

# A Man of Letters in Prison: Humanity and Justice in Libanius of Antioch

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## Abstract

Libanius of Antioch provides unique pieces of evidence for our understanding of prison conditions in antiquity. In advocating for the release of prisoners and/or the alleviation of their suffering, both publicly and privately, Libanius construes a narrative of humanity (φιλανθρωπία) and justice that affirms the value of the ancient pagan tradition in propounding and fostering the virtues of the good ruler. The present paper intends to set the ground for a future comprehensive study that will compare pagan and Christian narratives of humanity and justice when it comes to imprisonment in Late Antiquity.

## Key Words

Prison, Justice, Philanthropia, Libanius

## Introduction

Libanius' life nearly spans the fourth century CE, from Constantine to Theodosius. He spent most of it in Antioch, a vibrant civic and cultural center and imperial residence rivaling Constantinople,<sup>1</sup> where religious and political strife was a common occurrence. In these times of profound change, Libanius stuck to his profession as teacher of rhetoric, refused to directly take part in the political life of his city,<sup>2</sup> and cultivated his love for the masters of classical literature and his passion to transmit this love to as many students as possible. Yet, the sophist was far from sitting on the bench

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<sup>1</sup> “With short interruptions, the city had been the residence of a ruler since 333, when Constantius, then Caesar, made his headquarters there. [...] After the departure of Gallus, Antioch gradually lost its pre-eminence in the East, which had never been official, to Constantinople” (3–4). Wolf Liebeschuetz, *Antioch, City and Imperial Administration in the Later Roman Empire* (Oxford: Oxford University Press, 1972).

<sup>2</sup> “δόξης ἐλάττων ἀνὴρ, μόνης ἦττητο τῆς περὶ τοὺς λόγους, τὴν δὲ ἄλλην δημώδη καὶ βάνασσον. ὑπελάμβανεν.” J. Giangrande, *Eunapii vitae sophistarum* (Rome: Polygraphica, 1956), 16.2.9. “Though he was a man who longed most ardently for renown, he enslaved himself only to that renown which an orator can win, and held that any other sort is vulgar and sordid.” Eunapius, *Lives of the Philosophers and Sophists*, trans. Wilmer Cave Wright (Cambridge, MA: Harvard University Press, 1961), 527.

of an intellectual retirement, as he watched the world he loved so much crumble and decay under the corruption of its officials and the blows of the emerging new religion. He certainly had his priorities straight when, quoting Homer, he affirms that he would have followed in Odysseus' footsteps and refuse even the marriage of a goddess for the sight of the smoke of Athens,<sup>3</sup> where he was headed to school.<sup>4</sup> His love of the *logoi* permeates everything he did and wrote: his letters to his friends, fellow or rival teachers, students and their parents, imperial officials and emperors. All his writings exude deep love and affection for the intellectual world of the Hellenes: Homer, the tragic poets, especially Euripides, and his beloved Demosthenes are always on his lips, with one-liners that describe his state of mind, his relationships, his plans.<sup>5</sup> Within this intellectual framework, Libanius uses his influence and renown<sup>6</sup> to act upon the challenges of his time, denouncing political corruption and ineptitude, trying to soothe the nerves of extremists on both sides of the religious contention, and, maybe surprisingly for some, taking care of many people who experienced incarceration.<sup>7</sup> In this paper, I will focus on this last facet of Libanius' activity.

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<sup>3</sup> “οἶμαι δὲ κατὰ τὸν Ὀδυσσεῖα καὶ θεῖον ὑπεριδεῖν ἂν γάμιον πρὸς τὸν Ἀθηνῶν καπνόν” (*Or.* 1.12). The reference is to Homer, *Od.* 7.258.

<sup>4</sup> “His decision to go to Athens with a view to becoming a sophist had involved a readiness to break with Antioch for the sake of ‘logoi’, and when he returned he was separated from members of his family and class by the fact that he was immune from their curial obligations” (Liebeschuetz, *Antioch*, 7).

<sup>5</sup> Isabella Sandwell, *Religious Identity in Late Antiquity* (Cambridge: Cambridge University Press, 2007), 55.

<sup>6</sup> Libanius held the chair of rhetoric for the city of Antioch, hence his becoming a public figure in the social and political scene of the fourth century. See Sandwell, *Religious Identity*, 49.

<sup>7</sup> Coming from one of Antioch's most prestigious families, Libanius had an extensive social network throughout the city. On his prominence in Antioch, see Lieve Van Hoof, “Libanius' *Life* and life,” in *Libanius: A Critical Introduction*, ed. Lieve Van Hoof (Cambridge: Cambridge University Press, 2014), 19.

## Scope and Methodology

Care for prisoners runs throughout Libanius' entire life: we find him at the start of his teaching career in Antioch visiting members of the city's *curia* in prison and advocating for their release;<sup>8</sup> less than a decade later, we hear him taking pride in the power of his influence on obtaining the liberation of inmates;<sup>9</sup> toward the end of his life, we see him still at work interceding for a poor woman and a farmer;<sup>10</sup> finally, in an oration addressed to the Emperor, we hear his roaring voice denouncing local officials' abuse of prisoners.<sup>11</sup>

Libanius' interest in the problem of prisons and justice will be investigated under a historical and a cultural perspective. First, his writings shed light on the practice of incarceration, how imperial laws were enforced, and the conditions of prison life in Antioch. Second, the way in which he approaches the problem in general, and individual cases in particular, demonstrates a set of moral values that Libanius has acquired through his studies of rhetoric. In dialogue with direct personal experiences, they are the drive for the sophist's "activism." Reading these texts from this angle reveals that Libanius, while striving for justice, also proves the significance of his work for the world he lived in, work that he often had to defend against the more "practical" schools of law and short-hand writing.<sup>12</sup>

Since the texts of the present study are unique for their wealth of details regarding prisoners' conditions, they have appeared in recent scholarship concerned with the topic of

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<sup>8</sup> *Or.* 1.96: about his visit to Antioch in 354, after many *curiales* had been thrown in prison by Gallus Caesar.

