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GREEK LAWS AFTER *CONSTITUTIO ANTONINIANA*: IDEOLOGY, RHETORIC AND PROCEDURE IN EUNAPIUS OF SARDIS

1. Introduction: An Arcadian Tale

Once upon a time, as the story goes – in an anecdote narrated, around 220 CE,[1] by Flavius Philostratus in his *Life of Apollonius of Tyana* –, a handsome young man from Messene in Arcadia arrived in Rome, sometime in the late 80s, where he was courted by many aspiring lovers and, most famously, by the emperor Domitian. According to the Severan biographer, the youth proved 'prudent' and resisted the emperor's attempts at seduction, this resulting in his imprisonment upon capital charges, by order of Domitian himself. In prison, the young Arcadian approached the Neopythagorian sage Apollonius of Tyana, who was also awaiting trial by Domitian, and their exchange revealed the true cause of the youth's misfortunes. Just as Hippolytus 'was destroyed by his father Theseus' in spite of his turning down the amorous advances of his stepmother Phaedra, thus, in like manner, this youth was destroyed by the omissions or decisions of his own father, who neglected to give him a proper 'Hellenic' education, sending him instead to Rome '*to study law*' (ἐνταῦθα ἔστειλε μαθησόμενον ἤθη νομικά):

> „καὶ οἱ ἐπὶ Θησέως," εἶπε „τὸν γὰρ Ἱππόλυτον ἐπὶ σωφροσύνῃ ἀπώλλυ ὁ πατὴρ αὐτός." „κἀμὲ" εἶπεν „ὁ πατὴρ ἀπολώλεκεν. ὄντα γάρ με Ἀρκάδα ἐκ Μεσσήνης

[1] Flinterman 1995, 26 (between 217-238 CE); Kemezis 2014, 297.

> οὐ τὰ Ἑλλήνων ἐπαίδευσεν, ἀλλ' ἐνταῦθα ἔστειλε μαθησόμενον ἤθη νομικά, και με ὑπὲρ τούτων ἥκοντα ὁ βασιλεὺς κακῶς εἶδεν."
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> "So did the laws in the time of Theseus," said Apollonius, "since Hippolytus's own father destroyed him because of his modesty." "I too," replied the youth, "have been destroyed by my father. Although I was an Arcadian of Messene, he did not give me a Greek education, but sent me here to study law. I came here for that, and I unluckily caught the emperor's eye."[2]

Despite this being a largely fictional episode,[3] this short moral parable probably reveals more than its author intended. In the first place, it can be read in the traditional way, as expressing the familiar opposition between a proper 'Hellenic' education (οὐ τὰ Ἑλλήνων ἐπαίδευσεν) and 'law' (ἤθη νομικά) conceived as 'legalism' – an attack on the perennial stereotype of the 'lawyer', and his legal tricks and well-performed lies, all too familiar in the intellectual climate of the time. And yet, this passage – particularly if one were to focus on the sharp and clear distinction between 'Greek culture' and 'Roman attitudes' – may reveal something about the hostility of certain Hellenocentric elite circles towards the young Greeks who travelled from their cities of origin to study law in Rome, in order to return and serve as 'νομικοί' in the service of the Roman governor of the province, or to provide to the famous rhetors of the age legal arguments during their presence in court.[4] It can also be characteristic of the dubious reception of the prevalence and study of Roman law by a leading Greek intellectual in the immediate aftermath – less than ten years having elapsed – of *Constitutio Antoniniana* and the generalization of Roman citizenship to all freeborn inhabitants of *Imperium Romanum*.[5] The 'ἤθη νομικά' could signify the new morals of Roman legal education – one could point to how the author implicitly associates the passage to Rome for the study of law with the dangers of 'corruption' and 'seduction', – in short, with moral or even physical destruction.

This interpretation falls naturally within the broader narrative strategy of Philostratus, who repeatedly favours Greek rhetoric over Roman justice. It is no coincidence that during the description of Apollonius' trial at the hands of

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[2] *Vit.Apoll*. vii.42.1-2 (translation: C.P. Jones 2005, Loeb Classical Library, with minor alterations).

[3] The reference (vii.42.6) to a lost letter by Apollonius, in which he described 'much more charmingly' the Arcadian youth's little adventure, makes it likely that there is a grain, or even nucleus, of truth in this episode. However, the issue of the authenticity of all surviving letters by Apollonius is complex: Lo Cascio 1978; Penella 1979; Flinterman 1995, 70-72. On Damis – the purported narrator of the episode: Anderson 1986, 155-173. An interesting recent essay on reality and fiction in the *Life of Apollonius*, is Gyselinck/Demoen 2009.

[4] The essential study is now Jones 2007 (with a detailed prosopography: 1346-1358). On the elevated status of professional 'νομικοί', Bryen 2012, 32-34, 65-66 on Roman Egypt.

[5] Swain 1996, 392. On *Constitutio Antoniniana*: Kuhlmann 1994; Burazelis 2007; Bryen 2016.

Domitian[6] – which follows on from the story of the Arcadian youth –, the legal issues and the serious risks besetting the philosopher are downplayed, with a shift in emphasis to the character of the trial as rhetorical display. Coming before the imperial court, Apollonius is convinced that he will deliver a speech '*rather than run for his life*' (διαλέξεσθαι ἡγουμένῳ μᾶλλον ἢ δραμεῖσθαί τινα ὑπὲρ τῆς ψυχῆς ἀγῶνα); the tribunal '*has been arranged as if to accommodate an audience for a rhetorical display*' (κεκόσμητο μὲν τὸ δικαστήριον ὥσπερ ἐπὶ ξυνουσίᾳ πανηγυρικοῦ λόγου).[7] As a strategy, the denial of reality and the reversal of judicial roles – where the Roman judge ceases to sit in judgement of the accused and becomes, rather, the latter's audience – as well as the narrative transformation of an unpredictable court experience into a theatre of rhetorical performance, has been recorded by other Greek *pepaideumenoi* of the Imperial age as well. As succinctly described by Aelius Aristeides, relating his trial before the proconsul C. Julius Severus in August 153 CE, the court proceedings had already been transformed into oratorical display: 'σχῆμα ἐπιδείξεως μᾶλλον ἦν ἢ δίκης'.[8]

Thus, the Philostratean tale may open a window upon the manner in which Greek elites of the early third century CE were coping with the increasing importance of Roman law immediately following 212 CE – without, in actual fact, feeling divided between a defence of hellenocentric identity and their political or administrative integration into the Roman administrative apparatus.[9] In this context, the distancing from a Greek identity could be rendered symbolically as 'seduction', or 'ruin' – at the same time when Greek rhetoric was attempting to incorporate or reverse its inevitable coexistence with Roman judicial discourse.

2. Greek Elites on Constitutio Antoniniana*: Ambiguities of the present tense.*

The issue of the manner in which the educated elite of the Greek East responded to the *Constitutio Antoniniana* is a complex one and, in the absence of adequate primary sources, difficult to resolve.[10] As is well known, the framework which has up today helped define -whether in a positive or negative light-, the terms of the debate concerning the social, legal and intellectual effects of the *Constitutio* is the schema proposed by the German lawyer and legal papyrologist Ludwig Mitteis, in his epoch-making work *Reichsrecht und Volksrecht in den Östlichen Provinzen des*

[6] Flinterman 1995, 147-157.

[7] *Vit.Apoll.* viii.2; viii.4.

[8] *Sacred Tales* 4.91; Cf. *Vit.Soph.*525.

