

THE ATTACK ON JUSTICE: CICERO, LACTANTIUS, AND CARNEADES

Abstract: The speech of Philus in Book 3 of Cicero's *De re publica* is the fragmentary middle term between the lost speech attacking justice delivered by Carneades in 155 BCE and the defense of Christian justice by Lactantius in the fourth century CE. A re-examination and re-ordering of the fragments leads to a new reconstruction both of Philus' argument and of the long history of the argument about justice from Plato to Carneades, Cicero, and Lactantius.

Keywords: Cicero, Carneades, Lactantius, palimpsest

In 155 BCE, the Academic Carneades, in Rome as an ambassador for Athens, delivered a pair of balanced speeches first defending, then attacking, the necessity of justice in human society. The occasion was traumatic for the Roman audience, not used to hearing such Academic performances, and certainly not used to hearing such arguments against the possibility or desirability of justice. Carneades himself was pushed out of Rome as fast as Cato could manage it, but the memory of his performance lingered on.¹ In particular, in Book 3 of his *De re publica* Cicero re-imagined the Carneadean debate, reversing the order of the speeches, and giving L. Furius Philus the job of attacking justice and C. Laelius that of defending it. Some centuries later, Carneades reappears once more: Lactantius, in Book 5 of the *Divinae institutiones*, makes extensive use of Cicero's version of the debate as part of his argument that the only true justice is Christian justice.

1) On the memory of Carneades' debate and on Cicero's sources for it, see J.-L. Ferrary, *Le discours de Philus (Cicéron, De re publica, III, 8–31) et la philosophie de Carnéade*, *RÉL* 55, 1977, 128–156 at 153–155. My debt to Ferrary's reconstruction of Philus' speech will be apparent throughout; see also J. E. G. Zetzel, *Natural Law and Poetic Justice: A Carneadean Debate in Cicero and Virgil*, *CP* 91, 1996, 297–319. For an excellent analysis of the debate's history in Early Modern political theory, see now B. Straumann, *Crisis and Constitutionalism: Roman Political Thought from the Fall of the Republic to the Age of Revolution*, New York 2016. I am grateful to Benjamin Straumann, Katharina Volk, and Gareth Williams for their improvements of an earlier draft of this article. All translations are my own.

Unfortunately, of the three versions of the debate on justice described in the previous paragraph, only that of Lactantius survives complete. Carneades never wrote his speeches down; perhaps some summary survived in the writings of his pupil Clitomachus, but exactly what he said is beyond the possibility of recovery. Cicero's version is sadly fragmentary, as is the work in which it appeared. On the other hand, enough of it survives to make some reconstruction possible. And, at least for Philus' attack on the possibility of justice, reconstructing the speech allows us to see with greater clarity both how Cicero employed a tradition of argument that went back to Plato's *Republic* and how Lactantius revised Cicero for his own purposes. But reconstruction is neither easy nor straightforward, as it involves the assessment of two very different kinds of evidence: we have portions of Cicero's own words in the surviving leaves of the palimpsest of *De re publica*, and we have summaries of the argument (with some direct quotation) as presented by Lactantius. The first of these is problematic because we do not always know the original placement of the manuscript leaves; the second is problematic because we do not know how accurate Lactantius' summaries are. The answers given here are largely the same as those given by Ferrary forty years ago; a re-examination of the question is necessary only because the most recent edition (Powell's OCT) answers them differently and, as I believe, wrongly.

1. *The Palimpsest*

The manuscript Vaticanus Latinus 5757 (= V) contains the first part of Augustine's commentary on the *Psalms*, written in the seventh century at the monastery of Bobbio near Milan, an Irish foundation established by St. Columbanus in 614. The monks of Bobbio, with equal parts thrift and religious fervor, made a practice of erasing secular texts and re-using the manuscript pages to copy something more devout. In this case, under the Christian Augustine there are 151 folia of a late-antique copy of Cicero's *De re publica*. Luckily, the monks' talent in erasing the lower script was not as great as their zeal for recycling manuscripts, and the text of Cicero is far more legible than is the case with most palimpsests. It was discovered by Angelo Mai in November 1819, and Mai's edi-

tion was published (with the almost unacknowledged help of the great historian B. G. Niebuhr) in 1822.²

In recycling their manuscript of Cicero, of course, the monks did not keep the original order of the leaves, and so the text of Cicero must be pieced together. Luckily, V was a deluxe edition, with regular quaternions all numbered on the verso of the last folium and with running headers including the book number at the top of most pages. So too, the careful pattern of matching the color of facing pages (flesh side facing flesh side) means that, together with the quaternion indications, it is generally possible to know exactly where in its quaternion a given bifolium belongs.³ That is true, at least, until, near the end of Book 2, V becomes very discontinuous: after the end of Q23 (Rep. 2.66)⁴ there survive only 24 folia (11 bifolia and 2 single folia), of which three are from the conclusion of Book 2, sixteen from Book 3, and only five from the entire second half of the work.⁵ The scattered remains of Book 3 in the palimpsest, moreover, are not evenly distributed. When complete, the debate on justice – the speeches of Philus and Laelius plus any intervening conversation – occupied 90 folia of V, beginning with the last leaf of Q28 (3.8) and ending with the first leaf of Q40 (3.41).

2) On the discovery and Mai's edition, see J. E. G. Zetzel, "Arouse the Dead": Mai, Leopardi and Cicero's Commonwealth in Restoration Italy, in: W. Brockliss et al. (eds), *Reception and the Classics*, Cambridge 2011, 19–44.

