

# *Stasis*-theory in Judicial Speeches of Greek Novels

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AMONG THE ADVENTURES which young lovers in the Greek novel undergo are courtroom and trial scenes. Chariton himself acknowledges this at the beginning of Book 8: “There will be no more pirates or slavery or lawsuits or fighting or suicide or wars or conquests; now there will be lawful love and sanctioned marriage.”<sup>1</sup> These scenes offer a perfect illustration of the influence of Rhetoric in the genre of the novel. As G. Anderson states: “No extant ancient novel is without some form of court-room case where school rhetoric trials can be practised with a vengeance.”<sup>2</sup> In including these scenes, the authors aim at different goals. First of all, they achieve pathos and tension, characteristic features of the genre. Second, they prove the innocence of the young lovers against all charges, and show the guilt of their wicked enemies. Finally, they display their skills and knowledge in rhetorical matters.

However, the formal aspects of forensic speeches in the novels (their structure and relation to rhetorical theory) have never been exhaustively analysed. Only legal aspects, especially

<sup>1</sup> οὐκέτι ληστεία καὶ δουλεία καὶ δίκη καὶ μάχη καὶ ἀποκαρτέρησις καὶ πόλεμος καὶ ἄλωσις, ἀλλὰ ἔρωτες δίκαιοι ἐν τούτῳ <καὶ> νόμμοι γάμοι (8.1.4). All translations of the novels come from B. P. Reardon (ed.), *Collected Ancient Greek Novels* (Berkeley 1989).

<sup>2</sup> G. Anderson, *The Second Sophistic: A Cultural Phenomenon in the Roman Empire* (London 1993) 66. Similarly S. Schwartz, *Courtroom Scenes in the Ancient Greek Novel* (New York 1998) 12: “the trials in the novel reflect the general influence of the rhetorical tradition, which included the Athenian orators, Greek and Latin declamations, and the works of such imperial orators such as Dio Chrysostom.”

those related to marriage, have been studied in any depth.<sup>3</sup> In this paper I analyse how issue (στάσις)<sup>4</sup> theory is evident in the forensic speeches of *Chaireas and Callirhoe*, *Daphnis and Chloe*, and *Leucippe and Clitophon*. For this purpose, I have chosen the speeches in which these issues (στάσεις) can be readily identified, and I will examine how they are developed.

Issue-theory belongs to the first part of Rhetoric, to the first task the rhetor has to develop: invention (εὑρεσις, *inventio*).<sup>5</sup> This consists of designing the strategy of the line of argument: first of all, the question that is going to be judged must be analysed in order to find the best way to tackle it. An incorrect analysis would entail a misidentification of the main issue in the inquiry and, consequently, a faulty development would lead to failure. The issue-theory can be applied to judicial and deliberative genres. Its origin is to be traced back to Hermagoras of Temnos, a rhetor of the second century B.C. whose works have been only fragmentarily preserved.<sup>6</sup> At first hand we possess

<sup>3</sup> A careful study is Schwartz's dissertation (*Courtroom Scenes*), which provides a specific analysis of juridical aspects of these courtroom scenes. The one exception is R. F. Hock's analysis of the speeches of Dionysius and Mithridates at the Babylonian court: "The Rhetoric of Romance," in S. E. Porter (ed.), *Handbook of Classical Rhetoric in the Hellenistic Period* (Leiden 1997) 445–465, at 462–464.

<sup>4</sup> For the English translation of individual rhetorical terms and for the definition of the *staseis*, I follow M. Heath, *Hermogenes on Issues. Strategies of Argument in Later Greek Rhetoric* (Oxford 1995). D. A. Russell, *Greek Declamation* (Cambridge 1983) 40–73, provides other terms that differ slightly. J. Martin, *Antike Rhetorik. Technik und Methode* (Munich 1974) 28–52, does not include a German translation of the terms.

<sup>5</sup> Hermogenes considers issue-theory a part of invention theory (ἔστι δὲ σχεδὸν ὁ αὐτὸς τῷ περὶ εὑρέσεως, πλὴν ὅσον οὐ πάντα ἔχει τὰ περὶ εὑρέσεως, *Stat.* 28.13–14 Rabe). Nevertheless, the *Prolegomena* to *On Issues* (*Proleg. Syll.* 175.16–179.2, 210.5–14, 235.21–236.20 Rabe) situates it in a stage prior to invention, in the first of the rhetor's three tasks (ἔργα), the νόησις. Second is invention (εὑρεσις) and third style (ἔρμηνεία). G. A. Kennedy, *Greek Rhetoric under Christian Emperors* (Princeton 1983) 52, follows this, stating that the three stages would be represented, respectively, by *On Issues*, *On Invention*, and *On Types of Style*, all of them parts of the Hermogenic corpus.

<sup>6</sup> D. Matthes, *Hermagorae Temnitae testimonia et fragmenta* (Leipzig 1962). On the origin and evolution of the issue theory see M. Heath, *Menander. A Rhetor in Context* (Oxford 2004) 6–36.

only the classification of Hermogenes of Tarsus,<sup>7</sup> which shows the theory at its most advanced stage and inherits previous classifications.<sup>8</sup>

According to Hermogenes, in order to identify the appropriate issue the rhetor must question some aspects that correspond to the Aristotelian categories: Does the fact exist? What is the fact? What is the nature of the act? If the existence of the fact under study is not clear, the issue is considered “conjecture” (στοχασμός); if its name or category is not clear, the issue is considered “definition” (ὄρος); if both its existence and name are beyond any doubt, its quality must be questioned, and the issue is one of those of “quality” (ποιότης), which are divided, in their turn, into rational issues (λογικαὶ στάσεις, concerning acts) and legal issues (νομικαὶ στάσεις, concerning laws and legal documents). Rational issues can refer to past acts (δικαιολογία, juridical issues) or to future acts (πραγματικὴ στάσις, practical issue). Juridical issues are divided into counterplea (ἀντίληψις) and counterposition issues (ἀντιθετικαὶ στάσεις). In the counterplea, the defence claims that the act is legitimate; in counterposition issues, the accused admits that it is a crime, but makes some claim in order to reduce his responsibility or to

<sup>7</sup> Hermogenes lived in the second half of the second century, his birth given as 160 A.D. (Philostr. *VS* 2.7). For a general survey of his life and works see G. Lindberg, “Hermogenes of Tarsos,” *ANRW* II.34.3 (1997) 1978–2063, at 1985–1988. An outstanding collection of testimonies on his life is in M. Heath, “Hermogenes’ Biographers,” *Eranos* 96 (1998) 44–54.

