

ROMAN JUSTICE AND APULEIUS' *METAMORPHOSES*

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The instances of actual and supposed criminal activity and of the punishment of wrongdoing in the *Metamorphoses* of Apuleius are many and they appear to be interspersed through the novel at random, serving no purpose other than the amusement of the reader.* Upon a more careful reading, however, a good case can be made for the contention that Apuleius intended these incidents to serve as a subtle indictment of the system of justice in the provinces of the Roman Empire, and this is especially true where our knowledge from the epitome of the original Lucius story now to be found in the corpus of Lucian under the title *Lucius sive asinus* shows that Apuleius has altered events or adapted them from sources other than the original novel in the Greek language. Indeed, we find in Apuleius' romance two trial scenes not in the epitome, the trial of Lucius within the framework of the Risus festival (3.1-12) and the equally sensational trial of the unfortunate stepson (10.6-12). These scenes accentuate the loathing of the novelist for the Roman system and serve as fixed points around which he gathers the more carefully elaborated instances of crime and injustice. The analysis designed to substantiate the above contention consequently must proceed from the first trial scene.

The changes wrought in the administration of criminal justice in the Roman provinces during the early Empire were profound. The princeps on the one side and the senate and consuls on the other became the supreme judicial authorities at Rome, and the provincial governors, from the time of Augustus onward, began to acquire full criminal jurisdiction so that they soon had gained competence over all but the

* This article is dedicated to Professor John V. A. Fine.

most petty offenses involving non-citizens.¹ This rapid expansion of the Roman magisterial authority at the expense of the local municipalities understandably distressed the provincials. Although the jury trial system in that province certainly was not typical, the so-called Cyrene Decrees nevertheless demonstrate the fact that Augustus had to yield to dissatisfaction with Roman justice by allowing non-citizens to participate in the judgment of their fellows.

The exclusiveness and the value of Roman citizenship, however, led the princeps to retain all Roman juries at Cyrene for citizens. Likewise the old Republican rule which required that a citizen be sent to Rome for trial of a capital charge was at first observed in all provinces, but when the rapid expansion of citizenship made this impractical, the Caesars began to delegate jurisdiction to the several governors in these cases also.² Mommsen believes that there is evidence for such delegations as early as Augustus, and the jurist Ulpian states that such competency was granted to all governors as a result of Caracalla's edict on citizenship.³ This new authority, known as *ius gladii* or *merum imperium*, was an extraordinary right of the governor and, since he could not delegate it, every citizen was guaranteed his personal presidency over the trial court.⁴ Initially the emperor reviewed every capital penalty as an additional protection for all citizens, but the lower classes of citizens soon found this procedure generally unavailable.⁵

The age in which Apuleius lived thus is marked by a great centralization of power into the hands of the emperors and their chosen subordinates in the provinces. The result was the inquisitorial procedure known as *cognitio extra ordinem*, in which the magistrate often initiated the investigation and trial, acting either personally or through his agents, and in which he acted as sole judge of the defendant's guilt or

¹ Mommsen, *Strafr.* 238-39. A complex system also developed in the municipalities of Italy.

² *Ibid.* 243. Contra, J. L. Strachan-Davidson, *Problems of the Roman Criminal Law* (Oxford 1912) 2.166-68, who believes that the power was legislated to the governors on the strength of *quod lege datur* in *Dig.* 1.21.1, a view generally discounted.

³ *Dig.* 1.18.6.8.

⁴ *Dig.* 1.16.6 pr. Cf. 1.21.1.

⁵ Mommsen, *Strafr.* 244-45. The *ius gladii* is simply a grant of competency and did not preclude the possibility of a defendant being sent to Rome for trial at the governor's discretion.

innocence, aided by his *consilium*.⁶ The procedure was flexible in regard to sentencing, since the magistrate was allowed to take into account such matters as intent, motive, previous criminal record and social position, whereas he could not do so under the jury system.⁷ Naturally such a system allowed the judge to be arbitrary and it became so illiberal in practice that a "catch-all" criminal charge of *stellionatus* was soon conceived, Ulpian states, to serve when no legal description would fit the crime.⁸

The trial of Lucius in the *Metamorphoses* must be understood against the background of Roman encroachment and provincial displeasure. The hero of Apuleius' novel endures an experience which is a nightmare, as Roman justice well could be. One is very tempted to describe the whole escapade as Black Humor: Lucius, ostensibly a guest of the miser Milo in the Thessalian town of Hypata, is invited to a banquet at his relative Byrrhaena's home. Intoxicated, he returns to the home of his host, where he encounters and slays what he believes are three thieves (2.31-32). The next morning he is arrested and led through the streets in terrified silence while those around him are convulsed with laughter (3.2). The prosecution proceeds in a speech which is an excellent parody of the forensic art, e.g., the outrageous excess of alliteration (3.3), while the defense of Lucius vacillates between sincere and objective testimony and fear (3.5-6) and the desire to appear contrite by trickery (3.7). Throughout, both Milo and the audience laugh until it is made clear, when the trembling Lucius is made to uncover the "bodies," that he has "killed" three wineskins (3.9) and that he has been made the fool in the festival to Risus (3.10-12). As Milo leads him away, the tears of Lucius are distinct from the laughter of the whole city. So the mock trial in a Greek carnival atmosphere ends.⁹

When we turn to the legal details of this scene, we find the same fantastic atmosphere, a self-contradictory combination of elements

⁶ The opening lines of his *Apologia* show that exactly this procedure was used in the trial of Apuleius himself, and that trial also indicates accusations by private persons continued despite the governor's new powers.

⁷ Strachan-Davidson (above, note 2) 159-64.

⁸ *Dig.* 47.20.3.1.