3) Quaternions were composed by folding four bifolia together, such that foll. 1 and 8, 2 and 7, 3 and 6, 4 and 5 each are (or were once) a single piece of parchment; they were arranged so that the paler (flesh) side of fol. 1 was on the outside, while the other bifolia were arranged so that left and right sides of each opening matched in color. Hence it is generally possible to identify the place of any given bifolium in its quaternion. See G. Mercati (ed.), *M. Tulli Ciceronis De Re Publica Libri e codice rescripto Vaticano Latino 5757 phototypice expressi*, Vol. I: *Prolegomena*, Vatican 1934, 186–203 for a very careful codicological description of the manuscript; there is a convenient chart of the location of surviving folia in K. Ziegler (ed.), *M. Tulli Ciceronis De re publica*, Leipzig 1969, xi–xv. Whenever possible, I identify folia by quaternion and folium number, i. e. Q22.3 is the third folium in quaternion 22. Each leaf also has a page number in the manuscript of Augustine which constitutes the upper text; in this case, Q22.3 = p. 185–186. I use those numbers only to identify leaves the location of which is uncertain.

4) All section references to *De re publica* are to Ziegler (n. 3 above).

5) J. G. F. Powell (ed.), *M. Tulli Ciceronis De Re Publica, De Legibus, Cato Maior de Senectute, Laelius de Amicitia*, Oxford 2006 has reassigned one of the single leaves from Book 5 to Book 3, but I do not believe his new placement is correct. I discuss this problem in J. E. G. Zetzel, *Cicero on the Origins of Civilization and Society: The Preface to De re publica Book 3*, *AJP* 138, 2017 (forthcoming).

Of those 90 folia, however, only eleven survive; and of those eleven, ten come from Philus' speech and only one from Laelius', as it happens containing the very last paragraph of the debate.

Various attempts have been made to reconstruct Laelius' speech, but all must be tentative, since what we know of it consists entirely of quotations that supply no order or structure.⁶ Philus' speech is not so hopeless. Of the surviving folia, six are firmly located by quaternion numbers or by their continuity: the speech began on Q28.8 and included the four central leaves (Q29.3–6) and the final leaf (Q29.8) of Q29. The other four leaves are less firmly rooted in place: they consist of two pairs of folia, each pair occupying positions 2 and 7 in its quaternion. But the order in which the two pairs (designated by the manuscript page numbers V57–58 + V47–48 and V1–2 + V11–12) appeared is a much more difficult question: Mai, followed by Ziegler, places V57–58 + V47–48 first, while Powell prefers the reverse order.⁷ If, as seems likely in an Academic antilogy, Philus' and Laelius' speeches occupied roughly the same space (approximately 5½ gatherings, or 44 folia), then Philus' speech will have ended in the first half of Q34, and thus the floating pairs must have been in two of the gatherings Q30, Q31, Q32, Q33. That means that of these four quaternions, two are completely lost while only 25% of the other two survives.

The location of the two floating bifolia is an important and difficult question, and it requires combining the evidence of the palimpsest and Lactantius. For the present, it is much easier to start with the beginning of Philus' speech, for which enough of the palimpsest survives to permit us to follow his argument. After protesting that he has been given the task of attacking justice in the manner of Carneades (3.8 Z), Philus begins by referring to the great defenses of justice made by Plato in the *Republic* and Aristotle in his dialogue on justice, as well as the less rhetorically effective discussion by Chrysippus. He claims that, despite their desire and

6) See particularly J.-L. Ferrary, *Le Discours de Laelius dans le troisième livre du De re publica de Cicéron*, MÉFRA 86, 1974, 745–771; also Zetzel (n. 1 above) and the attempt at reconstruction in J. E. G. Zetzel (transl.), *Cicero: On the Commonwealth and On the Laws*, Cambridge 2017.

7) Ziegler (n. 3 above) xiv firmly states that these leaves were in positions 2 and 7; so too Mercati (n. 3 above) 190. Powell in his preface states that they were interior pairs (i. e. either 2+7 or 3+6), but then in his apparatus assumes that they were both 2+7.

eloquence, they completely fail to convince the reader of the greatness and importance of justice, the virtue which is altruistic in preferring another's good to one's own, *aliis nata potius quam sibi* (3.12 Z) and the one that is closest to *sapientia* itself. The starting point for his own argument, instead, is the assertion that justice is civil (that is, conventional) rather than natural: *ius enim de quo quaerimus civile est aliquod, naturale nullum* (3.13 Z).⁸

Most of the extant portion of the palimpsest of Philus' speech (3.14–17 Z) belongs to his proof of this assertion. Because custom and law vary widely by place and over time, it is impossible to claim that justice and law are identical: if they were, they would be the same everywhere. The last leaf of the palimpsest on whose position all editors agree (Q29.8 = V13–14 = 3.18–19 Z) contains the end of the argument against equating justice and law, concluding (3.18 Z) *nihil habet igitur naturale ius; ex quo illud efficitur, ne iustos quidem esse natura*: "So there's nothing at all natural about justice; and that leads to the conclusion that no people are naturally just." And having dispatched the idea that justice is natural, Philus immediately turns to the next definition of justice that he wants to dissect: *An vero in legibus varietatem esse dicunt, natura autem viros bonos eam iustitiam sequi quae sit, non eam quae putetur? esse enim hoc boni viri et iusti, tribuere id cuique quod sit quoque dignum*: "Or do they say that there's variation in laws, but that good men naturally follow true justice, not what is thought to be justice? It's the part of a good and just man to give to each person what is worthy of him." To refute this position, the idea that justice consists in giving everyone his or her due, he starts from the problem of animal rights (3.19 Z): Pythagoras and Empedocles had both insisted that harming animals was unjust.⁹ And here the palimpsest breaks off and editorial agreement ends.