<sup>8</sup> Lollianus, an Athenian rhetor of the first half of the second century A.D., distinguished five issues (Heath, *Menander* 20). Hermagoras ὁ νεώτερος distinguished seven: conjecture, definition, practical, quality, legal, juridical, and objection, dividing the last into documentary and non-documentary (Hermagoras III fr.7). For full documentation see M. Heath, “Hermagoras: Transmission and Attribution,” *Philologus* 146 (2002) 287–298, who concludes that there were three rhetoricians named Hermagoras: the first and most famous was Hermagoras of Temnos (II B.C.), who made an influential contribution to the development of the issue-theory; but his theory was no longer in use during the first century B.C. The second, a pupil of Theodorus, was active before Lollianus in the first century A.D. The third, ὁ νεώτερος, was perhaps early second century A.D. and made this categorization of seven issues, as all references to Hermagoras in later sources are likely to this third Hermagoras.

justify his action. Apart from this, we have the “objection” issue (μετάληψις), placed outside the system since it questions the validity of the procedure and affects the whole trial. If the objection succeeds, the inquiry will not take place.<sup>9</sup> These are the thirteen issues which Hermogenes of Tarsus differentiates, dividing each of them into “heads” (κεφάλαια), which are the main points in an argument and can be developed, according to the rhetor’s convenience, to the specific circumstances of the inquiry and to the persons and acts involved.

For chronological reasons, Hermogenes could not have influenced the first Greek novelists directly. In fact, his works were considered scholastic texts only later.<sup>10</sup> Nevertheless, the issue-theory, as stated above, can be traced back to Hermagoras of Temnos, and there were some rhetorical authors, contemporary with and older than Hermogenes,<sup>11</sup> who wrote treatises about it. The most important was Minucianus,<sup>12</sup> Hermogenes’ contemporary and opponent. Beyond any doubt, therefore, novelists knew this type of rhetorical theory thanks to the declamations (μελέται) that were delivered at schools,<sup>13</sup> and they used them in the forensic speeches featured in the novels.<sup>14</sup> Nevertheless, we will not find in the novels school-

<sup>9</sup> On this issue see E. Ruiz, “La μετάληψις en el *Peri ton staseon* de Hermógenes de Tarso,” *Habis* 29 (1998) 201–210, and M. Heath, “*Metalepsis, paragraphe* and the Scholia to Hermogenes,” *Leeds International Classical Studies* 2.2 (2003) 1–91.

<sup>10</sup> His *On Issues* was the handbook of rhetorical schools between the fifth and fifteenth centuries because of the relevance attached to it by the Neoplatonic Syrianus, who in the first half of the fifth century commented on it and *On Types of Style*. Nevertheless, *On Issues* was commented on before Syrianus: there were already commentaries (by Metrophanes and Menander) in the third century, but they have not survived. On the general features of these exegeses see Kennedy, *Greek Rhetoric* 109–112.

<sup>11</sup> For classifications prior to Hermogenes: R. Nadeau, “Classical Systems of Stases in Greek: Hermagoras to Hermogenes,” *GRBS* 2 (1959) 51–71.

<sup>12</sup> On his life see M. Heath, “The Family of Minucianus?” *ZPE* 113 (1996) 66–70.

<sup>13</sup> An excellent account of imperial rhetorical training can be found in Heath, *Menander* 217–254.

<sup>14</sup> In L. Pernot’s words, “Dans les romans comme dans la rhétorique, c’est un même processus de composition réglée, guidée, où l’imagination

room or demonstrative declamations, but speeches that follow the pattern of the rhetorical instructions of handbooks like that of Hermogenes and others that have not survived. The novelists use the rhetorical tools taught by theorists and adapt them to the plot and the subject-matter of their works. They do not offer declamations of the type we can read in Seneca the Elder or Libanius, nor do they claim to adhere rigidly to established patterns, but rather to create fictive equivalents of real forensic practice, as contemporary advocates in real cases also do.<sup>15</sup>

Courtroom scenes and forensic speeches appear in all the novels, except that of Xenophon of Ephesus, undoubtedly because of its brevity.<sup>16</sup> Heliodorus' novel has not been included in this study because its courtroom scenes—Cnemon's trial, where he is charged by his step-mother for attempted seduction (1.13.1–14), and Chariclea's trial for the murder of Cybele (8.9.5–10)—are in reported speech.

It is remarkable that Chariton's novel, while not long or complex, offers several very well-structured and organised judicial speeches. This can be explained by the forensic experience of the author, who describes himself as a “clerk to the attorney Athenagoras.”<sup>17</sup> The first speech in the novel is that of Chaireas' self-accusation (προσαγγελία)<sup>18</sup> for Callirhoe's (false)

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n'est mise en œuvre que dans des cadres pré-établis. Mais oui: sur le roman, flotte l'esprit d'Hermogène. Les mêmes hommes, on le sait, pratiquaient les deux méthodes. Apulée était orateur, Chariton secrétaire d'un rhéteur. Gageons qu'Achille Tatius et Héliodore ont fréquenté assidûment les auditoires de sophistes et les salles de déclamation”: “Notes et discussions. Nouveaux regards sur le roman antique,” *RevPhil* 67 (1993) 103–106, at 105.

<sup>15</sup> Examples in M. Heath, “Practical Advocacy in Roman Egypt,” in M. J. Edwards and C. Reid (eds.), *Oratory in Action* (Manchester 2004) 62–82.