<sup>9</sup> When complaining to Alexander III/5 about his powerlessness to help Porphyrius, Libanius reminds the governor, his friend, of the efficacy of his authority in the past: "ἐγὼ δὲ οὐδὲν ὠφελῶ καὶ ταῦτα πολλοὺς ἐκ δεσμῶν λευκῶς καὶ δόξης οὐσης ὡς ἀρκεῖ ἐθελῆσαι" (*Ep.* 1369, mid 363). In *Or.* 1.232, Libanius reports his success in granting release to the father of one of his students.

<sup>10</sup> *Ep.* 864 (year 388) and *Ep.* 1025 (beginning of 392). See below.

<sup>11</sup> *Or.* 33 and 45, ca. 386. For the problems of date of composition, see Albert Francis Norman, *Libanius: Selected Works II: Selected Orations* (Cambridge, MA: Harvard University Press, 1977), 155–59.

<sup>12</sup> Liebeschuetz, *Antioch*, 242.

imprisonment in the ancient world. The problem is complex, and scholars have employed a variety of approaches to it. Firstly, prison belongs to the juridical realm, and scholars have tried to understand whether, in the ancient penal system, prison played a role beyond that of detention, which is universally accepted, and constituted a punishment in its own right.<sup>13</sup> Related to the juridical problem, however, the practice of law enforcement and the judicial system in the provinces appears second, since different interpretations of the effects of imperial legislation come into play.<sup>14</sup> The crux of the matter here is whether imperial law constituted a coherent set of laws that provincial governors and officials had to enforce, or whether imperial pronouncements were mostly responses to requests from local officials who, in the full exercise of the powers of *coercitio*, were consulting the supreme source of the law only in disputed cases.<sup>15</sup> A third type of approach investigates how prisons functioned, where they were situated within a city, and what were the living conditions within them.<sup>16</sup> Lastly, these texts are evidence of cultural values that were put to the test by the practice of imprisonment and the conditions in which inmates lived.<sup>17</sup> As we will see, the functioning of the justice system and the suffering of prisoners called into

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<sup>13</sup> See, among others, Andrea Lovato, *Il carcere nel diritto penale romano: Dai Severi a Giustiniano* (Bari: Cacucci, 1994); and Pilar Pavón Torrejón, “Las poenae carceris durante el siglo IV,” in *Carcer II: Prison et privation de liberté dans l’Empire romain et l’Occident medieval*, ed. Cécile Bertrand-Dagenbach et al. (Paris: De Boccard, 2004): 111–22.

<sup>14</sup> The most comprehensive work is by Jill Harries, *Law and Empire in Late Antiquity* (Cambridge: Cambridge University Press, 1998), but on the problem, with a section dedicated to imprisonment specifically, see Peter Garnsey, “Why Penalties Become Harsher: The Roman Case, Late Republic to Fourth Century Empire,” *The American Journal of Jurisprudence* 13, no. 1 (1968): 141–62.

<sup>15</sup> Peter Garnsey, *Why Penalties*.

<sup>16</sup> See Pilar Pavón Torrejón, *La cárcel y el encarcelamiento en el mundo romano* (Madrid: Consejo Superior De Investigaciones Científicas, 2003). See also Bernard Schouler, “Un enseignant face aux prisons de son temps,” in *Pallas*, no. 72, *Le monde et le mots: Mélanges Germaine Aujac* (Toulouse: Presses Universitaires du Midi, 2004), 279–96, and Michele Matter, “Libanios et les prisons d’Antioche,” in *Carcer II: Prison et privation de liberté dans l’Empire romain et l’Occident medieval*, ed. Cécile Bertrand-Dagenbach et al. (Paris: De Boccard, 2004), 53–69. These include in their studies observations on the architecture and the topography of the prisons of Antioch.

<sup>17</sup> This is the main approach of Schouler, *Un enseignant*. Extremely relevant, albeit not directly concerned with the problem of imprisonment, is Glanville Downey, “Philanthropia in Religion and Statecraft in the Fourth Century after Christ,” *Historia: Zeitschrift für alte Geschichte* Bd. 4, H. 2/3 (1955): 199–208. This article helps to put the cultural values discussed by Schouler within the context of the dialogue between pagan and Christian cultures.

question ideas of justice and humanity, which Libanius explains in terms of the cultural tradition of the Hellenes. Clearly, no single approach can completely exclude or claim supremacy over the others. It is, instead, the progressive acquaintance with and assiduous reading of the sources that can polish our understanding and provide an ever clearer picture.

It is my intention, therefore, to offer another reading of these texts from the perspective of the history of ideas. My aim is to contribute to the understanding of the values upon which Libanius construed his argument in pleading the cause of prisoners. The present study is also intended as a preliminary work to broader research that will compare Libanius' approach to that of the Christian Fathers, particularly John Chrysostom.

Several questions arise when looking into Libanius' situation: what was life in prison like in fourth-century Antioch? What values and moral ideals did Libanius, by advocating for prisoners, discover as descriptors of the good ruler and the good man? Why was Libanius so passionately interested in the experience of incarcerated people?

We must address a methodological problem at the outset. Given the highly rhetorical content of the sources, their historical accuracy has been called into question.<sup>18</sup> Aside from the details that apply to each case, the consensus in the scholarship can be summarized in two main views: (1) The orations and the more elaborate letters of Libanius are not an unreliable exercise of rhetoric; (2) The same caveats that apply to oratory in general apply here: we hear a one-sided discussion from an extremely skilled rhetor who wants to get his point across. However, if details might be exaggerated for rhetorical purposes, the overarching theme must have found acceptance

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<sup>18</sup> For an initial discussion of the problems posed by the orations, see Liebeschuetz, *Antioch*, 23–39. The most in-depth analysis of the publication and diffusion of the orations is still Paul Petit, “Recherches sur la publication et la diffusion des discours de Libanius,” *Historia: Zeitschrift für Alte Geschichte* 5, no. 4 (November 1956): 479–509.

in the audience.<sup>19</sup> Furthermore, when available, the letters corroborate and correct the picture painted by the orations. Although private correspondence is not exempt from high rhetorical practices—depending on the culture of the addressee—rhetoric constitutes the language, or code, of an exchange that is expecting concrete action.<sup>20</sup> It is therefore highly unlikely that the descriptions of the situations for which the letters advocate strayed too far from the reality they aimed at changing. Moreover, some of Libanius’ addressees were responsible for the unfortunate situations of his protégées and would be particularly sensitive to the accuracy of his pleas.<sup>21</sup> The rhetoric that might be on display in Libanius’ more general treatment of the issue aims to achieve concrete results in the correspondence. It is safe, therefore, to assume a high level of historical accuracy in the information provided.