[9] Philostratus himself was an Athenian sophist and magistrate (*Syll*[3] 878; Puech 2002, 200; hoplite general in 200/1 CE: Follet 1976, 101-102; cf. *Vit.Soph.* 526), member of the so-called 'circle' of Julia Domna, Septimius Severus' second wife and mother of Caracalla, and finally a member of Caracalla's *Consilium Principis.* On the circle of Julia Domna: Bowersock 1969, 101-109; Levick 2007, 113-118. *Amicus* and *comes* of Caracalla: *Vit.Apoll.* v.2; vii.31. Member of *Consilium Principis*: *Vit.Soph.* 626.

[10] On Christian elite attitudes towards Caracalla's edict: Inglebert 2016.

römischen Kaiserreichs (1891). Famously, Mitteis built his argument on the tension between 'Reichsrecht', the law of the ruling power – thus Roman imperial law –, and 'Volksrecht', the local law or law of practice, on the basis that state law was imposed over local legal systems, abolishing them in the process.[11] In the course of the twentieth century, the majority of scholars that addressed the issue, based on spectacular advances in juridical papyrology, using Roman Egypt as a model, underlined the distinction between substantive and procedural law, and argued that common Greek legal traditions did not cease to exist after 212 CE, but assumed, instead, at least in the field of private law, the form of custom.[12] In the awarding of justice, however, changes that had already taken place since the late Hellenistic period and throughout the High Empire,[13] famously described in Geoffrey de Ste. Croix's angry elegy (namely, the decline of popular democratic courts and their replacement by judicial councils controlled by the upper classes, as was also the case with civic offices, and, later, the more frequent recourse to the judicial conventus of the Roman governor)[14] were consolidated, at least in the case of mainland Greece and Asia Minor, through the concentration of all civil and criminal jurisdiction in the hands of the governor, within the framework of *cognitio*.[15]

In contrast, we are more familiar with the way in which Greek intellectuals of the Flavian and Antonine eras received, in general terms, Roman control on the political and legal affairs of their Greek cities. One need only refer to the classic, bitter yet penetrating, remarks by Plutarch – a restrained blend of pragmatism and nostalgia – in his work *Political Advice*, where the Boeotian philosopher warns Menemachus, while he is holding public office, not to have '*great pride or confidence*' in his crown, since he sees '*the boots of Roman soldiers*' just above his head – pointing out that there can never be true political freedom as long as '*a small edict by a proconsul may annul or transfer to another man and which, even if it lasted, has nothing in it seriously worthwhile*'.[16] We also know at least some of the psychological and social strategies worked out by the

[11] Cf. Amelotti 1999. Further bibliography and discussion in Scheibelreiter 2016, in the present volume, 4.1.

[12] Recent studies on Roman and local laws after 212 CE: Carrié/Rouselle 1999, 57-65; Garnsey 2004, 140-151; Honoré 2004, 115-116 on custom; Carrié 2005, 271-276; Humfress 2011, on the institution of 'customary' law; Ando 2012, 85-99; Alonso 2013, esp. 365ff; Kantor 2015, 17-19; Kantor 2016.

[13] Gauthier 1993, 223-225; Lintott 1993, 61-65 (discussing Cilicia, Asia and Cyrene); Fournier 2010.

[14] Ste Croix 1981, 315-317.

[15] On *cognitio*, see Sherwin-White 1963, 1-23; Buti 1982; Turpin 1999 (esp. 531-574); Harries 1999, 101, 118-122; 2007, 28-33; Roueché 1998, Humfress 2007, 46-51 on the governor's jurisdiction in the Late Roman Empire. On the survival of local laws and courts in Aphrodisias, in the case of the response of Gordian III to Epaphras (*IAph* 2007, no 8.100), see now Kantor 2016, 48-49 and the discussion in 52-54.

[16] *Moralia* 824e-f (translation: Fowler, 1936 Loeb Classical Library). Cf. Cartledge 2009, 124-30.

Greek *pepaideumenoi* in order to cope with, or reverse Roman reality. In the same work, Plutarch advises his young friend to '*imitate the actors, who, while putting into the performance their own passion, character, and reputation, yet listen to the prompter and do not go beyond the degree of liberty in rhythms and metres permitted by those in authority over them*.'[17] In the mid-second century CE, the famous sophist M. Antonius Polemo was urging the Smyrneans not to have their private disputes judged '*outside*' their city, and to '*settle*' them there, ensuring that jurisdiction in private disputes would remain with the local courts, which were controlled by the leading aristocratic families. On the contrary, Polemo suggested that the citizens of Smyrna '*take out of the city*' and transfer to the jurisdiction of the Roman governor, who held the *ius gladii*, disputes such as those concerning '*acts of adultery, sacrileges and homicides*'.[18] Polemo's command can be easily read as a defensive denial of reality, since Rome retained jurisdiction over capital crimes – an illusory belief that the transfer on of criminal jurisdiction to the Roman judge was a free choice of the Smyrneans and not an ineluctable necessity.[19]

However, we do not possess similar testimonies about the Greek intellectuals of the post-212 era, nor do we have access to the ways in which, more than a century later, the *pepaideumenoi* of the third and fourth centuries CE, reacted against a legal change which seems, at least to our understanding, that was even more drastic and, more importantly, all-encompassing. For our generation, the initiative studies on this stimulating question have been two highly influential papers of the 1970s, both by Joseph Mélèze-Modrzejewski: *Grégoire le Thaumaturge et le droit romain. À propos d'une édition récente* (1971), and especially *Ménandre de Laodicée et l'Édit de Caracalla* – presented in *Symposion* 1977, and published in 1982. Focusing, successively, on a passage from the valedictory speech of Gregory the 'Miracle-Worker', later to become bishop of Neocaesarea in Pontus, during his graduation, after eight years of study, from the school of Origen in 238 CE,– and then on a number of passages from a technical rhetorical treatise of the late third century CE (Διαίρεσις τῶν ἐπιδεικτικῶν), which has come down to us under the authorship of Menander of Laodicea in Phrygia,[20] Mélèze-Modrzejewski drew attention, among other things, to the cultural and legal context of these two texts in light of the *Constitutio*, delving, in essence, into the ambiguous signification of two famous 'νῦν': on the one hand, the 'νῦν' of Gregory, who finds Latin difficult to bear, yet necessary for the study of Roman law, which guides – as he writes – *in the present time,* ('νῦν') the fortunes of all those under Rome's power (οἱ θαυμαστοὶ ἡμῶν <νόμ>οι, οἷς νῦν τὰ πάντων τῶν ὑπὸ τὴν Ῥωμαίων ἀρχὴν

[17] *Moralia* 813e.

[18] *Vit.Soph.*532: τὰς γὰρ ἐπὶ μοιχοὺς καὶ ἱεροσύλους καὶ σφαγέας, ὧν ἀμελουμένων ἄγη φύεται, οὐκ ἐξάγειν παρεκελεύετο μόνον, ἀλλὰ καὶ ἐξωθεῖν τῆς Σμύρνης, δικαστοῦ γὰρ δεῖσθαι αὐτὰς ξίφος ἔχοντος.

[19] On the passage, Karambelas 2013, 96-98. *Contra* Kantor 2015, 8, who uses it as a proof that local capital jurisdiction had not been abolished under the Antonines.

[20] On the question of authorship of the treatise: Mélèze-Modrzejewski 1982, 337, n.9; Heath 2004, 127-131; Humfress 2013, 73-75.

