

A More Excellent Way: Dispute Resolution and Community Formation

in Paul's Corinthian Ministry

by

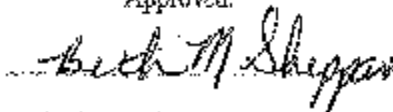
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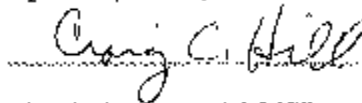


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This is submitted in partial fulfillment of

the requirements for the degree of Doctor of Ministry

in the Divinity School of Duke University

2015

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ABSTRACT

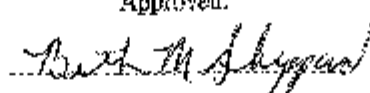
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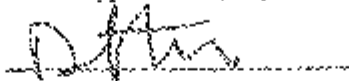
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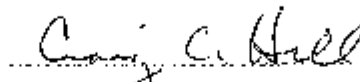
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## Abstract

St. Paul's first letter to the church in Corinth provides an important resource for the work of dispute resolution. The letter reveals Paul's unique approach to conflict. Using modern categories of alternative dispute resolution borrowed from the legal sciences, one can identify the structural approaches to conflict: negotiation, mediation, arbitration, and adjudication. These categories help a reader to peer behind Paul's rhetoric to examine his method. Faced with particular conflicts in Corinth over divided factions in the community, disagreements about sexual conduct, and differences regarding food, Paul has many strong opinions. However, he never imposes those opinions on the Corinthian congregation. Paul never adjudicates, arbitrates, or even mediates between the parties. Instead, Paul undermines traditional understandings of power and authority in dispute resolution by demonstrating a new, cross-shaped, power-subverting approach to conflict. In addressing disputes, Paul articulates a new social ethic of solidarity based in love and points the community towards a new goal that transcends winning or losing, namely growing into the body of Christ as an organic whole. Through this process of formation, Paul seeks to both empower members of the congregation to negotiate disputes among themselves and to build up the community as whole.

Paul's approach to conflict contrasts sharply with contemporary and traditional alternatives. Jewish practice, as evinced in the Septuagint, the New Testament, Josephus, and the Tractate Sanhedrin of the Mishnah, focused on adjudication or arbitration by an authoritative body of elders, the Sanhedrin. The Jerusalem assembly described in Acts adopted this approach to resolving disputes. Similarly, in the Gospel of Matthew, Jesus appears to adopt this traditional authoritative approach. Roman magistrates, in their exercise of *imperium*, readily adjudicated disputes backed with the threat of force. This consistent assumption of the power to adjudicate disputes is demonstrated in their correspondence and the New Testament. In adopting a cross-shaped approach to conflict, Paul turns away from the traditions of both the Sanhedrin and Roman law as he unsettles assumptions of power and authority.

Many modern churches adopt the authoritative methods of the Sanhedrin and Roman magistrates to resolve disputes today. This focus on arbitration, judgment, winning, and losing, corrodes community and solidarity. Paul's unique approach to conflict provides a potentially transformative alternative that needs to be reappropriated today.

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## **Chapter One**

### **Introduction and Overview: Conflict and the Church**

Leaders must resolve disputes. In any human community or enterprise, a leader must somehow reconcile the differing values, perspectives, methods, cultures, and preferences of its members in order to provide peace, cohesion, and solidarity as necessary prerequisites to pursuing the community's or enterprise's goals. Without the ability to effectively and constructively address such competing interests, a purported leader will fail in her or his role. Absent the essential function of effective dispute resolution, the group will slowly drift towards faction, fraction, ineffectiveness, and in most cases, extinction.

In the Christian tradition, dispute resolution is a centrally important function of the community and its leaders. Jesus lifts up this function as even sacramental in character when he promises that whenever two or three are gathered together as the church in agreement on how to solve disputes among members of the community that he would be present among them (Matt. 18:20). Jesus' promise of presence with and among the church specifically in the work of dispute resolution both highlights its importance as a practice of Christian discipleship and emphasizes the critical importance of this function for the survival and success of the Christian community.

The function of dispute resolution within the church has necessarily changed over time corresponding to evolving relationships between the Christian movement and formal mechanisms of secular and coercive power. Much of the history of the relationship between church and state(s) can be viewed through this functional lens highlighting

trends in jurisdiction, adjudication, and authority. Contemporary churches in North America are purely voluntary associations lacking inherent secular jurisdictional authority to resolve disputes or impose decisions on unwilling parties. While their methods and goals vary, contemporary churches cannot impose decisions on any individual who voluntarily chooses to disassociate from a church community. Congregational and denominational polity only applies to voluntary participants. In contrast, only when church disputes are handed over to the deliberations of secular courts can determinations be imposed upon uncooperative groups or individuals. Lacking the explicit political and legal authority to impose decisions, churches instead are left with alternative and often more subtle means of dispute resolution.

Disputes abound within mainline Protestant denominations in the United States relating to competition over scarce resources, highly-partisan polarized debates, the breakdown of theological consensus, a consumer-driven mentality about religion, as well as perennial fights over ethical issues such as human sexuality, social justice, and the relationship between the church and the state in mainline churches. Facing declining membership and resources, old compromises break down, contributing to renewed disputes.<sup>1</sup> These disputes consume the time, treasure, and energy of leaders of Christian communities. Meanwhile, the way in which such disputes are resolved is lifted up to a skeptical public as a demonstration of what the church and its leaders actually believe when put to a practical test. In an often cynical and instantly-connected world, dispute

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<sup>1</sup> Pew Forum on Religion & Public Life, ““Nones” on the Rise: One-in-Five Adults Have No Religious Affiliation,” October 9, 2012, accessed April 2, 2015, <http://www.pewforum.org/files/2012/10/NonesOnTheRise-full.pdf>.



resolution is important both for what it functionally does for the community and for what it says about the community's values and commitments.

The cost of conflict is high. Many congregations wracked by internal disagreements and disputes with denominational bodies often withdraw from broader communion. Membership declines in the face of interminable infighting. Evangelism and outreach suffer as few people want to enter into a congregation in active conflict. Often pastors grow increasingly disgruntled, burned-out, and ineffective as they face permanent crises and conflicts trying to reconcile individuals who cannot tolerate each other. Other religious organizations such as seminaries, often facing their own conflicts over budgets, tenure, status, politics, distance learning, accreditation, and policies, rarely provide either constructive training in addressing such conflicts or even healthy modelling of how Christian communities should resolve disputes. The apparently permanent state of dissension, infighting, and controversy contributes to a permanent culture of anxiety wedded to systemic conflict.

Major historic Protestant mainline denominations including The United Methodist Church and the Presbyterian Church (U.S.A.) appear on the knife-edge of division over significant disputes related to human sexuality, authority of scripture, and power with many congregations withdrawing from communion rather than enter into any sort of dispute resolution process. As these conflicts now divide another generation in these denominations, they risk becoming the anticipated norms of culture. Often these disputes appear to have reached an impasse where the only choices available are domination or departure. Meanwhile, more sensitive observers watch how these denominations conduct themselves and despair.

In seeking ways to respond to conflict and disputes, the canonically-minded church turns to scripture. Scripture suggests that disputes must be resolved and peace maintained, but does not clearly and univocally state how that is to be achieved. Attempting to glean from scripture consistent substantive statements on how disputes are to be resolved results in a confusing and often inconsistent pile of proof texts, vague aspirations, and particular judgments. Particular statements describing formal dispute adjudications illuminate their own particular narrative contexts far more than some underlying, consistent method and ethic of dispute resolution.<sup>2</sup> Locating substantive statements related to dispute resolution forces the exegete to stitch together a patchwork of quotations and aphorisms that extol concord but never explain how it can be achieved.

There is another way. Instead of asking the expository question, what does scripture *say* about dispute resolution, a student of scripture could ask the functional question, what does scripture *do* about dispute resolution. Rather than examining as primary evidence what Moses, Elijah, Peter, or Paul say about disputes, such an approach would rather look to what they actually do to resolve disputes. This approach privileges function--how a given change occurs--over description or polemic. All leaders must resolve disputes and by looking to the function of how they do that, it may be possible to draw useful inferences, methods, and resources from diverse and often unrelated contexts.

The most prominent and scripturally prolific advocate for Christianity during its earliest formative period was Paul of Tarsus. Considerable attention has been paid to

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<sup>2</sup> For example, Moses resolved disputes and found it burdensome, but the process that he followed is not specified in the text (Exod. 18:13).

Paul's identity, role, authority, and influence as a leader in the earliest church. Paul said much about many things that are recorded in scripture and his words have been dissected for centuries. But he also led actual communities. Paul's letters were intended as much to do something as to make factual assertions about his understanding of God and humankind. Both proximately and at a distance, Paul guided, nurtured, and equipped nascent Christian communities to face a variety of challenges. How Paul actually did that, as opposed to what he had to say about it, forms the basis for any functional understanding of Paul's leadership in the church and a demonstration of how Paul sees that conflict can be overcome in human community comprises the heart of this study. That being said, there are milestones to pass on the journey of unpacking Paul's thought that will be explored in the pages that follow. Of course, in preparing for such a trip, it is important to understand and processes that are associated with the practice of dispute resolution. This task is undertaken in the next chapter.

Then, the focus will fall on Paul's writing itself. While all of Paul's letters address disputes express or implied within the various churches he served, his first letter to the Corinthians contains the most distinct and numerous examples of Paul's efforts to resolve disputes within the church. It is from the Corinthian church and Paul's attempts to address and reconcile various factions and conduct within the community that a distinctly Christian method for dispute resolution can be discerned.

Once the basic definitions and categories are established, it is important to distinguish the message from the noise. Every community needs some method for dispute resolution. In order to identify a process for dispute resolution as distinctly belonging to the early Christian community rather than merely borrowed from the

surrounding society it is necessary to differentiate unique Pauline dispute resolution methods from those of surrounding and antecedent communities. Consequently, an exploration of both Jewish and Roman methods of dispute resolution will be undertaken in chapters three and four. As a Roman Colony, Roman civil law applied in First Century Corinth with all its detailed institutions and procedures. First century Judea, under a variety of legal and political orders at various times and places, experienced a more complicated history with varying degrees of Roman and Jewish civil authority. Paul, however, followed neither Roman nor Jewish systems of dispute resolution, while he would have been familiar with and was the occasional object of both. Instead, Paul develops and practices a distinct method for dispute resolution that arises from both the hopes and the social context of the earliest Christian churches.

After surveying the processes of dispute resolution that were available to the Apostle, in the final chapters, attention falls on drawing out how Paul's method for dispute resolution, separate from any foundations in secular power and authority, provides an important and potentially helpful resource for contemporary churches seeking their way in the Post-Christendom age. By returning to the functional "roots" of the tradition, contemporary churches may rediscover traditions long ignored during the church's era of social privilege. By reclaiming Paul's methods, the contemporary church may find a way out of its frustrating impasse beyond not only disputes, but towards a richer and more holistic expression of Christian life in community.

## Chapter Two

### Four Models of Dispute Resolution

To understand how Paul seeks to resolve disputes within the Corinthian community, it is necessary to consider the forms of dispute resolution available to anyone faced with conflict. While cultural and institutional contexts change over the centuries, there are a finite range of possible relationships between parties in a dispute. These forms, with many slight variations and hybrid combinations, can be found in both ancient and modern societies. One standard taxonomy of these forms of dispute resolution would include adjudication, arbitration, mediation, and negotiation.<sup>1</sup> These four procedures arise from the alternative relationships among the disputants and between the disputants and any outside party they may seek to involve. Specifically, these forms are differentiated based on the presence or absence of cooperation between the parties and the voluntary or involuntary nature of the decision maker's authority. Because these forms are distinguishable based on the necessary relationships between and among the parties, they provide a useful taxonomic tool for identifying unstated or implied relationships between parties to a dispute. Using these four categories of dispute resolution, each of which are examined in turn below, one can more clearly see what Paul actually does in his own work when Christians find themselves at odds with one another.

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<sup>1</sup> Standard textbooks for practitioners in the field of alternative dispute resolution begin with this taxonomy of structural models of dispute resolution. Stephen B. Goldberg et al., *Dispute Resolution: Negotiation, Mediation, and Other Processes* 5<sup>th</sup> ed. (New York: Wolters Kluwer, 2007), 3; Stephen J. Ware, *Principles of Alternative Dispute Resolution* 2<sup>nd</sup> ed. (St. Paul: Thompson West Group, 2007), 6-7; and, Michael Moffitt and Robert Bordone, eds., *The Handbook of Dispute Resolution* (San Francisco: Jossey Bass, 2005), 277-78.