### **The Brothers Eusebius and Olympius**

The first case involves two brothers and the *consularis Syriae* Alexander 5/III.<sup>22</sup> Olympius 9/V and Eusebius 17/XXI<sup>23</sup> were two family friends of Libanius. The former occupied an official post

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<sup>19</sup> In the case of the orations regarding prisoners, “criticism of judicial cruelty is not evidence in itself for the extent of that cruelty, but for public willingness to criticize operations of justice as cruel and inhumane” (119). Jill Harries, *Law and Empire in Late Antiquity* (Cambridge: Cambridge University Press, 1998).

<sup>20</sup> “In every oration and even every letter Libanius is in part trying to display his skills in manipulating this tradition [the classical literary tradition] to other educated men who would have shared his joy in such an exercise” (Sandwell, *Religious Identity*, 55).

<sup>21</sup> “We may conclude that the opinions [Libanius] expresses on public life, when they are not distorted by a close personal involvement or merely stated to support a particular case, are sound and worth considering” (Liebeschuetz, *Antioch*, 39).

<sup>22</sup> According to common practice in Libanian scholarship, the Arab numeral refers to the numbering in A. H. M. Jones, J. R. Martindale, and J. Morris, *Prosopography of the Later Roman Empire (PLRE)*, vol. 1, A.D. 260–395 (Cambridge: Cambridge University Press, 1971), and the Roman numeral refers to the numbering used in Oliver Seeck, *Die Briefe des Libanius zeitlich geordnet (BLZG)* (Leipzig: J. C. Hinrichs, 1907).

<sup>23</sup> The prosopography of Eusebius is complex. I followed Bradbury’s identification in Scott Bradbury, *Selected Letters of Libanius From the Age of Constantius and Julian* (Liverpool: Liverpool University Press, 2004), 136. The most recent prosopographical work discusses the information missing from the PLRE, but refers to Eusebios XXIII in BZLG, instead of Eusebios XXI. See Pawel Janiszewski, Krystyna Stebnicka, and Elzbieta Szabat, *Prosopography of Greek Rhetors and Sophists of the Roman Empire* (Oxford: Oxford University Press, 2015), 122–23.

in Antioch and, during his tenure, had committed some faults.<sup>24</sup> Alexander unsuccessfully tried to punish him but instead agreed to pardon him and grant him another office. Eusebius also held an office in Antioch under Constantius, and he later became a teacher of rhetoric. He was, unlike his brother and their father, Asterius, a Christian. Religious allegiances are not a prominent feature of Libanius' exchanges with his correspondents unless they directly concern the topic of the exchange. For this reason they are noted here.<sup>25</sup>

Alexander had been appointed *consularis Syriae* when Julian departed for his fatal campaign in Persia on March 5, 363 CE, and he was eager to enforce Julian's policies to revive paganism in his territory.<sup>26</sup> Ammianus describes him as *turbulentum et saevum* but admits that, although he did not deserve the post, Julian deemed his character a good fit for the hot-headed Antiochenes.<sup>27</sup> At some point in the summer of 363 CE, Eusebius was accused of working against the governor's initiative, although it is not clear what the actual charges were.<sup>28</sup> Libanius intervened in the matter since he was a close friend with all actors involved.

The opening of the first letter about Eusebius' case offers a glimpse into what the enforcement of Julian's directives on religion must have looked like for the people of Antioch:

[1] I should wish you to be zealous about the gods and to lead many men to their worship, but don't be surprised if one of those who has recently sacrificed thinks what he has done is terrible, and once again praises abstinence from sacrifice. *In public* they obey you when you advise them of the best path and they approach the altars, but *at home* one's wife, her

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<sup>24</sup> Probably as *peraequator*, "which involved adjustment of tax levels on Antiochene landholdings" (Bradbury, *Selected Letters*, 136).

<sup>25</sup> On this topic, Sandwell, in *Religious Identity*, offers valuable insights. In particular, chapter 1 frames the problem of religious identity in fourth-century Antioch, and chapter 2 describes how Libanius dealt with the problem of his and his addressees' religious allegiances.

<sup>26</sup> "He was active in restoring paganism in Apamea and in Seleucia" (*PLRE*, 40).

<sup>27</sup> *Amm.* 23.2.3.

<sup>28</sup> Seeck thinks he was persuading Christians who had converted to paganism to return to their old religion. "Im J. 363 wurde er beschuldigt, Christen, die zum Heidentum abgefallen waren, wieder zu ihrer früheren Religion bekehrt zu haben" (*BLZG*, 143).

tears and the night bring about a change of heart and drive them from the altars. (*Ep.* 1411, B98)<sup>29</sup>

The key of the matter here is the opposition outside/inside, represented by what one does publicly (ἔξω) and what one does at home (οἶκοι), which mirrors the impossibility of enforcing matters of conscience by law. The night (νύξ) clearly refers to a time of meditation and examination of conscience. In this climate, Eusebius is the object of slander (σεσυκοφάνηται) at the hands of people who claim that “he would be undoing the things” Alexander has “been toiling about” (ὥς ἄρα σοι τὰ πονηθέντα λύσειε).

Following the charges, the problem becomes particularly complex:

[4] In flight from chains and *the soldiers’ grasp*, this Eusebius has come to me and *recounted where he was arriving from*. I was happy that a man deserving and innocent hadn’t been bound, since you too would have been disheartened, if you knew of him suffering a thing like that—a man of his sort coming to such a pass! [5] So now *free the man from fear or demand him from me*, since he’s at my house. I don’t think that I’ll be less of a friend than dogs or Admetus! [6] I counsel you to chastise Eusebius *after the accusation and an investigation have taken place*, but not to believe that slanders constitute an investigation. It’s abominable that those who are depriving him of a defence need to defend themselves. And if he shouldn’t be convicted, then how would his followers be doing wrong? If they’re doing no wrong, they’ll endure in silence what they’ve suffered, but let the suffering stop there.