8) On Philus' first argument, see Ferrary (n. 1 above) 136–137; Zetzel (n. 1 above) 301–302.

9) On Philus' second argument, see Ferrary (n. 1 above) 137–145. His interest is in Carneades' speech itself and its relationship to earlier philosophers, and his analysis is much more detailed than mine. See also Zetzel (n. 1 above) 302–303.

2. *Lactantius' Summary*

At this point, enter Lactantius. Aside from the two pairs of leaves of the palimpsest whose location is as yet uncertain, what remains of the rest of Philus' speech, the bulk of his attack on justice, consists of paraphrases and quotations by Lactantius, largely from Book 5 of the *Divinae institutiones*. The few other surviving fragments merely help to fill out details of the arguments, for whose order and location we are to a large extent dependent on Lactantius' summary of the speech at DI 5.16. Lactantius' version of Philus' argument falls into two parts: the first is summary in indirect discourse, the second is direct quotation; each of these parts itself has two sections. Lactantius' markers are very clear and explicit: the first report is introduced by the statement *eius disputationis haec summa fuit*, and what follows is clearly meant to be a summary of the whole argument (5.16.3):

Iura sibi homines pro utilitate sanxisse, scilicet varia pro moribus, et apud eosdem pro temporibus saepe mutata, ius autem naturale esse nullum; omnes et homines et alias animantes ad utilitates suas natura ducente ferri; proinde aut nullam esse iustitiam aut, si sit aliqua, summam esse stultitiam, quoniam sibi noceret alienis commodis consulens.

That men ordain laws for themselves in accordance with utility, that is to say they vary in accordance with customs, and have frequently been altered by the same people in accordance with the times; there is no such thing as natural law. All men and all other animate creatures are drawn to their own utility under nature's guidance; and furthermore, either there is no justice at all, or if there is any, it's the highest stupidity, since it would harm itself in looking after the interest of others.

What follows is a summary of the arguments used, again in indirect discourse, again clearly introduced by *et inferebat haec argumenta* (5.16.4):

Omnibus populis qui florerent imperio et Romanis quoque ipsis, qui totius orbis potirentur, si iusti velint esse, hoc est si aliena restituant, ad casas esse redeundum et in egestate ac miseris iacendum.

All successful imperial powers, including the Romans themselves who have gained possession of the entire world, if they should wish to be just – that is to say to return property that belongs to others – would have to go back to living in huts and languishing in want and wretchedness.

The second half of Lactantius' version of the speech contains two long quotations, in direct speech, the first introduced by *inquit* and

the second by *dicebat enim*. The first (5.16.5–7) gives two examples of people getting away with commercial dishonesty, while the second (5.16.9–11) gives two examples of people saving their own lives at the expense of someone else's and again getting away with it. Lactantius makes it clear that these quotations are in the order in which they appeared in the speech: the first is introduced by *tum omissis communibus ad propria veniebat* (5.16.5), the second by *transcendebat ergo ad maiora, in quibus nemo posset sine periculo vitae iustus esse* (5.16.9). At the end of these quotations, he summarizes the speech again (5.16.12):

Ita ergo iustitiam cum in duas partes divisisset, alteram civilem esse dicens, alteram naturalem, utramque subvertit, quod illa civilis sapientia sit quidem, sed iustitia non sit, naturalis autem illa iustitia sit quidem, sed non sit sapientia.

And so, after dividing justice into two parts, one civil and the other natural, he overturned both, by showing that what is called civil justice is wisdom, but not justice, while natural justice is indeed justice, but is unwise.

It is this summary and set of quotations that Powell uses as the basis for reconstructing Philus' argument, noting that he does not see why Lactantius should have abandoned the order he found in Cicero, and drawing attention to the phrases of transition. Lactantius lays out his summary and excerpts with great care, and there is indeed every reason to believe that his indications of order are accurate; there is no doubt, and to the best of my knowledge no editor or translator or critic has ever suggested otherwise, that DI 5.16.4 preceded 5.16.5–7 which in turn preceded 5.16.9–11 in Cicero as in Lactantius. Ferrary, whom Powell wrongly criticizes for violating Lactantius' order, established its validity and its relationship to the other fragments of the speech forty years ago.¹⁰ What Ferrary rightly questioned is something Powell simply ignores: granted that Lactantius' quotations are in order, how accu-

10) So Powell (n. 5 above) ix: "Multi de hac re dubitaverunt, immo vero pro re iam pridem iudicata habuerunt non eundem ordinem ab eo servari" (with a footnote to Ferrary [n. 1 above]). Powell's later summary of his version of Philus' speech adds nothing; J. G. F. Powell, *Cicero's De Re Publica and the Virtues of a Statesman*, in: W. Nicgorski (ed.), *Cicero's Practical Philosophy*, Notre Dame 2012, 14–42 at 32–33. I emphasize this because the incautious reader of Powell may not realize how much he misrepresents Ferrary's argument.

rate is the summary of Philus' speech in which they are embedded? If Lactantius' description is the truth, is it the whole truth?