<sup>16</sup> M. F. Ferrini, “Discorsi giudiziari e altro nel romanzo greco antico,” *AFLM* 24 (1991) 31–60, at 35.

<sup>17</sup> Χαρίτων Ἀφροδισιεύς, Ἀθηναγόρου τοῦ ῥήτορος ὑπογραφεύς (1.1.1). Although I otherwise use Reardon's translation, I think “orator” is more suitable here than “attorney.”

<sup>18</sup> See D. A. Russell, *Greek Declamation* (Cambridge 1983) 35–37, and R. Webb, “Rhetoric and the Novel: Sex, Lies and Sophistic,” in I. Worthington (ed.), *A Companion to Greek Rhetoric* (Oxford 2007) 526–541, at 532.

death and Hermocrates' corresponding defence (1.5.1–7). Later, in his speech, Theron first defends himself against the charge of tomb profanation, kidnapping, and selling a free woman, and then, after the irrefutable testimony of an eyewitness, confesses his crimes (3.4.12–14). Finally, two high-quality forensic speeches<sup>19</sup> are delivered in the court at Babylon, before the Persian King who acts as judge: Dionysius charges Mithridates with licentiousness and outrageous behaviour for having tried to seduce his wife, and Mithridates defends himself, rebutting Dionysius' charges and letting Chaireas enter (5.6.1–7.10).

In *Daphnis and Chloe*, in the context of the pastoral environment and the simple world where the action takes place,<sup>20</sup> two speeches are delivered at the trial in which Daphnis is accused by some youngsters from Methymna of having caused damage to their boat (2.14.3–17.3).

Finally, in Achilles Tatius' novel we find a larger number of forensic speeches. They are inserted into several trial scenes towards the end (Books 7 and 8) and occupy more than a quarter of the account. It all starts when Thersander, Melite's husband, who was thought to be dead, appears and charges Clitophon with adultery. Several speeches are delivered. The first is Clitophon's when he is taken before the court by Thersander and, by means of a *προσαγγελία*, charges himself not with adultery—the crime of which he has been accused—but with the murder of Leucippe (7.7.1–6). Several more speeches follow: Clinias' defence of Clitophon (7.9.1–14), the two speeches of Thersander (7.11.1–8, 8.8.1–14), that of the priest of Artemis (8.9.1.14), and finally that of Sopater (8.10.1–12), Thersander's defender.

In order to determine the relevant issue in each judicial question, we must start with an analysis of the objective situation: what is the charge? What is the crime alleged? We must know

<sup>19</sup> ταῦτα δικανικῶς μὲν εἶπεν ὁ Διονύσιος (Char. 5.4.11).

<sup>20</sup> According to Anderson, *Second Sophistic* 170, "Longus' literary personality is different again from that of Achilles and Heliodorus: here we have a delicate miniaturist smiling at the naivety of characters set in a much smaller world, that of rural Lesbos."

the position of the two opposing parties, prosecution and defence, in order to discover the matter to be judged (τὸ κρινόμενον) and to identify the relevant issue in each situation. In the examples provided I will therefore analyse both speeches when they are in direct discourse, although at times the position of one of the parties (usually the accusation) is known only through the information given by the narrator.

In the classification of issues, the first is conjecture (στοχασμός), a proof of the existence of an act which is unclear and wrong from another act—the sign—which is clear and apparently innocent.<sup>21</sup> For example, a man is apprehended burying a corpse in a remote place (sign) and is charged with homicide.

A very interesting and complex example of conjecture can be seen in the trial between Dionysius and Mithridates at the Persian court, before the Great King as judge.<sup>22</sup> Dionysius accuses Mithridates of adultery, basing the accusation on evidence that consists of letters sent to his wife under the name of her previous husband (Chaireas). And in connection with this conjecture, we find another, called the “pre-confirmatory conjecture” (προκατασκευαζόμενος στοχασμός):<sup>23</sup> Dionysius takes it for granted that Chaireas is dead (sign) and accuses Mithridates of having forged these letters and signed them as Chaireas, in order to seduce Callirhoe (charge).

In the main conjecture, and on the basis of these letters (sign), Dionysius charges Mithridates with “wanton and arrogant behaviour”<sup>24</sup> for having tried to seduce his wife (crime) and, by extension, with immorality and abuse of power. These negative qualities of Mithridates that Dionysius underlines can

<sup>21</sup> Hermog. *Stat.* 36.9–17.

<sup>22</sup> See Hock, in *Handbook* 462–464, and Schwartz, *Courtroom Scenes* 64–104.

<sup>23</sup> “Pre-confirmatory conjecture arises when in advance of the main question the truth or falsity of some other act requires prior confirmation by conjecture” (Hermog. *Stat.* 57.11–14), cf. Heath, *Hermogenes* ad loc.

<sup>24</sup> ἀσέλγειαν καὶ ὕβριν (Char. 5.6.1–2). Hock, in *Handbook* 464, points out that these words are taken from the opening of Dem. 21. The idea of licentiousness is repeated in 5.6.5, 5.6.7, and 5.7.2, and the charge of adultery in 4.5.10, 5.2.3, 5.4.10, 5.6.9, 5.6.10; cf. other expressions at 4.6.4, 4.6.8, 5.4.1.

support the pre-confirmatory conjecture: a person with bad attributes is able not only to fabricate letters and usurp someone's identity, but also to seduce the wife of another person.

We can isolate different heads of this issue: exception (παροργραφικόν), demand for evidence (ἐλέγχων ἀπαίτησις), motive and opportunity (βούλησις καὶ δύναμις), sequence of events (τὰ ἀπ' ἀρχῆς ἄχρι τέλους), and counterplea (ἀντίληψις).