Firstly, Eusebius has escaped arrest at the hands of the soldiers and found refuge at Libanius’ residence.<sup>30</sup> Libanius does not play deaf (Eusebius told him “where he was arriving from”) and quite bravely dares the governor to come and take him, if he deems it just to do so. Two reasons can be identified for such a daring request. On the one hand, Libanius feels an obligation to respect the traditional custom of Greek hospitality (ξενία) and to protect the man who sought refuge at his

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<sup>29</sup> Some of the letters in this study have appeared in English translations, others in French or Italian, and others have never been translated. In order to help the reader navigate the different collections, all letters will follow Foerster’s numbering, followed by the numbers that appear in A. F. Norman, *Libanius. Autobiography and Selected Letters*, 2 vols. (Cambridge, MA: Harvard University Press, 1992) (N), or Bradbury, *Selected Letters* (B). I used their translations when available. Where there is no number other than Foerster’s, the translation is my own. Translations in languages other than English will be referenced in note. All italics are my own.

<sup>30</sup> “We frequently read of police actions, arrests, beatings, raids on shopkeepers suspected of charging too high prices, searches carried out by ‘soldiers’. This word might describe *officiales* or real soldiers” (Liebeschuetz, *Antioch*, 124).

residence, hence the reference to the dogs (Argos recognizing Odysseus comes immediately to mind) and Admetus' welcoming of Apollo. On the other hand, the sophist construes a solid legal argument for his friend's defense: Eusebius should be chastized after an *investigation* (ἐλέγχου), not after the *accusation* (κατηγορίας). The principle of "innocent until proven guilty" here entails the inviolability (freedom from punishment) of the accused up to the time of the sentence. By 320 CE, Constantine had upheld a similar principle in dealing with pre-trial remand. The provisions included rules for detention and mentioned the right to a speedy trial and decent living conditions (e.g., regarding the darkness of the place of custody), along with the prohibition of torture that could lead to death before trial.<sup>31</sup> In 380 CE, Theodosius will intervene again, this time to forbid the use of chains on individuals detained and awaiting judgment.<sup>32</sup> The existence of these imperial decrees attests to the awareness of the problem of prison conditions and the abuse of detention in the empire of the time. The ideas Libanius is putting forth, therefore, are consistent with principles in the imperial legislation of his century. Consequently, Alexander's mandate to arrest Eusebius did not comply with the developing trend in imperial law-making.

Furthermore, Alexander must have understood a third argument in Libanius' letters. This argument was an appeal to what the sophist seems to value as most important in mediating religious practices and policies: moderation. In the paragraphs preceding the passage above, the sophist offers a description of Eusebius' character that makes this clear: he was timely because he was aware of his contemporary circumstances (τὸν καιρόν);<sup>33</sup> he preferred reason (λογισμῶ) over a daring attitude (τόλμη), and he was neither harsh (βαρύς) nor arrogant (ὕβριστής) when he had the

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<sup>31</sup> *C.Th.* 9.3.1.

<sup>32</sup> *C.Th.* 9.2.3.

<sup>33</sup> The reference is to the tensions between pagans and Christians that followed Julian's measures to revive paganism. See Glanville Downey, *A History of Antioch in Syria from Seleucus to the Arab Conquest* (Princeton, NJ: Princeton University Press, 1961), 380–97.

power to be; finally, and most importantly, he proved to be tolerant in matters of religion (“in honoring his own way he didn’t dishonour those who took their oath by Zeus,” *Ep.* 1411.3).

The references to Eusebius’ moderation can be better understood in the broader context of Libanius’ and Alexander’s relationship, as their correspondence attests. Another letter, sent in the same summer months of 363 to Apamea, sheds light on a similar problem—one of enforcing religious practices through the power of the law. The sophist praises Alexander’s effort but also advises him not to use force if it is not necessary: “You visited Apamea, and very properly, for she is dear to Zeus and continued to reverence Zeus when punishment were reserved for reverencing the gods [...]. But *if force is applied* (προσούσης ὕβρεως), they become frantic with despair and are incapable of even the easiest tasks” (*Ep.* 1351.3, N104). The kinds of actions Libanius has in mind when he uses the word ὕβρις become clear few paragraphs later:

What is more pleasant than to get one’s job done and for them to treat it as a holiday? And a holiday it is, not *when sacrifices are made with grumblings and in expectation of arrest*, but when libations and sacrifices are offered in an atmosphere quite free from fear. [...] The council will obey you implicitly *without being flogged* once it is convinced that it is not going to be flogged (*Ep.* 1351.4–5, N104).

Arrest and threat of torture, which were hanging over Eusebius’ head, were, therefore, the topic of conversation between Libanius and Alexander concerning Alexander’s enforcement of religious policies. The character of Eusebius, explicitly marked as lacking ὕβρις, implicitly suggests the attitude Alexander should assume.

Shortly thereafter, another letter addressed to the *consularis Syriae* (*Ep.* 1414) reveals how the matter ended: Libanius’ worst fears became reality. This letter has not yet been translated into English, but because it plays a significant role in this study, I offer my translation here<sup>34</sup>:

[1] Nestor, thinking that the king of the Achaeans and the son of Thetis would be persuaded by him, used his advanced age as his strong argument. For my part, not only do I happen

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<sup>34</sup> It appears in French in Bernard Schouler, *Un enseignant*, 281–82. Differences in interpretation of the Greek text are marked in footnote.