ἀνθρώπων κατευθύνεται πράγματα)[21] – and on the other hand, the multiple 'νῦν' of Menander, who, enumerating the topics that could serve as objects of praise when composing the encomium of a city, excludes its *politeia* and laws, since all cities are *in the present time* ('νῦν') governed by one such [city] (ὑπὸ γὰρ μιᾶς αἱ Ῥωμαϊκαὶ ἅπασαι νῦν διοικοῦνται πόλεις).[22] Similarly, the praising of laws is '*in the present time*' (*ἐν τοῖς νῦν χρόνοις*) also pointless, since all legislative action is undertaken 'κατὰ γὰρ τοὺς κοινοὺς τῶν Ῥωμαίων νόμους' – although the possibility still remains of praising local custom (ἔθεσι δ' ἄλλη πόλις ἄλλοις χρῆται, ἐξ ὧν προσῆκεν ἐγκωμιάζειν).[23] In Gregory, the present time clearly refers to the time of writing and the reinforcement of Roman law in the period after 212 CE. By contrast, according to Mélèze-Modrzejewski's astute reading, Menander's 'present' is more expansive and covers, as we also know from the writers of the Second Sophistic, the entire period of the Roman rule of the Greek world, with the loss of autonomy of Greek cities, and not just the third century CE and the legal landscape formed by the *Constitutio*.[24]

The apostrophes of Gregory and Menander may offer us some hints about their stance towards the new world order, well-hidden behind the autobiographical style of the former and the icy rhetorical tropes of the latter. The tension between Hellenism and Roman Law, and the ambivalence on the part of educated elites vis-à-vis the ongoing Romanisation, are highlighted in a passage from Gregory, who, whilst characterising Roman Law as '*our*' law (οἱ θαυμαστοὶ ἡμῶν ≤νόμ≥οι,) and Roman Laws as '*wise, precise and varied and marvellous*' (σο≤φ≥οί τε ≤καὶ ἀκρ≥ιβεῖς καὶ ποικίλοι καὶ θαυμαστοί), concludes his encomium with the euphemism that the aforementioned attributes of Roman Laws render them '*in a word, most Greek*' (ὄντες μὲν αὐτοὶ καὶ συνελόντα εἰπεῖν Ἑλληνικώτατοι) – an adroit incorporation of Roman into Greek, the latter having the last word, as it were –as the author insists, all the while, in the difficulty of the "Ρωμαίων φωνή' (οὔτε καὶ ἐκμανθανόμενοι ἀταλαιπώρως), which voice, even though '*awesome, solemn and well suited to imperial authority*' (καταπληκτικῇ μὲν καὶ ἀλαζόνι καὶ συσχηματιζομένῃ ≤πάσῃ≥ τῇ ἐξουσίᾳ τῇ βασιλικῇ), requires great effort of learning (φορτικῇ δὲ ὅμως ἐμοί).[25] There exists also, in Gregory's speech, something of the *Zeitgeist* of an era when technical training in Latin and Roman law began to supersede the study of rhetoric.[26] On the other hand, the perfunctory remarks by

[21] Crouzel (1969), *Εἰς Ὠριγένην Προσφωνητικός*, 1.7.

[22] Menander *Rhet*., 360 (Spengel).

[23] Menander *Rhet*., 363 (Spengel).

[24] Recently, we notice a regression in the older hypothesis that Menander's observations refer to the post-212 CE era, although Mélèze-Modrzejewski 1982 is cited for support: Humfress 2013, 78-79, followed by Kantor 2016, 45. However, Mélèze-Modrzejewski 1982, 342-343, 345-346 argues explicitly for the exact opposite thesis, *contra* Talamanca 1971.

[25] Translation: Lane-Fox 1986, 525-526 – where also an alternative, more 'technical' reading of 'συνελόντα εἰπεῖν Ἑλληνικώτατοι' is to be found. Cf. 518-519.

[26] Palm 1959, 84-86. Libanius, *Or.* 1.151-154; 214-215; 243-246; 18.288; 62.21-23; 57.3.

Menander constantly recall the lost possibility of encomia of Greek laws and, with it, the weakening of the rich and elevated Greek rhetorical tradition itself.

The diagnosis of an ambivalence between past and present is, of course, fully compatible with contemporary sensibilities, – our 'νῦν' – in the same way that the construction of an up-to-date theoretical paradigm constitutes a projection, inter alia, of our own needs and preoccupations – especially since we address eschatological questions, such as when, or how, a form of legal life dies. In the same way that Mitteis built his arguments under the influence of the German Historical School or the Romantic 'Volk' of Herder, historians of the early twenty-first century are currently in the process of denying the binary schemes of integration/resistance and working out a theory of 'multiculturalism', 'legal pluralism' or legal 'hybridity'. Of course, the critique of the essentialist conception of 'Roman' and 'local' laws is an old one.[27] Yet today, academic discussion, as it runs its post-modern course, refuses with ever greater determination to reduce 'Roman law' and 'local laws' to isolated and self-sufficient 'essences' rather than relations.[28] Clifford Ando, in his general overview of the effects of the Antonine Constitution on citizenship and law, and summing up postwar epigraphic and papyrological research, exposes the functionality of legal pluralism both before and after 212 CE.[29] From another perspective, Caroline Humfress also focuses on legal pluralism in Late Antiquity and challenges the vocabulary and discourse of 'survival' or 'persistence' of local laws after 212 CE. Humfress denies that the transition from the normative dominance of Greek legal systems to that of Roman law assumed the nature of an 'imposition from above', in the sense of the normative enforcement of an obligation; on the contrary, the *Constitutio* broadened the scope for making use of Roman law, on the basis of multiple legal choices or alternatives of a non-conflicting nature – a practice which was widespread in late antique societies.[30]

The purpose of the present paper is to navigate the grey area between theory and historical testimony, or rather, the points of friction and resistance between the

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Liebeschuetz, 1972: 242-245; 342-355; Heath 2002, 431-437. Law School of Beirut: Kunkel 1966, 141.

[27] Cf. Schiller 1978, 540-541, who underlined that Romanization also occurred '*due to the voluntary reception of Roman legal institutions, including documentary forms, on part of notaries, local jurists and even lower local courts, by reason of the recognition of the superiority of the Roman law*'. Cf. the cautionary note by Sherwin-White 1973, 386-394, who stressed the '*paucity of contemporary evidence*' and the common perception that '*it remains in dispute whether the use of Roman legal notions and terms in provincial documents represents a total adoption of Roman law or its infiltration into and amalgamation with provincial usage*'.

[28] Cf. Carrié/Rouselle 1999, 57-65. On the post-212 era in Egypt, Yiftach-Firanco 2009, 553-555.

[29] Ando 2012, 95. According to Ando, the relationship between Roman and local law remained a substantially two-way affair: even though Roman officials '*across the third century* (…) *insisted in more and more strident tones on adherence to Roman norms*', at the same time '*certain non-Roman customs were* (..) *redescribed as Roman in legal literatures*'.

[30] Humfress 2013, esp. 73-90.

two – and revisit both the ideological stance of educated elites after 212 CE towards Roman law, as well as the core nucleus of questions concerning the continuity of Greek legal institutions in the fourth century CE, by adding another important text to the ongoing discussion: the description of a trial, narrated by Eunapius of Sardis in his *Lives of the philosophers and sophists*, which, to this day, has escaped the attention of legal historians, although it is best understood in its complex judicial context.

3. A trial in Eunapius' Lives*: Ideology, Rhetoric, Procedure.*

Sometime in the late 310s CE, in Corinth, the proconsul of the province of Achaia took his seat in court in order to pass judgement on – and with the ulterior motive of making an example of – one of the prominent teachers of rhetoric in Athens at the time, Julianus of Cappadocia, and a group of students supporting him, these having been arrested following a violent brawl with the pupils of another teacher, Apsines, son of the sophist Onasimus.[31] The events surrounding the trial did, however, leave its marks on the parties involved, circulated anecdotally in academia and was in the end preserved for posterity by the historian Eunapius of Sardis, in a series of biographies of rhetors and philosophers which he composed at the turn of the century (probably in late 399 CE).[32] The episode in question takes up the most part of Julianus' biography, but functions, essentially, as an introduction to the biography of Eunapius' teacher, the Armenian Prohaeresius, who followed a prominent career in rhetoric amid the political and intellectual upheavals of the Later Roman Empire.