In his accusatory speech, Dionysius describes the acts as they happened, according to him (sequence of events, τὰ ἀπ' ἀρχῆς ἄχρι τέλους). The sequence of events is a head that pertains to the accusation and has considerable force: in fact, it is the strongest device of the prosecution. It expands upon the acts in order to underline the facts that otherwise would not be sufficiently highlighted.<sup>25</sup> Dionysius says that Mithridates came to Miletus, saw Callirhoe as a result of hospitality (opportunity, δύναμις), and showed himself to be an indecent man, shameless and immoral (motive, βούλησις).<sup>26</sup> Since he could not convince Callirhoe with words or presents, because of her loyalty to her husband, he plotted a scheme (Char. 5.6.6–11), as the irrefutable evidence (ἀποδείξεις ἄφυκτοι, 5.6.11) proves (demand for evidence, ἐλέγχων ἀπαίτησις). Dionysius tries to get Mithridates' alleged crime out of the private sphere (attempted adultery) and give it public and political exposure, in order to reinforce its seriousness, presenting Mithridates before the Great King as a bad governor and royal representative.<sup>27</sup>

In his reply Mithridates discusses the motive (βούλησις) alleged by Dionysius: Callirhoe's beauty contributes to create suspicion against Mithridates, but he has always lived a respectable life, he has always been an honest man, he is an important governor, and the Great King trusts him.<sup>28</sup> Then he resorts to

<sup>25</sup> Hermog. *Stat.* 47.8–13.

<sup>26</sup> Dionysius is using the topics of blame, especially that of the attributes of the person (Hermog. *Stat.* 46.8–18).

<sup>27</sup> μείζονος δὲ τιμωρίας ἄξιον τὸ ἔργον γέγονε καὶ διὰ τὸν ποιήσαντα (5.6.2, cf. 5.6.3–4).

<sup>28</sup> 5.7.2–3. Mithridates ends this argument with a rhetorical question: τίς οὕτως ἐστὶν ἀνόητος, ἵνα ἔληται τὰ τηλικαῦτα ἀγαθὰ μᾶς ἡδονῆς ἕνεκεν ἀπολέσαι καὶ ταύτης αἰσχροῦ;



exception (παρογραφεῖον) based on the person. Dionysius is not entitled to bring a charge of adultery because this task belongs to the legitimate husband, and Dionysius is not such a husband. Dionysius has defined himself as a legal husband: he married Callirhoe when she was no longer a maiden and she has made him a father (5.6.5). He has just mentioned the arguments that favour him and has omitted those that harm him. In his turn, Mithridates answers with a counter-definition, showing all the details omitted by Dionysius. These details question Dionysius' status as legitimate husband: Dionysius is not legally married to Callirhoe because he bought her as a slave, and marriage laws do not apply to slaves (5.7.3–4). Mithridates demands evidence of a legitimate marriage: Callirhoe's freedom document should be read out in order for the marriage to be defined as legal. He also presents another fact that has been passed over by Dionysius: he bought Callirhoe for one talent from Theron the pirate who, for his part, had kidnapped her after desecrating her grave. Even if Dionysius admits that he has bought a free woman, he will not avoid punishment, since in that case he might be charged with slave trade (5.7.4). This head is absolutely appropriate in this case,<sup>29</sup> and it is such a strong objection that it would invalidate the trial. Nevertheless, Mithridates says that he is going to omit it, and he will therefore consider Dionysius a legitimate husband.<sup>30</sup>

After this strong argument, Mithridates answers the accusation, by means of the head of counterplea (ἀντίληψις). He rebuts Dionysius' charge of licentiousness and immorality and states that he has not offended him either as a husband (since he did not seduce his wife) or as a subordinate. Moreover—and this is the strongest point in his line of argument—Dionysius has not charged him with actions, but with attempts, and his evidence is weak: “empty letters” (γραμμάτια κενά, 5.7.6) with-

<sup>29</sup> εἰ δὲ ἄρα τι καὶ συνήθειν ἑμαυτῷ πονηρόν, ἐδυνάμην καὶ παρογραψασθαι τὴν δίκην (5.7.3).

<sup>30</sup> If he had insisted on this circumstance, claiming that the trial was invalid because the prosecution was not entitled to bring the charge, there would have been the issue of incomplete or non-documentary objection (ἄγραφος μετάληψις, see below), comparable to the speech *Against Timarchus*.

out his own handwriting.<sup>31</sup> But finally he neither defends himself *stricto sensu* nor refutes the charge: he neither invalidates evidence nor says why he has not attempted adultery. He offers Dionysius an opportunity to withdraw the charge and he keeps his most effective (non-technical) proof for the end of the trial: the sudden appearance of Chaireas. With this theatrical effect, it is proved that Chaireas is still alive, and that therefore Mithridates did not forge any letters and there is no charge of adultery at all.

The issue of conjecture can be also identified in connection with the charge of adultery against Clitophon, Thersander's original accusation (Ach. Tat. 6.5.3). Not being satisfied with this false charge, Thersander has arranged to deceive Clitophon by telling him, by means of a cell-mate, that Melite has plotted Leucippe's murder (7.1.4–5). Clitophon, in despair, instead of delivering a defence speech against the charge of adultery, decides to implicate himself in this murder (προσαγγελία), so that he will die and take Melite down with him (7.6.3–4). This is an unforeseen side-effect: the situation changes drastically and the question of the murder of Leucippe arises. This case needs no proof other than Clitophon's confession. According to the law, that is sufficient for the death penalty, which Thersander is demanding. Nevertheless, Clinias, speaking in Clitophon's defence,<sup>32</sup> analyses the situation, and the one issue that can be isolated is conjecture. We have here a conjecture similar to the example offered by Hermogenes: the father of a dissolute son is missing and the son is charged with homicide (Stat. 31.7–8). The sign is the disappearance and the crime alleged is homicide. Nevertheless, the simple fact that person A has disappeared is a very weak sign that person B has murdered him; the disappearance has to be taken in conjunction with some other fact that incriminates

<sup>31</sup> By pointing out the weakness of the proofs, he is also using the head of demand of evidence. According to Hermogenes, if there are no witnesses, the defendant will demand them, using the circumstances of the act (Stat. 45.20–46.3).