to be older than you—and for this reason you should similarly give in—but also I have up my sleeve a charm stronger than the one the adviser of the combatants had back then. [2] I say to you again, then, that this rivalry with Olympius must be set aside once and for all: it would not be glorious to drag him down and show him prostrate on the ground, not even to a slave of yours. If this is not feasible, then all the more is it neither good nor proper that his brother, who has no part in the responsibility, be struck down instead of him. As it is, to chastise the latter on account of the former is to admit defeat and gives the impression that Olympius should be hated, but he is too strong to incur any punishment. [3] Let Eusebius be released from prison, and may he not face further beatings,<sup>35</sup> strippings, and chokings. He should not have to beg anymore for so-and-so to come fetch him.<sup>36</sup> For these are the things that are happening. If he is shown a little bit of pity and receives a small amount of silver, somebody comes and snatches it from his hands, and if somebody raises an objection, they say they are acting in accordance with your wishes. They are the ones you should be going after, since they are making your own affairs look petty and sordid, if you need allies of this kind to wage your war against your enemies. [4] I know that if it seemed proper to you in the first place to take down the insensible Olympius, many accusers and charges would have surrounded him. “But this was not within the heritage nor the nature of the Athenians,” says your mentor. And since you know that the Athenians gained their repute from knowing how to show mercy, as soon as you saw the ashes, you gave him back his office. [5] If you do not approve of the humanity that took place, then let him be stripped of the office and torn to pieces, but let’s stop those who are maltreating Eusebius, because in the former there is the expectation of a possible defense, but to the latter no argument is left. As it is, the liturgy about the ship is a joke, and it is poverty that makes it a joke. [6] Consider, then, what kind of talks there will be if Eusebius dies or what will be said if he remains alive and is showing the signs of what he has suffered in his body.

At the time of writing, Eusebius was in prison, subject to different kinds of torture, and Libanius was demanding his release. We have no information about how the arrest was conducted, but we have to assume that Libanius witnessed it, since Eusebius was staying at his house, and the sophist did not violate hospitality (ξενία) by keeping Eusebius at his house. There appear in this letter vivid details about what imprisonment entailed. As an inmate, Eusebius was forced to undergo physical violence (τυπτόμενός) and abuse (έκδύόμενος), restraint by chains (άγχόμενος), and the

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<sup>35</sup> *καὶ μὴ διὰ πάντων ἐρχέσθω*... Schouler, in *Un enseignant* (281), takes *διὰ πάντων* literally (“traverser la foule”), but I find it hard to imagine what crowd it would refer to. I believe *ἐρχέσθω* to be auxiliary of all the passive participles that follow (*τυπτόμενος*, *έκδύόμενος*, and *άγχόμενος*), and *διὰ πάντων* to be adverbial, a phrase Libanius often uses with this meaning in the letters. See, among others, *Epp.* 458.2, B113; 596.2; 651.5, B100; 712.1, B181; 715.7, B126; 984.1; 1385.1; 1476.2.

<sup>36</sup> *μηδ’ ἵνα ὁ δεῖνα λαμβάνῃ προσαιτείτω*. This is a difficult passage to interpret, especially for the meaning of *λαμβάνω* in this context. Schouler thinks that Eusebius should beg that someone else take the money for him (“qu’il ne soit pas réduit à mendier afin qu’un autre touche de l’argent”), but it would be hard to assume money to be the object of the verb, since money is mentioned two sentences later. More likely, Eusebius is imploring for someone to free him.

humiliation of begging for mercy (μηδ' ἵνα ὁ δεῖνα λαμβάνη, προσαιτείτω). In addition, it is clear that for a prisoner it was possible to receive outside help, be it for food or daily necessity, since Libanius denounces the theft perpetrated by the jailors and assumes the provision of goods for inmates to be a common practice.<sup>37</sup> The prospective outcome for Eusebius was to die as a consequence of his torture, which would technically be a violation of the law since he was not sentenced to death, or to be visibly scarred for everyone to see once he got out, hence the menacing warning in the letter's closing.

The argument to stop all suffering is even more pressing here than in the previous letter. Here Libanius does not only appeal to proper procedure but attacks his friend Alexander directly by accusing him of punishing Eusebius to get back at Olympius. It is, therefore, innocent suffering caused by personal strife that infuriates Libanius. Furthermore, his indignation may also be inspired by the bad state Eusebius was in physically. The liturgy mentioned toward the end of the letter—most likely a *sitigia*, which involved the supervision of grain shipments—must have been another way in which political power allowed for personal revenge against one's enemies, or their family and friends.<sup>38</sup>

The case is even stronger when we read a prior letter that refers to the clemency Alexander had granted Olympius when he was accused of some crime, probably related to his post as *peraequator* (*Ep.* 1397).<sup>39</sup> If Libanius was praising the forgiving attitude of the governor, moved to compassion at the sight of Olympius prostrate and covered in ashes (hence the reference to ashes<sup>40</sup>), in this letter he is accusing him of having forgiven out of cowardice and of using Eusebius

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<sup>37</sup> See note 49 below.

<sup>38</sup> “Such appointments were a common form of revenge meted out by angry officials” (Bradbury, *Selected Letters*, 136).

<sup>39</sup> See note 24 above.

<sup>40</sup> “καὶ νῦν ὁ πεσὼν εἰς γόνυ καὶ κόνιν αὐτοῦ καταχέας καὶ φθεγξάμενος μὲν οὐδέν, ἔργω δὲ τὸν ἔλεον αἰτήσας δεῖγμα ἐναργέστατον περινοστεῖ τῆς σῆς ἡμερότητος” (*Ep.* 1397.2).

to exact the penalty he would have wanted to exact from Olympius. This is a case in point for the rule of law, once again, since if Alexander did not approve of the clemency accorded to Olympius, he should have prosecuted him, because he is entitled to and able to provide a defense, and not Eusebius, who cannot even defend himself and can only endure his torture.