## A. Negotiation

By far the most common method of resolving disputes is direct negotiation between parties.<sup>2</sup> Negotiation requires no necessary involvement from any outside agents. Instead, negotiation is, “communication for the purpose of persuasion.”<sup>3</sup> As communication, negotiation is voluntary for disputants, although agreements may or may not be enforceable. Lacking any third party participation, disputants are free to present arguments, evidence, and interests as they may deem useful. All conclusions to negotiation are similarly voluntary: impasse, exit, or some form of compromise either in whole or in part. Because negotiation does not necessarily require the involvement of outside parties, it can and does occur without the participation and often without the awareness of leaders within the community. Indeed, the vast majority of interpersonal disputes are resolved quietly and naturally between individuals without any organizational or leadership involvement at all.

Two party negotiations can be further distinguished on the basis of the desired outcome. Outcomes can either be distributive or integrative, or some combination of both. Distributive negotiations relate to a single issue--often the distribution of money--where the parties have directly opposite interests.<sup>4</sup> Distributive negotiations are focused entirely on the specific outcomes for both parties along a commonly shared measure of

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<sup>2</sup> Approximately 70% of all civil cases in the United States are resolved through some form of negotiation. Herbert Kritzer, “Adjudication to Settlement, Shading in the Gray,” *Judicature* 70 (1991), 161.

<sup>3</sup> Goldberg et al., 17.

<sup>4</sup> Howard Raiffa, *The Art and Science of Negotiations* (Cambridge.: Harvard, 2002), 33.

value, usually money. Buying and selling in arms' length financial transactions are the classic expressions of distributive negotiations.

Alternatively, integrative negotiations often involve ongoing relationships and complex sets of interrelated interests. Such negotiations focus on the parties' interests that underlie their negotiating positions and seek to invent options for mutual gain.<sup>5</sup> Integrative negotiations look towards eventual cooperation in mutual problem solving. Integrative negotiations, however, require the disputants to agree to a common set of procedures and an open sharing of information.<sup>6</sup>

Both distributive and integrative negotiations may or may not involve reference to external standards or norms. Nevertheless, the presence of some mutually agreed upon external standards often facilitates negotiations by de-personalizing concessions and increasing the perceived legitimacy and therefore the acceptability of any outcome.<sup>7</sup> External standards also inform the rules of procedural fairness that apply to negotiation, like standards of truthfulness.<sup>8</sup> The content of any such external standards can therefore profoundly shape both the process and the outcome of the negotiation. In addition, such standards can be either explicit in the case of particular rule or code imposed on the disputants or implied as general cultural standards.

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<sup>5</sup> Roger Fisher and William Ury, *Getting to Yes, Negotiating Agreement Without Giving In* (Boston: Houghton Mifflin, 1981), 45.

<sup>6</sup> James White, "The Pros and Cons of 'Getting to Yes,'" *Journal of Legal Education* 34 (1984), 116.

<sup>7</sup> Fisher and Ury, 91.

<sup>8</sup> G. Richard Shell, "When Is It Necessary to Lie in Negotiations," *Sloan Management Review* (Spring 1991): 93, 94.

There is also a shadow side to negotiation. Absent outside involvement, norms, standards, or interested institutions, negotiation is vulnerable to any form of persuasion including intimidation, threats of violence, extortion, and coercion. Negotiation, in the formal sense of dispute resolution, by itself only defines the relationship between the parties to a dispute and discloses nothing regarding how agreement may be reached. Constraints on the parties conduct in negotiations must therefore either be imposed from without or the parties own standards must be informed by a shared set of values or else they may resort to self-help. What these standards may be vary tremendously with the parties' contexts.

## **B. Mediation**

The second general form of dispute resolution is mediation, which is simply negotiation carried out with the assistance of a third party who has no direct power to impose an outcome on the disputants.<sup>9</sup> Stephen Goldberg observed that mediation transforms negotiation in numerous ways by introducing a third party into negotiations who may provide new information, encourage the parties towards resolution, reframe issues, help interpret and evaluate positions, promote collaboration, propose alternatives, nurture flexibility, create space for apologies, and stimulate creativity.<sup>10</sup> Fundamentally, mediation shifts the social context of negotiations as two parties now must persuade a disinterested third. The introduction of a third party creates the potential for empowering one or both disputants through the external recognition of the inherent value and worth of each party's position. In doing so, a mediator has the capacity to engender moral

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<sup>9</sup> Goldberg et al., 107.

<sup>10</sup> Ibid.



transformative growth by helping the disputants bridge the human differences that lie at the center of their conflict.<sup>11</sup> Despite this potential, mediation, like negotiations, is still an entirely voluntary process. The mediator has no intrinsic power or authority, beyond persuasion, to impose a settlement on the parties or enforce any partial or complete agreements.

The actual process that mediators employ varies enormously. Some may focus on legal rights and responsibilities. Others may seek to identify the parties' underlying vital interest. Still others may seek to focus on the cost, both monetary and in-kind, to the disputants of ongoing conflict over the issue. Mediators must also be tremendously sensitive to the cultural presumptions, values, and blind spots that each disputant brings to the conflict. Conversely, there is always a danger that the mediator's own values and culture will shape the dispute resolution process. Accordingly, an effective mediator needs to know about more than the conflict itself. In essence, an effective mediator needs to intimately know the disputants themselves, as well as herself or himself.

When it comes to the particulars of how this method is employed, mediation is often a second attempt at conflict resolution, arising after the parties have failed to negotiate settlement directly between themselves. Therefore, many mediators begin the process with parties locked into mutually irreconcilable bargaining positions in which they may be heavily emotionally invested.<sup>12</sup> The mediator must consequently first provide an opportunity for each party to tell her or his story and vent emotions before

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<sup>11</sup> Robert A. Baruch and Joseph P. Folger, *The Promise of Mediation* 2<sup>nd</sup> ed. (San Francisco: Jossey Bass, 2005), 22.

<sup>12</sup> Nancy Rogers and Richard Salem, *A Student's Guide to Mediation and the Law* (New York: Matthew Bender, 1987), 7.

constructive engagement can occur.<sup>13</sup> Such work requires trust and empathy with and for both parties. Such trust is the mediator's only foundation for influence. This process of building trust and sharing may be a significant reason why so many participants feel both greater satisfaction with settlement agreements and a commitment to them arising from mediation rather than from traditional adjudication.<sup>14</sup>

### **C. Arbitration**

Arbitration, the third method, is process for dispute resolution that employs all the traditional methods of formal adjudication—evidence, proofs, arguments, and formal written judgments—but directed to a third party decision maker who only possesses such authority to resolve the dispute that may be granted by the disputants themselves.<sup>15</sup> Frequently arbitration procedures incorporate a relaxed version of those found in the more formal settings of adjudication within the law courts incorporating expedited discovery, more inclusive rules of evidence, broader latitude in proofs, and often very little explicit reasoning supporting decisions. Essentially, arbitration is a voluntary form of adjudication in which the disputants jointly decide on the judge, the standards that the judge will employ, and the procedure that will be applied. Like adjudication, the arbitrator imposes a final judgment on the parties. Unlike adjudication, the authority of that judgment derives from the parties' voluntary submission to that judgment rather than from any objective or inherent authority of the arbitrator. Arbitration is, in essence, voluntary adjudication.

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<sup>13</sup> Goldberg et al., 143.

<sup>14</sup> Tom Tyler, "The Quality of Dispute Resolution Processes and the Outcome: Measurement, Problems, and Possibilities," Univ. of Denver Law Review 66 (1989): 436.

<sup>15</sup> Goldberg et al., 213.

There are many potential benefits from arbitration. For instance, the arbitrator can be selected for her or his special technical knowledge about the dispute or for her or his cultural sensitivity about the dispute. Another benefit is that arbitration allows the parties to keep disputes confidential. Usually, arbitration promises speedier resolutions, lower costs, and fewer intrusions through its use of informal procedures agreed to by the parties than they would find in formal adjudication as well. Finally, arbitration provides the finality of an authoritative decision, not due to the inherent authority of the arbitrator, but rather because of the mutual commitments of the parties to accept the arbitrator's decision as final. Because of these benefits, arbitration is frequently preferred by religious communities that wish to apply their own standards and norms and also avoid potentially embarrassing public scrutiny.

#### **D. Adjudication**

Adjudication, the last method to discuss, is the resolution of a dispute between parties by a third party who possesses the formal authority to resolve the dispute arising not from the consent or request of the parties, but rather from the community itself through political means. Through this process, the adjudicator does not merely consider and apply law; the adjudicator's decisions have the full force of law. Specifically, the adjudicator usually possesses all forms of authority, including any coercive force and putative measures, available to the political establishment of the community. As a consequence, the adjudicator's decisions functionally articulate politically legitimate rationality that is accepted by the community in the resolution of disputes not because of the inherent wisdom of such speech, but because of the adjudicator uttering it. In other

words, the adjudicator's decision itself is law backed by at least the implied threat of force.

To be sure, this is a benefit to the parties of adjudication due to its public finality for the parties and the broader community. Indeed, what is more certain than a decision that is enforceable as a matter of law backed by the persuasive power of coercive force? Moreover, consistent patterns of such adjudications over time create predictability in human social interactions permitting complex forms of organization and cooperation. The risk in adjudication, though, is that in placing the dispute in the hands of public decision makers, the disputants largely surrender control over the process and outcome of the dispute. The adjudicator alone determines the procedures, rules of evidence, substantive basis for the decision, and publicity of the dispute. While such procedures are usually tightly regulated, they are neither designed nor implemented for the parties' benefit. Accordingly, adjudication involves much greater risk for the parties because they cannot directly shape the outcome.

The conventional four-fold taxonomy of dispute resolution—negotiation, mediation, arbitration, and adjudication—provides a useful heuristic lens through which one can identify the dispute resolution method(s) employed by various communities. Moreover, these standard classifications permit direct comparisons and contrasts to be made at the functional level between radically diverse communities and institutions. Because they focus on the relationships between the parties and potentially interested groups and institutions in the community, the four models permit an observer to identify the power relationships at work between the parties to a dispute.

Applying this taxonomy to Paul's dispute resolution work in Corinth will reveal that Paul never adjudicates, arbitrates, or even mediates. Instead, he seeks to inform, shape, nurture, and facilitate the parties and the entire community to negotiate disputes among and between themselves. This method, and Paul's reticence to directly resolving disputes will be shown to contrast sharply with antecedent and contemporary models of dispute resolution as administered by both Roman and Jewish authorities.

## Chapter Three

### Paul and Conflict in Corinth

Paul sought to shape, nurture, and strengthen early Christian communities. One of the ways he did this was through addressing conflict. Unlike other Jewish and Roman contemporaries, however Paul did not seek to adjudicate or arbitrate disputes within these communities. He did not even serve as a mediator between disputants. Instead Paul exercised his leadership through the slow work of formation, educating, modelling, and coaching communities to either avoid conflict altogether or to negotiate differences between individuals all while sharing his vision for a new social reality grounded in love. The Pauline epistles address many theological, pastoral, and social issues confronted by the early church. Among those letters, Paul's first letter to the Corinthians contains the most extended discussion of disputes within the early church and Paul's interventions in those disputes.

For their part, the Pauline Epistles include content that addresses many theological, pastoral, and social issues confronted by the early church. Among those letters, Paul's first letter to the Corinthians contains the most extended discussion of disputes within the early church and Paul's interventions in those disputes.<sup>1</sup> Actually, in First Corinthians, Paul not only seeks to resolve disputes within the Corinthian church,

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<sup>1</sup> Recognizing the scholarly debates on both the sequencing and the divisions of the Corinthian correspondence, for purposes of this analysis, reference will be made to the canonically received texts. This is appropriate given the influence that the received text has had on subsequent ecclesial reflections on church order and dispute resolution. Moreover, while the authorship of many "Pauline" epistles remains contested, there is broad consensus on the original authorship of First Corinthians, Galatians, Philemon, and Romans. Marion Soards, "Paul, Authorship," *The New Interpreter's Dictionary of the Bible IX* (Nashville: Abingdon, 2009), 403.

but also demonstrates his theological approach to quarrels within the church.<sup>2</sup> In addressing these disputes, Paul displayed a distinctive form of leadership using conflict not so much problems to be resolved, but rather as a teaching moment to form new communities according to new values, goals, and cultural norms.