As it is unanimously recognized, Eunapius' narrative constitutes a credible source and a reliable representation of court proceedings in the early fourth century CE.[33] Eunapius bases the description of Julianus' trial - except for whatever written sources

[31] The *terminus ante quem* is quite certain, since upon Libanius's arrival in Athens in 336 CE, the sophist Julianus, son of Domnus, of Caesarea in Cappadocia, active under Constantine the Great (306-337 CE) was already dead. On the dating of the trial: Karambelas, forthcoming. Traditional dating: Kennedy 1983, 9: *around 330*; Watts 2006, 51: between 325-335. However, this dating creates problems in the dating of Prohaeresius' life, and in reaching a convincing reading of the whole episode. Prohaeresius was born in 276 and was 86 years old in September 362 CE, when Eunapius arrived in Athens. If Prohaeresius became a pupil of Julianus' in the mid-310s and the trial took place around 330 CE, as the majority of the scholars argue, then Prohaeresius, oddly enough, must still have been a student in Julianus' school at the ripe old age of fifty-five. On this issue: Watts 2006, 51-52. Brown 1992, 44 does not address the inconsistency: he accepts the date of 330, yet, at the same time, describes Prohaeresius as a "*young…tall Armenian of striking demeanor.*" Thus, in his recent edition and commentary of Eunapius' biographies, Richard Goulet argues for a date earlier date, around 300 CE: Goulet 2014, II 539 (534-540). However, we must probably opt for a date in the late 310's, if we do not believe that the title 'proconsul'used by Eunapius is anachronistic: Constantine acquired the province of Achaia in 314 CE, which became again a proconsular province, governed by senators of consular rank. Jones 1971, I, 106-107; Davenport 2013, 233.

[32] Banchich 1984. For a biography of Eunapius: Penella 1990, 1-9; Becker 2013, 25-28; Goulet 2014, I 5-34.

[33] Cf. the commentaries in Penella 1990; Civiletti 2007; Becker 2013.

or oral traditions were available to him - on the first-hand account of an eye-witness, the co-defendant Tuscianus (ταῦτα δὲ πρὸς τὸν συγγραφέα Τουσκιανὸς ἐξήγγελλε παρὼν τῇ κρίσει, καὶ εἴσω τῶν κατηγορουμένων).[34] This Tuscianus recalled, not only the actual events, but even some of the rhetorical turns of phrase from the proem of Prohaeresius' speech in court [ὁ μὲν προοίμιόν τι ἔφη (οὐ γὰρ ἠπίστατό γε αὐτὸ Τουσκιανός, τὸν δὲ νοῦν ἔφραζεν)...εἰς δεύτερον προοίμιον ὁ Προαιρέσιος ἐντείνων τὸν λόγον (τοῦτο γὰρ ἐμέμνητο Τουσκιανός).[35] Eunapius distinguishes between what Tuscianus did or did not remember, and invokes the latter's testimony in order to highlight the rhetorical excellence of Eunapius' teacher, Prohaeresius; there is no reason to suppose that what legal information he does provide is an imaginary construction, given that such information does, in actual fact, arise neutrally and incidentally during the course of the narrative. In addition, the legal framework mapped out by Eunapius is corroborated, to the letter almost, by independent sources from the same period, such as the classic account by Libanius of the dreams cherished by a youth of Antioch concerning his future passage to Athens.[36] There is no reason to resort to the common sense argument that, even if the episode were fictional, it would, nevertheless, provide us with a useful insight into the stance of Greek intellectuals towards Roman law, on the basis of the ideological manipulations or preoccupations of its author.

The prosecution of Julianus and his students constitutes a stormy episode which is best understood within the context of physical violence in everyday student life in Late Antique Athens, not only between students, but also in the broader social milieu,[37] in a face-to-face microcosm, whose economy depended to a considerable extent on wealthy teachers and their international clientele.[38] The

[34] *Vit.Phil.* 484. On Tuscianus' identity: Watts 2005b, 350-352; Civiletti 2007, 558; Becker 419-420.

[35] *Vit.Phil.* 484.

[36] Libanius, 1.19: Ἀκούων ἔγωγε ἐκ παιδὸς, ὦ ἄνδρες, τοὺς τῶν χορῶν ἐν μέσαις ταῖς Ἀθήναις πολέμους καὶ ῥόπαλά τε καὶ σίδηρον καὶ λίθους καὶ τραύματα γραφάς τε ἐπὶ τούτοις καὶ ἀπολογίας καὶ δίκας ἐπ ἐλέγχοις πάντα τε τολμώμενα τοῖς νεοῖς, ὅπως τὰ πράγματα τοῖς ἡγεμόσιν αἱροιεν, ἀγαθούς τε αὐτοὺς ἐν κινδύνοις ἡγουμην δικαίους τε οὐχ ἧττον τῶν ὑπὲρ τῶν πατρίδων τιθεμένων τὰ ὅπλα εὐχόμην τε τοῖς θεοῖς γενέσθαι καὶ ἐμαυτῷ τοιαῦτα ἀριστεῦσαι καὶ δραμεῖν μὲν ἐς Περειᾶ τε καὶ Σούνιον καὶ τοὺς ἄλλους λιμένας νέων ἐφ ἁρπαγῆτῆς ὁλκάδος ἐκβάντων, δραμεῖν δὲ ὑπὲρ τῆς ἁρπαγῆς αὖτις εἰς Κόρινθον κριθησόμενον, δεῖπνα δὲ δείπνοις συνείροντα ταχὺ τῶν ὄντων ἀνηλωμένων εἰς δανείσοντα βλέπειν.

[37] Extensively discussed in Watts 2005a, 236-241, 248-24; Watts 2006, 42-47 (also on the central and provincial government's attempts to control student violence). See also Karambelas, forthcoming; Rousseau 1994, 28-34 (30 on the violence between rival student groups; 31-32 on Prohaeresius as teacher of Basil of Caesarea between 349-355 CE); and the older work of Walden 1912.

[38] Thompson 1959; Frantz 1988, 12-13; Gauville 2001, 52: Athens was a small fortified city, containing only the Acropolis and a small part of the agora, with a population of around 25,000.

reader is introduced to the successive stages of a trial, from prosecution to verdict. The scuffle between the pupils of the sophists Julianus and Apsines ended with the former beating up the latter – who, in spite of the fact that they got the better of their opponents by resorting to inordinately violent ways, thus putting the lives of their victims at risk, then proceeded, considering themselves hard done by, to bring charges against them. Eventually, the case was referred to the proconsul of Achaia, who tried it in Corinth:[39]

> ἔτυχον μὲν γὰρ οἱ θρασύτατοι τῶν Ἀψίνου μαθητῶν ταῖς χερσὶ κρατήσαντες τῶν Ἰουλιανοῦ κατὰ τὸν ἐμφύλιον ἐκεῖνον πόλεμον χερσὶ δὲ βαρείαις καὶ Λακωνικαῖς χρησάμενοι, τῶν πεπονθότων περὶ τοῦ σώματος κινδυνευόντων, ὥσπερ ἀδικηθέντες, κατηγόρουν. ἀνεφέρετο δὲ ἐπὶ τὸν ἀνθύπατον ἡ δίκη, καὶ ὃς βαρύς τις εἶναι καὶ φοβερὸς ἐνδεικνύμενος, καὶ τὸν διδάσκαλον συναρπασθῆναι κελεύει καὶ τοὺς κατηγορηθέντας ἅπαντας δεσμώτας, ὥσπερ τοὺς ἐπὶ φόνῳ κατακεκλεισμένους. ἐῴκει δὲ ὡς Ῥωμαῖός τις οὐκ εἶναι τῶν ἀπαιδεύτων, οὐδὲ τῶν ὑπ' ἀγροίκῳ καὶ ἀμούσῳ τύχῃ τεθραμμένων. ὅ τε γοῦν Ἰουλιανὸς παρῆν, οὕτως ἐπιταχθέν, καὶ ὁ Ἀψίνης συμπαρῆν, οὐκ ἐπιταχθέν, ἀλλ' ὡς συνηγορήσων τοῖς κατηγορηκόσιν.
>
> It so happened that the boldest of the pupils of Apsines had, in a fierce encounter, got the upper hand of Julian's pupils in the course of the war of factions that they kept up. After laying violent hands on them in Spartan fashion, though the victims of their ill-treatment had been in danger of their lives, they prosecuted them as though they themselves were the injured parties. The case was referred to the proconsul, who, showing himself stern and implacable, ordered that their teacher also be arrested, and that all the accused be thrown into chains, like men imprisoned on a charge of murder. It seems, however, that, for a Roman, he was not uneducated or bred in a boorish and illiberal fashion. Accordingly Julian was in court, as he had been ordered, and Apsines was there also, not in obedience to orders but to help the case of the plaintiffs.[40]