Also common to *Ep.* 1397 and *Ep.* 1414 is the reference to the mercy of the Athenians. In 1397.3, Libanius suggests that if Alexander granted pardon to Olympius and welcomed him back in his good graces, he would “appear to be really an imitator of the native Athenians, who saved those who had done wrong to them as if they were benefactors.”<sup>41</sup> Referring to Demosthenes as Alexander’s mentor (ὁ σὸς ἡγεμὼν) in *Ep.* 1414.4, Libanius is insisting again by reminding his friend of the great Attic orator’s ideals. Through his references to “the heritage” (τά πατρια) and “the nature” (τά ἔμφυτα) of the Athenians, the sophist is using a phrase from Dem. 18.203 to propound the moral greatness of classical Athens, forgiving and compassionate toward those who deserved their support (and also merciless against those who opposed them, one might add).<sup>42</sup> A cultivated man like Alexander, with whom Libanius had exchanged several letters, would have been particularly sensitive to, and probably even pleased by, this display of their common intellectual milieu. Although we do not know how the matter ended, the exchange with Alexander shows Libanius in action in his attempt to value the classical tradition as the ground for public virtues, at a time when those same virtues were being appropriated by Christians.<sup>43</sup>

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<sup>41</sup> “τῶν αὐτοχθόνων Ἀθηναίων ἀτεχνῶς μιμητῆς εἶναι δόξεις, οἱ τοὺς ἡμαρτηκότας ὥσπερ εὐεργέτας ἔσωζων” (*Ep.* 1397.3). The reference is to Dem. 18.94 and 20.142, as suggested by Richard Foerster, *Libanius Opera*, vol. 11 (Lipsia: Bibliotheca Scriptorum Graecorum et Romanorum Teubneriana, 1922), 438. The former describes the pardon Athens granted to Byzantium in order to favor anti-Phillip alliances; the latter provides examples of Athenian justice, virtue, and magnanimity (δικαιοσύνης, ἀρετῆς, μεγαλοψυχίας).

<sup>42</sup> “Les enseignants, et au premier chef Libanios, proposaient les discours de Dèmôsthène non seulement comme modèles stylistique, mais comme sources d’aphorismes moraux” (Schouler, *Un enseignant*, 282, note 16).

<sup>43</sup> Downey, *Philanthropia*.



## **The *De Vincitis***

Twenty years after the case of Eusebius and Olympius, Libanius addressed an oration to the emperor Theodosius in which he outlines the problem of the prisons of Antioch. *Or.* 45 is commonly associated with *Or.* 33 *Contra Tisamenum*, which denounces the misgivings of the *consularis Syriae*, especially in the administration of justice and in his dealings with the council and the citizens,<sup>44</sup> but it differs significantly in being a reform speech that does not directly attack one official (and the hierarchy of power that appointed him), but it appeals to the humanity of the supreme ruler to foster change. On the complex issue of the delivery and publication of the orations of Libanius, Paul Petit has offered the most comprehensive analysis.<sup>45</sup> Here it suffices to note two characteristics the French scholar argued about the so-called “Theodosian” orations and *Or.* 45 in particular: first, they are all marked by the pursuit of efficacy and are therefore composed to be distributed in various degrees;<sup>46</sup> second, *Or.* 45 was not delivered before the emperor (Libanius never met Theodosius in person), but was sent to court.<sup>47</sup>

*Or.* 45 vividly describes the problems that bedevil prisoners. First of all, the faulty administration of justice on the part of the officials, who are slow in granting an audience to cases that do not involve money or personal friends and are busy attending spectacles and parties, causes the number of prisoners to increase exponentially and the prisoners’ confinement to become torture. Overcrowding makes it impossible to sleep, and the little yard time allowed deluded the prisoners’ hope: “The prison is packed with bodies. No one comes out – or precious few, at least – though many go in. They are doubly afflicted, by the actual imprisonment and by the manner of

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<sup>44</sup> Libanius reports the quarrel with the council over the games (13, 21, 24) and with the shopkeepers over the repainting of the shops and the provision of more street lamps (33–36).

<sup>45</sup> Petit, *Recherches*.

<sup>46</sup> “Tous les modernes, sans se prononcer nettement sur les conditions de leur publication, s’accordent à leur reconnaître le minimum de diffusion que postule leur efficacité” (Petit, *Recherches*, 498).

<sup>47</sup> Petit, *Recherches*, 503–4.

it. They cannot get any proper sleep, for they cannot even lie down to rest. Their repose is just what they can get standing” (Or. 45.8).<sup>48</sup>

Next is malnutrition: a soup with few vegetables constitutes the food ration for prisoners, who therefore have to resort to help from the outside. Libanius here gets highly dramatic in describing the shame that befalls the women of the house, who used to be supported by the now incarcerated man and are forced to use any means available to provide for him. For the prisoner, to ask and know how the women were able to acquire the money adds to their pain.<sup>49</sup> The reference to disreputable practices embraced by the women of the family gains pathetic efficacy by being left to a silent allusion, probably mirroring the imagined dialogue between the inmate and his loved ones. This passage confirms what *Ep.* 1414 suggests: people in prison could resort to support from the outside for their basic necessities.

Where does the food come from for all these? The soup in their pots, their few greens, and anything else besides—all this, they say, is much below their needs. Their wives, sisters, daughters, who were supported by them before their imprisonment, must needs be the ones to support them now. And how, Sire? The women cannot possibly be better off as a result of the imprisonment of their menfolk. The consequence is that the ugly and the aged go begging, while those who have any looks at all endure every kind of outrage. For the prisoners then this is a more bitter pill than their imprisonment, for they are bound to ask the source from which they get this support and to be told it. (*Or.* 45.9)

Third, abuses from jailors: jailors provide services in exchange for money, but if their service is not requested, or the money not provided, they take the liberty of flogging and beating their prisoners. A lamp is freely given to the prisoners, who, however, must pay for the oil (*Or.* 45.10).

The argument Libanius makes for imperial intervention depends on two main points: the emperor’s humanity (Φανήτω δὴ κἀνταῦθα τὸ τῆς σῆς φιλανθρωπίας, ὦ βασιλεῦ: “Then, Sire, let

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<sup>48</sup> Translation in Norman, *Selected Works II*, 161–93.