The relevance of the letter for a discussion relating to conflict resolution is clear. In fact, the stated purpose for Paul's first letter to the church in Corinth is specifically to address a dispute within the congregation.<sup>3</sup> Apparently, quarrels have arisen among various individuals or factions (1 Cor. 1:11). Paul's goal is to achieve unity of mind and purpose within the congregation (1 Cor. 1:10). But, Paul does not attempt to solve the conflict through adjudication or arbitration. Nor does Paul seek to mediate between the parties. Paul instead addresses the divisions through education, encouraging reconciliation, and offering a new social vision all through the mode of his letter rather than his actual presence. Of equal interest is what Paul does not do and how those choices and his descriptions of those choices reflect on leadership and authority in the early church as well as on Paul's own claims of power and authority. Circumstantial evidence of the success of his efforts can be inferred from the fact that the Corinthian

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<sup>2</sup> First Corinthians "has the great value of showing theology at work, theology being used as it was intended to be used, in the criticism and establishing of person, institutions, practices, and ideas." C.K. Barrett, *The First Epistle to the Corinthians*. Black's New Testament Commentary (Peabody, Mass.: Hendrickson, 1968), 26.

<sup>3</sup> Ben Witherington III, *Conflict & Community in Corinth: A Socio-Rhetorical Commentary on 1 and 2 Corinthians* (Grand Rapids: Eerdmans, 1995), 46, 95; Richard B. Hays, *First Corinthians*. Interpretation (Louisville: Westminster John Knox, 1997), 4-5.

community, however it may have changed, did not cease to exist as a result of these conflicts.<sup>4</sup>

In considering these First Corinthians as evidence of Paul's goals, methods, and practices, it is important to distinguish between the functional purpose of what Paul is attempting to achieve with his writing to a particular community and any ultimate theological propositions that one may derive from the letter that transcend its original provenance. Both ways of reading inform and support each other as an integrated whole, but for the purpose of clearly illuminating and better understanding Paul's methods and goals it is better to begin by asking what Paul did and how he did it rather than why Paul did what he did and how it reflects his understandings of humankind and God.

#### **A. The Corinthian Context of Faction and Division**

Many different classes and status groups were represented in First Century Corinth. Paul notes this diversity when he observes that, "not many of you were powerful, not many were of noble birth" (I Cor. 1:26 NRSV). "Not many," however, does imply that some were powerful or of noble birth. Possessing the natural advantages of wealth and the social connections of local notables, these elites were also deemed to be "wise" in the eyes of the broader community (I Cor. 26). Wisdom, power, and nobility are all characterized boundary markers between groups within the Corinthian community.<sup>5</sup> Paul further highlights these divisions within the community as he

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<sup>4</sup> First Clement addresses the issue of ongoing division within the Corinthian Church around the end of the first century. First Clement 15.1. *The Apostolic Fathers: Greek Texts and English Translations*, Michael Homes ed. (Grand Rapids: Baker Books, 1999), 45.

<sup>5</sup> Alan C. Mitchell, "Litigiousness and Status in 1 Corinthians 6:1-11," *New Testament Studies* 39 (1992) 569.



distinguishes the attributes of groups within the church: foolish versus wise, strong versus weak, and lowborn versus those who are not (1 Cor. 1:27-28). Paul's focus on these contrasts between groups illuminates fault lines within the community over various presenting issues related to status, spiritual gifts, food, and sex (1 Cor. 1: 26-28). Strong themes of class and status underlie all these issues. These fault lines threatened to tear the nascent church apart.

While Paul could have issued a binding opinion as an adjudicator or an arbitrator over these issues, he chooses not to do so. Instead he seeks to equip the community to negotiate and resolve these disputes among themselves. In order to address these dangerous divisions Paul poses a three-part solution. First, Paul presents a new substantive understanding of the community as a new body conceived in light of Jesus' resurrection and bound together by an ethic of love expressed most poetically in 1 Cor. 13. Second, Paul relativizes his own authority and position, and that of church leaders more generally, into that new understanding. Third, Paul demonstrates new processes for addressing division and conflict within the community emerging from his substantive theological reimagining of the community and church leadership.

Paul begins his attempts to resolve conflict in Corinth through an educational effort to reorient the participants away from the particular presenting issues and refocus them on their shared identity in unity in Christ Jesus (1 Cor. 1:12-15).<sup>6</sup> He establishes these themes in his introductory thanksgiving in the letter (1 Cor. 1:5) where he lifts up for particular thanks the grace of God given in Christ Jesus to the members of the community enriching them in speech and knowledge, precisely those gifts that support

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<sup>6</sup> Hays, 22-23.

and cement mutuality in understanding and solidarity in community. Speech and knowledge, introduced here at the beginning of the letter, become the objects of Paul's instruction throughout the letter and serve as the instruments through which community and reconciliation may be strengthened.<sup>7</sup> Specifically, Joseph Fitzmyer observes that the opening blessing is more appropriate to a letter of reconciliation than judgment.<sup>8</sup> While many contemporary letters lift up the health of the addressee, here Paul deviates from common epistolary convention and commends the condition of the community as a whole. Paul extols the community as part of his overall work towards achieving reconciliation and solidarity within the congregation by identifying what is held in common by members of the Corinthian congregation, both in their actual experiences of community within the congregation to that point and, looking ahead, for what they might experience in the future.<sup>9</sup>

In the opening chapter of First Corinthians, Paul also distinguishes the character of relationships within the Corinthian community he seeks to form from ones that they would be forced to rely on in prevailing models for solving social conflict. To this end, Paul tries to undermine Hellenistic methods of dispute resolution that were founded upon rhetorical presumptions of "wisdom." (1 Cor. 1:27).<sup>10</sup> In this way, Paul clears out imaginative and rhetorical space to share his alternative vision for human behavior and community grounded not in pre-existing social constructions but in an eschatological

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<sup>7</sup> Joseph Fitzmyer, *First Corinthians*. Anchor Bible (New Haven: Yale, 2008), 130.

<sup>8</sup> Ibid.

<sup>9</sup> The aorist ἐπλουτίσθητε in verse 5 emphasizes this dual quality of an action already commenced, having ongoing action in and on the community in the present into which Paul's letter will now participate.

<sup>10</sup> Witherington, 75.

hope and implicit warning, “so that you may be blameless on the day of our Lord Jesus Christ.” (1 Cor. 1:8). This eschatological foundation and implicit warning remain dormant for the much of the letter but later find full expression in the lengthiest discourse on the resurrection in the New Testament in chapter 15.

Paul also underscores the importance of his formative work and the fact that he would not serve as an external agent of dispute resolution. He begins with an appeal to unity based not on his apostolic authority, nor on his authority as one of the congregation’s founders, nor on his authority as a teacher, but solely in the name of Jesus: “I appeal to you brothers [and sisters] by the name of our Lord Jesus Christ, that all of you be in agreement and that there be no divisions among you, but that you be united in the same mind and same purpose.” (1 Cor. 1:10). Here, Paul stresses that the organic quality of this unity must be one of both self-conscious thought and purposeful outward judgment and action.<sup>11</sup> Paul recommends this conceptual and functional unity to the Corinthian congregation as a form of healing action through the name of Jesus as if Jesus himself were present. (1 Cor. 1:10).<sup>12</sup>

After establishing the eschatological goal of unity and its present practice as central to the life of the community that Paul seeks to form, he moves to unpack and demonstrate his method for equipping the Corinthian community to negotiate disputes among themselves through the examples of various issues plaguing the community.

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<sup>11</sup> In 1 Cor. 1:10, Paul exhorts unity within the community of both the intellectual/rational mind (νοῦς) and unity of the judging, deciding, purpose-forming mind (γνώμη).

<sup>12</sup> In I Cor. 1:10 the use of δὲ with the genitive followed by direct address suggests a speech-act form of request that compares to other invocations of Jesus’ name which served as healing acts for individual and communal restoration. (for example, Acts 3:6, 16; 4:7, 10). Paul’s exhortation to unity can therefore also be read as a supplication for communal healing. Anthony Thistelton, *The First Epistle to the Corinthians*, The New International Greek Testament Commentary (Grand Rapids: Eerdmans, 2000), 115.

Sequentially, Paul addresses the various topics of dispute that include factionalization, sexual immorality, and difficulties involving food. In each case Paul seeks to recast the community as new body shaped by the ethic of love, relativize the role of decision makers (including himself) so as to empower members of the community to negotiate disputes among themselves, and demonstrates specific methods for overcoming disputes. The order and the emphasis that he places on these tasks varies from dispute to dispute.

## **B. Specific Conflicts:**

### **1. Factionalism**

Paul begins his consideration of specific disputes by diagnosing the underlying cause of conflict in each case as division of the community into mutually hostile factions each identifying with a different purported leader (1 Cor. 1:12). Paul criticizes the unstated assumptions of identity and authority arising from each group or faction (e.g. belonging to himself or Apollos or Cephas/Peter).<sup>13</sup> Instead of providing a foundation for identity, Paul relativizes those partisan identifications and their founders' roles as mere functional differences among various leaders within the early church rather than ones of rank, prestige, or authority (1 Cor. 3:7-9). He extends that same approach to himself as he demotes his own functional role as a directive leader and instead emphasizes his own task as proclamation and formation (1 Cor. 1:17).<sup>14</sup> In doing so, Paul highlights his teaching role within the community while recognizing that others fulfill other roles.

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<sup>13</sup> Hans Conzelmann, *1 Corinthians*. Hermeneia (Philadelphia: Fortress Press, 1975), 73.

<sup>14</sup> This clarification of role is highlighted by Paul's apparent use of self-deprecating humor in his attempts to recall all those he baptized while reminding the reader that while it may not have been his primary role, he did in fact participate in the baptism of the Corinthian church's earliest leaders. 1 Cor. 1:17.

While various factions squabbled for status, authority, and position (1 Cor. 1:11) Paul extends his analysis and reframes the role of all human decision making in such a way as to make adjudication and arbitration impossible within his hoped-for community. He downplays all differences within the community of rank, authority, power, and prestige in light of the cross (1 Cor. 1:17-18) thereby making any assumption of superior external authority by any adjudicator or arbitrator impossible. In light of the cross, Paul suggests that one cannot rule on a dispute as from above when he asks the rhetorical question--Who then is wise, where is the scribe, and where is the debater? (1 Cor.: 1:20).<sup>15</sup> Here Paul proposes a profound a profound shift in the Corinthians' understandings of power and authority in community.<sup>16</sup> In essence, Paul distinguishes his proposed foundations for authority within this community based upon love, solidarity, and reconciliation from status on the basis of wealth, power, or parentage (1 Cor. 1: 26) and he acknowledges that his proposed alternative foundation may appear as foolishness to those evaluating authority within the context of preexisting social systems. In his idealized community, boasting of a faction's superiority would only demonstrate that faction's failure to participate and belong (1 Cor. 1:31). Consequently, winning or losing in a dispute, as through a decision by an adjudicator or arbitrator, would merely demonstrate that an individual or faction had failed to integrate into the life of the community.

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<sup>15</sup> Paul's verbless question inquires of the true identity and whereabouts of a triad of alternative authorities for the community: the wise (σοφός), the scribe (γραμματεύς), and the debater (συζητητής). Paul presents these three approaches or functions as offices embodying alternatively Greek and Jewish systems of authority and authoritative knowledge whose powerlessness and meaninglessness has been demonstrated in the cross. See Fitzmeyer, 156-57; Thistelton, 163.

<sup>16</sup> Fitzmyer, *First Corinthians*, 162.

Paul not only rebukes those contributing to division and competition within the Corinthian congregation, Paul uses their negative example as an opportunity to undermine various factions' assumptions of power and authority and instead reorient them toward the goal of unity characteristic of his educational work throughout his Corinthian correspondence.<sup>17</sup> Here Paul further pushes the community away from adjudication or arbitration, which would declare one party in the right and one in the wrong, to the constructive inter-personal work of negotiation, which would strengthen the social cohesion of the community as a whole. Put another way, Paul aims to redirect the social imagination of faction members away from achievement and status and redirect their recognized gifts towards building up the community.