<sup>32</sup> Analysed by Schwartz, *Courtroom Scenes* 187–193; see also Webb, *Rhetoric and the Novel* 532–533.

person B, for example his character or his behaviour.

Similarly, Leucippe's disappearance is only the sign, which is clear and undeniable (7.9.4–5) and which has to be linked with Clitophon's confession in which he admitted the homicide. In order to defend Clitophon—whose innocence is clear to Clinias—Clinias easily concedes the disappearance and focuses his attention on discrediting Clitophon's confession. He tries to show that this confession must not be taken into account by using the head of demand of evidence (ἐλέγχων ἀπαίτησις). When there is testimony against the accused, the witness has to be discredited,<sup>33</sup> and Clinias doubts Clitophon's testimony against himself (7.9.4–5). After this, Clinias demands some other evidence: whom Clitophon paid and where the victim is.<sup>34</sup> The head of motive (βούλησις) is also introduced, and Clinias goes on to argue that Clitophon's alleged motive for the crime he claims to have committed is inconsistent.<sup>35</sup> Finally, the head of transposition of cause (μετάθεσις τῆς αἰτίας) or gloss (χρῶμα) is used. This head belongs to the defence, who tries to give an innocent and plausible explanation of the facts. In this case, Clinias gives a different account of the acts and an explanation of why Clitophon has given a false testimony. This head raises another conjectural question (an incident conjecture),<sup>36</sup> about the real sequence of events, especially those in which Melite is involved. Accordingly, Clinias relates that Melite was deeply in love with Clitophon, but the latter had never forgotten Leucippe and when he discovered she was alive, he drifted away from Melite. She treated Leucippe mercifully and took her into

<sup>33</sup> Hermog. *Stat.* 45.8–10.

<sup>34</sup> εἰ δὲ αὐτὸς ἐπεβούλευσεν, ὡς λέγει, τὸν φόνον, εἰπάτω τίς ἐστὶν ὁ μισθωμένος, δεῖξάτω τὴν ἀνηρημένην (7.9.6).

<sup>35</sup> “ἤρων,” φησί, “Μελίτης· διὰ τοῦτο Λευκίππην ἀπέκτεινα.” πῶς οὖν Μελίτης φόνον κατηγορεῖ, ἣς ἦρα, διὰ Λευκίππην δὲ ἀποθανεῖν ἐθέλει νῦν, ἦν ἀπέκτεινεν; οὕτω γὰρ ἂν τις καὶ μισοῖ τὸ φιλούμενον καὶ φιλοῖ τὸ μισούμενον; ἄρ' οὖν οὐ πολὺ μάλλον ἂν καὶ ἐλεγχόμενος ἠρνήσατο τὸν φόνον, ἵνα καὶ σώσῃ τὴν ἐρωμένην καὶ ὑπὲρ τῆς ἀνηρημένης μὴ μάτην ἀποθάνῃ; (7.9.7–8).

<sup>36</sup> ἐμπύμων στοχασμός, which “arises when the transposition of cause raises a whole question, and it is necessary to give that too a complete division” (Hermog. *Stat.* 56.24–57.11, cf. Heath, *Hermogenes* ad loc.).

her own house (7.9.9–11). By means of this description of the acts, Clinias is also developing—in reference to Melite—the above-mentioned heads of motive and opportunity, since the qualities and actions of this woman towards Leucippe prove that, although she could have killed her (opportunity), she had no reason to do so (motive). Finally, and for the main question, he uses the head of common quality (κοινή ποιότης), which is usually placed at the end of the speech (7.9.14). This head is a summary of the most outstanding points in the whole argument and uses the heads of purpose (legality, justice, advantage, feasibility, and honour) with witnesses provided.<sup>37</sup> In this case, Clinias uses the head of honour/religion: it is not religious to condemn one who has charged himself out of desperation and insanity. He therefore tries to move the judges and, at the same time, offers witnesses (Melite's servants, Sosthenes, and the convict who cheated Clitophon) who can prove his testimony.

If the confession can be overturned, the sign (Leucippe's disappearance) can be explained otherwise, provided that it can be proved that another person can be responsible for it. Clinias shifts the suspicion from Clitophon to Sosthenes by exploiting the conjecture's heads of motive and opportunity (βούλησις καὶ δύναμις).<sup>38</sup> These two heads, which usually go together, pertain to the person, are based on his or her attributes, and are expanded upon with the topics of praise or blame. In this case, Clinias develops them by using the topics of the nature of the soul, actions, and Sosthenes' status as slave: the last thing known about Leucippe was that she had been caught by him, that he was in love with her, that he tortured her many times to obtain her favours, with no success, and that he was on good terms with pirates (7.9.4).

Clitophon's confession is an unexpected bonus for Thersander, and it makes the forensic situation more complicated, because Clinias demands some evidence that can support or refute the involvement of Clitophon and Melite in Leucippe's

<sup>37</sup> Hermog. *Stat.* 52.6–53.13.

<sup>38</sup> Normally the heads of motive and opportunity are concerned with the defendant. But, as Hermogenes points out, it is worth considering everyone involved (*Stat.* 46.24–47.2).