<sup>49</sup> Those who do not have family are invited to resort to deaconesses of the Antiochene Christian community, who, out of *philanthropia*, visit prisoners in the jails (*Or.* 45.10).

your *humanity* reveal itself here too,” *Or.* 45.32), and the rule of law he embodied. The sophist references an imperial constitution of Theodosius,<sup>50</sup> which showed the same rationale as his current appeal, and by showing that the emperor’s law is not being enforced, Libanius can in one stroke praise the emperor and denounce the local officials as murderers,<sup>51</sup> since letting somebody die in prison without trial is murder regardless of whether the person is guilty or not. As Jill Harries puts it, “Libanius expressed views that carried more weight because publicly endorsed by imperial law; his position of influence in Antioch ensured that he would be heard; and the oppressed in prison, socially and economically weak as they were, were not left to suffer in silence”.<sup>52</sup> Bernard Schouler (2004) adds the idea of φιλοπονία (sense of duty or professional attitude in holding office)<sup>53</sup> to that of humanity to complete the two high moral values that depict the image of the good ruler. The word does not appear in the oration, and it appears only three times in the entire corpus of Libanius,<sup>54</sup> but it surely describes, by contrast with the actual practice of provincial government, what Libanius expected of local officials.<sup>55</sup>

## Common People

The last two texts are fragments of cases about which we would like to know more but cannot.

The first appears in a letter from 388 CE to Eutuchianus II/5, who was probably the *comes*

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<sup>50</sup> *C.Th.* 9.3.6 (December 380): “De his quos tenet carcer id aperta definitione sancimus ut aut convictum velox poena subducat aut liberandum custodia diuturnal non maceret.”

<sup>51</sup> “ἴσθι τοίνυν σοι φονέας ὄντας τοὺς ἐπὶ τὰ ἔθνη πεμπομένους ἄρχοντας, ὧ βασιλεῦ” (*Or.* 45.3).

<sup>52</sup> Harries, *Law and Empire*, 122.

<sup>53</sup> Schouler, *Un enseignant*, 292–93.

<sup>54</sup> *Ep.* 1022.3 to Proclus, *Or.* 1.11, referred to the work ethic of a Cappadocian, Iasion, who, through his accounts of school life, first introduced Libanius to the idea of studying at Athens. See *Or.* 43.14 on the devotion to duty of teachers who work even on holidays, as opposed to the laziness of officials.

<sup>55</sup> An interesting problem posed by the application of φιλοπονία regards Christian officials who are reluctant or unwilling to carry out death sentences. See *Or.* 45.27.

*sacrarum largitionum* at the time (*Ep.* 864).<sup>56</sup> Its opening statement is striking for the deep empathy (φιλανθρωπία?) it attests to.<sup>57</sup>

[1] You know that I feel for those who are unfortunate, and if I see somebody struck by Tyche, I have pity and if I can do something good, I don't shrink from it.

The letter advocates for a woman who had the misfortune of delivering a baby in prison and is now running the risk of being evicted from her house:

[2] Would that a poor woman who gave birth in prison, although written laws do not allow that, and was then evicted from her house, could be spared at least the second suffering through your intercession.

Andrea Pellizzari identified this woman with a mother Libanius mentions in *Or.* 54, addressed to the *Consularis Syriae* Eusthatius 6/V.<sup>58</sup> The sophist, he tells us in the speech, had interceded for the woman through a letter sent to the governor, who, however, dismissed the request, considering it an initiative of the letter courier and not of Libanius.<sup>59</sup> In this letter, Libanius seems to be trying again to move the governor to compassion through a different intermediary. We do not know any more detail,<sup>60</sup> and the letter stands as a formidable example of Libanius' humanity.

The second text (*Ep.* 1025), a letter sent to Anatolius 9/VI in 392 CE, also concerns the case of an individual from the lower strata of society. Libanius had interceded on behalf of an otherwise unknown farmer (γεωργός) and succeeded in receiving a letter from the emperor to grant him respite.<sup>61</sup>

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<sup>56</sup> So *PLRE* I, 319–21. According to Petit, he must have held a post, maybe at the service of the *magister officiorum*, but it is not possible to determine precisely which one. Paul Petit, *Les fonctionnaires dans l'œuvre de Libanius: Analyse prosopographique* (Besançon: Annales Littéraires de l'Université de Besançon, 1994), 106–7.

<sup>57</sup> The letter appears in Italian translation in Andrea Pellizzari, *Maestro di retorica, maestro di vita: Le lettere teodosiane di Libanio di Antiochia* (Roma: L'Erma di Bretschneider, 2017), 42–43.

<sup>58</sup> Pellizzari, *Maestro di retorica*, 42.

<sup>59</sup> *Or.* 54, 71.

<sup>60</sup> Pellizzari reasonably speculates that the woman must have been imprisoned in a form of detention for her husband's insolvency, a case attested to in papyri from Egypt. Pellizzari, *Maestro di retorica*, 42.

<sup>61</sup> This letter also appears in Italian translation in Pellizzari, *Maestro di retorica*, 319–20.

[1] Priscianus knows very well by what means I could obtain what I wanted to happen. For this reason I dismissed the others and made it yours to take care of the farmer. The letter of the excellent emperor released him, not because he was without guilt, but because he had become a better man in prison.

Even though we have no further information about this case, and it is not possible to establish what the content of the accusation was, the reason for Libanius' appeal is quite exceptional: the farmer was not innocent (οὐχ ὄντα ἀναμάρτητον), but became better during his incarceration (ἀμείνω τῷ δεσμῷ γεγενημένον). The passage offers too little information to warrant an argument for the concept of rehabilitation in ancient prisons. Rather, it attests more to Libanius' humanity, and it leaves us wondering whether these two cases were isolated instances or a common practice in Libanius' extensive network of relationships.<sup>62</sup>

### **Libanius' Life Experience**

The texts analyzed so far have offered a picture of Libanius engaged with the problems of prisoners at all levels of society. A last series of passages might suggest a reasonable answer as to why Libanius demonstrated such passionate interest in prisoners.

In a letter to the praetorian prefect Salutius,<sup>63</sup> sent in 363 CE (*Ep.* 1428), the sophist uses an interesting simile to express his sentiments toward his friend and the impossibility of his being present with him due to illness.

[1] Now I can praise more fully that poet who said in one of his songs that the greatest of all goods is to be healthy. Let me tell you, I do not have that, and I sit expecting when you will come, and instead of the enjoyment of your presence, I already count those who run to you among the blessed, *just like those who are in prison do with the passersby through*

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<sup>62</sup> Another piece of the puzzle that portrays Libanius' relationship with the lower strata of the population of Antioch is in *Or.* 2.6 (*To Those Who Called Him Tiresome*): "I tiresome? Then what can you hear people say in the workshops whenever I go by? 'Decent and polite, isn't he? He replies in kind to the greeting even of the penniless.'" Translation in Norman, *Selected Works II*, 13.