⁹ Cf. D. S. Robertson, "A Greek Carnival," *JHS* 39 (1919) 110-15. He observed the contrast between ridiculous and tragic here in connection with very different matters. The trial scene and the incidents motivating it are not found in the *asinus* and we may assume Apuleius employed a source other than the Lucius story.

which reveal the true confusion and horror the defendant before the bar actually feels. Jean Colin has revealed for us a number of elements in his trial which are very typical of the Greek Orient: the use of a theater as the place of trial and the action by popular acclaim (3.2); the obvious fact, since the accused must persuade the people (3.4), that the judgment will be by popular acclaim; the threat of torture in the Greek manner (3.9); the board of magistrates and the presidency of the senior member at the trial are the most obvious examples.¹⁰ Upon this Greek matrix Apuleius has superimposed the Roman legal system with no serious attempt to harmonize the two systems. As we shall see, this apparent neglect is not an accident, but has a genuine literary purpose.

That Apuleius has brought to the *Metamorphoses* a good knowledge, perhaps even a technical knowledge, of Roman private law has long been recognized.¹¹ That he had experience with Roman criminal law his own career makes obvious, and a number of incidents can be adduced to show that he also made use of that aspect of Roman law in

¹⁰ "Apulée en Thessalie: fiction ou vérité?" *Latomus* 24 (1965) 330-45. Colin's work has much of value in it and his delineation of Greek legal elements in the trial scenes proves that Apuleius was using a Greek model and also indicates that any Roman legal elements are his own additions. Nevertheless I cannot accept his central thesis that Apuleius was familiar with judicial procedure in the free cities of Thessaly and wanted to delight his Latin readers with these strange details. The following points mitigate against such an assumption of verisimilitude: (1) The location of the Risus trial at Hypata simply follows the original story epitomized in the *asinus* in regard to Lucius' location at this point in the romance. Hypata seems to have been associated with such fantastic incidents as the metamorphosis of Apuleius' hero. Cf. Heliodorus *Aethiopica* 2.34. The description of the city in the *Metamorphoses* (1.5, etc.) is so vague it proves nothing. Larissa, setting of the Thelyphron tale (2.21), also is not described in any detail, and the trial scene at 10.6-12 takes place in an unnamed location. Without evidence of peculiarities proper to the cities named, it hardly seems possible to argue verisimilitude simply on the basis of legal details common to much of the Eastern world. (2) Apuleius' famous passage which places Thebes near the sea (4.11) inspires no confidence in his knowledge of central and northern Greece. Likewise the description of Thessaly as *provincia tota* (3.11) is hardly appropriate, even if the reference is to all Achaea, Thessaly included, which does not seem likely from the context. Consequently his change from a northern Greek location found in the *asinus* (49) to Corinth (*Met.* 10.18-19) may be indicative of such unfamiliarity. (3) As the analysis in this article will amply demonstrate, Apuleius does not dwell on Greek law. The main legal details are Roman and such usage argues that he wanted to show his Latin readers details with which they would be familiar instead of the reverse. Obviously Apuleius knew more about the Roman system than he did about Greek law.

¹¹ See Fritz Norden, *Apulejus von Madaura und das römische Privatrecht* (Leipzig 1912).

his novel. The *lex Iulia de adulteriis* is mentioned by name (6.22), and his knowledge of the *lex Pompeia de parricidiis*, the *lex Fabia*, the *lex Cornelia de sicariis et veneficis*, and the *leges Iuliae de vi* can also be demonstrated. For example, the penalty of the sack (10.8) is the ancient punishment for parricides under the *lex Pompeia*.¹² Elsewhere Cupid is described by Apuleius (4.30) as *qui malis suis moribus contempta disciplina publica, flammis et sagittis armatus, per alienas domos nocte discurrens et omnium matrimonia corrumpens impune committit tanta flagitia et nihil prorsus boni facit*. This language and the situation should be compared to the language and the provisions of the *leges Iuliae de vi*: *Eadem lege tenetur, qui pubes cum telo in publico fuerit. In eadem causa sunt, qui pessimo convocatu seditione villas expugnaverint et cum telis et armis bona rapuerint. Item tenetur, qui ex incendio rapuerit aliquid praeter materiam. Praeterea punitur huius legis poena, qui puerum vel feminam vel quemquam per vim stupraverit*.¹³ Clearly the incident in Apuleius has a legal model.

Psyche is conceived to be the fugitive slave of Venus (5.31) and consequently she is refused asylum by both Ceres and Juno. Certainly both goddesses refuse to aid the girl because of the penalties of the *lex Fabia* as well as other civil and praetorian remedies. The statement of Apuleius, in the mouth of Juno (6.4), is as follows: *Tunc etiam legibus, quae servos alienos perfugas invitis dominis vetant suscipi, prohibeor*. Again, it is to be compared with a legal text, in this case one attributed to Ulpian and reported to be the language of the statute: . . . *qui alieno servo persuaserit, ut dominum fugiat quive alienum servum invito domino celaverit vendiderit emerit dolo malo, quive in ea re socius fuerit: iubeturque populo sestertia quinquaginta milia dare*.¹⁴

The tale of Aristomenes and his adventures with his friend Socrates is good evidence that Apuleius was familiar with the *lex Cornelia de sicariis et veneficis*. Socrates is killed by witches while in a room at an

¹² Dig. 48.9.9pr. Hadrian changed the penalty to condemnation to wild beasts.

¹³ Dig. 48.6.3.2-4. Cf. *Cod. Iust.* 9.30.1, where the phrase *adversus publicam disciplinam* mirrors Apuleius' language.