alleged murder. Melite's advocates support this demand by means of a *πρόκλησις*, appealing to the testimony of Melite's servants, Sosthenes, and the prisoner who spoke to Clitophon in jail. It would be disastrous for Thersander if his opponents were to get an opportunity to question Sosthenes in court; Thersander therefore argues against this *πρόκλησις* and delivers a speech that attempts to rebut this demand for evidence (*ἐλέγχων ἀπαίτησις*).<sup>39</sup> He introduces a second conjecture: Sosthenes' disappearance is a sign of the fact that he has been murdered by Melite and Clitophon (crime). Here Thersander reveals himself to be an insolent man and a liar. Although he has left Sosthenes in his household, taking care of Leucippe, and later sent him a messenger telling him to flee (7.10.3), he charges Clitophon and Melite with this crime. Thersander exploits the heads of motive and opportunity: the alleged adulterers—Melite and Clitophon—have reason to get rid of Sosthenes, because they hate him for having reported the adultery.<sup>40</sup> Both opposing parties agree about the description of the sign—Sosthenes' disappearance—but disagree about its interpretation: Thersander says that Sosthenes has been killed, whereas the opposition claims that he has only disappeared.<sup>41</sup> As far as Leucippe's death is concerned, Clinias, as Clitophon's defender, has requested Sosthenes' testimony as witness. On the other hand, Thersander, as the opposing party, denies that this is of any interest in this case (7.11.3), claiming that Sosthenes' testimony is irrelevant because he can only testify about acts that are well known and beyond any doubt. Thersander concludes that the other witnesses are irrelevant as well: Melite's servants can testify to Leucippe's disappearance—which is clear—but they know nothing about what might have happened to her later, and as for the prisoner, Thersander states that Clinias has invented the story about him.<sup>42</sup>

<sup>39</sup> 7.11.1–8, analysed by Schwartz, *Courtroom Scenes* 193–198.

<sup>40</sup> αὐτὸς γὰρ ἐτύγχανεν ὁ τὴν μοιχείαν μοι κατειπών. ὥστε εἰκότως ἀποκτεῖναι μοι δοκοῦσιν αὐτόν (7.11.2).

<sup>41</sup> This is what the priest of Artemis says (8.9.14).

<sup>42</sup> 7.11.6–8. He knows this very well, because in fact it was Thersander's own lie.

Counterplea (ἀντίληψις) is one of the quality issues. It analyses the quality of an act which is clear (versus conjecture) and complete (versus definition). It is defined as the defendant's statement about the legitimacy of an act which the prosecution considers wrong. An important feature of this issue is that in most cases the charge does not exactly correspond to the act.<sup>43</sup>

We find a counterplea in the speech of the priest of Artemis against Thersander.<sup>44</sup> The priest sheltered Leucippe as a refugee in Artemis' temple. He also sheltered Clitophon, after Leucippe had appeared and the murder charge had been invalidated. Nevertheless, Thersander charges the priest with tyrannical behaviour; he accuses him of having released a convict who had pleaded guilty to murder, thus acting against the court's decision. The act on which Thersander's prosecution is based is the following: the priest released a person condemned to death and freed a person convicted of murder (8.9.7–13), and that is not permitted by the law. The priest rebuts this charge: I did free a prisoner condemned to death for the murder of someone who is known still to be alive, and that is permitted. The priest's irony-laden arguments<sup>45</sup> lead to the conclusion that Thersander himself is the tyrant.

In the priest's counterplea some heads can be identified: presentation (προβολή) when he briefly summarizes the prosecution, definition (ὄρος) when he defines tyrannical behaviour,<sup>46</sup>

<sup>43</sup> For its definition see Hermog. *Stat.* 38.10–13, and for its division into heads 65.10–67.18.

<sup>44</sup> See Schwartz, *Courtroom Scenes* 212–219.

<sup>45</sup> He is said to be εἰπεῖν οὐκ ἀδύνατος, μάλιστα δὲ τὴν Ἀριστοφάνους ἐξηλωκῶς κωμωδίαν, and his manner of speaking is defined as ἀστεῖως καὶ κωμωδικῶς (8.9.1). Aristophanic echoes have been highlighted in this speech, but R. Brethes has underlined that the model for the priest was the forensic speech of the fourth century B.C. that attacks the way of life of the accused in order to damage his reputation, especially Aeschines' *Against Timarchus*. Rather than Aristophanic echoes, the style is Menander's: "Le discours du prêtre chez Achilles Tatius (VIII, 9): Une déconstruction de la *paideia*," in B. Pouderon and J. Peigney (eds.), *Discours et débats dans l'ancien roman* (Lyon 2006) 177–189, at 185–188.

<sup>46</sup> "ἔλυσας," φησί, "τὸν θανάτου κατεγνωσμένον"· καὶ ἐπὶ τούτῳ πάνυ δεινῶς ἐσχετλίασε, τύραννον ἀποκαλῶν με καὶ ὅσα δὴ κατετραγώδησέ μου. ἔστι δὲ οὐχ ὁ σῶζων τοὺς συκοφαντηθέντας τύραννος, ἀλλ' ὁ τοὺς μηδὲν

a part of the law (μόριον τοῦ δικαίου) when he asks Thersander about the laws he has used to condemn him (8.9.8–9),<sup>47</sup> and the characteristic head of this issue, the counterplea itself (ἀντίληψις) based on the fact that the priest's release of Clitophon is permitted by law since there has been no such murder, because the alleged victim is alive and present in the courtroom.<sup>48</sup>

As the charge of homicide is no longer valid, the accusation against Melite and Clitophon returns to that of adultery. Thersander's rather comical advocate Sopater—after demonstrating the shameless behaviour of the priest and the young lovers and the blameless behaviour of Thersander—finally gets to the point, and the issue seems to be definition (ὄρος).<sup>49</sup> Several heads of this issue can be identified: presentation (προβολή), which consists of the sequence of events, enlarged upon in this case, arguing that Melite commits shameless adultery (and not for the first time) with a young lover described as the male prostitute of declamations (8.10.9); definition (ὄρος), a looser definition of the facts: adultery consists in living openly with a lover in a foreign country, travelling with him, sleeping with him, and exposing her lust on the boat for all to see (8.10.9); quality (ποιότης), based on the attributes of the person, the lawyer in this case presenting Melite as an adulteress who lacks modesty and decency and Clitophon as though he were an

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ἀδικούντας, μήτε βουλῆς, μήτε δήμου κατεγνωκότος (8.9.7). There are textual problems in this passage, after ἀδικούντας, see E. Vilborg, *Achilles Tatius. Leucippe and Clitophon* (Stockholm 1955) ad loc.

<sup>47</sup> He has not been allowed a defence nor has any law been applied to him, but only Thersander's caprice and desire (8.9.10).