According to Lactantius, Philus' argument fell into two parts. The first, *iura sibi homines pro utilitate sanxisse*, clearly matches the portion of the speech preserved in the coherent part of the palimpsest (3.14–18 Z), the attack on natural law. The second, beginning in his summary *proinde aut nullam esse iustitiam aut, si sit aliqua, summam esse stultitiam, quoniam sibi nocerent alienis commodis consulens*, clearly reflects the attack on the idea that justice consists in giving to each person what they are due that is anticipated in 3.16 but begins in detail at the end of 3.18.¹¹ A corresponding division into two parts appears in Lactantius' concluding summary: the argument that civil *sapientia* is not just corresponds to the argument that law is not the same as justice, while the argument that natural justice is not *sapientia* corresponds to the argument against justice being defined as someone else's good. The second passage in Lactantius summarizes an argument about the justice of empire, and clearly illustrates the idea that looking out for other people's interests is dumb.

So far, so good. But then Lactantius says that Philus moved from *communio* – the argument about empire – to *propria*, which are divided into lesser and greater instances.¹² The first group (5.16.5–7) is a set of illustrations of people's willingness to get away with cheating, if they can get away with it; the second (5.16.9–11), *maiora*, are cases where someone will save his own life at the expense of someone else's, again, if he is certain of not being caught. But these examples can only with difficulty be construed (as Lactantius does) as illustrations of justice as altruism, and hence of the bond between justice and stupidity: they are part of a refutation of the Epicurean argument that people behave justly because of fear of punishment. Lactantius has made it seem as if the arguments about getting away with unjust behavior are part of the same argument as the criticism of justice as someone else's good, but they are

11) The example of Romans' forbidding the Gauls to grow olives and vines at 3.16, which Philus says shows the distance between *sapientia* and *aequitas*, is used to illustrate the arbitrariness of law, but also serves to introduce the subsequent topic of justice as equity. The divisions of Philus' speech are clearly marked, but not altogether separate.

12) On the *communio* / *propria* distinction (and its irrelevance to Cicero's argument), see Ferrary (n. 1 above) 132–133 and below, p. 312.

not. Lactantius himself divides Philus' speech into two arguments, one the proof that natural law is not the same as civil law, the other the proof that acting in accordance with justice (defined as someone else's good) is stupid. In fact, as Lactantius' own discussion shows, Philus' speech was divided not into two arguments, but into three.

3. *Philus' Argument*

At this point, it becomes possible to link the evidence of Lactantius to the evidence of the palimpsest: just as the beginning of his summary overlaps with the preserved portions of the first argument in Philus' speech, so too the end of his summary seems to overlap with a part of V that contains the end of the second argument. There are, as noted above, two pairs of leaves the position of which is uncertain, V1–2 + V11–12 and V57–58 + V47–48. V1–2 begins with the end of a paragraph:

**praeter Arcadas et Atheniensis, qui credo timentes hoc interdictum iustitiae ne quando existeret, commenti sunt se de terra tanquam hos ex arvis musculos extitisse.*

... except the Arcadians and Athenians; and in my opinion, because they were afraid that at some time this injunction of justice would be served on them, they pretended that they arose from the earth like these mice from the field.

Hoc interdictum: the demonstrative makes it clear that the claim of justice to which Philus refers is that of giving to each his due, as applied to states. The Arcadians and Athenians are prudentially warding off a claim that they had stolen their land from someone else by asserting their autochthony. This illustrates exactly what appears in Lactantius' argument about *communio* (5.16.4), that imperial peoples, to be just, would have to return everything they had taken. Autochthonous people have at least not stolen their own land.¹³

But Philus does not stop there. After the single sentence about the Arcadians and Athenians a new paragraph begins (3.26 Z), and it very clearly introduces a new opponent: *Ad haec illa dici solent*

13) So, rightly, Powell (n. 5 above) x.

primum ... *negant enim sapientem idcirco virum bonum esse quod eum sua sponte ac per se bonitas et iustitia delectet, sed quod vacua metu cura sollicitudine periculo vita bonorum virorum sit*: “The reply to these arguments comes first from those who ... say that the wise man is good not because goodness and justice are automatically and in themselves pleasing to him, but because the life of good men is one free from fear, care, worry and danger ...” This is clearly the Epicurean argument that men behave well because of the fear of being found out if they misbehave; it is a prudential response to the conclusion of the previous argument that justice and wisdom are mutually exclusive by claiming that true wisdom will lead people to behave justly in order to maintain their state of calm happiness.¹⁴ And Lactantius, in a different section of DI 5, helps to confirm this shift to the argument about the fear of being found out: the other half of this bifolium (V11–12 = 3.27 Z) overlaps with a quotation in Lactantius 5.12.5–6 which contains the highly rhetorical contrast, drawn from Plato, between the just man who is thought unjust and the unjust man who is thought just (cf. Plato, *Resp.* 2.361a–362c).

The Epicurean argument which Philus attacks beginning in V1–2 is different in approach from the first two arguments in Philus’ speech: in those sections, he shows that the two fundamental definitions of justice found in Plato and Aristotle are unworkable in the real world, but in the final section he is refuting not a definition but a consequential argument, that obedience to law or justice, however defined, is necessary in practice because otherwise the fear of being found out will trouble our lives and make us wretched. That is what the Platonic example of the good man thought evil and the evil man thought good shows: even behaving with perfect justice is not a protection against misery, and even perfect evil does not always result in misery, and therefore behaving well should not, in practice, relieve us of the fear of punishment; hence the Epicurean incentive for just behavior does not work. But although it is Lactantius who preserves most of this paragraph, he does it in a very different context; in his apparently honest sum-

14) On Philus’ third argument, see Ferrary (n. 1 above) 145–152. He notes (146–147) that *primum* in this passage implies that Philus lumped together with the Epicurean view the Stoic idea that justice and self-interest are inseparable; this may have appeared (briefly) in the lacuna after 3.26.

mary in 5.16, there is no hint that Philus offers an argument against the prudential defense of justice, no hint that there was a great deal more to Philus' speech than he lets on.