¹⁴ Coll. 14.3.5. Cf. Norden (above, note 11) 77 ff. At 8.24 Apuleius causes reference to be made to a *lex Cornelia* as the statute which prohibits sale of a free man as a slave, one of only two specific references to a statute in the novel. The actual operative statute is the *lex Fabia* (Coll. 14.2.1-2) and the "mistake" is genuine or it serves a literary purpose similar to those discussed below. In any case, the incident is fair warning of the care to be taken when applying any standard of verisimilitude.

inn with Aristomenes and there is great evidence that the survivor fears crucifixion (1.14-15), so much so that he attempts to leave, is foiled by the ostler, a character inserted by Apuleius for the sole purpose of motivating this fear, and then tries suicide before Socrates magically reawakens, his wound covered by a sponge.¹⁵ The statute, a part of Sulla's comprehensive reform of the Roman criminal law, doubtless underwent changes in its substance, but as interpreted by the classical jurists it punished those who carried weapons with intent to kill or steal, poisoners and their co-conspirators, assassins, those who used office or influence in the commission of judicial murder, those who gave false witness in a capital trial, and arsonists. The penalty for violation of this statute in the Empire involved the usual class distinctions and thus *honestiores* suffered loss of the *caput* and even possible execution, but never by the gruesome methods of rending by wild beasts and crucifixion, both of which were reserved for *humiliores*.¹⁶ From Aristomenes' constant reference to robbery and crucifixion here it is quite clear that he fears prosecution under the *lex Cornelia* as "one who carried a weapon for the purpose of murder or robbery" and the penalty of that law.¹⁷ When Socrates finally collapses after the two set out from the inn (1.19), Aristomenes shows how great his fear was by hiding and then by voluntary exile, the standard method of avoiding the penalties of Roman criminal law.¹⁸ Consequently

¹⁵ On combinations of tales and additions, see Ben E. Perry, *The Ancient Romances* (Berkeley and Los Angeles 1967) 259-64. The contradictions at this point occur mainly because Apuleius had to provide the witness who could convict Aristomenes unjustly of the crime. This motivates the attempt at suicide and accents the terror felt by a man almost certain to die for a crime he did not commit. Cf. Perry, "On Apuleius' 'Metamorphoses' 1.14-17," *CP* 24 (1929) 394-400.

¹⁶ *Coll.* 1.3.1 (Ulpian); Paul, *Sent.* 5.23.1-2. Mommsen, *Strafr.* 630, claimed, on the basis of Cic. *pro Mil.* 4.11, that the law originally did not punish a murderer staying at the same house as his victim, a fact which would make Aristomenes' fear senseless. However, Ulpian's phrase *hominemve occidit* seems to indicate the statute was broad enough to include the crime in the Empire. Cf. Pfaff, "homicidium," *RE* 8.2 (1913) 2248-50.

¹⁷ The statute punishes only intentional murder. Ulpian is made to say in *Coll.* 1.3.1: *qui cum telo ambulaverit hominis necandi furtive faciendi causa, hominemve occiderit, cuius id dolo malo factum erit.* Cf. Paul *Sent.* 5.32.1-2: *qui hominem occiderit eiusve rei causa furtive faciendi cum telo fuerit.* Merely carrying a weapon was not a crime. Intent to kill or steal was necessary. Cf. *Coll.* 1.3.2; Paul *Sent.* 5.23.7; *Dig.* 48.6.11.2.

¹⁸ Cic. *pro Caec.* 100, indicates no penalties or punishments were involved. Cf. Kleinfeller, "exilium," *RE* 6.2 (1909) 1684. On compulsory exile in the early Empire see Mary V. Braginton "Exile under the Roman Emperors," *CJ* 39 (1943-44) 391-407.

we have shown that Apuleius was familiar with these five statutes which, it should be noted, form the matrix of Rome's underdeveloped system of criminal law. Except for the *lex Fabia*, they are to be found at the head of the list of criminal statutes in Book Forty-eight of the *Digest*, preceded only by a heading on the *lex Iulia de maiestate*.¹⁹

Any synoptic view of the trial of Lucius at Hypata reveals that there can be no doubt but that Apuleius considered the charge to be a violation of the *lex Cornelia de sicariis* and not of an unknown Greek law. In a scene for which there is no parallel in the Greek epitome, Fotis warns Lucius about the gangs of ruffians who prowl the streets of Hypata and make the city unsafe at night. Lucius seeks to calm her fears by stating that he shall not go to Byrrhaena's banquet unaccompanied and that he also shall carry a sword, but strictly for defensive purposes (2.18). Clearly the purpose of this little scene is to establish for the reader that Lucius was not armed for the purpose of committing homicide or robbery, that is, he was innocent of violating the *lex Cornelia*. Indeed, he draws this sword only when he sees the three men assaulting Milo's house and he uses it only when they resist him (2.32). Once the trial is in session, his accuser makes the specific charge that he found Lucius standing there to do slaughter with drawn sword, three men already dead at his feet (3.4), and Lucius replies in his defense that he first saw and heard the three men intent on robbery before he drew his sword, which he carried against such dangers, and that he did not kill anybody, although he feared greatly for his own safety and the safety of his host, until actually attacked (3.5). This great attention to a single detail makes no sense unless the charge and the defense are not for murder but the intent to commit murder, and consequently the Latin reader had to recognize the statute and had to recognize also that Lucius truly was innocent of the charge.

It is equally clear that on the morning after the killings Lucius expected the trial to be a *cognitio extra ordinem* and it is, at least at the beginning of the scene. The trial will, Lucius supposes, be held in the forum, the proper setting for the Roman law court. Indeed, this proves to be the case until the people demand in chorus that the pleading be shifted to the theater, the device by which Apuleius connects normal Roman practice with standard Eastern practice (3.2). Moreover,

¹⁹ *Dig.* 48.5-9. The *lex Fabia* is at 48.15.

Lucius gives forth a soliloquy on the improbability of finding a *iudex* who will believe him (3.1). Then the magistrates appear (3.2) with their retainers to conduct the investigation and order the arrest of Lucius by their lictors. The conclusion that this is to be a Roman trial conducted by a single magistrate with his *consilium*, that is, that this is *cognitio* procedure, is inescapable at this point.²⁰ In addition, the *praeco* or public herald performs here functions totally consistent with those required of him at a Roman trial, and we know that such heralds were found attached to the assize of the provincial magistrate even in the Republican era.²¹

The charge against Lucius is brought not by the chief magistrate at the trial but a *nocturnae custodiae praefectus* (3.3). Obviously the title is modeled on that of *praefectus vigiliū* at Rome itself and Apuleius again is on firm ground insofar as Roman practice is concerned because such officials are found in the provinces with titles as diverse as *praefectus vigiliū et armorum* at Nemausus, *stratēgoi epi ta hopla* at Smyrna, and *praefectus arcendis latrociniiis* at Noviodunum, titles which prove the relationship between the central officer and his provincial counterparts.²² At Rome the *praefectus vigiliū* would have reported to the *praefectus urbi* any charge so severe as murder, just as his counterpart at Hypata now denounces Lucius before the magistrate and the people. It is also important to note that the prefect's description of his diligence in covering the city throughout the night closely follows the injunction placed on such officials by the jurist Paul in his enumeration of their duties.²³