<sup>48</sup> “ἐπὶ φόνοφ κατέγνωσται,” φησί. πεφόνευκεν οὖν; εἰπέ μοι τίς ἐστίν; ἦν ἀπέκτεινε καὶ ἔλεγεσ ἀνηρησθαι, ζώσαν βλέπεις, καὶ οὐκ ἂν ἔτι τολμήσειας τὸν αὐτὸν αἰτιάσθαι φόνου. οὐ γὰρ δὴ τοῦτο τῆς κόρης ἐστὶν εἶδωλον· οὐκ ἀνέπεμψεν ὁ Αἰδωνεὺς κατὰ σοῦ τὴν ἀνηρημένην (8.9.12).

<sup>49</sup> The issue of definition “is an enquiry into the description of an act that is partially performed and partially deficient with regard to the completeness of his description. E.g.: A man steals private property from a temple; the legal penalty for temple-robbery is death, while the legal penalty for theft is twofold repayment; the man is prosecuted as a temple-robber, but claims to be a thief” (Hermog. *Stat.* 37.5–11, cf. Heath, *Hermogenes* ad loc.).

object, a piece of merchandise; and counterdefinition (*ἀνθοοισμός*), when Sopater reproduces Melite's plausible defence, in which intention is crucial: "I thought that my husband had perished." There is no adultery without a husband, and Melite would be acquitted of this charge. But the situation is quite different, as Sopater states, laying down a strict legal definition of what adultery is (8.10.10–12).

Nevertheless, the charge of adultery is not a strong one, because neither Melite nor Clitophon nor anybody else knew that Thersander was alive, and the court is unlikely to bring a guilty verdict.<sup>50</sup> As there is no easy solution to the situation and there is no end in sight, the author turns to a common device in novels: the ordeal.

In novels' speeches some examples of counterposition issues (*ἀντίθεσις, ἀντιθετικὰ στάσεις*) can also be found. Counterposition issues, typically of the accused, are characterized by the fact that the defendant concedes that the act in question was wrong but tries to mitigate his guilt by pointing out some benefit achieved as a result of this wrongful act (counterstatement, *ἀντίστασις*) or by transferring responsibility to some external agent or fact. He can transfer responsibility to the victim, accusing him of deserving to suffer as he did (counteraccusation, *ἀντέγλημα*), or to a third party (transference, *μετάστασις*, and mitigation, *συγγνώμη*).<sup>51</sup> If responsibility is assigned to a person or an act that can be considered responsible, it is transference; if to somebody or something that cannot be considered responsible, it is mitigation.<sup>52</sup> Mitigation particularly arises with reference to cases where the accused acts under the influence of some emotion, like fear, hatred, or jealousy. Of all the issues, mitigation is the one with least probative force; it

<sup>50</sup> It can be an incomplete objection based on time (see below).

<sup>51</sup> Hermog. *Stat.* 38.16–39.11.

<sup>52</sup> The difference between these two issues is not clear to Hermogenes, who admits that two different criteria can be used (*Stat.* 39.17–19): the first when the person or fact to which the crime is transferred is responsible (transference) or not responsible (mitigation); the second when the crime is transferred to some external factor (transference) or to the individual's own internal state (mitigation). Hermogenes prefers the first while other rhetoricians—Minucianus among them—the second.



admits that the defendant had no will of his own when he committed the crime. It is to be used exclusively when it is the only way to beg the courtroom's pity.<sup>53</sup>

There is counteraccusation in Daphnis' speech against the youngsters from Methymna.<sup>54</sup> They accuse him of being a bad goatherd, in having let his goats get away and nibble at their boat ropes. Their boat drifted away and they demand compensation: Daphnis should be punished. The charge, in the context of the pastoral environment, is also a minor crime. In his speech, Daphnis defends himself against the charge of incompetence: he states that he is a good shepherd and puts forward evidence for his statement.<sup>55</sup> The first issue Daphnis uses in his defence is counteraccusation: the victims, the sailors, deserve the loss they suffered and are guilty because they are bad hunters and could not control their dogs, which ran off, barked, and frightened the goats (2.16.2–3). They are even more at fault for having acted so negligently if it is true that they kept in their boat valuable clothes and silver.<sup>56</sup> He also uses mitigation: his goats nibbled on the ropes because they had nothing to eat and the boat drifted because of the wind and the sea, and so the storm, and not the goats, is responsible.<sup>57</sup> Philetas, the judge, swore an oath by Pan and the Nymphs that neither Daphnis nor the goats had committed any crime. He decided that the sea and the wind were responsible, thereby supporting Daphnis' argument (2.17.1).

Mitigation can also be found in Chaireas' self-accusatory

<sup>53</sup> Hermog. *Stat.* 38.17–39.19.

<sup>54</sup> Studied in full detail in Schwartz, *Courtroom Scenes* 145–164.

<sup>55</sup> ἐγὼ νέμω τὰς αἰγὰς καλῶς. οὐδέποτε ἠτιάσατο κωμήτης οὐδὲ εἷς ὡς ἢ κῆπόν τινος αἶξ ἐμῆ κατεβοσκήσατο ἢ ἄμπελον βλαστάνουσαν κατέκλασεν (Longus 2.16.1).

<sup>56</sup> ἀλλὰ ἐσθῆς ἐνέκειτο καὶ ἄργυρος· καὶ τίς πιστεύσει νοῦν ἔχων ὅτι τοσαῦτα φέρουσα ναὺς πείσμα εἶχε λύγον; (2.16.3).