However, the foregoing passage gives rise to a series of legal problems, on which we will now turn. In the first place, Eunapius creates the impression that Apsines' pupils travelled from Athens to Corinth immediately following the scuffle, they filed charges, and then the proconsul tried the case. This is also the traditional view.[41]

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[39] Cf. Libanius, *Or.* 1.19: εἰς Κόρινθον κριθησόμενον. Cf. Kennedy, 9-10. Historians have been agnostic on the identity of the proconsul (cf. Jones 1971, I, 1013) given the debate on the chronology of the trial. If we accept a date around 330 CE, a possible candidate is Ceionius Rufius Albinus: Davenport 2013, 233-234; however, a chronology in the late 310s, as we have seen, is more probable.

[40] *Vit.Phil.* 484.

[41] A synopsis of which we find in Watts 2006, 50: "Apsines' group (…) traveled to the office of the proconsul and filed charges against Julianus's students". Compare Opelt 1969, 31-32.

However, if one pays attention both in the precise wording and in the context of the whole episode, he may find a hole in the sequence of events:
a) In his account, Eunapius clearly differentiates between 'κατηγόρουν' and 'ἀνεφέρετο δὲ ἐπὶ τὸν ἀνθύπατον ἡ δίκη'. The wording of 'ἀνεφέρετο ἐπὶ τὸν ἀνθύπατον' implies at least the original filing of charges (κατηγόρουν) with some other judicial authority in Athens and their referral from that authority to the Roman governor. The term 'ἀνεφέρετο' -even though not legally technical- indicates clearly the movement of jurisdiction from one authority to another. One is reminded of the relevant term 'ἀναπέμπω', which is well-attested in the papyrological sources.[42]
b) The existence of a first hearing, before the trial in Corinth, during which the two parties had delivered speeches of prosecution and defense, is clearly attested later in the narrative, when the Roman governor orders that the pleading for the prosecution be delivered 'according to Roman procedural rules' by the student that had delivered it *the first time around*. We also learn that the student who delivered the speech for the prosecution in the first trial was named Themistocles:

> "ἀλλ' οὐ τοῦτό γε" εἶπεν "Ῥωμαῖοι δοκιμάζουσιν, ἀλλ' ὁ τὴν πρώτην εἰπὼν κατηγορίαν κινδυνευέτω περὶ τῆς δευτέρας." (...) ἦν δὲ ὁ Θεμιστοκλῆς κατηγορηκώς.
>
> (the proconsul) said : " This procedure is not approved by the Romans. He who delivered the speech for the prosecution at the first hearing must try his luck at the second also." (…) Now Themistocles had made the speech for the prosecution before.[43]

Eunapius possibly suppresses the first hearing, although he eventually mentions it through the words of the proconsul, because he is only interested in the role of his teacher Prohaeresius in the 'Roman' trial. It is also probable that the Athenian judicial body which had conducted the first hearing, had ceased to function and did not interest Eunapius' perspective in the late 399 CE. Although we have solid knowledge of the movement of jurisdiction from the local courts to the provincial governor, or even to the emperor, in the High Empire, it comes as a surprise that in early fourth century CE, an Athenian court continued to try criminal cases in the first degree – or that, at any rate, had the legal responsibility of carrying out a criminal hearing to arrive at a precise legal determination of the offences concerned. The evidence of a complete first hearing runs also against the suggestion that some local authority had only the capacity to refer the case to the Roman judge, even if it eventually decided to do so. Philipp Scheibelreiter's objection, in his response to the present paper, that we do not need to suppose an initial exchange of both speeches of

[42] *SB* 5 7601 (135 CE); *BGU* 1 168 (around 170 CE) l.24.; *P. Col.* X 270 (3rd century CE) l.15; *P.Princ.* III 126 (around 150 CE) l.4; *P.Rainer Cent.* 68 (235-236 CE) l.23; *P. Kramer* 11 (299 CE) l.4.
[43] *Vit.Phil.* 484 ff.

prosecution and defense, but only a speech of prosecution,[44] is stimulating, but does not answer the question why Julianus' pupils would be deprived by a Greek court of the right to defend themselves. Later, Eunapius presents the Roman judge to urge 'anyone who could' to 'reply to the earlier speech of the prosecution', i.e. to the speech of the first hearing (ἀπολογεῖσθαι δὲ πρὸς τὴν προτέραν κατηγορίαν ὡς ἐκέλευσε τὸν δυνάμενον), but this comes as the result of Themistocles' inability to deliver his speech and the need for a precise refutation of the charges by the defendants, which could only be based in the initial procedure in Athens, since no speech for the prosecution was delivered in the second trial. Scheibelreiter argues that the reference, in the last stage of the trial, during Prohaeresius' second proem, to men who 'win belief for what they say, before the defense is heard' (καὶ λέγοντα πιστεύεσθαι πρὸ τῆς ἀπολογίας) proves that the accused did not defend themselves in the first trial. To our view, at that point Prohaeresius protested against the mistreatment of the accused by the Roman officials – they were arrested on the charge of homicide, put in chains e.t.c. – before they had the chance to defend themselves in a proper Roman trial before the proconsul, and did not refer to the Athenian procedure. Otherwise, why would Prohaeresius raise a complaint about a violation of legal rights during the Athenian procedure, to the Roman judge?

The most important question is, of course, before which body could have the first trial taken place. There is some evidence from Antioch and Africa where the *boule* or local magistrates still had jurisdiction.[45] In the case of Julianus' trial, our options include some Athenian magistrate responsible for minor criminal offences – or even the Areios Pagos. It is known that civic offices continued to operate in Athens until the fifth century CE.[46] Areios Pagos was functioning as late as the fourth century CE,[47] and we are certainly familiar with its jurisdiction earlier in the Imperial period.[48] It is also argued, on the basis of a passage from Lucian's *Timon* -a dialogue set

[44] Scheibelreiter in the present volume, 4.2.

[45] Libanius 11.139; *Codex Theodosianus* 12.1.174 (Emperors Valentinian and Valens to Eucharius, proconsul of Africa; 412 CE): *Duumvirum impune non liceat extollere potestatem fascium extra metas propriae civitatis* (Duumvirs shall not be allowed with impunity to extend the power of their fasces beyond the limits of their own municipalities – transl. Pharr 1952). On the very limited number of epigraphical sources: Feissel 2009, 99-102. Cf. the older views of Jones 1940, 150: '*The city courts seem by the end of the third century to have disappeared entirely, and all jurisdiction devolved upon the provincial governor, who was authorized to delegate minor cases to iudices pedanei (χαμαιδικασταί)*"; and Ste Croix 1981, 317: '*Before the end of the third century the local courts seem to have died out completely, and all jurisdiction was now exercised by the provincial governor or his delegates', with the reservation that 'no doubt many governors were glad to allow local magistrates to try minor cases*'. Cf., however, *IK Perge* II 323, II.5-6 (200-250 CE).