Lucius then makes his defense against the prefect's charge, at the end of which (3.6) he emphasizes his sterling reputation among his own countrymen, a point of great importance since this is a *cognitio* procedure in which the penalty is at the judge's discretion. He also

²⁰ The technically correct usage of a large number of Roman legal and quasi-legal terms in the trial scene also should be noted here as ancillary evidence that Apuleius wanted the reader to comprehend the scene in terms of Roman law. Consider, e.g., *facinus*, *iudicium* (3.1), *sacramentum* (= adjudication; cf. Cic. *Dom.* 29.78; *Caec.* 33.97), *sententia* (3.3), *officium* (3.5), *vindicare* (3.6,8), *peculium* (3.9), *manus iniectio* (3.10,12), *iniuria* (3.10), *vadimonium* (3.12).

²¹ See Mommsen, *Staatsr.* 3 1.363-66. Cic. *Verr.* 2.10.27 shows heralds were in Verres' retinue. On Roman use of the clepsydra cf. Plin. *Ep.* 2.11.14.

²² W. Ensslin, "praefectus," *RE* 22.2 (1954) 1330-31.

²³ *Dig.* 1.15.3.3. There is no proof of existence of the title at Hypata.

emphasizes lack of any motive that would have led him to arm himself for murder or robbery with malice, a point of equally great importance since he wishes to refute the charge based on the *lex Cornelia*. Immediately following this defense speech and the hero's ruminations, two women enter, and the younger one is specifically described as wearing the garb of mourning (3.8). Whatever custom at Hypata may have dictated, the Latin reader certainly would have recognized that his woman was properly garbed in accordance with the Roman law and custom of the day. Women whose husbands died had been forced to remain in widowhood for a period of not less than ten months or to sacrifice a sacred cow in expiation as early as the reign of King Numa. This early religious sanction was not enforced by the *ius civile*, but the praetor had stipulated that any woman who did not maintain this *tempus lugendi* would be placed on his list of *infames* and suffer the serious disabilities involved in such action.²⁴ In any case, the very appearance of these women is good evidence that we are dealing with the *cognitio* procedure, since their appearance here clearly is designed not only to convict Lucius but also to obtain more severe punishment of him by arousing even greater pity for the slain. The speech of the old woman is filled with legal metaphor which gives it a legalistic tone and makes it a good foil to the accusation of the prefect and a good foreshadow of the final result, but she does demand punishment *pro modo facinoris* at the end (3.9), a plea unsuited to any procedure other than *cognitio*. Indeed she envisions crucifixion.

This leads to the question of citizenship and of status in regard to Lucius, as well as to that of the competence of the trial court. As we have seen, if Lucius were a Roman citizen, we should expect that jurisdiction would be transferred to Rome or that he would be tried by a magistrate with the *ius gladii*, a right enjoyed by some provincial governors before Apuleius' lifetime, but the magistrate here is not described beyond the colorless term *magistratus*, although he acts as if he were conducting a *cognitio* procedure with his *consilium*, herald, and lictors in attendance. The prefect's speech is gauche, but he does refer to the populace (*populum sic adorat*) as *Quirites sanctissimi* in his

²⁴ Plut. Numa 12.2; Paul *Sent.* 1.21.13; Percy E. Corbett, *The Roman Law of Marriage* (Oxford 1930) 248-251. An analogous case in which the legal implications are obvious is found at *Met.* 1.6.

end-of-sentence vocative (3.3) and, moreover, Lucius employs the same form of address in his defense oration (3.5). It might be argued that this is simply a translation from Apuleius' Greek source, but he need not have employed a term suitable only to Roman citizens if that were the case. Certainly the colorless *cives* was available if Apuleius did not wish us to think of the people and magistrates as Romans and the old woman does in fact address the assembly simply as *optimi cives*.²⁵ Lucius, on the other hand, seems to be a non-citizen before the bar of Roman justice. The prefect describes him as a *peregrinus* (3.3) and his description of himself as *spectatus apud meos* (3.6) also indicates that he is of a status apart from that of the *Quirites* of Hypata. Moreover, the presiding magistrate orders his torture (3.8), a most unusual treatment for a Roman citizen in the early second century, and the penalty of crucifixion would not fit a citizen unless he were one of the *humiliores*. Since Apuleius has not provided any positive evidence that Lucius was a citizen or that the court was competent to try a citizen, unquestionably we are to look upon the situation as indicated.

The trial suddenly evaporates as Lucius uncovers the wineskins. At first he finds himself deeply ashamed to have been made the victim of the *Risus* festival but the magistrates then announce to him that he has been selected *patronus municipii* (3.11). It is almost as if Lucius had dreamed the whole incident, as if he had in fact just recovered from the drunkenness of the previous evening (2.31). Since a *patronus* was selected by the local legislative body, it is apparent that the magistrates are the local magistrates of Hypata despite their contrary position as Romans in the trial. Since the position was a singular honor which in turn involved responsibilities only a man of substance could afford, it is clear that Lucius is not a person of mean station as he was depicted to be in the trial scene. Indeed, the board of magistrates praises his lineage (3.11). All ends well for Lucius, but only because the magistrates really are local citizens. Apuleius has made the subtle point that these magistrates in their Roman aspect bred terror and injustice, while in their municipal aspect they are genial and just.^{25a}

²⁵ This usage of *Quirites* as a general form of address at Hypata hardly seems in keeping with verisimilitude. The first grant of citizenship known to us in this town came as late as the reign of Domitian. E. Preuner, *Athen. Mitt.* 28 (1903) 378.

^{25a} I thank the Association's referee for his aid here and elsewhere.