Paul applies this same skeptical humility towards himself and other potential leaders, diminishing the role any one leader might play, in order to place the emphasis back on the Corinthian community and their own agency in dispute resolution. To this end, he explicitly refuses to adjudicate or arbitrate disputes, as is clear when he declares, "I do not even judge myself" (1 Cor. 4:3). Indeed, Paul compares himself to a fool (1 Cor. 4: 10) and rubbish (4:13) and suggests that all attributions of human authority to individual leaders are suspect: "let no one boast about human leaders . . ." (1 Cor. 3: 21). Instead, he functionally relativizes his own role and that of Apollos within the community (1 Cor. 4: 3-4, 6) and highlights his formational work sharing this gift with the Corinthian community to change their own behavior (1 Cor. 4:14).<sup>18</sup> Without a doubt, Paul understands that both he and Apollos are mere servants, albeit with slightly different

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<sup>17</sup> Witherington, 96-97.

<sup>18</sup> Hays, 73-74.

functions, of the Lord. It is the Lord who alone is responsible for the ongoing work of transformation within the community (1 Cor. 3: 6-7). Although roles within the community may be functionally differentiated (*e.g.* planting and watering) the purpose and the reward are the same, namely the qualitative and quantitative growth of the Corinthian community (1 Cor. 3:8).

## **2. Sexual Conduct**

The fifth chapter of First Corinthians focuses on a second source of conflict: a purported dispute over sexual misconduct by a member of the community. Paul does not rule on the matter as an adjudicator or arbitrator. He does not seek to mediate between the parties. Instead he uses this issue and the tension it generates to show the Corinthian community both how they need to understand various roles in addressing disputes within the community as well as the theological goal of all their work together in nurturing a greater solidarity through and in Christ. Accordingly, this chapter of the epistle is not about a person to be judged, but rather a teaching moment to be exploited to demonstrate a more excellent way.

At the beginning of his consideration of a dispute over human sexuality, Paul initially appears to assume the role of an arbitrator issuing a decisive ruling for the community: “I have already pronounced judgment in the name of the Lord Jesus on the man who has done such a thing” (1 Cor. 5:3-4). Paul refers here not to some abstract principle but rather judgment on a particular man who is presently engaged in *porneia*, or sexual immorality—in this case, incest, which is ongoing and apparently notorious at the time of the composition of the letter.

On its face, this would appear to indicate that Paul, acting as an arbitrator over disputes within the community, has indeed rendered an authoritative judgment against this man. But Paul's heated rhetoric may disguise what has actually happened. First, the continuous and ongoing nature of the misconduct is demonstrated by the grammar Paul uses to describe the behavior. The alleged miscreant "is having" the inappropriate relationship as rendered by the present tense infinitive *ἔχειν*. The present tense at this juncture indicates an ongoing pattern of conduct instead of a past event that would presumably be rendered in the aorist.<sup>19</sup> Second, Anthony Thistleton astutely observed that the term Paul uses to describe his act of judgment (*κέκρικα*) is rendered as a perfect indicative active verb (i.e. I pronounce judgment) implying that Paul has already (*ἔδε*) passed judgment on conduct that is still ongoing at the time of the composition of the letter (1 Cor. 5:3).<sup>20</sup> Paul's use of these verbal tenses depicts an ongoing pattern of misconduct that began at some point in the past, previously was condemned by Paul, and still continues to the time of the composition of the letter. Any purported judgment by Paul was therefore necessarily ineffective: the couple is still together. So, instead of demonstrating Paul's authority as an arbitrator over the social and sexual mores of the Corinthian community, this passage demonstrates the opposite: Paul has no such authority or power to impose his opinions on the community. Lacking the authority of an arbitrator, Paul must salvage this dispute as best he can by providing a teaching moment for the entire community, rather than attempting to impose his unambiguous condemnation of the behavior.

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<sup>19</sup> The present tense of the infinitive *ἔχειν* denotes a continuous ongoing relationship at issue rather than a one-time event in the past. Thistleton, 386. Specifically, Thistleton speculates whether this ongoing relationship is some form of a married union or ongoing co-habitation that deviated from social norms. Thistleton, 392.

<sup>20</sup> Ibid.



In his teaching that follows, Paul switches to personal, emphatic expression seeking to inform the community and shape it so that the members of the community itself may themselves constructively negotiate the dispute. First, Paul clarifies that he is not adjudicating or arbitrating this dispute, only offering his personal opinions (1 Cor. 5:3).<sup>21</sup> What at first hearing sounds like an authoritative judgment against an individual by Paul, appears instead to serve as a teacher's provocation leading the community into a deeper reflection on their own commitments and practices. Paul's alleged judgment therefore appears to be not so much against the individual but rather against the practices of the community: "You are arrogant! Should you not rather have mourned, so that he who has done this would have been removed among you?" (1 Cor. 5:2). The alleged miscreant fades from Paul's view as he takes aim at the community as a whole and its purported failure to address this issue. Instead of using this matter as an opportunity to adjudicate or arbitrate, Paul uses it as an example to teach and form the community new values.

As was the case with how he approached the problem of factionalism, here, by focusing on the community as an organic whole, Paul pursues the opposite strategy to that of his more partisan opponents who seek alternatively to lift up the gifts of the individual or the interests of a single party. The problem that Paul identifies is not that one side is right or wrong, but rather that the community itself has failed in its internal self-regulatory functions. For Paul to decisively rule on this or any matter as an adjudicator or arbitrator would only serve to further fracture the community's unity and

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<sup>21</sup> Here the introductory phrase ἐγὼ μὲν γάρ rhetorically distinguishes Paul as speaker from the opinion, or lack of opinion, of the Corinthian community. Thistleton, 390; Fitzmyer, *First Corinthians*, 236.

undermine its ability to constructively address internal disputes. Moreover, Paul's repeated emphasis on his spiritual presence alongside the Corinthian community and the personal nature of his judgment further downplays Paul's actual decision making power and authority. Instead, Paul points to his spiritual solidarity with the community, spiritually present with the Corinthians in this conflict (1 Cor. 5: 3).<sup>22</sup>

Where Paul allegedly adjudicates or arbitrates this dispute over sexual conduct he does so "in the name of the Lord Jesus Christ" (1 Cor. 5:4). Here Paul simultaneously reaffirms the collective authority of the assembly to wield decision-making authority in its judgments and also that Paul stands in solidarity with them.<sup>23</sup> This attribution, "in the name of the Lord Jesus Christ," which alludes to a baptismal or a liturgical formula, appears to modify the next line, literally, "when you and my spirit are gathered together with the power of our Lord Jesus" (1 Cor. 5:4).<sup>24</sup> The claim for shared participation in Christ contextualizes the passage that follows. Paul understands that both the members of the Corinthian community and he himself are participating together in some greater communion that has both spiritual and behavioral manifestations. Paul's strong criticisms that follow are therefore not of an Emperor standing in final judgment or a magistrate standing at a distance apart from the community and condemning an individual wrongdoer. Nor does Paul criticize the Corinthian community as its distant

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<sup>22</sup> Thistleton, 396.

<sup>23</sup> Conzelman, 97-98; cf. Barrett, 124, suggesting that Paul's claim was merely illustrative.

<sup>24</sup> 1 Cor. 6: 11 uses the same formula to identify baptism and in the transformation of baptism identify a deeper functional unity of the communion of the Holy Spirit. Alternative translations attempt to attach this attribution to, among other things, the sexual misconduct at issue or the corporate confidence of the Corinthians. These appearing unlikely, it is simpler to apply the prepositional phrase to the immediately following genitive absolute reading something closer to, "In the name of our Lord Jesus Christ, yours and my spirit having been gathered together with the power of the Lord Jesus . . ." See Fitzmyer, 237; Thistleton 396-97; Hays, 84.

judge. On the contrary, Paul's criticisms are those of an active participant in the shared life of the community and clearly naming its failures to maintain mutual accountability as one who abides in that mutuality, albeit spiritually if not physically. In this context, what sounds on its face like judgment, in reality appears to be construction of and exhortation towards a new social reality characterized by solidarity and communion.

In constructing this new social reality, Paul returns to his themes of promoting a new communal identity introduced in the first chapter of the epistle.<sup>25</sup> What he recommends be purged from the community are not the alleged miscreants but old attitudes and practices of community (1 Cor. 5:7). Negative attitudes, and the way they may impede the social cohesion Paul seeks, are the object of particular censure. He highlights boasting with particular criticism since Paul has already explained that the only thing in which the Corinthians may boast is the Lord (1 Cor. 5:6 cf. 1 Cor. 1:31). Paul then recapitulates his vision of collective holiness within the community that he apparently articulated in an earlier and now lost epistle (1 Cor. 5: 9).

Continuing in that same verse, Paul emphasizes that his role is explicitly not one of judging or arbitrating, but rather seeking to form and shape the community so that it can encourage negotiation and reconciliation. While he refers to some now-lost previous letter and his moral admonitions within it (1 Cor. 5:9), Paul does not suggest that these earlier letters contained any actual judgments over disputes between individuals. He merely stated his opinion and shared it with the community. Paul recognizes that formal

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<sup>25</sup> While scholars no longer identify the man engaged in sexual misconduct with his step mother in 1 Cor. 5 with the man who aggrieved Paul mentioned in 2 Cor. 2: 5-11, Paul's reflections in 2 Cor. 2: 5-11 continue to emphasize reconciliation rather than punishment. J. Paul Sampley, "The Second Letter to the Corinthians," *New Interpreter's Bible XI* (Nashville: Abingdon, 2000), 53.

adjudication and arbitration would undermine his formational task: “For what have I to do with judging those outside? Is it not those who are inside that you are to judge?” (1 Cor. 5:12). Where a reader would expect a parallel response to Paul’s rhetorical question (*i.e.* is it not I who am to judge those inside?), Paul shifts the subject from himself to the Corinthian community itself. He deflects any possible role for himself to arbitrate or adjudicate disputes. Rather, Paul encourages members of the community to engage in critical discernment as the foundation for internally negotiating their own disputes.<sup>26</sup>

So, after exhorting readers to avoid the civil courts (1 Cor. 6:1), Paul lays out a new goal for the community and context for dispute resolution focused on solidarity and communion completely distinct from personal self-interest (1 Cor. 6:3).<sup>27</sup> Here Paul’s constructive goal, not merely to resolve disputes, but to create a new community, emerges. To “speak the same,” or “to have the same mind,” are not merely the absence of conflict or the resolution of a dispute by an adjudicator or arbitrator, but affirmative behaviors that create and nurture social bonds in a unity of love (1 Cor. 1:10). Membership in the community is defined not merely by faith or by the absence of conflict, but rather by the active participation in the building up of other members and the community as a whole, including the difficult interpersonal work of negotiation and reconciliation. The focus on relationships between and among the members of the community refocuses Paul’s work on nurturing the community’s capacity to internally negotiate differences and reconcile when differences occur. This strengthened, internal,

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<sup>26</sup> Fitzmyer, *First Corinthians*, 244; G. Harris, “The Beginnings of Church Discipline: 1 Corinthians 5,” *New Testament Studies* 37 (1991), 10, 18.

<sup>27</sup> The *Didache* appears to be directed towards a similar goal in avoiding conflict altogether: “You shall not cause division, you shall reconcile those who quarrel. You shall judge justly.” *Did.* 4:3, Kurt Niederwimmer, *The Didache*. Hermeneia (Philadelphia: Fortress, 1998), 106-7.

self-regulatory capacity to negotiate differences can be seen as a distinctive characteristic of the Corinthian congregation as a new social reality that Paul seeks to nurture and support.<sup>28</sup>

### **3. Food**

Paul's extended discourse on food dedicated to idols presents yet another specific application of this move towards a communal method and ethic for dispute resolution--an approach that clearly establishes standards for living in community which, when members agree to adhere to them, would either help them avoid conflict altogether or, when conflict arises, negotiate the dispute among individuals. After extended teachings about personal sexual behavior throughout chapter seven, Paul returns to communal instruction attempting to sway the direction and focus of the debates within the community away from parochial self-interest to a broader collective unity.<sup>29</sup>

To that end, he advises, but does not order: "we know that no idol in the world really exists" (1 Cor. 8:4). He cajoles, but does not judge: "Food will not bring us close to God. We are no worse off if we do eat, and no better off if we do." (1 Cor. 8:8). Paul applies his community building approach to himself in the case of food dedicated to idols, concluding that he would not partake of such meat not as matter of decision or principle, but rather because of its potential harm for others (1 Cor. 8:13). Paul sidelines the question of judgment in all its forms as irrelevant for his underlying purpose of creating and nurturing community. Determining right or wrong is simply not always

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<sup>28</sup> Witherington, 165; Hays, 94, 96.