[46] *IG* II^2 5, 13293.

[47] Frantz 1988, 12; 17 (with 'reduced responsibilities'); *I.G.* II ^{2} 4222; Himerius *Or.* VII describes Areios Pagos as the body which '*now judges for the Athenians concerning freedom*'; Sironen 1997, nos 4 (p. 56), 12 (p. 67), 17 (p. 75) until the late fourth century CE.

[48] Geagan 1967, 60-61; Fournier, 142-156 (also a collection of the relevant sources). We may

in fifth-century BCE Athens- that, at least in the second/third centuries CE, Areios Pagos had jurisdiction over cases of assault (τραύμα).[49] However, it seems inprobable that Areios Pagos – who would probably issue a 'yes'/'no' verdict – would refer the case to the proconsul after the completion of the trial.

According to Eunapius' narration, the referral of the case to the Roman justice had two consequences. On the one hand, the governor ordered that Julianus also be arrested (καὶ τὸν διδάσκαλον συναρπασθῆναι κελεύει) – as instigator of his pupils' behaviour – and, on the other, that all of the accused be treated as arrested on the charge of homicide (τοὺς κατηγορηθέντας ἅπαντας δεσμώτας, ὥσπερ τοὺς ἐπὶ φόνῳ κατακεκλεισμένους). The logical consequence of Eunapius' phrasing is that Julianus' arrest was the Roman governor's idea – therefore the initial hearing only pertained to pupils, with the governor adding their teacher to the parties accused. In that case, the pupils had already been tried in Athens, following the original complaint, and the governor ordered at a later stage, when he took over the case, the arrest of the teacher as well (συναρπασθῆναι).[50] It is also possible that the proconsul transmuted the legal charges (iniuria)[51] and brought Julianus and his pupils to court on a charge of attempted homicide – hence their treatment "*like men imprisoned on a charge of murder.*" of this is the case, then there is the possibility that the charges had initially been filed with an Athenian magistrate who had tried the case in the first degree, but decided that he had no jurisdiction over criminal cases.

During the 'ἐξέτασις', Themistocles of Athens appears as κορυφαῖος[52] of the 'chorus' of plaintiffs and the two rival teachers are also present – Apsines as *synegoros,* in the technical sense, for his pupils. The defendants appear in a 'pitiable' state and the judge decides to appear pitiless and instill fear (βαρύς τις εἶναι καὶ φοβερὸς ἐνδεικνύμενος: 'showing himself stern and implacable')[53] – with his body language communicating his irritation at Apsines's presence. Similarly, the governor's silences function as a performative act, which keeps his psychic movements within bounds,

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also note Aelius Aristides' rhetorical praise of the continuity of Areopagus (writing in the present tense) in his 'Panathenaic' Oration, 47-48 (cf. also the references in 367; 385).

[49] Lucian, *Tim*. 46: τί τοῦτο; παίεις, ὦ Τίμων; μαρτύρομαι: ὦ Ἡράκλεις, ἰοὺ ἰού, προκαλοῦμαί σε τραύματος εἰς Ἄρειον πάγον. Geagan 1967, 61; *contra*, Fournier 2010, 147. Phillips 2007, 104 reads the passage as a testimony of Lucian's '*impressive knowledge of Classical Athenian law*'.

[50] When, at the start of the trial, Eunapius describes the physical state of the defendants – they entered the courtroom 'unfairly treated'; 'their hair was uncut'; 'they were in a great physical affliction,' resulting from their being remanded in custody for a fair length of time– he includes among their ranks their teacher as well (εἰσῄεσαν πάλιν οἱ δεσμῶται καὶ ἠδικημένοι, καὶ ὁ διδάσκαλος μετ' αὐτῶν, κόμας ἔχοντες καὶ τὰ σώματα κεκακωμένοι λίαν, ὥστε οἰκτροὺς αὐτοὺς φανῆναι καὶ τῷ κρίνοντι). Cf. Mommsen 1899, 330-331, n.5.

[51] On iniuria/τραύμα as the main charge against Julianus' students, see Scheibelreiter in the present volume, 4.1.

[52] Identity of Themistocles: Jones 1971, I, 894; Penella 1990, 81 n.9; Civiletti 2007, 561.

[53] *Vit.Phil.* 483.

so that the legal procedure is followed without impediment.[54] An unexpected 'crisis' during the hearing breaks out the moment Apsines tries to plead for the prosecution:

> δοθέντος δὲ τοῦ λόγου τοῖς κατηγοροῦσιν, ἤρξατο μὲν ὁ Ἀψίνης τοῦ λόγου, ἀλλ' ὁ ἀνθύπατος ὑπολαβών, "ἀλλ' οὐ τοῦτό γε" εἶπεν "Ῥωμαῖοι δοκιμάζουσιν· ἀλλ' ὁ τὴν πρώτην εἰπὼν κατηγορίαν κινδυνευέτω περὶ τῆς δευτέρας." ἐνταῦθα παρασκευὴ μὲν οὐκ ἦν πρὸς τὴν τῆς κρίσεως ὀξύτητα· ἦν δὲ ὁ Θεμιστοκλῆς κατηγορηκώς, καὶ λέγειν ἀναγκαζόμενος, χροιάν τε ἤλλαξε καὶ τὰ χείλη διέδακνεν ἀπορούμενος, καὶ πρὸς τοὺς ἑταίρους ὑπέβλεπεν καὶ παρεφθέγγετο τί πρακτέον· εἰσεληλύθεσαν γὰρ ὡς ἐπὶ τῇ συνηγορίᾳ τοῦ διδασκάλου μόνον κεκραξόμενοι καὶ βοησόμενοι. πολλῆς οὖν σιωπῆς καὶ ταραχῆς οὔσης, σιωπῆς μὲν καθ' ὅλον τὸ δικαστήριον, ταραχῆς δὲ περὶ τὸ τῶν διωκόντων μέρος, ἐλεεινόν τι παραφθεγξάμενος ὁ Ἰουλιανός, "ἀλλ' ἐμέ γε εἰπεῖν" ἔφη "κέλευσον·" ὁ δὲ ἀνθύπατος ἀναβοήσας· "ἀλλ' οὐδεὶς ὑμῶν γ' ἐρεῖ τῶν ἐσκεμμένων διδασκάλων, οὐδὲ κροτήσει τις τῶν μαθητῶν τὸν λέγοντα, ἀλλ' εἴσεσθέ γε αὐτίκα ἡλίκον ἐστὶ καὶ οἷον τὸ παρὰ Ῥωμαίοις δίκαιον. ἀλλὰ Θεμιστοκλῆς μὲν περαινέτω τὴν κατηγορίαν, ἀπολογείσθω δὲ ὃν ἂν σὺ ἀποκρίνῃς ἄριστον." ἐνταῦθα κατηγόρει μὲν οὐδείς, ἀλλὰ Θεμιστοκλῆς ὀνόματος ἦν ὕβρις.
>
> Then the plaintiffs were permitted to speak, and Apsines began to make a speech, but the proconsul interrupted him and said: "This procedure is not approved by the Romans. He who delivered the speech for the prosecution at the first hearing must try his luck at the second also". There was then no time for preparation because of the suddenness of the decision. Now Themistocles had made the speech for the prosecution before, but now on being compelled to speak he changed colour, bit his lips in great embarrassment, looked furtively towards his comrades, and consulted them in whispers as to what they had better do. For they had come into court prepared only to shout and applaud vociferously their teacher's speech in their behalf. Therefore profound silence and confusion reigned, a general silence in the court and confusion in the ranks of the accusers. Then Julian, in a low and pitiful voice said: "Nay, then, give me leave to speak". Whereupon, the proconsul exclaimed: "No, not one of you shall plead, you teachers who have come out with your speeches prepared, nor shall anyone of your pupils applaud the speaker; but you shall learn forthwith how perfect and how pure is the justice that the Romans dispense. First let Themistocles finish his speech for the prosecution, and then he whom you think best fitted shall speak in defence." But no one spoke up for the plaintiffs, and Themistocles was a scandal and a disgrace to his great name.[55]