The entire trial scene is in fact a *fantasia*, in which logic plays a secondary role. Fotis was awakened by the turmoil the previous night (2.32) and admitted Lucius into Milo's house, yet her testimony was never sought. The prefect of the watch claims that he saw Lucius at the scene of the supposed crime (3.8), that he actually saw him escape in the darkness into a certain house (3.3), yet he apparently made no attempt to search him out. The hero of the novel obviously went to bed with a clear conscience, yet he awoke the next morning fearful of the law and of almost certain punishment.²⁶ Apuleius has made no attempt to reconcile these differences, nor has he attempted to reconcile the elements of Roman law with those of Greek law which he doubtless found in his model. This is not careless writing: Apuleius did not want perfect logic. The one constant feature of the trial is the fear of Lucius that he will be wrongly charged and convicted by the capricious system of Roman justice. It is the Roman system and not Lucius that we see as the object of the satire.

The trial scene is no more than the centerpiece for this indictment of Rome. Apuleius has led us to the trial with a carefully orchestrated set of incidents that make the fear of Lucius very real. The first case was the death of Socrates and the dread of Aristomenes (1.5-19) as has already been stated, a dread based on fear of Roman punishment, again in a fantastic atmosphere. The second case involves Pythias and the fishmonger (1.24-25). Lucius has purchased some fish in language technically correct for a Roman sale by *emptio venditio*.^{26a} He then chances to meet his old friend Pythias, who is municipal aedile and in charge of the grain supply.²⁷ Pythias finally forces Lucius to return to the market, since the price of the fish was too high, and proceeds to use his *coercitio* by having the fish destroyed by what are obviously his lictors. Lucius speaks to us of this aedile's *imperium*, and, of course, this chief magisterial power of Rome is not suited to the office. It is

²⁶ See on internal contradictions Perry, *Romances* (above, note 15) 273-80.

^{26a} This sale contract required consent of the parties, a *res* to be sold by *vendor*, a definite monetary sum to be paid by *emptor*, and often *arra* or earnest. See Gaius 3.139-41. In Apuleius' passage the fish is *res* and the other conditions are illustrated by the phrase (1.24) "*percontato pretio quod centum nummis indicaret aspernatus viginti denariis praestinavi*". Cf. Norden (above, note 11) 167-68.

²⁷ Norden (above, note 11) 167-73, for details of civil law. Aediles at Rome lost control over the grain supply early in the principate, but there is evidence municipal aediles retained competence. See Mommsen, *Staatsr.*³ 2.503-5.

suit to the overbearing Pythias, however, and consequently Lucius is the victim of this at once Roman and at the same time provincial magistrate whose friend he supposedly was. The satiric point is obvious.

The third case is that of Thelyphron (2.21-30), an unfortunate individual who is made the object of public laughter in a totally inconsistent tale patched together from various sources by Apuleius which thus has a certain affinity with the Risus trial.²⁸ The fact is that Thelyphron becomes involved in this strange story of horror and mirth because he enters into an agreement to protect a corpse from mutilation, and that agreement is in fact a Roman contract, *locatio conductio operarum*, coupled with another contract, *depositum*, as the phraseology (2.22-23) indicates. Indeed the widow even goes beyond the requirements of Roman private law and has the agreement written out (2.24) as evidentiary proof. Moreover, she produces seven witnesses and, albeit Roman consensual contracts did not require any witnesses, the number is not accidental. The most common civil law act which also required writing was the mancipation will in which the testator employed this formula: *haec, ita ut in his tabulis cerisque scripta sunt, ita do, ita lego, ita testor, itaque vos, Quirites, testimonium mihi perhibetote*.²⁹ Certainly the words of the widow, *vos in hanc rem, boni Quirites, testimonium perhibetote*, are not simply coincidence. Consequently, it is because of his dealings in Roman private law that Thelyphron suffers mutilation and humiliation. Moreover, the wife probably has committed a senseless murder because of the Roman legal system. The uncle of the dead man claims she has committed the act in order to continue adultery and especially to gain the inheritance of her husband (2.27). This would be possible under the laws of intestate succession established in the *ius honorarium*, for the praetor would give possession to any wife of a *iustum matrimonium* if *liberi, legitimi* or *cognati* failed to appear.³⁰ The wife, however, has

²⁸ So Ben E. Perry, "The Story of Thelyphron in Apuleius," *CP* 24 (1929) 231-38, esp. p. 237 note 1.

²⁹ Gaius 2.104. Cf. Norden (above, note 11) 151-52; 175 for additional civil law details.

³⁰ *Dig.* 38.6-11. Also O. Lenel, *Das Edictum Perpetuum*, 3rd edn. (Leipzig 1927) xxv. B. 156-61 (pp. 355-59). Norden (above, note 11) 151, envisions this situation but does not appreciate the hopelessness of the woman's cause. Naturally the entire interpretation is based on the assumptions of intestate succession and *manus*-free marriage.

been ignorant of the law she hopes to use, because the uncle (mother's brother) would precede the wife on the praetor's list as a *cognatus* in the third degree and therefore she has gained nothing for her efforts. Apuleius has taken his clever condemnation of the Roman system a step further, and when Lucius laments how he already seemed in the service of Proserpina and in the household of Orcus (3.9) as he stood before Roman justice based on Roman law, the reader of these three bittersweet experiences preceding the trial, in which everything touched by the Roman system inspired fear and brought ridicule to hapless provincials, cannot but sympathize with his plight.

The aftermath of the Risus festival also continues the same theme. Much of the material, or course, is unquestionably adapted by Apuleius from the Greek original, since it also is found in the *asinus*, but several details show that the Latin author intended to keep his clever criticism of Roman justice before the reader throughout his account of the fantastic adventures of the now metamorphosed Lucius in an absolutely lawless environment. Several instances for which there are no parallels in the epitome are particularly instructive. In the first (7.1-3), one of the robbers explains how Lucius is now being sought as one of those who ransacked Milo's house and lists the impressive circumstantial evidence against him. Naturally the reader knows this is a false charge, but this added detail gives Apuleius the occasion to place in his hero's mouth a bitter lament about the injustice of the situation which is brought to full effect because he cannot speak to defend himself. Nor can there be any doubt that the author carefully contrived his opportunity to present this incident, since he takes great care to mention, amid all the confusion of the robbery scene, the fact that the band of robbers left one of their members behind at Hypata to report later on the sequel to events (3.28), a detail the only purpose of which is to furnish the information about the false charge some three books later in the novel. Even the attempt of Lucius to call on the emperor (3.29), a detail found in the *asinus* (16), is made to foreshadow this by indicating at once his inability to gain redress.