4. *Lactantius' Argument*

It is scarcely surprising that Lactantius' account of Philus' speech is not a perfect representation of the original. In fact, it is more surprising that anyone would ever expect him to give a clear, accurate, and honest description of Philus' speech: he is a Christian apologist, not a professor of classics. In Book 5 of the *Divinae institutiones*, Lactantius' topic is justice; he wants to show that Christian behavior – above all in refusing to conform to pagan religious norms – is just, that persecution of the Christians is unjust, and that it is only in terms of the true moral structure of the world (Christianity) that judgment about what is just can properly be made. His argument requires two things: the demonstration that true justice is not to be found on earth, and certainly not among non-Christians; and the rejection of any non-Christian argument to the contrary. For showing the injustice of human behavior, Philus' speech is far more useful to him than Laelius'. At the same time, Laelius' Stoic argument for natural law is dangerous for him, because it is, in effect, a non-Christian theodicy. Lactantius more or less reverses the results of Cicero's debate: seen from a Christian point of view, Philus / Carneades is right, and Laelius is, by definition, wrong.¹⁵

Thus, after accepting with pride the charge of *stultitia* levelled against Christians for refusing to conform to pagan religion, he cites with approval the passage of Philus' speech discussed above which contrasts, following Plato, the good man who is believed to be criminal and the wicked man who is believed to be good (DI 5.12.5–6). He concludes by asking rhetorically *quis tandem*

15) On Lactantius' view of justice, see C. Ingremeau, Lactance et la justice dans le livre V des Institutions Divines, in: M. Piot (ed.), Regards sur le monde antique. Hommages à Guy Sabbah, Lyon 2002, 153–162 and C. Ingremeau, Lactance et la justice: du livre V au livre VI des Institutions Divines, in: J.-Y. Guillaumin / S. Ratti (eds), Autour de Lactance. Hommages à Pierre Monat, Paris 2003, 43–52; also J. Walter, Pagane Texte und Wertvorstellungen bei Lactanz, Göttingen 2006, 214–231.

erit tam demens qui dubitet utrum se esse malit? Lactantius responds (5.12.7) that Philus speaks as if he knew prophetically (*diuina*ret) the evils which would afflict Christians because of their justice (in Christian terms, of course).¹⁶ Let these wise men, he says (5.12.11, modifying 1 Corinthians 1.19), keep their wisdom, but leave our *stultitia* to us. After discussing the unimportance of the pains inflicted on Christians (5.13), he returns to the question of the relationship between *sapientia* and *stultitia* in 5.14, and again uses Philus' speech to show that even among pagans, true justice is often linked to *stultitia*.¹⁷ Cicero used Carneades' speech, he says, as a means of introducing the praise of justice, which he thought necessary for the *res publica*. But Carneades collected all the arguments in favor of justice in order to overturn them – as indeed he did (... *ut posset illam, sicut fecit, euertere*; 5.14.5).

This comment deserves a closer look. Lactantius claims that Philus' / Carneades' argument was successful, but that automatically implies that Laelius' speech against Philus was unsuccessful. According to Lactantius, at that time no justice existed on earth to be understood by the philosophers, since only the true religion can provide the true argument in favor of justice: *Si ergo pietas est cognoscere deum, cuius cognitionis haec summa est ut colas, ignorat utique iustitiam qui religionem dei non tenet. quomodo enim potest eam ipsam nosse qui unde oriatur ignorat?* "If it is *pietas* to recognize god, and the essence of that recognition is worship, then in any case anyone who does not embrace the religion of god does not know justice. How can somebody know it if he doesn't know where it comes from?" (5.14.12).¹⁸ Again, at the end of his long summary of Philus' speech, Lactantius criticizes Laelius' speech once more, saying – completely falsely – that Laelius defended civil justice, not natural justice.¹⁹ Given how much Lactantius uses of

16) For this use of *divinare* in Lactantius, see P. Monat (ed.), *Lactance: Institutions Divines Livre V*, Paris 1973, on DI 5.9.6.

17) On the importance of *stultitia* in Lactantius' discussion, see Ferrary (n. 1 above) 130–131.

18) In fact, as Monat (n. 16 above) ad loc. points out, this is also drawn from Cicero, ND 2.153.

19) For a more generous account of Lactantius' version of Laelius' speech, see E. Heck, "Iustitia civilis – iustitia naturalis": à propos du jugement de Lactance concernant les discours sur la justice dans le "De re publica" de Cicéron, in: J. Fontaine / M. Perrin (eds), *Lactance et son temps*, Paris 1978, 171–184.

Philus' speech, his neglect of Laelius' speech is striking. He only cites it once identifying the source, heaping scorn on Laelius' understanding of *virtus* from a Christian point of view (DI 5.18.4–8 = 3.40a Z). He twice in Book 6 quotes Laelius favorably, including the long and famous description of natural law – but he does not identify the source, instead admiring it as something worthy of a Christian. Why then should we expect his version of Philus to be more truthful than his version of Laelius?²⁰

Indeed, if we look again at the long summary of Carneades / Philus at DI 5.15, it is very clear that it is framed from a Christian perspective. Carneades, Lactantius says, dared to attack justice, because the arguments of the philosophers were weak: *sumpsit audaciam refellendi, quia refelli posse intellexit* (5.16.2). From his point of view, Cicero was unable himself to refute the Carneadean attack, because only a Christian could do so effectively. He emphasizes Philus' equation of justice with stupidity not because it was a central element in Philus' argument, but because his whole argument in Book 5 is intended to show, as he had said earlier, that Christian "stupidity" is preferable to pagan "justice." For a Christian apologist, Lactantius is in fact less unscrupulous in his attack on non-Christian texts and beliefs than some others. He is careful to distinguish paraphrase from quotation; he is precise about the order of his quotations; his quotations, where they can be checked, are accurate. But his paraphrases and summaries are not to be taken as sworn testimony, and if he offers blatant lies about Laelius' speech, one should not necessarily believe that his truth about Philus' speech is anything like the whole truth.