<sup>29</sup> Hays, 141.

helpful when the desired goal is not proving a point but rather constructing a new social reality. As an alternative, Paul tries to reframe and expand the Corinthians' social imagination to bow to the consciences of others: "[T]ake care that this liberty of yours does not somehow become a stumbling block to the weak." (1 Cor. 9:9).

In this controversy over food dedicated to idols, Paul not only does not directly arbitrate the dispute, although he has a clear opinion that such consumption is permitted, but he goes further to suggest that pressing the controversy itself is problematic. For Paul, being right or wrong pale in comparison to honoring and embodying Christ in community, because even if one is right, "when you thus sin against member of your family and wound their conscience when it is weak, you sin against Christ." (1 Cor. 8:12).

Paul uses the Corinthians' own slogans to drive home his ultimate goal of community formation, "all things are lawful, but not all things are beneficial." (1 Cor. 10:23).<sup>30</sup> Truth, power, proof, and authority must yield to Paul's work of formation. What is truly beneficial is not judgment but embodied love in community. Throughout the remainder of the letter, addressing various controversies within the community, Paul consistently appears quite willing to render what sound like formal judgments, but only upon matters of principle and not actual cases or particular disputes. For example, Paul opines that women should veil their heads in prayer (1 Cor. 11:5) but nowhere addresses an actual presented dispute about or between members of the community on this issue.<sup>31</sup> Without a concrete controversy in dispute, this opinion should be considered didactic, not

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<sup>30</sup> Conzelmann, 176.

<sup>31</sup> Ibid, 185-86.

an arbitral judgment, and it was interpreted as such during the patristic period.<sup>32</sup> In short, Paul points the community towards a new social ethic but does not actually adjudicate or arbitrate anything. Acknowledging the sensitive social realities of factions within the congregation (1 Cor. 11: 18-19) as well as Paul's distance from the congregation, Paul couches his comments as "instruction" rather than judgment:

Now in the following instructions I do not commend you, because when you come together it is not for the better but for the worse. For, to begin with, when you come together as a church, I hear that there are divisions among you; and to some extent I believe it . . . What should I say to you? Should I commend you? In this matter I do not commend you! (1 Cor. 11:17-18, 22).

While Paul has clear views against the divisions caused by specific factions or parties within the Corinthian congregation, he refuses to make any specific judgment against any individual's or group's behavior. The strongest rebuke he musters is, "In this matter I do not commend you," which sounds far more like disappointment and far less like the issuance of a binding judgment.

### **C. The Conclusion of Corinthians and the Apostle's ethic of love**

Moving towards the climax of the letter in his exhortation for the imperative of love in chapter 13 grounded in the resurrection in chapter 15, Paul maintains the delicate balance between upholding his voice as an authoritative teacher and apostle and limiting his actual authority over the community. Paul claims the authority, voice, and office of an apostle in resolving disputes and simultaneously repudiates that authority as a voluntary choice not because of a defect in call or vocation, but rather because of his

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<sup>32</sup> For example, during the patristic period, Theodore of Mopsuestia interpreted this passage as a general lesson on the orders of creation and John Chrysostom understands Paul to be teaching about the lack of subordination of Jesus the Son to God the Father. Judith L. Kovacs, trans. and ed., *1 Corinthians, Interpreted by Early Christian Commentators* (Grand Rapids: Eerdmans, 2005), 179.

previous role in persecuting others (1 Cor. 15:9).<sup>33</sup> Paul's own career history, with his past certainties and zeal for judgment, collides with his community forming work. Indeed, if he were to exercise direct authority over the Corinthian community through adjudication or arbitration he would be functioning much as he did while a pharisaic "enforcer." In order to reset expectations of his role, Paul reasserts his humility--"the least of the apostles"--while claiming a legitimate basis for his teaching and kerygmatic authority even though he is voluntarily denying himself that same authority.<sup>34</sup> Here he demonstrates the mutual deference and conciliation that he seeks to engender within the Corinthian community.

Through this delicate balance, Paul appears to be claiming an authoritative voice within the Corinthian community by articulating a new social vision and advising them how it could be achieved in the lived relationships within the community. He nurtures solidarity with them through his own expressed humility *and* defers from directly arbitrating actual disputes, thereby avoiding potential challenges to his power influence. The gap between the hypothetical power and authority that Paul claims as an apostle and the much more circumspect influence he actually exercises within the Corinthian congregation presents following generations with the conundrum of Paul's role and authority and how they have been appropriated into the church's later understandings of its own role and authority in resolving disputes. The development of church authority over the following centuries would unfold within this ambiguity between using influence

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<sup>33</sup> Holmberg, 51, Conzelmann, 260.

<sup>34</sup> Paul's voluntary humility is somewhat undercut by his claim to apostolic authority. It is important to distinguish the functional role Paul is claiming within the Corinthian community from the overall status he is claiming compared to other early evangelists in the broader Mediterranean world. cf. Witherington, 21; Hays, 150.



to strengthen community according to a new social ethic and alternative forms of authority imposing judgment from above. Paul wisely avoids potentially damaging fights that he may not win while never ceding an *unciae* of apostolic authority.

In summary, in the first letter to the church in Corinth Paul claims the implicit authority to arbitrate disputes within the community, albeit at a distance, but he never actually exercises that power. Such opinions as he may issue are advisory. Paul instead limits his actual dispute resolution activity to instruction and community formation both in the broader ethics of love and in the particulars of personal conduct and communal process. Rather than judging and resolving their disputes, he urges the Corinthians to work towards mutual resolution of their disputes within the context of an embodied community of love. Paul's constructive work, as will be demonstrated in later chapters, contrasts sharply with contemporary alternative methods of dispute resolution.

#### **D. An Example of Consistency: Paul and Philemon**

First Corinthians is not the only instance in the Pauline epistles demonstrating Paul's reluctance to engage in direct dispute resolution and instead to inspire and nurture the faithful with his vision of a community centered in a social ethic of love. Paul utilizes similar methods and assumptions to those he applied in the Corinthian community to a private dispute recorded in his letter to Philemon. In Philemon, Paul makes use of the same strategies of reticence, reversing expected authority roles, mentioning his presumed authority to render judgments while avoiding doing so, and seeking to nurture new social reality. In the brief snapshot of his letter to Philemon, Paul demonstrates both his method and his attitudes towards disputes within the Christian community.

Paul begins, after a salutation, with a thanksgiving for Philemon for his love and faith (Phil.: 4). Paul alludes to a shared sense of mission that they share for “the good we may do in Christ” (Phil.: 6). By identifying their mission in common, Paul is then able to ask for Philemon to receive Onesimus charitably, even with love. Paul’s request flows from their shared mission rather than as an imposition upon Onesimus. Paul emphasizes that he is not in any way imposing a verdict upon Onesimus or issuing an order to him (Phil 14). On the contrary, Paul seeks to lead Onesimus through consent (γνώμη). Paul then re-emphasizes his shared bonds with Onesimus (Phil.: 17). While Paul alludes to some form of claim or authority over Onesimus (Phil.: 19), he does not base his request upon that authority.<sup>35</sup> Instead, Paul seeks to guide Onesimus to receive Philemon peaceably and perhaps even release him. Through his refusal to resolve disputes directly, his efforts to contextualize dispute resolution within the broader solidarity of the community, and his method of ethical teaching, Paul consistently displays his methods in dispute resolution employed in Corinth in miniature in the Letter to Philemon, as he seeks to shape and inform Onesimus in a new social identity rather than to issue a decisive judgment on the matter.

#### **E. An Example of Contrasts: The Jerusalem Assembly in Acts**

In order to observe the distinctiveness of Paul’s work of mitigating the need for traditional dispute resolution in Corinth by shepherding the congregation into adopting new patterns of interpersonal and community relationships rooted in the cross, it is helpful to examine contemporary alternatives. The work of the Jerusalem Assembly as

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<sup>35</sup> Like in 2 Thess. 3: 17, the assumption of authority is most likely due to Paul having brought Philemon into the faith in Jesus. Cain Hope Felder, “The Letter to Philemon,” *New Interpreter’s Bible XI* (Nashville: Abingdon, 2000), 899.

described in the Acts of the Apostles provides such an alternative. The Jerusalem Assembly functioned as a board of arbitration, rendering authoritative judgment on those like Paul and Barnabas who voluntarily subscribed to its authority over their community.<sup>36</sup>

Acts records that the apostles and the elders met together to consider the issue of Paul's mission to gentile communities (Acts 15:6). The focus of the conversation is investigative.<sup>37</sup> First Peter, then Paul and Barnabas present their testimony. At the end of the hearing, James alone stands and declares an authoritative decision on behalf of the assembly: "Therefore I have reached the decision that we should not trouble those Gentiles who are turning to God . . ." (Acts 15:19).<sup>38</sup> Here, James uses the specific verb for rendering an authoritative judgment (κρίνω) in order to resolve the dispute.<sup>39</sup> The council then appears to ratify that decision through the appointment of an investigative panel to travel to Antioch (Acts 15: 22) and present a written judgment detailing its decision (Acts 15:23).<sup>40</sup> James' statement therefore functions as an arbitrator's decree rendering an authoritative decision on the matter that is binding on the parties. The council does not render judgment in its own authority, but rather aids James in his decision-making through assisting in investigation and later in implementation. This

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<sup>36</sup> Bengt Holmberg, *Paul and Power* (Philadelphia: Fortress, 1978), 20.

<sup>37</sup> Ζητήσις normally refers to an investigation into a matter in dispute. Walter Bauer, Frederick W. Danker, William F. Arndt, and F. Wilbur Gingrich. *A Greek-English Lexicon of the New Testament and Other Early Christian Literature*, 3rd ed. (Chicago: University of Chicago Press, 2000), 429.

<sup>38</sup> While James speaks singly from his own authority, his decision may well express the wider concerns of the entire assembly. But, the fact remains that he alone renders the decision on behalf of the assembly. Robert W. Wall, "The Acts of the Apostles," *New Interpreters Bible X* (Nashville: Abingdon, 2002), 221.

<sup>39</sup> Luke Timothy Johnson, *The Acts of the Apostles*. Sacra Pagina (Collegeville, MN: The Liturgical Press, 1992), 266, 270.

<sup>40</sup> Conzelman, 118-19.

relationship between James and the Jerusalem Assembly in the work of decision-making presents a tantalizing parallel with the relationship between the High Priest and the Jerusalem Sanhedrin that will be described in the next chapter.

James' Apostolic decree contrasts with Paul's actions in Corinth in both substance and process. James, unlike Paul, participates as a part of and presumably the head of a formal investigative review by a panel of elders possessing some form of authority over the dispute and the disputants. James and the Jerusalem Assembly receive formal testimony, unlike the process that occurs with Paul who receives his information from correspondence. James issues a formal arbitration decision that authoritatively declares Paul and Barnabas have acted appropriately, albeit with certain directions to avoid future conflicts. Finally, that judgment is ratified, implemented, and reduced to a written decree by the Jerusalem Assembly so that it may be served upon interested parties in Syria and Asia Minor. The Jerusalem Assembly with James at its head functions as a formal court of arbitration rendering binding judgments on members of the community and mirroring the functions of a formal tribunal. The Jerusalem Assembly does what Paul cannot or will not. The Jerusalem Assembly functions as a court.

The Jerusalem Assembly's process for resolving disputes through a formal process of investigation, discernment, and judgment, was by no means unique to the early Christian community. Unlike Paul's innovative work in community formation as a response to interpersonal and factional conflict, the Jerusalem Assembly relied upon far older institutions and traditions within Judaism that also played an important role in shaping the early church's responses to conflicts. It is to these that attention will now turn.