The legal perplexities that arise from the above episode are linked to the antagonism between the litigants' rhetorical practice – different orators in the first and

[54] On all of the above, see Karambelas, forthcoming.
[55] *Vit.Phil.* 484.

second hearing; preparation of speeches before the trial – and the governor's imposition of Roman procedural rules, within the framework of *cognitio*.[56] The manner in which the governor forbade Apsines to speak, ordering that the pleading be made by the prosecutor who had done so in the first hearing, and also forbade all rhetors to deliver the speech they had prepared and their pupils to applaud the speaker, is charged with a reference to "Roman justice", as being the legal framework to be respected by the litigants – when one could expect that, in matters of procedure, a century after the *Constitutio Antoniniana* the direct tensions between Greek and Roman procedural rules would have disappeared. It is also clear that Eunapius illustrates the rhetorical practice of the teachers, their students and audience alike, as a challenge to the Roman rules of the legal game. We must particularly emphasize the governor's conviction that both the observance of procedural order and the prohibition of offering practical encouragement to the litigants by means of acclamations and applause, stem from the 'superiority' of Roman judicial system. When the proconsul tries to establish his prohibitions, by insisting that the 'Greek' rhetorical practice is not approved by the Romans (ἀλλ' οὐ τοῦτό γε [...] Ῥωμαῖοι δοκιμάζουσιν) and that all may be taught "how perfect and how pure is the justice that the Romans dispense" (ἀλλ' εἴσεσθέ γε αὐτίκα ἡλίκον ἐστὶ καὶ οἷον τὸ παρὰ Ῥωμαίοις δίκαιον), the 'charge' of his phrase preserves the effort by a Roman senator to deal with his duties, roles and identifications while enforcing his judicial authority. The governor confronts the Athenian teachers inside his courtroom at the level of legal procedure – imposing respect for Roman rules, invoked by him as their representative and violated by accusers and accused alike, and this he does by attacking the Greek rhetorical tradition, as concerns both the speeches of the prosecution and defense, and the involvement of their supporters in court. Of course, the proconsul is not presented as innocent of Greek *paideia* – the latter serving as a common tradition, a way of recognition and communication, not only for the local elites throughout the empire, but also between the governors and other Roman administrative officials and the provincial elites.[57] In Julianus's trial, however, *paideia* turns, at first, into a field of confrontation. The governor gives precedence to an enthusiastic identification with Roman legal culture – a mixture of pride and harshness, in the fight for symbolic power inside the courtroom.

In this context, Eunapius' narrative constitutes an important testimony, not only on the continued operation of Athenian judicial institutions at the beginning of the fourth century CE, but also to the ongoing antithesis between Greek rhetoric and Roman law as expressed by the Athenian teachers and the Roman judge respectively. This antithesis resonates within the framework both of the original trial of 310 CE

[56] Mitteis 1891, 141-142; Mommsen 1899, 375.

[57] Brown 1992, 35-58; esp. 40: '*even if they represented a far more intrusive imperial system than before, governors would still expect to meet, in the local elite, men who enjoyed the same paideia as themselves* (…) *they could set up a system of instant communication with men who were, often, total strangers to them*.'

and of Eunapius' work itself, at the end of the fourth century. The author reproduces the narration identifying himself with his teachers and acting as a representative of Greek classical heritage – a clear conflict between a past which ought to stay immutable, and the 'present time', the 'νῦν' of Roman justice, which is attacked and demands its own rights. Whether one reads the events taking place during the trial as a token of the ideological conflicts at the beginning of the fourth century CE, with the Athenian teachers of rhetoric as their vehicle, or as an expression of the biographer's ideological 'charge' at the end of the century, Eunapius' narrative challenges our oversimplification of a 'legal pluralism' following the *Constitutio Antoniniana* as being without conflicts, resistance or regression. Particularly in Athens, which stood as a guardian of the values of the classical Greek past, the contestation of the universal validity of Roman rules by Athenian rhetors was constant and obliged the governor to counter-attack, in order to impose and assert his authority. Within the same framework, the violent confrontations between students from different educational institutions could be seen as an acting-out of the same conflict, a challenge towards Roman authority, even if, in the end, it assumed the character of a rite of passage, before these very students would come of age and become subsumed into the Late Roman bureaucracy.

The outcome of the trial, as recounted by Eunapius, is, in this respect, quite typical. The governor ordered that whosoever of the defendants was capable of the task (τὸν δυνάμενον) should proceed to speak in his own defense, in answer to the earlier speech of the prosecution (ἀπολογεῖσθαι δὲ πρὸς τὴν προτέραν κατηγορίαν). Taking the floor, Julianus asked the governor to free Prohaeresius of his chains and then to test – having transformed Apsines into a Pythagoras (πεποίηκας Πυθαγόραν Ἀψίνην), by silencing him through the superiority of Roman law – whether Prohaeresius had been taught "the Attic manner or the Pythagorean" (δοκιμάσεις αὐτὸς πότερον ἀττικίζειν ἢ πυθαγορίζειν πεπαίδευται). Julianus' call was already transposing the conflict to the antagonism of Greek and Roman cultural demands, and Eunapius does not fail to mention Tuscianus' confirmation that "the proconsul granted this request very graciously" – proof of the fact that the governor had willingly accepted a loosening of the strict limits he had imposed earlier. Immediately after this, Julianus, raising the tone of his voice, urged his student, in a forceful manner, to proceed: «Speak, Prohaeresius! Now is the time to make a speech! ("λέγε, Προαιρέσιε, νῦν καιρὸς τοῦ λέγειν") – and with this command, the courtroom would be transformed into a theatre of rhetorical display, with the Roman governor now assuming the role of audience, rather than enforcer of the law. As already seen above, in the analogous examples from Philostratus' *Life of Apollonius of Tyana* and Aelius Aristeides' *Sacred Tales*, the conversion of the Roman governor from 'judge' to 'audience' of the accused was a commonplace among courtroom narrations by Greek *pepaideumenoi*. In Eunapius, the transformation was quite spectacular, according to Tuscianus' testimony (9.2.17-20):

> 'κάτω δὲ τοῦ ἀνθυπάτου νεύοντος, καὶ τόν τε νοῦν τῶν λεγομένων καταπεπληγμένου καὶ τὸ βάθος τῶν λέξεων καὶ τὴν εὐκολίαν καὶ τὸν

κρότον, καὶ πάντων μὲν βουλομένων ἐπαινεῖν, καταπτηξάντων δὲ ὥσπερ διοσημείαν, καὶ σιωπῆς κατακεχυμένης μυστηριώδους, εἰς δεύτερον προοίμιον ὁ Προαιρέσιος ἐντείνων τὸν λόγον (τοῦτο γὰρ ἐμέμνητο Τουσκιανός), ἐνθένδε ἤρξατο· "εἰ μὲν οὖν ἔξεστι καὶ ἀδικεῖν ἅπαντα καὶ κατηγορεῖν καὶ λέγοντα οὖν ἔξεστι καὶ ἀδικεῖν ἅπαντα καὶ κατηγορεῖν καὶ λέγοντα πιστεύεσθαι πρὸ τῆς ἀπολογίας, ἔστω, γινέσθω Θεμιστοκλέους ἡ πόλις." 'ἐνταῦθα ἀνά τε ἐπήδησεν ὁ ἀνθύπατος ἐκ τοῦ θρόνου, καὶ τὴν περιπόρφυρον ἀνασείων ἐσθῆτα (τήβεννον αὐτὴν Ῥωμαῖοι καλοῦσιν), ὥσπερ μειράκιον ὁ βαρὺς ἐκεῖνος καὶ ἀμείλικτος ἐκρότει τὸν Προαιρέσιον· συνεκρότει δὲ ὁ Ἀψίνης οὔτι ἑκών, ἀλλ' ἀνάγκης βιαιότερον οὐδέν· ὁ διδάσκαλος Ἰουλιανὸς ἐδάκρυε μόνον.