A wife in *manus* might succeed on intestacy as a *sua heres* under civil law according to *Coll.* 16.2.3 (= *Gaius* 3.3?). Still the wife would lose out in the circumstances of this tale, because the *lex Iulia de adulteriis* provided for loss of property and relegation in such cases. Mommsen, *Strafr.* 698-99. For Greek legal details Colin (above, note 10) 344-45.

Interestingly enough, the robber's spy indicates that the relationship between Lucius and Milo's slave Fotis also had been discovered, but no attempt is made to pursue this further in the novel whereas, in actual fact, this is the one point where Lucius actually is guilty of violating the law. In those cases where an *ancilla* had been corrupted, indeed, the penalties were civil as well as criminal. The civil law penalties involved a maximum of quadruple damages under a *furti actio*, while the praetor granted double damages under the so-called *actio de servo corrupto* against anyone who even lessened the slave's physical or moral worth to the master. On the other hand the *lex Fabia* provided criminal penalties.³¹ Although the criminal law does not apply here, since Lucius did not detain Fotis, nevertheless his legal difficulties are clear and the failure to have true guilt punished while false charges cause untold pain doubtless is a method by which the novelist is emphasizing the absolute capriciousness of the system.

In the second instance, a boy who has been inhumanly cruel to Lucius the ass is killed by a bear (7.24), but this apparent salvation leads only to more difficulty. The stranger who takes the ass in tow (7.25) is within his legal rights, since a *res nullius* may be possessed by *occupatio* in good faith. The stranger's gain from the law, however, is only apparent, for he is treated by the shepherds as a manifest thief and then is called *percussor* of the boy (7.26), once the pieces of the body are found, and *abactor* of Lucius. The first term is appropriate to a murder charge under the *lex Cornelia de sicariis* and the second to a charge of *latrocinium*.³² This hapless provincial, whose only witness, the ass, cannot speak, is promised a speedy trial before the magistrates in the morning and sure punishment, a clear reference to the *cognitio extra ordinem*. Thus the stranger who violated no law and even volunteered to return the ass to its rightful owner is made the victim without just cause. Apuleius does not tell us this individual's ultimate fate simply because we already know it.

Even the ass does not escape from this situation unscathed. Already destined to be gelded the next morning, he is handed over to the devices of the dead boy's mother, and she treats him as if he were a derelict slave who had acted against the Roman code of commonly expected

³¹ Paul *Sent.* 2.31.31; Gaius 3.189-90; Lenel (above, note 30) xv.63 (p. 175).

³² The main penalties for *latrocinium* are under the *leges Iuliae de vi. Dig.* 48.6-7.

behavior. The applicable legal rules are those of the *S. C. Silanianum* as confirmed and amended by later senatorial and imperial enactments, especially those provisions whereby the slave was liable to render all conceivable aid to his master when the master's life was threatened by open violence.³³ With typical Roman emphasis on proprietary rights, Hadrian based the logic of this regulation on the belief that a slave ought to place his master's life before his own. Although this emperor limited the instances where a slave might be tortured upon his owner's violent death, nevertheless any slave with a master on a journey who fled, as Lucius did, or who otherwise failed in his duty in the face of danger, was liable to torture, partially to determine culpability, partially as punishment.³⁴ The actions of the mother are legally proper, if morally repulsive, and the novelist again shows how little considerations of humanity matter.

This continued demonstration of injustice under the Roman system reaches its culmination near the end of the ninth Book, where two incidents show the utter inability of the poor to gain justice under Roman law. In the first case three brothers of substantial background are attempting to protect a poor neighbor from a rich youth who not only despoils his property but attempts to use legal means, the *quaestio finalis*, to deprive him of his homestead (9.35). One of these three brothers attempts to point out to the rich youth the fact that all enjoy equality before the law in a statement (9.36) comparable to the famous dictum of Celsus—*ius est ars boni et aequi*—placed at the beginning of the Digest by Justinian's compilers. Indeed the poor man should have legal remedies. The *lex Aquilia* and its extensions specifically provided that anyone who killed another's beast, if that beast were within the broad designation *pecus*, should be liable to pay the owner the animal's highest value within the last year, and that any individual whose property had been burnt, damaged, or broken, animals and slaves excepted, had to be paid its highest valuation within the last thirty days.³⁵ Apuleius has the rich youth destroy both classes of property here and consequently gives the reader a case-book example

³³ *Dig.* 28.7.15; 29.5 *passim*. W. W. Buckland, *The Roman Law of Slavery* (Cambridge 1908) 95–97. Cf. Norden (above, note 11) 64–69.

³⁴ *Paul Sent.* 3.5.3 ff. *Dig.* 29.5.1.31.

³⁵ *Gaius* 3.210; *Iust. Inst.* 4.3.13.

for application of the statute. Moreover the *actio finium regundorum*, an action to settle disputes when boundaries had been obliterated, confused, or contested, also should have been available to the peasant.³⁶ As the brother states, he should have been able to vindicate his claim. Instead, in the presence of a number of citizens, he sees the dogs turned upon his friends and himself.