## Chapter Four

### Dispute Resolution and Jewish Authority

While Paul sought to shape and nurture the culture of the Corinthian community in order to resolve disputes through negotiations, contemporary and earlier Jewish leaders demonstrated no reluctance to resolve disputes directly either through adjudication (when they were directly supported by political authorities), or through arbitration (when they were not). These antecedent and contemporary Jewish institutions and methods contrast with Paul's work and the community he sought to build in Corinth: Paul taught about how to resolve disputes; the Jewish leadership decided disputes.

Paul lived in the intersection between Rome and Jerusalem. Although proudly claiming Roman citizenship as part of his identity, Paul also identifies himself as “a member of the people of Israel, of the tribe of Benjamin, a Hebrew born of Hebrews; as to the law, a Pharisee” (Phil. 3:5). As such, his experiences, thinking, and expectations were shaped both by the institutions, cultures, and practices of ancient Rome and the Hellenistic world as well as those of Second Temple Judaism. In order to have any sense of the context in which Paul makes decisions and resolves disputes within various communities of the Jewish diaspora and beyond it is therefore necessary to have some understanding of both Roman and Jewish dispute resolution practices. Having just glimpsed the work of the Jerusalem Assembly, it makes sense to address the Jewish institutions and processes here, while reserving attention to the Roman practices for the next chapter.

The heart of Jewish law is Torah, which presumes some form of adjudication by the Priestly leadership of the community (Lev. 19:15). Torah expressly forbids self-help: “You shall not take vengeance” (Lev. 19:18). Instead, some form of dispute resolution body within the community is expected to render impartial justice and keep the Torah (Lev. 19: 15, 19). How that happens within the Jewish community appears to change over time. For example, both Aaron and Hur are nominated to serve as arbitrators of disputes within the Sinai community succeeding Moses in that ongoing work. Both the procedures and the institutions through which disputes are resolved in the Second Temple period are not altogether clear.<sup>1</sup> Some of the ambiguity arises from inconsistencies among Greek, Hebrew, and Aramaic sources spread over roughly 500 years. Various descriptions by different sources in different centuries, the primary agent of dispute resolution in Israel was the body of elders known as the Sanhedrin (συνέδριον). Confusion also arises from the use of the term Sanhedrin itself which variously appears to entail a place of assembly, the body that is assembled, the act of assembling it, a court, and a council, all with varying degrees of involvement by the High Priest and other Temple officials. Uncertainty also arises from the different descriptions of the scope of the functions of the Sanhedrin with earlier sources emphasizing solely its dispute resolution role while later sources include legislative functions.<sup>2</sup> It is therefore necessary to reconcile the divergent descriptions of the institution and its function.

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<sup>1</sup> David Goodblatt, “Sanhedrin,” *The Encyclopedia of Religion* 2<sup>nd</sup> ed. XII, Lindsay Jones, ed. (Detroit: MacMillan Reference, 2005), 8101.

<sup>2</sup> Shaye J.D. Cohen, *From the Maccabees to Mishnah* 2<sup>nd</sup> ed. (Louisville: Westminster John Knox, 2006), 103.

## A. The Sanhedrin as dispute resolving institution

Unlike Paul's work within the Corinthian community, the Gospels and Acts present the Sanhedrin in Jerusalem, otherwise known as the Great Sanhedrin, as the paramount judicial decision-making and dispute resolution body in First Century Judaism. But, the Sanhedrin's form, composition, functions, procedures, jurisdiction, and even its existence have remained hotly contested issues.<sup>3</sup> Were there one or many? What terms in ancient sources denote it--συνέδριον, γερουσία, βουλή, or ἐκκλησία—and what difference do those terms make if any? What was the extent of its authority in different eras and most vexing of all, how accurately do post-70 sources like the Mishnah describe the Sanhedrin of the Second Temple period as opposed to either an institution of a latter Tannaitic era or the authors' aspirations? Many of these questions present highly technical issues for a specialist, but even a basic review of the sources demonstrates that there was indeed a high judicial body in Jerusalem called the Sanhedrin in the first century with which Paul would have been familiar, in both the Pharisaic and Apostolic phases of his career.

The term Sanhedrin in the first century had various meanings. Therefore, beyond merely searching for occurrences of the term, it is necessary to search for instances of organizations, by whatever name, executing its role. A council, βουλή, or γερουσία, that functions as *like* a Sanhedrin in Jerusalem during the relevant period most likely is identical with that institution, especially when so described by non-Jewish sources that

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<sup>3</sup> The very existence of the Sanhedrin has been called into existence by some. "Had a national council been the supreme Judean institution of self-government, then I think it reasonable to assume that it would have left a clearer mark in the sources—even when the fragmentary nature of the documentation is taken into account." David Goodblatt, "The Monarchic Principle: Studies in Jewish Self-Government in Antiquity," *Texts and Studies in Ancient Judaism* 38 (1994): 130.

would likely be unfamiliar with the term. Attention to function rather than labels, though, also helps in identifying changes in power, place, and practice over time.

Early textual evidence for the existence of the Sanhedrin, let alone its procedures, is sparse. Prior to the Gospels and the Tractate Sanhedrin of the Mishnah, there are no detailed descriptions of the functioning of the Sanhedrin.<sup>4</sup> Instead, there are momentary glimpses from authors focused on other institutions or issues. Specifically, Josephus, the Gospels, and the Acts of the Apostles serve as the primary first century sources for the institution and its functions. Later, how much later is debated, the Mishnah provides much greater procedural detail. Before the first century, there is only one tantalizing reference from Hellenistic sources. Around 300 BCE, a fragment from Hecataeus of Abdera preserved in Diodorus Siculus' world history mentions an assembly of priests in Jerusalem that resolves disputes among the people under the supervision of the High Priest.<sup>5</sup> Other than this single reference, the Septuagint with its various uses of the term συνέδριον remains the only source.

### **1. The Septuagint**

References in Jewish literature in Greek prior to 70 CE never mention a συνέδριον as a national institution with some form of judicial oversight. Instead, the word refers in the general sense to any assembly, council, or court.<sup>6</sup> Accordingly,

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<sup>4</sup> Lester L. Grabbe, "Sanhedrin, Sanhedriyyot, or Mere Invention?" *Journal for the Study of Judaism* 39 (2008): 3.

<sup>5</sup> Diodorus Siculus, *Library of History* XII, LOEB CLASSICAL LIBRARY, trans. by Charles Oldfather (Cambridge: Harvard, 1940), 40.3.5-6; Grabbe, "Sanhedrin, Sanhedriyyot, or Mere Invention?", 5; Menahem Stern, *Jews and Judaism in Greek and Latin Literature*, vol. 1 (Jerusalem: Israel Academy of Arts and Sciences, 1974), 26-30.

<sup>6</sup> Goodblatt, "Sanhedrin," 8102.



different texts use the term in different ways that may or may not refer to identical or related institutions.

Within the Septuagint a variety of sources mention different forms of decision making bodies in Jerusalem. For example, Sirach provides an extended section on the activities of a scribe, mentions a council of the people and a public assembly (Sirach 38:32-33). Here the Greek text preserves twin generic terms for a civic council--βουλή and ἐκκλησία, which was a distinctive feature of any proper Hellenistic *polis*. Because these terms are used apparently interchangeably, it is impossible to identify precise definitions let alone detailed procedures. But the appearance of an institution in Jerusalem performing the function of interpreting and resolving religious and judicial disputes attests to the existence of some form of Sanhedrin during the Hasmonean period.

The books of Maccabees describe the emergence of Hasmonean Israel amid the political schemes and internecine feuds of the *diadochi* and their successors. As Hasmonean Israel emerged from Ptolemaic and Seleucid domination, the Books of Maccabees describe various institutions involved in international relations with Hellenistic Kingdoms and include several references to the council of elders, the ἐκκλησία or γερουσία. For example, in 2 Macc. 4:43-47 representatives of the γερουσία are sent to petition Antiochus IV to intervene against the High Priest Menelaus, who succeeds in out-bidding them for influence in the Seleucid court. Indeed, ἐκκλησία was a standard, generic term for the members of the ruling council (βουλή) of a Greek polis.<sup>7</sup>

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<sup>7</sup> Maud W. Gleason, "Greek Cities Under Roman Rule," *A Companion to the Roman Empire*, David S. Potter, ed. (Chichester, UK: Wiley Blackwell, 2010), 233-34. Ἐκκλησία focuses on the gathered community of council members, literally those who are summoned by the herald. Karl Ludwig Schmidt,

Γερουσία, on the other hand emphasized the more senior members of the ruling class. The assembly of adult male citizens, with or without property qualifications, served as a distinctive institution of Hellenistic administration. By using the term γερουσία for a gathering of more senior elders or higher-ranking members, the author of Maccabees may be implying that this council was not merely the standard administrative fixture of the Hellenistic world, but was instead a pre-existing Jewish body identified through Greek institutional imagination and vocabulary.<sup>8</sup> In 2 Maccabees 11: 27, Antiochus IV addresses his letter to the γερουσία of the Jews. The high priest Jonathan writes to Sparta on behalf of the γερουσία of the nation in 1 Maccabees 12:6. In 2 Maccabees 1:10, the letter to Aristobulus and the Jews in Egypt is sent by the Jews in Jerusalem, and Judas, and the γερουσία. Finally, 3 Maccabees 1:8 identifies members of the γερουσία and elders as among the delegation sent to Ptolemy IV Philopater after the battle of Raphia suggesting a diplomatic or political role for these officials.

Judith, while likely a historical fiction alluding to five centuries of assorted events, contains anachronistic descriptions of Judean administration during the time of the neo-Babylonian period that likely refer to Second Temple institutions extant during the composition of the work. Specifically, the γερουσία παντός δήμου Ἰσραήλ (council of the whole peoples of Israel) in Jerusalem issues orders to respond to the Babylonian invasion (Judith 4:8). This same council of elders is described in Judith as providing necessary interpretation and judicial legitimacy for decisions related to cultic matters

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“Εκκλησια,” *The Theological Dictionary of the New Testament* III, ed. by Gerhard Kittel (Grand Rapids: Eerdmans, 1964), 513-14, 527.

<sup>8</sup> L.L.Grabbe, “Sanhedrin, Sanhedriyyot, or Mere Invention?” 7.

such as ritual purity and tithes (Judith 11:14). Finally, Judith 15:8 notes in passing that the high priest Joakim and the *γερονσία* of the Israelites took delight in God's blessing.

Both the Greek and Hebrew versions of the Old Testament presume established institutions within Jewish communities, both inside *eretz* Israel and in the broader Jewish diaspora, which actively resolved disputes by making direct evaluations and judgments. These judgments were enforceable on the parties either through political means, when the Jewish communities directly governed the communities, or through social influence, when they did not. These bodies directly resolved disputes by performing the function of adjudication when they possessed political power, and arbitration when they did not. These institutions and the methods they employed, albeit under various names and descriptions, provide the background for Paul's scriptural imagination as well as for those in the Corinthian community that may have been familiar with Judaism. The evidence for such institutions and their direct role in resolving disputes is not limited to inter-testamental literature from centuries prior to Paul's Corinthian correspondence, but, as evinced by Josephus, occurs after the advent of Christianity.

## **2. Josephus**

The Sanhedrin emerges in much greater clarity and through multiple sources in the first century of the Common Era as the supreme body of adjudication within Israel, subject to Roman oversight and intervention. The Sanhedrin, as described by Josephus, stands in sharp contrast to the Corinthian community both structurally as an institution and functionally in its method of adjudication to resolve disputes.

Josephus, writing only a few decades following Paul's Corinthian correspondence, provides the most extensive source for Jewish history in the first century. The Jewish Historian, in describing Jewish institutions and political processes prior to the great revolt shines a light, however hazy, on Paul's world. In recounting the institutional arrangements of the Jewish state, Josephus' writings contain numerous important references to the Sanhedrin both by name and by function. He mentions the existence of a council of elders in a general sense even prior to the Maccabean revolt. For instance, he observes that the Seleucid Antiochus III appointed a council of elders (γερούσια) to oversee temple repairs, but does not refer to the Sanhedrin by name during his record of this period of history.<sup>9</sup> Curiously, Josephus does not mention a high priest in this context either.