<sup>63</sup> *PLRE*, Secundus 3.

*a little window*.<sup>64</sup> [2] Then I am bitten in the presence of some, I have to tell the truth, but I rejoice with others considering that a certain mode of festivity becomes shared through them. Something like that is also the present moment.

Being sick constrains Libanius' freedom to go see his friend, and he identifies himself with the prisoners who, through the window of their jail, spot the passersby, free to go wherever they please. The image is highly emotional, and its rarity attests to the presence in Libanius' mind of the experience of privation of freedom and of sense of constraint.

A different kind of experience had similar effects on Libanius' perception of bonds and chains. He faced a kind of mock imprisonment when he was hazed by his future schoolmates in Athens. His harsh reaction and subsequent behavior gained him the reputation that he would not partake in the revelries and pranks for which student life in Athens was famous, but would dedicate himself completely to his studies (*Or.* 1.16–21).<sup>65</sup>

Furthermore, during his stay in Constantinople around 343 CE, Libanius faced charges of magic (as he would multiple times throughout his life) from some competitors and professional enemies, who took advantage of a riot between the Orthodox and Arians in the capital that wreaked havoc for the administration of justice. Michel Matter and Pilar Pavón believe he was actually imprisoned for a while before finding a way to leave the city and relocate, first to Nicea and then

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<sup>64</sup> Pavón (*Las poenae carceris*) translates only this sentence in Spanish as one of the sources for prison overcrowding. However, her translation misinterprets the context: “los vivos envidiaban la libertad de los que morían y eran trasladados por una estrecha Ventana” (116). τοὺς παριόντας clearly refers to the passersby, not to dead prisoners carried through the window (a solution that would not fit with the comparison with Libanius' condition). Furthermore, the position of *διὰ μικρᾶς θυρίδος* suggests that it refers to the prisoners “counting among the blessed” and not to the place “through which” the alleged dead bodies were pushed.

<sup>65</sup> “αὐτός τε γὰρ ὡς ἂν ὑβρισμένος ταῖς ὄρκων ἀνάγκαις οὐδὲν ὧν ἔφην ἠξίουον λειτουργεῖν, ἄλλος τ' ἂν οὐδεὶς ἐπέτατε διὰ τὸ οὐχ ἐκόντα δεδεκέσθαι, καὶ ἅμα δέος ἦν, μὴ δυσχεραίνων τὸ φορτίον ἕτερόν τι βουλευέσθω πρὸς τὸν ὄρκον ἀπολογησάμενος οἷς προσηναγκαζόμεν.” “I felt myself outraged by the compulsion of the oath and refused to perform any of the services I have mentioned, and no one else would order me to do them *because of my unwilling bondage*, and there was also the fear that, in my resentment of the imposition, I might take some fresh line with regard to the oath, *basing my case upon the compulsion to which I was subjected.*” *Or.* 1.20, translation in Norman, *Autobiography*, 77.

to Nicomedia,<sup>66</sup> as does Norman in his translation of Libanius' autobiography.<sup>67</sup> The text cannot be interpreted univocally, but what is clear is Libanius' intention to *allude* to the possibility that he was actually imprisoned and was able to escape (*Or.* 1.43–47). For our purposes, it will suffice to note that Libanius had first-hand experience of the justice system and its corruption—torture (at least of his copyist) and incarceration included.<sup>68</sup> It might be a stretch to connect this personal experience with the image of the prisoners looking out the window, but the evidence is enough to suggest it.

## Conclusions

Scholars have rightly compared the conditions described by Libanius with constitutions in title 3 of book 9 of the Theodosian Code (*De Custodia Reorum*) to reinforce the historical validity of the sophist's description.<sup>69</sup> The general argument for this line of thinking is that the emperor issuing an official act to address specific malpractice is proof enough of the malpractice's existence. I would like to follow Jill Harries' lead when she argues that, instead of looking at imperial legislation as an eternal conflict between law and power, "late Roman society must be viewed in terms of a multiplicity of relationships, in which the law was used as a tool of enforcement, an expression of power, or a pawn in the endless games played out between emperor and citizen, center and periphery, rich and poor."<sup>70</sup> The texts presented in this paper confirm this perspective: Libanius appeals to imperial law within the context of his relationships at both ends of society,

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<sup>66</sup> Matter, *Libanios et les prisons*, 63; Pavón, "Las *poenae carceris*," 113.

<sup>67</sup> "When the rioters had regained their senses and the governor had returned, *my* confinement was clearly illegal" is the translation Norman offers of the following: "ὥς δὲ οἱ μὲν ἑαυτῶν ἐγένοντο οἱ παραφρονήσαντες, ὁ δὲ ἄρχων ἐπανήκεν, ὁ δεσμός δὲ ἦν παρὰ τοὺς νόμους" (*Or.* 1.45). What follows might warrant the interpretation of ὁ δεσμός as Libanius' imprisonment, but there is still room for doubt.

<sup>68</sup> *Or.* 1.46.

<sup>69</sup> Among others, Matter, *Libanios et les prisons*, Pavón, *La cárcel*.

<sup>70</sup> Harries, *Law and Empire*, 8.

from the emperor to the poor woman and the farmer, not as an authoritative principle expressing the power of an abstract and modern idea of state, but as one of the factors involved in human interactions the sophist is trying to shape according to his moral ideals of justice and humanity.

In conclusion, the evidence presented has shown prison conditions that lead to the death of detainees, the abuse of power, and local officials' neglect of the duties of office. On the field of local abuses and injustice, Libanius constructs a dialogue with the Emperor that presents humanity and justice as the pillars of good government. Those same values shaped Libanius' activism on behalf of many (we assume) fellow citizens, of all social classes, enriching the network of relationships he so zealously cultivated throughout his life with the high moral ideals he learned and taught through the masters of Hellenic culture.

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