There are, in fact, three ways in which Lactantius' version of Philus / Carneades can not be taken at face value: his elimination (in his summary) of Philus' third argument, against the Epicureans; his emphasis on the link between justice and stupidity; and – something that has not yet been discussed – his strong suggestion that the focus of the argument against justice was on individual rather than civic behavior. As suggested above, the justice-stupidity link is central to Lactantius' approach because he wants to show that Christian "stupidity" in not giving in to Roman magistrates and ac-

20) On Lactantius' distortions of Laelius' speech, see also Ingremeau 2002 (n. 15 above) 159–162 and Ingremeau 2003 (n. 15 above) 46–48 with Walter (n. 15 above) 244–245 n. 87.

cepting punishment for being Christian is in fact the true *sapientia* of the true believer. That, of course, means that he can not remotely accept the force of Laelius' speech, which uses non-Christian means to link justice, virtue, and intelligence. As for his elision of the Epicurean prudential argument, that too, I suspect, has a religious cause. Epicureans argue that it is fear of punishment or of being found out that keeps people in line with justice; but, allowing a shift from this world to the next, that is exactly the Christian argument too. It is Pascal's wager, with a vengeance.

The third way in which Lactantius distorts Philus' argument remains to be discussed: was Philus' main focus on individual or civic behavior? Lactantius' emphasis, with the sole exception of his brief summary of the argument against empire, is on individual morality, not the morality of states: he is, after all, talking about the proper behavior of individual Christians, not of the Christian community as a whole. That was not true of Philus' speech: as the conclusion of Book 2 makes clear, the whole point of reproducing the Carneadean debate was to show that justice was necessary for states, and that is why any reconstruction, including either Powell's or Ziegler's arrangement of the leaves of the palimpsest, must have Philus' speech end with civic or imperial justice, not individual morality. Lactantius' summary of Philus' speech does not do that, and instead suggests that the speech was structured around the opposition of *communis* and *propria*.²¹ That is clearly wrong, and it is worth contrasting Augustine's summary of the whole debate on justice in CD 2.21, where the debate is described as dealing purely with the justice of states and there is no mention of individual morality.

There is evidence in the palimpsest too that Philus' focus was on cities and empires, not individuals: after he brings up, as the final proof that even prudential justice is not rewarded, the example from Plato of the just man thought wicked and the wicked man thought just, he moves the argument to a higher plane: *Quod in singulis, idem est in populis: nulla est tam stulta civitas, quae non iniuste imperare malit quam servire iuste*: "What applies to individ-

21) See Ferrary (n. 1 above) 133 with reference to earlier discussions of this problem. Ingreteau 2002 (n. 15 above) 156–158 tries to argue that Lactantius is in fact talking about Carneades' speech, not Philus'. Lactantius had no access to Carneades except through Philus; he only wishes to appear to.

uals also applies to nations: there is no state so stupid that it would not prefer to rule unjustly than to be enslaved justly” (3.28 Z).²² He then adduces the contrast between the honorable behavior of Hostilius Mancinus and the dishonorable behavior of Q. Pompeius in connection with their respective Numantine treaties. The text of the palimpsest breaks off at this point, and the moral Philus drew is unclear. The direction of the argument is nevertheless unmistakable, and in fact found in all three parts of the speech: Philus starts from individual behavior and ends with civic behavior.

5. Reconstruction

But where, in fact, did Philus’ speech end and how was it organized? It is, finally, necessary to consider the question of the order of leaves in the palimpsest. If V1–2 contains (as Powell too believes) the end of Philus’ second argument (against justice = someone else’s interest) and (as Ferrary has shown) the beginning of Philus’ third argument, and if the other half of this same bifolium, V11–12, contains the transition between the part of the third argument dealing with individual behavior and the section on civic behavior, that still leaves open the relative positions of this bifolium and the other surviving pair, V57–58 + V47–48. Powell, as noted above, puts this latter pair after V11–12, at an uncertain remove, but with the suggestion (xi) that V47–48 is part of Philus’ peroration. And yet in terms of its contents, it is clear that V47–48 is part of the argument against justice as another’s good. Philus here is viewing the contrast between *sapientia* and *iustitia* in terms of empire: *sapientia* tells us to expand empire as widely as possible, for power and glory and wealth, while *iustitia* tells us to be kind, gentle, and *suum cuique reddere* – and the use of that phrase shows that we are in the argument that began at the end of 3.18 Z, that justice is *tribuere id cuique quod sit quoque dignum*. Which, he asks, has Rome followed? The answer, though lost in the lacuna after V48, is pretty obvious, and it leads easily and fairly rapidly into the sentence about the Arcadians and Athenians that begins V1. The

22) On the Platonic example, see above, p. 308; the passage quoted here is found on V11–12, immediately following Lactantius’ quotation (at DI 5.12.5–6) which overlaps with V11.

other half of the bifolium, V57–58, also fits into Philus' second argument. Here, Philus speaks of the various forms of government, arguing that the three apparently good forms of constitution (monarchy, aristocracy, democracy) are in fact merely hypocritical re-descriptions of the three bad forms (tyranny, oligarchy, ochlocracy) by those in power, in order to disguise the fact that they rule in their own interest, not that of others. The fragment ends with a recapitulation of Glaucon's famous statement from the *Republic*, that government is simply an agreement neither to harm nor be harmed, a compromise between the best and the worst possible scenarios which is in everyone's least bad, if not best, interest.