At this the proconsul bowed his head and was overcome with admiration of the force of his arguments, his weighty style, his facility and sonorous eloquence. Meanwhile they all longed to applaud, but sat cowering as though forbidden to do so by a sign from heaven, and a mystic silence pervaded the place. Then he lengthened his speech into a second proemium as follows (for this part Tuscianus remembered) : "If, then, men may with impunity commit any injustice and bring accusations and win belief for what they say, before the defense is heard, so be it! Let our city be enslaved to Themistocles!" ' Then up jumped the proconsul, and shaking his purple-edged cloak (the Romans call it a 'tebennos'), that austere and inexorable judge applauded Prohaeresius like a schoolboy. Even Apsines joined in the applause, not of his own free will, but because there is no fighting against necessity. Julian his teacher could only weep.

Already, with the first proem of Prohaeresius' defence, the proconsul 'bowed his head',[58] and with the second proem, which Tuscianus memorised and Eunapius thus quotes verbatim, the governor leapt from his throne and started applauding with enthusiasm; Apsines was forced to applaud as well, and Julianus had tears in his eyes. The biographer tactically presents the outcome of the trial as a radical reversal of judicial roles: the accusers turned into the accused and vice versa; the 'stern and inexorable' proconsul was transformed into a child (μειράκιον) full of enthusiasm; the prohibitions were violated in emphatic fashion by their own enforcer, and the applause received became the very essence of judicial decision.

From all the above, it is more than obvious that even in the late fourth century CE, the trial of Julianus and Prohaeresius was staged by Eunapius as a triumph of Greek judicial rhetoric over Roman law – with a spectacular reverse of the legal reality after 212 CE. Eunapius emphasizes the 'metaphysical' powers of Greek rhetoric which overturns Roman legal rules, even if the 'reality' of the Roman judge's conversion, and especially his motives, could be somewhat different. To take the governor's reaction at face value – solely as an acknowledgement of the justice of

[58] Goulet 2014, II 242 on alternative interpretations of the phrase.

Prohaeresius' claims – would constitute a very limited and limiting reading, if not an historiographically naïve one.[59] His symbolic language may even involve a carefully planned tactical move. The proconsul knew the rules of the game – and he was offering the Athenian elite what it wanted – a 'spontaneous', triumphant declaration of its victory, in order to reinforce his own authority.[60] The Roman governor may also have been using a body language which was already familiar: we are reminded of an analogous expression of enthusiasm by the emperor Caracalla, after a rhetorical display by the sophist Heliodorus the Arab in 213 CE.[61] A similar display of enthusiasm and joy can also be found in Libanius' autobiography, when describing Julian's self-proclamation as consul in 363 CE.[62] And, to be sure, the 'psychagogic power' of rhetoric remained undiminished in the Late Roman period[63] – given the survival of the classical rhetorical tradition and its dialogue with educated Roman officials.[64]

However, the purported intentions of the Roman governor, if any, as well as his eventual decision to go along with the Athenian elite – deeming that the latter had been taught its lesson – are of little importance, to the extent that the disposition of Greek intellectuals, both in the 310s and in 399 CE, and the giving of precedence to Greek rhetorical order over Roman law are presented in bold relief. The trial of Julianus and his pupils, as preserved by their faithful pupil Eunapius, indicates

[59] Penella 1990, 128: '*That this stern proconsul was overwhelmed by the eloquent pleading of Prohaeresius, one of the accused pupils of Julianus, was to his credit; Prohaeresius had right to his side.*'

[60] This is the view expressed in Brown 1992, 45: '*What mattered, of course, was that the proconsul had played the game correctly. Faced by a relatively trivial incident, he could allow himself to succumb to the 'spell' of Prohaeresius without losing face. To give way to such persuasion, indeed, heightened his authority in Athens. For paideia was not simply a skill in persuasive speech; it was a school of courtesy.*'

[61] *Vit.Soph.*626: ὡς δὲ ἔσω παρῆλθε καὶ θαρραλέον μὲν ἐς τὸν βασιλέα εἶδεν, καιρὸν δὲ ᾔτησεν ὕδατος, αὐτὴν δὲ τὴν παραίτησιν ἐντρεχῶς διέθετο εἰπὼν „καινόν σοι δόξει, μέγιστε αὐτοκράτορ, ἑαυτόν τις παραγραφόμενος μόνος ἀγωνίσασθαι τὴν δίκην ἐντολὰς οὐκ ἔχων" ἀναπηδήσας ὁ αὐτοκράτωρ ἄνδρα τε „οἷον οὔπω ἔγνωκα, τῶν ἐμαυτοῦ καιρῶν εὕρημα" καὶ τὰ τοιαῦτα ἐκάλει τὸν Ἡλιόδωρον ἀνασείων τὴν χεῖρα καὶ τὸν κόλπον τῆς χλαμύδος.'

[62] Libanius, *Or.* 1.129: οἱ μὲν δὴ ἀλλήλοις εἰς παραμυθίαν ἤρκουν, ὡς δὲ ἀπέδυν ὕστατος αὐτοῦ τοῦ βασιλέως, ὅπως ὅτι πλεῖστοι συνέλθοιεν, φροντίσαντος, τὸν Ἑρμῆν ἔφησαν τοῦ θεράποντος κηδόμενον τῇ ῥάβδῳ κινεῖν τῶν ἀκροωμένων ἕκαστον, ὅπως μηδ' ὁτιοῦν ὄνομα θαύματος ἄμοιρον ἀπέλθῃ. βασιλεὺς δὲ τὰ πρῶτα μὲν τῇ διὰ τῆς μορφῆς ἡδονῇ μηνυομένῃ συνετέλει, ἔπειτα τῷ μέλλειν ἀναπηδᾶν, ἔπειτα, οὐ γὰρ δὴ κατεῖχεν αὐτὸν καὶ σφόδρα πειρώμενος, ἅλατο μὲν ἐκ τοῦ θρόνου, τῆς χλαμύδος δὲ ὁπόσον ἐξῆν, ταῖν χεροῖν ἀνεπέτασεν, ὡς μὲν ἂν εἴποι τις τουτωνὶ τῶν ἀγγάρων, ἐκφερόμενος τοῦ σχήματος, ὡς δ' ἂν ἀνὴρ εὖ εἰδώς, οἷς ἂν σεμνὴ βασιλεία γένοιτο, ἆρα ἐν τοῖς προσήκουσι μένων· τί γὰρ δὴ βασιλικώτερον τοῦ βασιλέως ψυχὴν πρὸς κάλλη λόγων ἀνίστασθαι. Cf. Korenjak 2000, 89-91.

[63] Heath 2004, 327.

[64] Kennedy 1983, 10: '*In fact the governors of Achaea often seem to have sought their post because of cultural interests in the country, and it is likely that trials in Greece and in certain other places like Antioch preserved somewhat more of the old rhetorical tradition than elsewhere. The story indicates how much procedures depended on the inclination of the judge.*'

that the universal extension of Roman law, which followed on from the *Constitutio Antoniniana*, did not prevent the Athenian guardians of Greek cultural authority and tradition from confronting Roman justice in its own field. Instead, it did trigger symbolic conflicts and spectacular regressions, even if, at the level of harsh legal reality, the game for Greek law would very soon be lost, and irrevocably so.

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