Apart from the New Testament, Josephus' *Antiquities* provides the earliest reference to the Sanhedrin (συνέδριον) by name and description that it functioned with some form of appellate or advisory jurisdiction, at least over capital cases.<sup>10</sup> Here Josephus recounts Herod the Great testifying before the Sanhedrin under the leadership of the High Priest Hyrcanus II to defend his decision to execute certain bandits without seeking the prior authorization of the Sanhedrin. The need for such legitimation suggests that the Sanhedrin played an important role in capital cases. Josephus depicts the Sanhedrin as having a central role in resolving disputes. For example, Josephus

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<sup>9</sup> Josephus, *Antiquities*. Loeb Classical Library. Ralph Marcus, trans. (Cambridge: Harvard, 1943), 12.138-146; Lester L. Grabbe, "Jewish Historiography and Scripture in the Hellenistic Period," in *Did Moses Speak Attic? Jewish Historiography and Scripture in the Hellenistic Period*, ed. L.L. Grabbe, *Journal for the Study of Judaism*, Supp. 317 (2001): 139-42.

<sup>10</sup> Josephus, *Antiquities*, 14.167.

emphasizes that the King is to do nothing without the high priest and the *γερουσία*.<sup>11</sup> The scope of this jurisdiction applies not only to the King but also to subordinate village courts and judges. Under Roman rule following the deposition of Archelaus, Judea was divided into eleven toparchies each headed by a Jewish or Samaritan Sanhedrin with jurisdiction over local disputes but subordinate to the Jerusalem Sanhedrin.<sup>12</sup> Josephus notes that cases that could not be resolved by local officials were to be referred to the authorities in Jerusalem, specifically the high priest, the prophets, and the *γερουσία* to adjudicate the matter.<sup>13</sup> Taken together, Josephus' accounts of the Sanhedrin in the *Antiquities* portray a standing body of prominent Jews under the leadership of the high priest exercising both appellate jurisdiction over local officials as well as some form of advisory jurisdiction over the Hasmonean kings and Herodian kings. This emphasis on shared jurisdiction and collective decision making no doubt influenced Paul's imaging of possible means of resolving disputes and providing some form of administrative order for nascent Christian communities. But the function of the Sanhedrin in making determinations and legally binding decisions on issues from above directly contradicts Paul's own methods.

The *Wars of the Jews* contains a different set of descriptions. Josephus confuses matters by using the term *συνέδριον* generically for all sorts of *ad hoc* advisory councils summoned to aid kings or generals.<sup>14</sup> For example, Herod convenes a *συνέδριον* to help

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<sup>11</sup> Josephus, *Antiquities*, 4.224.

<sup>12</sup> Helmut Koester, *History, Culture, and Religion of the Hellenistic Age*, 2<sup>nd</sup> ed. (New York: Walter de Gruyter, 1995), 376.

<sup>13</sup> Josephus, *Antiquities*, 4.218.

<sup>14</sup> Cohen, 103.

settle disputes at his court.<sup>15</sup> Here Herod the Great appears to follow the Roman fashion for summoning *consilium princeps* to assist in court deliberations or matters of important government policy. Augustus assembled a standing executive advisory body including a group of senators chosen by lot, the *consilium semenstre*, to prepare business by the Senate.<sup>16</sup> The Roman general and future Emperor Titus assembles a συνέδριον of his generals and other high ranking officers to plan the assault on Jerusalem.<sup>17</sup> And, most perplexing of all, Josephus refers to the Senate in Rome itself as a συνέδριον.<sup>18</sup>

Josephus also introduces the term, βουλή, to refer to the ruling council in Jerusalem. Βουλή along with ἐκκλησία were generic terms used throughout the Hellenistic world for a municipal council, a ubiquitous feature of Hellenistic and later Roman domains. This of course raises the possibility that there may have been concurrent or competing councils and courts in Jerusalem, one Hellenistic and one Jewish. It is important to remember the tangled web of empires stretching across the centuries in the Levant leaving behind a residue of institutional memory and vocabulary. In the general cultural mishmash of the Hellenistic age one can find anachronistic institutional misattributions rooted in vocabulary. For example, a Greek general (στρατηγός) could also be considered a satrap through memory of earlier Achaemenid titles and offices. “For an institution like the Sanhedrin that existed over many centuries,

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<sup>15</sup> Josephus, *Wars of the Jews*, 1.537.

<sup>16</sup> Suetonius, *Lives of the Twelve Caesars*, Robert Graves trans. (New York: Penguin, 1982), 35.3.

<sup>17</sup> Josephus, *Wars of the Jews*, 6.243

<sup>18</sup> Josephus, *Wars of the Jews*, 2.25.

a variety of terms in the sources would hardly be surprising, especially if none of the Greek terms quite fitted an originally Semitic institution.”<sup>19</sup> While vocabulary may mislead, the role it played helps identify the Sanhedrin through changing contexts. Regardless of name or composition, Josephus attests that such a body did exist in Israel and did exercise decisive authority in resolving conflicts. While Josephus’s terminology varies, he consistently describes a body or bodies that adjudicated disputes with the force of law while always subject to Roman oversight. These descriptions directly contrast with Paul’s own methods he seeks to employ in Corinth.

Josephus also provides important evidence on the composition of the Sanhedrin. In one passage, Josephus confusingly uses the term συνέδριον in both a specific and a general sense. Josephus recounts Agrippa II convening a συνέδριον for a decision on a temple matter to be comprised from those who attended the συνέδριον (τόν εἰς τό συνέδριον).<sup>20</sup> With or without a definite article, this passage suggests some form of council that could be summoned *ad hoc* to address a particular issue but whose membership was drawn from a predetermined and established body. An informal Sanhedrin of this sort may be what informs Paul’s imagination when he urges the Corinthians to look to the saints or holy ones (ἅγιοι) in 1 Corinthians 6:2.

### **3. The New Testament**

In addition to Josephus, the New Testament itself provides evidence from the first century regarding methods and institutions for dispute resolution within Palestine. As Jesus and his followers entered into conflict within their communities, these structures

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<sup>19</sup> L.L. Grabbe, “Sanhedrin, Sanhedriyyot, or Mere Invention?”, 12.

<sup>20</sup> Josephus, *Antiquities*, 20.216-217.

come into sharper focus in both the Gospels and the Acts of the Apostles. These institutions and methods, and the assumptions that underlie them, provide documentary evidence for authoritative adjudication of disputes by Jewish religious leaders in the first century. Jesus' own teachings on dispute resolution are consistent with contemporary Jewish practice and assumptions that leaders will directly and authoritatively resolve disputes and consequently contradicts Paul's practice in Corinth.

The Gospels include various references to dispute resolution methods and one clear statement by Jesus about the process of dispute resolution that should be followed in the earliest Christian communities. In various statements, Jesus expresses familiarity with dispute resolution methods, even when he chooses not to participate in them. For example, when asked to intervene in a dispute between brothers over the division of an inheritance, Jesus refuses, asking rhetorically, "who set me to be a judge or arbitrator over you?" (Luke 12:13). In this passage, found only in Luke, Jesus uses the technical terms for judge (κριτήν) and arbitrator (μεριστήν).<sup>21</sup> Here Jesus perceives that one brother is seeking Jesus to intervene authoritatively in the dispute and issue a binding decision. Such a decision could only be issued by a judge or arbitrator. Jesus' correct use and understanding of both what is sought by the man and the functional offices that would wield appropriate authority to resolve the case shows at least a working understanding of arbitration and adjudication as a dispute resolution methods. It also demonstrates a presumption, at least for the Matthean audience, that a Palestinian rabbi would be an appropriate person to evaluate competing claims to an inheritance and issue

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<sup>21</sup> Μεριστήν literally "portioner" is used nowhere else in the New Testament or the Septuagint. This has led to multiple variant readings alternatively inserting the general term for one who decides disputes (δικαστήν) perhaps in harmonization with Acts 7:27 and 7:35. Metzger, 135; Joseph Fitzmyer, *The Gospel According to Luke X-XXIV*. Anchor Bible (New York: Doubleday, 1985), 969.



a binding decision to the disputants.<sup>22</sup> Here, Jesus expressly refuses to participate in his anticipated dispute resolution function as a rabbi. While this refusal does not expressly inform what sort of dispute resolution process Jesus would endorse, it does evince the assumption that rabbis would offer authoritative decisions to disputants within their communities. While in this case, Paul and Jesus act in a similar fashion given that Paul declines this role in the Corinthian community refusing to act as an arbitrator of disputes, there are fundamental differences in how they approach dispute resolution to which attention will now turn.

Jesus himself provides the most detailed description of the process of dispute resolution within the community of believers in Matthew 18. Here Jesus explains a three-step progressive alternative dispute resolution process that proceeds in an orderly fashion from negotiation to mediation to arbitration in order to obtain a satisfactory resolution. When a “brother” sins against you, Jesus states that you should go and speak directly to that person. (Matt. 18:15). Jesus initially recommends direct negotiations in which two parties address their dispute without any outside intervention. Jesus recognizes that negotiation will not always settle the matter. Accordingly, Jesus next recommends that if that does not work, one should bring along one or two others to address the issue.

As a second stage, Jesus recommends mediation, the involvement of outside parties who do not have any compulsory authority to resolve the dispute to intervene and use such techniques as they may be able to employ to reach a settlement between the

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<sup>22</sup> Fitzmyer, *Luke*, 969; Luke Timothy Johnson, *The Gospel of Luke*. Sacra Pagina (Collegeville, MN: Liturgical Press, 1991), 201.

disputants (Matt. 18: 16). Interestingly, Jesus proposes bringing more than one mediator into the dispute implying perhaps some choice of mediator for the other party.

Finally, if mediation does not work, Jesus proposes arbitration--bring the matter to the assembly for consideration (Matt. 18: 17). The binding authority of the assembly acting in concert is emphasized further when Jesus accords to such a panel almost sacramental authority, "For where two or three are gathered together in my name, I am there among them" (Matt. 18: 20). This divine ratification of the authority of the assembly when acting in solidarity to resolve disputes underlies and highlights the decision making power of the assembly. To further emphasize the binding authority to exclude, the decision making body's determination apparently extends to exclude the offender from salvation (Matt. 18:18).<sup>23</sup> This lofty understanding of the power of the decision maker is a reiteration of the power of the Kingdom of Heaven. It is important to observe however, that the authority is always deemed voluntary, never compulsory. Authority extends only to those who actively wish to be a part of the community.

While the dispute resolution process in Matthew 18 has no parallel in the other Gospels, something quite similar does appear to have been utilized by the Qumran community.<sup>24</sup> The Qumran manuscripts describe a three-step process by which a member of the community may be disciplined or excluded. The Manual of Discipline details a disciplinary process for a member of the community who wrongs another that bears striking similarities to that described in Matthew:

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<sup>23</sup> J. Andrew Overman, *Matthew's Gospel and Formative Judaism, The Social World of the Matthean Community* (Minneapolis: Fortress Press, 1990), 103. Johnson, *Luke*, 271.

<sup>24</sup>Ibid, 104.

Let no man address his companion with anger, or ill-temper, or obdu[racy or with envy prompted by] the Spirit of wickedness. Let him not hate him [because of his uncircumcised] heart, but let him rebuke him on the very same day lest he incur guilt because of him, And furthermore, let no man accuse his companion before the Congregation without having admonished him in the presence of witnesses.<sup>25</sup>

Whether the Matthean community's dispute resolution process was influenced by the Manual of Discipline at Qumran or whether both groups developed their procedures independently cannot be established. The existence of a similar processes for investigation and evaluation in both communities and the assumption that the decision making body would have binding authority over its members supports the conclusion that religious leaders, here acting corporately, served as authoritative judges over their communities. While the methods described in The Manual of Discipline and Matthew may be unrelated, their similarities suggest common foundations and assumptions. This common approach by two distinctive alternative forms of Judaism in first century Israel makes Paul's refusal to employ this method all the more distinctive.