<sup>57</sup> ἀλλὰ ἀπέφαγον τὴν λύγον· οὐ γὰρ εἶχον ἐν ψάμμῳ πόαν ἢ κόμαρον ἢ θύμον· ἀλλὰ ἀπόλετο ἡ ναὺς ὑπὸ τοῦ πνεύματος καὶ τῆς θαλάσσης· ταῦτα χειμῶνος, οὐκ αἰγῶν ἐστὶν ἔργα (2.16.3). This latter argument can be identified as transference as well, if the criterion of externality is used (n.52 above).

speech (προσαγγελία) on Callirhoe's death.<sup>58</sup> Chaireas was deceived by her former suitors, who wanted to take revenge on him for having married the prettiest girl in Syracuse. They drew up a plot to break up Chaireas' marriage to Callirhoe. They planned a way to trick him into thinking that his wife was unfaithful, that she had received a lover at home while her husband was out.<sup>59</sup> Chaireas rushed into his house and, overcome by anger, kicked Callirhoe. His foot hit the girl's diaphragm and stopped her breathing. She was assumed to be dead. Chaireas managed to extort information from the servants by means of torture and realized that he had been deceived: his wife had been faithful. After having tried desperately to kill himself, he was brought to trial accused of having murdered Callirhoe.

The omniscient narrator points out that Chaireas uses none of the typical resources of the defence in his speech before the court, and refers specifically to the resources of the mitigation issue: "instead of defending himself, he launched into an even bitterer self-condemnation and took the lead in finding himself guilty. He used none of the arguments he could reasonably have used in his defence—that he was a victim of malicious slander, that he was moved by jealousy, that his action was involuntary."<sup>60</sup> And in the defence speech, which paradoxically is delivered by Hermocrates after Chaireas' self-accusation, Hermocrates says: "I know very well that what happened was unintended" and then transfers the guilt (μετάστασις) to those who have conspired against them.<sup>61</sup>

Finally, I will analyse the objection issue (μετάληψις), which is not within the systematic classification of the issues because it affects the whole legal procedure and not only the crime, the act, or the legal text. Nevertheless, it is related to the rational issues (concerning the act) and the legal issues (concerning the

<sup>58</sup> See Schwartz, *Courtroom Scenes* 35–37.

<sup>59</sup> Char. 1.2.1–1.4.11.

<sup>60</sup> ἀντὶ τῆς ἀπολογίας αὐτοῦ κατηγορήσε πικρότερον καὶ πρότος τὴν καταδικάζουσαν ψήφον ἤνεγκεν, οὐδὲν εἰπὼν τῶν πρὸς τὴν ἀπολογίαν δικαίων, οὐ τὴν διαβολήν, οὐ τὴν ζηλοτυπίαν, οὐ τὸ ἀκούσιον (1.5.4).

<sup>61</sup> "ἐγὼ," φησὶν, "ἐπίσταμαι τὸ συμβᾶν ἀκούσιον. βλέπω τοὺς ἐπιβουλευόντας ἡμῖν" (1.5.6).

legal documents). The objection issue arises from a challenge to procedural validity. It can be double: documentary and non-documentary. The documentary challenge occurs when there is a defect in the proceedings as such, for example when the law has been misinterpreted or misapplied. The non-documentary type is applied when the proceedings are invalid because there is explicit legal warrant for the act charged, referring to one of its circumstances: place, time, person, cause, manner. The debate arises from the citation of a law, but with reference to the act in question.<sup>62</sup> The documentary objection—also called procedural exception (παράγραφη)—is used by the accused and seeks to restrain the primary case (εὐθυδικία, that is, the inquiry into the acts brought to trial) on the basis of a law that prevents the trial. Hermogenes gives this example: someone is charged with homicide and acquitted; later, when he consults an oracle, the god replies that he does not give oracles to murderers; he is charged again.

There is no instance of documentary objection in novels, but we find two examples of non-documentary objection (μετάληψις). This issue—also called incomplete exception—on the basis of a legal text, rejects the primary case and focuses on some of its circumstances. For example, a husband kills his wife when he finds her crying on her lover's grave: a husband is allowed to kill his adulterous wife and her lover when caught red-handed, but not later.<sup>63</sup>

We find this issue in the charge of adultery against Clitophon and Melite.<sup>64</sup> This charge might have been denied by using an objection concerned with time: Thersander had been missing for such a long time that Melite was considered a widow (Ach. Tat. 5.11.6), and Clitophon himself was a widower as well, or at least had not broken his vow of loyalty to Leucippe as she was thought to be dead. Therefore, nobody can be charged with adultery if the spouse has been missing for a long time.<sup>65</sup>

<sup>62</sup> Hermog. *Stat.* 42.5–43.8, with Heath, *Hermogenes* 78.

<sup>63</sup> Hermog. *Stat.* 42.20–43.8.

<sup>64</sup> Schwartz, *Courtroom Scenes* 173.

<sup>65</sup> This case has been analysed according to the legal issue of conflicts of laws (ἀντινομία, Hermog. *Stat.* 40.20–41.5) because two principles clash: the

Another example of an incomplete objection, concerned this time with the person, is Mithridates' speech. Before Dionysius delivers his speech of accusation against him, Mithridates demands of the Persian King the presence of Callirhoe, for procedural reasons: all the people involved in the case—and not only prosecution and accused—should be questioned.<sup>66</sup> Dionysius is against this demand and, although the arguments of both parties are convincing, it is the desire to see Callirhoe that succeeds in the end (Char. 5.4.9–11).

From the analysis of forensic speeches in the three novels under study, we can state that their structure is set according to the principles of rhetorical theory. We have identified the rhetorical issue that is appropriate for each case, including its heads. Examples of conjecture, definition, counterplea, transference, mitigation, and incomplete objection have been analysed. They demonstrate the solid rhetorical training of the Greek novelists and the influence of their practice of rhetoric in the plots of their novels.<sup>67</sup>

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right of a lawful husband versus the right of return, which granted returning prisoners of war or victims of brigands to take possession of their property (S. Schwartz, "Clitophon the Moichos: Achilles Tatius and the Trial Scene in the Greek Novel," *AncNarr* 1 [2000–2001] 93–113, at 101).

<sup>66</sup> δεῖ δὲ πρὸ τῶν λόγων ἅπαντας παρῆναι τοὺς ἀναγκαίους ἐν τῇ δίκῃ ποῦ τοίνυν ἢ γυνή, περὶ ἧς ἢ κρείσις; (Char. 5.4.9).

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