The second case involves the attempt of a Roman soldier to requisition the ass from a poor gardener (9.39-42). This scene, which is found in the *asinus* (44-45), has been adapted by Apuleius to place in clear focus the resentment of provincials toward the system of requisitions by the imperial government and toward the soldiers who were the most immediate representatives of that government. Indeed, Germanicus forbade the seizure of beasts of burden from persons met in the streets as early as A.D. 19, but a number of decrees show that the problem was never really solved and, in fact, most of these decrees were directed against provincials who defrauded Rome rather than against abuse of provincials by the government.³⁷ To heighten this feeling of injustice, Apuleius has the gardener falsely accused, a detail entirely absent from the extant Greek version, once again demonstrating the inability of a peasant to cope with the power of Roman criminal justice. Fearing that he will be punished for a breach of his military oath because he has lost his sword, the soldier with the aid of his companions fabricates the story (9.41) that the gardener has refused to return a silver vessel belonging to the company commander which he has found in the road. The magistrates then begin a *quaestio* similar to that preceding the Risus trial (3.2), find the gardener and lead him away to a trial which results in his death. What compounds the injustice already so apparent is the fact that not even the fabrication claims the gardener accomplished the theft by force, and consequently *latrocinium* with its criminal penalties cannot be a fair charge even if the story of theft were true. The charge should have been *furtum*, a civil matter not demanding any action on the initiative of magistrates.

It is from the point where this tale ends that Apuleius shows his

³⁶ Dig. 10.1 passim.

³⁷ F. Preisigke, ed., *Sammelbuch griechischer Urkunden aus Ägypten* (Strassburg 1915) 1.3924; *PLondon* 3.1171 (c); *SEG* 8 (1938) 794.III; *PSI* 5 (1917) 446; F. F. Abbott and A. C. Johnson, *Municipal Administration in the Roman Empire* (Princeton 1926) no. 51 (p. 354 ff.).

reader how a just system of dealing with crime under law might be made to prevail. The tenth Book of the novel begins with the tale of the stepmother whose rejected love for her stepson leads her to attempt to poison him through her slave, a scheme which leads to the supposed accidental death of her own child and her callous accusation of her stepson as the murderer. Stricken with grief, the woman's husband then has his son brought to trial for the murder of the half brother (10.2-6). Seemingly we are about to witness another condemnation on a false charge, but at the crucial moment further evidence is brought to bear and the guilty are punished while the innocent stepson escapes the cruel penalties of the law (10.6-12) and the children are returned to their father. What the two scenes at the close of Book Nine and Lucius' description of the story as high tragedy (10.2) have prepared us to expect has not happened, while the unexpected, in the best Euripidean tradition,—and the tale has obvious affinities with the Hippolytus story—has occurred. It is therefore the task of the reader to discern the differences between this trial and the Risus trial of Lucius in Book Three.

Most certainly these differences are not to be found in the law applied to the situation, which is consistently Roman. As the situation appears in the early stages of the tale (10.4), the slave seems guilty of violating the *lex Cornelia de sicariis et veneficiis*, the stepmother of violating, perhaps, the *lex Pompeia de parricidiis*.³⁸ In fact, however, there is only conspiracy to poison since the physician (10.11) did not provide the desired drug but a sleeping potion, and these charges hardly would appear justified. Nevertheless the *lex Cornelia* also punished those who made any attempt at judicial murder, and both persons engage in securing the trial of the stepson. The penalties of both are suitable to this statute and the social position of each, for the slave is condemned to death (10.12) and the stepmother, obviously of a high social station, suffers the perpetual exile consistent with *deportatio* in

³⁸ Paul *Sent.* 5.23.1-2. The stepmother's status is not certain. *Dig.* 48.9.1 applies the *lex Pompeia* to a mother who kills her child and an opinion attributed to Marcian states that this covers killing by a stepmother by implication. Consequently it is possible that the reverse situation, child killing stepmother, also was covered. Note however the distinction Apuleius draws between charges at 11.6, although this may be based on the weapon employed. The death of her own son by accident nevertheless would make the woman a parricide.

the early Empire.³⁹ So, too, the false charges brought against the stepson, that he is a *parricida* with respect to his half-brother and a *sicarius* with respect to the threat of sword-play against his stepmother (10.6), are technically correct under the two statutes. Moreover, Apuleius takes great pains to insure himself that the reader cannot help but recognize the penalty of the court as Roman, for he makes it the sack (10.8), the ancient Roman penalty for parricides.⁴⁰

The differences here are those of *procedure*, not those of law. After the funeral of his younger son, the father hurries to the forum and brings his charge before the local *decuriones*, not any body of Roman magistrates (11.6). This local senate and the populace become so enraged that they demand the accused be stoned to death without delay, a procedure and a penalty which Colin duly notes to be typical of the East.⁴¹ At this point the magistrates step in, because they fear a breakdown of public order, address the decurions, restrain the populace, and request that justice be done in the accepted manner under the *mos maiorum*. As a result the town fathers convene in the local senate house (10.7), and the trial on the charge made by the father, who also is a decurion (10.1), proceeds before this municipal legislature, which, as we have seen, clearly is applying Roman statutes.

Any attempt to apply an external test of verisimilitude to this situation encounters great difficulties. The decurions, it is true, are trying a case involving a member of their own order, and this parallels the competence of the senate and consuls at Rome to hear cases involving members of the senatorial order. There was no appeal from such a trial before the senate, not even to the princeps, and this is perhaps paralleled by a statement in the trial scene (10.8) about the immutability of the sentence once the vote is taken.⁴² So, too, the procedure of voting, which must have been by wax tablets, or the mention of *stili*

³⁹ Braginton (above, note 18) gives details.

⁴⁰ Dig. 48.9.9 pr.: *poena parricidii more maiorum haec instituta est, ut parricida virgis sanguineis verberatus deinde culleo insuatur cum cane, gallo gallinaceo et vipera et simia: deinde in mare profundum culleus iactatur.*

⁴¹ Colin (above, note 10) 336–38. The reference to Athens and the Areopagus Council at 10.7, it should be noted, strictly refers to the method of oration and has no relationship to the procedure or the law. So the torture also may be described as in the Greek manner at 10.10, but Roman law, which required it for the admission of evidence from slaves, still can be seen to be the guiding principle. Cf. *Met.* 3.9.

⁴² Dig. 49.2.1.2.