In terms of content, then, we can see that the order established by Mai and Ziegler makes far better sense of the argument than Powell's reversal of the two bifolia. In Powell's version, Philus progresses from the argument against justice = law, to the argument against justice = someone else's interest, to the argument against the Epicurean view that it is prudent to behave justly to avoid consequences, and then back again to the argument against justice = someone else's interest, with both iterations of that argument beginning from individual behavior and moving to the behavior of states. That seems, at best, clumsy – and neither Carneades nor Cicero was that; and it is even less consistent with Lactantius' bipartite summary than the alternative. Furthermore, in Powell's reconstruction there is only one leaf missing between the beginning of the second argument at 3.18–19 and the end of the argument with the sentence about the Arcadians and Athenians on V1 leaving only fifteen or sixteen lines of text for Philus to move his argument from Pythagorean vegetarianism to autochthony and empire. That is very improbable.²³

And if we accept Mai's order, then where do the excerpts from Philus' speech in Lactantius 5.16 belong? The summary in 5.16.4, about empire, is obviously closely connected to the sentence about the Arcadians, as noted above, and belongs to the second, civic portion of the second argument (on justice = another's good), perhaps

23) Powell (n.5 above) is not explicit in his preface about the number of leaves missing, but immediately before V1–2 he notes that the first leaf of Q30 is missing, and immediately after the second half of this bifolium (V11–12) he notes that the last leaf of Q30 is missing. Since 3.19 is on the last leaf of Q29, that leaves one missing leaf.

immediately before V1 begins (with those Arcadians). The two sets of verbatim excerpts that follow are quoted by Lactantius as if they were part of the second argument, but they are not: both sets of examples concern people who can get away with dishonesty or murder, and therefore belong in the part of the third argument which concerns individual behavior and which ends on V11–12; they therefore belong in the four-folio gap between V1–2 and V11–12, i. e. between 3.26 and 3.27, and lead up to the Platonic example of the perfectly good and perfectly wicked men in 3.27.²⁴ Lactantius' citations are in the order of the text: it's just that there is a very large gap between the second and third citations, and he completely leaves out the last part of Philus' argument.

There is in fact a large gap in our knowledge of Philus' speech. If one works backward from the end, it is clear that the transition from individual to civic behavior that appears on V11–12 must have been fairly close to the end of the speech: the example of the Numantine treaties concerns a recent event involving participants in the conversation of *De re publica* itself; it is more than likely that Philus ended his argument with an incident that directly involved his interlocutors. If the two speeches were balanced, moreover, meaning that Philus' speech ended somewhere in Q34, then we can locate the anti-Epicurean argument very precisely, because it begins on V1–2, the second leaf of a quaternion, which in this case must be Q33. Before that comes the argument about empire that must have been part of the conclusion of the second part of Philus' argument, on V47–48: it is likely that it came not long before V1–2. If that is so, we have on V57–58 + V47–48 leaves 2+7 of Q32 – but in that case there is a very large gap of 17 leaves – 8–10 printed pages in a modern edition – after 3.19, the beginning of the second part of Philus' argument.

In this tentative reconstruction, the part that seems most secure is that the gap between the two bifolia is quite short: V48 contains the beginning of the argument about the self-interest of imperial states and V1 contains the end of the same argument – one that was clearly emphatic, but need not have taken many words. Both Ziegler and Bréguet allow only two missing leaves, and that

24) So, rightly, E. Heck, *Die Bezeugung von Ciceros Schrift De re publica*, Hildesheim 1966, 83–84; see also Ferrary (n.1 above) 133 and Zetzel 2017 (n.6 above) 68–69.

seems correct.²⁵ What needs further scrutiny is the gap before V57–58 and the gap between V11–12 and the end of the speech. I have suggested that the former was very long, and under any reconstruction it is not hard to see that the argument of that section, in which Philus showed that, if we define justice as the interest of others, then in fact we do regularly behave unjustly and act out of self interest, lends itself to elaboration. Parts of the argument are drawn from Glaucon's speech in *Republic* 2, but nothing that survives includes the most famous part of that argument, the ring of Gyges; Philus might well have included it.²⁶ So while the gap of 17 folia is very long, it seems slightly preferable to the two alternatives, either that Philus' speech was significantly shorter than Laelius' (and thus the gap would be only 9 folia) or that the conclusion of the speech after V12 was a great deal longer than I have suggested.

How did Philus' speech end? Obviously, we do not know. As Ferrary showed, however, the structure of the speech is such that in each of the three arguments, Philus moved from individuals to states and, in particular, to Rome.²⁷ In this, almost certainly, he modified the Carneadean argument, which seems to have focussed, like Glaucon's argument in *Republic* 2, on individual behavior rather than state action.²⁸ If we assume that Philus' argument followed the basic order Cicero inherited – moving from Plato and Aristotle to their successors the Stoics and Epicureans – then the position of the refutation of the Epicurean consequentialist argument was fixed. What we have of V11–12, the last relevant leaf of the palimpsest, includes Philus' account of the behavior of Pompeius and Mancinus after their respective treaties with the Numantines. Both treaties were made under duress with the full expectation that Rome would not honor them; Mancinus, an honorable

25) E. Bréguet (ed.), *Cicéron: La République*, Paris 1980. The only alternative, a gap of ten leaves, seems too much for the probable contents, but it is a possibility, if unlikely.