(10.8) is pointless, in which the votes are to be deposited in a bronze urn, is attested Roman practice as early as Cicero's day and the use of such an urn also is mentioned in the Cyrene Decrees of Augustus.⁴³ To the best of our knowledge, however, trials for serious crimes committed in the provinces during the imperial epoch were left in the hands of the governor or his delegates as already stated, the municipal authorities having only insignificant jurisdiction.⁴⁴ There is some evidence that municipal magistrates, at times acting in conjunction with the decurions, could punish certain crimes, at least in those municipalities located within the confines of Italy, but this is limited to the Republican epoch.⁴⁵ Nor is Colin's suggestion that this trial is Greek and takes place in a free city of Thessaly convincing in view of all the Roman evidence adduced here, although the model of Apuleius may have been Greek.⁴⁶

Simply stated, we cannot verify this form of trial as extant in the provinces during the lifetime of Apuleius because such a procedure did not actually exist. Apuleius is not showing us what *is* in this second major trial scene of the *Metamorphoses*; he is showing us what *should be*. The first trial scene is very definitely tied to the Risus festival at Hypata and, since Lucius was the defendant, the account we have of that trial is absolutely authentic and vouched for by the narrator. This second trial is not placed in any definite location, not because Apuleius was not inventive enough to name a place, but because there was no place which could be named, since the reader of his own day knew that such a procedure could not exist anywhere in the Empire. Lucius was not present at this trial. He got word of the whole story second-hand (10.2) and consequently our narrator is not stating that these events actually happened on the pledge of his own reputation. This point is made again, with even greater force, at the beginning of the trial itself (10.7), and there can be no doubt Lucius

⁴³ A. H. J. Greenidge, *The Legal Procedure of Cicero's Time* (Oxford 1901) 497; F. de Visscher, *Les édits d'Auguste découverts à Cyrène* (Louvain 1940) 16-18.

⁴⁴ Mommsen, *Strafr.* 228. *Dig.* 2.1.12 affords evidence that local authorities could not order severe punishment even for a slave.

⁴⁵ Mommsen, *Strafr.* 225-26. The best evidence is *Cic. Cluent.* 14.41. Cf. Kübler, "decurio," *RE* 4.2 (1901) 2340.

⁴⁶ Colin (above, note 10) 338. Indeed the sole documented attempt at Eastern practice in the trial scene (10.6) is halted by the magistrates.

could have been stationed near enough to the senate house to hear had Apuleius wanted us to have this tale on the narrator's authority.

There are other instances in the novel where a sort of justice prevails. The murderess in the tale of Thelyphon is unmasked, but only by magical means (2.28-30), hardly a suitable device. Self-help is also a means to justice, as we see when the local citizens simply hurl the thieving priests of the Syrian goddess into prison (9.10), but this involves taking the law into one's own hands, and it can place the individual who resorts to it in danger of his own life, as the three brothers (9.35-38) and the gardener who resists the soldier (9.39-42) learn. In this trial, however, rule of law encourages the necessary civil spirit and the good physician comes forward in that spirit at the strategic moment (10.11) to prevent an unjust sentence. Apuleius simply is telling his perceptive reader that the injustice which is the rule in his novel and in his society to this point need not endure forever. The Roman law is not at fault as law. It can be employed and the political realities are such that it and not Greek nor any other law-system must be employed. The real problem is the application of that law and it is here that the reform is needed. There must be a return to the *mos maiorum*, the practices of days past, when the provincials themselves and not their Roman masters had competence over their own citizens and over crimes committed within their territorial limits. In other words, the subtle point that Apuleius is attempting to make is this: Justice in the provinces and for provincials can only be obtained if Rome returns the administration of criminal justice to the hands of responsible municipal citizens rather than insisting upon the primary role of the provincial governor backed by the central authority of the emperor. It is a point which the Cyrene Decrees show Augustus appreciated, and the upright citizen of Madaura doubtless appreciated it too.

In Apuleius' own lifetime the system of centralization had progressed to a point where such an idea might seem treasonable. He had to show its truth by the most circumspect means. This is why he allows a provincial governor to conduct a *quaestio* (10.28-29), which results in the condemnation of a murderess to the wild beasts in strict accord with justice and with law. Why should he not do so? This governor is hardly diligent and it is not until the fourth victim takes action to

arouse him and the town and actually expires at his feet that any action is taken. In addition the actual penalty marked out for this poor wretch in its inhumanity goes far beyond what the law envisioned. What appears to be proof that Lucius realized how just the governor can be is actually reinforcement of the message contained in the trial scene.

It can now be stated that the pattern of crime and punishment which seemed so haphazard in the *Metamorphoses* actually was planned by Apuleius with considerable care.⁴⁷ Within the fantasy framework of the Greek story of Lucius and of the Milesian tales he cleverly placed an indictment of Roman justice and an indication of how the provincials might hope for better service to their own desire for equal treatment and equal protection under the law. This important motif would not be missed by his knowledgeable provincial reader, while Apuleius could represent himself as a simple translator of pleasant tales should the shadow of Roman anger chance to reach out to him. Whether or not the Roman system was so oppressive as to require this elaborate caution need not be discussed here. Apuleius apparently thought such was the case and yet he wanted to share his point of view with his reading public.⁴⁸

⁴⁷ Perry long ago noted in his article on *Met.* 1.14-17 (above, note 15) 395, note 3, the repeated occurrence of fear of the law in the novel and he seems to have sensed intuitively that this was a connecting link between many of the tales discussed here. However, he never pursued the matter beyond this observation.

⁴⁸ I received P. G. Walsh, *The Roman Novel* (Cambridge, U.K. 1970), too late to make use of his views on certain legal situations in the *Metamorphoses*. In general my work is supplemented by his although we interpret legal details for far different purposes. On two points I wish to comment: (1) Professor Walsh believes (p. 59) that Lucius admits "technical guilt" at the Risus trial, a view I do not share. (2) His confusion about the purpose of the contract in the Thelyphron story (p. 154) is perhaps to be dispelled by my views. Moreover, the contract tends to foreshadow the real interest of the widow, i.e., the inheritance, and thus it aids in unifying the tale.