26) I am not sure why Ferrary (n. 1 above) 147 believes that Cicero could not have used the story of Gyges here; on Cicero's later use of it in *De officiis* as an argument against Epicurean ideas of justice, see R. Woolf, *Cicero and Gyges*, CQ 63, 2013, 801–812 and R. Woolf, *Cicero: The Philosophy of a Roman Sceptic*, London 2015, 193–197.

27) Cf. Ferrary (n. 1 above) 148–150; Zetzel (n. 1 above) 304.

28) Cf. Ferrary (n. 1 above) 149.

man, ended up being surrendered to the Numantines by Rome as a (dubious) compensation for Rome's failure to honor the treaty, but Pompeius convinced the Romans not to surrender him for the same reason. The story is introduced by Philus' statement that no state is so stupid as not to prefer to rule unjustly than to be enslaved justly, but it ends with a comparison of the individual fates of Pompeius and Mancinus: *Si pudor quaeritur, si probitas, si fides, Mancinus haec attulit. si ratio, consilium, prudentia, Pompeius antistat. utrum** "If you're looking for decency, honor, and trustworthiness, Mancinus had them; but if you want calculation, planning, and prudence, Pompeius stands out. Which . . ." (and here the manuscript breaks off). But the moral of the whole story of the Numantine treaties is a complicated one. On the one hand, it contrasts the individual behaviors of Pompeius and Mancinus in showing that honorable behavior is not rewarded. On the other hand it has a moral for the behavior of states: the Romans cynically handed over Mancinus to the Numantines, but in the case of the treaties of neither Pompeius or Mancinus did the Romans collectively have any concern about being seen to behave unjustly in repudiating the treaties. In other words, the Epicurean consequentialist argument fails for states just as it does for individuals – and the state that provides the example of getting away with public injustice is Rome itself. It is perhaps no accident that the final sentences of Laelius' speech – the only part of the speech preserved in the palimpsest – ends with the danger to Rome's eternity posed by the unjust behavior of Tiberius Gracchus and his followers to Rome's allies. That is itself a consequentialist argument in favor of justice.²⁹

29) I am grateful to Benjamin Straumann for suggesting this interpretation of the end of Philus' speech and pointing out the link to the end of Laelius' speech.

At this point, a chart of the reconstruction proposed here may be useful:

Arguments	V	Lactantius
Preface	V205+206, V17 (Q29.3–4) = 3.12–13 Z	–
I. Justice = law	V17+18, V27+28, V203+204, V13 (Q29.4–6,8) = 3.14–18 Z	DI 5.16.3
II. Justice as another's good (individuals)	V13+14 (Q29.8) = 3.18–19 Z	DI 5.16.3
II. Justice as another's good (states)	V57+58, V47+48 (Q32.2,7) = 3.23,24 Z	DI 5.16.4
III. Justice < fear of punishment (individuals)	V1+2, V11 (Q33.2,7) = 3.26, 3.27 Z	DI 5.16.5–7,9–11 (between 3.26 and 3.27 Z); DI 5.12.5–6 (overlaps with V11)
III. Justice < fear of punishment (states)	V11+12 (Q33.7) = 3.28 Z	–

6. *The Attack on Justice*

Philus' speech against the possibility of justice poses serious problems of reconstruction and no interpretation can be completely certain. But even with due caution, we can recognize the powerful structure of his case, moving from the grandest idea, of law and justice being identical, through the more cautious Aristotelian idea of justice as another's good – already rejected by Thrasymachus in *Republic* 1 – to the vulgar consequentialism of the Epicureans, ending with the picture of a world in which only a fool would pay any attention to moral standards, and in which, to adapt an anecdote used in Philus' speech (3.24 Z), a monarch is no better than a brigand. Laelius starts from this utter negation of morality and reverses it: by the time he is finished, we can again believe in justice, this time as a transcendent moral standard independent of any human failings. Cicero uses the darkness of Philus' speech to set off the sublimity of Laelius' (and his own) vision of a

world and a Rome that is capable of embodying justice. And despite Lactantius' best attempts, it is not a Christian world.

The debate on justice has a long and curious history in which Carneades played a central role. His debate was clearly drawn from Plato: however he shaped the argument for justice, the argument against, to judge from Philus, was based on Glaucon's speech in *Republic* 2. And like Plato, Carneades seems to have focussed on individual justice. That was not Cicero's version. He too looks back to the *Republic*; his Philus too looks back to Glaucon's speech. But Cicero's dialogue as a whole has a much more complex relationship to the *Republic*, and Philus' speech is part of that as well: while Plato uses his Callipolis as a large-scale analogy to explore the individual character, finding justice in the internal relationship among the parts of each person's soul, Cicero is writing about the *res publica* at least in part as an instrument for shaping the individual character, as a real (if idealized) social organization composed of individuals, not some idea laid up in heaven. Hence the debate on justice grows: it is only about individual behavior in so far as that provides some framework for talking about the behavior of states.

In terms of the order of the two speeches too, there is a progression. In Plato, Glaucon's argument in Book 2 is refuted over the course of the rest of the dialogue, and his view clearly loses. Carneades, technically, gave an Academic antilogy in which the two sides were to be so equally balanced as to cause suspension of judgment – but he left the Roman audience with the argument against justice ringing in their ears. And Cicero reverses it again, giving justice the last (and transcendent) word. And what of Lactantius? By moving the argument out of this world, he reverses it again: Philus wins, in his distorted account, but only on earth, and Laelius is suppressed – perhaps because Lactantius was afraid that he might actually win.

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