The Gospels not only discuss methods of dispute resolution, they also provide direct evidence for the institution of the Sanhedrin as a body authoritatively adjudicating disputes. The Gospels consistently refer to a council in Jerusalem overseen by the high priest that would render decisions on matters related to religious law. These references appear to use συνέδριον, γερουσία, and βουλή interchangeably. For instance, Joseph of Arimathea is described in both Mark and Luke as a member of the βουλή (Mark 15:43; Luke 23:50). But in the same passages, that council is also described as a συνέδριον (Mark 15:1; Luke 22:66). Jesus also uses the term when he warns his listeners in the Sermon on the Mount to avoid being summoned before the συνέδριον (Matt. 5:22). John

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<sup>25</sup> *Manual of Discipline*, 1 QS 5:25-6:2. Geza Vermes, ed., *The Complete Dead Sea Scrolls in English* (New York: Penguin, 1997), 105.

recounts the chief priests and the Pharisees assembling the συνέδριον to plot against Jesus (John 11:47). Later in the trial narratives, the συνέδριον is repeatedly identified as the body before whom Jesus is arraigned, if not initially tried (e.g. Mark 14:55; Matt. 26:59; Luke 22: 66). While controversies swirl around the procedures and substantive law applied by the Sanhedrin in the Gospel accounts, they are consistent in identifying the Sanhedrin as the body before whom Jesus initially appears.<sup>26</sup> Disputes over the scope of the Sanhedrin's jurisdiction and its competence to adjudicate capital crimes all assume the existence of a Sanhedrin that was involved, rightly or wrongly, in adjudicating criminal cases. The existence of the Sanhedrin as a standing adjudicatory body contrasts with Paul's understanding of how dispute resolution would occur between and among the members of the Corinthian community.

The Acts of the Apostles, which purports to be contemporary with Paul's own career, provides additional descriptions of the Sanhedrin as an institution. As in Josephus' descriptions, the term Sanhedrin has multiple meanings. In Luke-Acts, the term may even refer to the room where the council meets (e.g. Luke 22:66; Acts 4:15, 5:4, 6:15, 23:6). Alternatively, συνέδριον could refer to a session or a seating of the council (Acts 5:34). Given the scope of its functions, the Sanhedrin, as described in Luke-Acts, appears to have operated as a multipurpose council making decisions in religious, civil, and criminal actions. Such a body would of course, take special interest in a case like Jesus' own trial where these areas of religious law (alleged blasphemy) and political concerns (potential sedition) interconnect. Operating in the intersection of

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<sup>26</sup> “[T]here is no contradiction between the rabbinic sources and the New Testament concerning the court before which Jesus was tried. The difficulty lies in the [Synoptic] Gospels' accounts of the circumstances of Jesus' trial, especially the day on which it occurred, on the one hand, and the nature of the charges brought against him on the other.” Hugo Mantel, *Studies in the History of the Sanhedrin* (Cambridge: Harvard Univ. Press, 1965), 254.

political and adjudicatory functions with the added pressure of appeasing Roman interests, it is not surprising to find the Sanhedrin as described in Luke-Acts acting decisively in issuing judgments on various disputes rather than involved in the slow and uncertain work of community formation as undertaken by Paul in Corinth. Moreover, the Sanhedrin operated within an established cultural and political environment that may have made such efforts futile even if pursued.

Acts 4 and 5 provide a depiction of the functioning of the Sanhedrin when Peter and John are called to account. The council (συνέδριον) and the whole body of elders (γερονσία) are convened at the request of and under the leadership of the High Priest (Acts 5:21). Later, Paul is called before the chief priests and all the council (συνέδριον) (Acts 22:30). It is not clear whether the council and the chief priests are separate groups who are working concurrently or whether the two groups overlap in composition.

Paul's appearance before the Sanhedrin in Acts 22 is especially significant because it suggests the scope of the Sanhedrin's jurisdiction. To be specific, Paul does not substantively respond to the charges against him, but rather objects to the extent of the Sanhedrin's jurisdiction over him as a Roman citizen (Acts 22:27). Paul's jurisdictional objections coupled with the Sanhedrin's competency to order judicial examination under torture (Acts 22: 24) demonstrate both the investigative authority of the Sanhedrin at this time along with its power to impose punishment on members of the Jewish community, an outcome that Paul strenuously seeks to avoid.<sup>27</sup> If the Sanhedrin did not have authority to judge and punish him, then it makes no sense for Paul to object

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<sup>27</sup> Certain Jewish scholars imputing contradictions between the Acts account and the Talmud have postulated the existence of two separate Sanhedrins: scholarly and priestly. This separation neatly places responsibility for Apostolic adjudications on the now-defunct priests. But, even if there were separate courts, the decision making character of both is undisputed. Mantel, 300.

to the Sanhedrin's personal jurisdiction over him and seek removal. Taken together with Jesus' appearance before and references to the Sanhedrin, the New Testament evinces a Sanhedrin operating in collaboration with temple officials in making formal decisions about matters of at least religious law pertaining to Jews and enforcing those judgments on the members of the Jewish community. This method of formal adjudication, albeit subject to Roman oversight, directly contrasts with Paul's own method of shaping and nurturing the Corinthian community to negotiate their own disputes.

#### **4. The Mishnah: Tractate Sanhedrin**

Jewish dispute resolution institutions and practices continued evolving throughout the first century. The political upheavals of the First Revolt and the enormous social and religious dislocations of the Bar Kochba revolt conclude Jewish national history in antiquity. Out of that maelstrom, oral tradition and memory, now divorced from institutional stewards like the temple, took written form first as the Mishnah and later as the Talmud. The Mishnah was the first written redaction of Jewish oral tradition or oral Torah codified into six orders each comprised of multiple tractates.<sup>28</sup> Of the 63 tractates, Tractate Sanhedrin provides the most comprehensive description of the Sanhedrin, its structure, and its procedures, in antiquity. As with the rest of the Mishnah, Tractate Sanhedrin is a complex document incorporating older source materials redacted, edited, and supplemented over the first 217 years of the Common Era during the formative period of rabbinic Judaism following the destruction of the Temple and the failure of the Bar Kokhba revolt. It is notoriously difficult to ascertain clearly the identity of the

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<sup>28</sup> Cohen, 207

precise contributions to the Mishnah by individual “teachers” or Tannaim during this period. The Mishnah never identifies its authors, audience, authority, organizational scheme or purpose.<sup>29</sup> Moreover, a separate body of glosses on the Mishnah, the Tosefta, portions of which may be from a later period, sometimes parallels sometimes illuminates, and sometimes confuses the underlying Mishnah text.<sup>30</sup> Tractate Sanhedrin likely incorporates both political and institutional memories of Second Temple Judaism and the later institutional and social conditions faced by the Jewish communities in the Galilee in the century following the Bar Kochba revolt.

Some scholars completely reject the entire Mishnah as a historical source because of these changing social and political contexts as well as the Mishnah’s complex history of redaction.<sup>31</sup> Any attempt to derive a first century legal code on the basis of second and third century redaction of oral tradition questions and answers would be misguided.<sup>32</sup> But, lack of clarity in its depiction of the Sanhedrin does not mean that Tractate Sanhedrin suggests the Sanhedrin was merely a “scholarly myth.” The question of evidence is one of relevancy, not ultimate proof or detail. Imperfect though the source may be, Tractate Sanhedrin projects substantive legal reasoning informing the decision of cases and the imposition of judgments onto a historical institutional memory. That

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<sup>29</sup> Jacob Neusner, *The Mishnah* (New Haven: Yale Univ. Press, 1988), xiii. In addition to Neusner’s modern and sometimes controversial translation, the classic rendering in English, especially for Christian scholarship, remains Hebert Danby, *Tractate Sanhedrin, the Mishnah and the Tosefta* (New York: MacMillan, 1919).

<sup>30</sup> Jacob Neusner, *Jewish Law from Moses to Mishnah* (Atlanta: Scholar’s Press, 1998), 120-21.

<sup>31</sup> Kenneth D. Litwak, “Synagogue and Sanhedrin,” in *The World of the New Testament, Cultural Social and Historical Contexts*, Joel B. Green and Lee Martin McDonald, eds. (Grand Rapids: Baker Publishing, 2013), 268.

<sup>32</sup> Lester L. Grabbe, *Judaic Religion in the Second Temple Period: Belief and Practice from the Exile to Yavneh* (London: Routledge, 2000), 145-46.

reasoning would not have been authoritative if it did not correspond to some institutional or procedural antecedent. So, while the Mishnah's depiction of the Sanhedrin between the Second Temple and the Tannaitic period reflects the changing political and social circumstances of the Jewish community in Israel, its composition and adoption by the Jewish community in the Galilee provides strong circumstantial evidence that its claims about the Sanhedrin's past are grounded in fact. Despite these evidentiary difficulties, the Mishnah in general and the Tractate Sanhedrin provide relevant evidence of how Jewish groups resolved disputes.

The Mishnah is frequently ignored in Christian scriptural studies circles for several reasons. First, it is compiled around the year 217 and therefore well after the composition of the canonical Gospels. Accordingly, the composition of the Mishnah is closer in time to Origen than to Paul's correspondence with the Corinthians. Second, as already alluded to in the above discussion, it incorporates cases, descriptions, and evaluations from multiple time periods in such a jumbled fashion that it is perhaps impossible to discern individual authors or even institutions. It can and does include various anachronisms, for example referring in the same line to Sanhedrins meeting in both Jabneh (Yavneh) and Jerusalem when we know from other sources that Yavneh was a center for Jewish scholarship and jurisprudence only after the fall of Jerusalem in 70 not before. The Mishnah reflects those changing circumstances of *eretz* Israel and the expanding authority and prestige of the council chair (Nasi) as sort of chief executive for



the Jewish community in Galilee.<sup>33</sup> While inferences from the Mishnah to the Pauline epistles may be extended and easily overdrawn, that does not mean they do not exist.

Along with Tractate Makkot, or lashes (מכות), which follows it, Tractate Sanhedrin describes a great council of 71 members based on the mandate of Numbers 11:16, which would convene in Jerusalem.<sup>34</sup> This council met in the “Chamber of Hewn Stone . . . whence the law goes forth to all Israel.”<sup>35</sup> The Tractate Sanhedrin then goes on to describe an array of topics including sentencing guidelines for various criminal offences, process and etiquette in the court, rules on pleading, judicial investigations, and (curiously) a nearly universalistic soteriology in considering who has a share in the world to come.

For its part, the Tannaitic evidence of the Sanhedrin recorded in Tractate Sanhedrin provides insufficient data for a precise historical reconstruction of the institution.<sup>36</sup> But, that same evidence consistently recounts the prior existence of the Sanhedrin as well as its power and authority to address and resolve legal disputes. The Mishnah as a whole contains the principles and propositions of an earlier era repackaged and applied by and to a later age.<sup>37</sup> By bridging the later needs of the Jewish community with its historical memory of prior institutions Tractate Sanhedrin demonstrates both the

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<sup>33</sup> Cohen, 214

<sup>34</sup> Danby, *Tractate Sanhedrin*, 1:6, 42; Neusner, *Mishnah*, Sanhedrin, 1:6, 584.

<sup>35</sup> Danby, *Tractate Sanhedrin*, 11:2, 138; Neusner, *Mishnah*, Sanhedrin, 1:6, 608.

<sup>36</sup> After the work of Neusner and others, earlier pre-critical Tannaitic studies that accept the historical veracity of the Mishnah and Talmud at face value are widely questioned. Those studies, however, and their detailed bibliographic work, especially in their painstaking Talmudic analysis, remain useful heuristic tools.

<sup>37</sup> Neusner, *Mishnah*, xxxiii.

existence and, at least in its general claim of authority, the function of the Sanhedrin during the Second Temple period. The substantive law described in Tractate Sanhedrin may well be anachronistic, but it derives its authority precisely because it is projected onto well-known, accepted, historical judicial structures. No one would write, let alone record, redact, and transmit, legal fiction that did not correlate in some fashion with the structures of decision making that members of the community would have known and found legitimate even if those structures were in the past. Indeed, among the social, political, and religious rubble and reconstruction after both failed Jewish revolts, perhaps the only safe repository of public authority and reliable decision making legitimacy lay in the past. In many ways the Mishnah is an attempt to reinvent a real but inaccessible past. Its function is to conserve and so while perhaps not descriptively accurate in its account of Tannaitic practice, it remains a relevant source for First Century Judaism.

Taken together, the variety, number, independence, and descriptive consistency of ancient sacred sources including Torah, Inter-Testamental literature, and the New Testament as well as sources like Josephus and the retrospective reflections of early Rabbinic sources from the Mishnah all demonstrate the existence of the Sanhedrin during the first century as a decision making and dispute resolving body with certain other advisory functions. Later, after Great Revolt and the Bar Kochba revolt, the Tannaitic sources evince the evolution of the institution adding additional legislative responsibilities.<sup>38</sup> Given that these sources make various descriptions of the Sanhedrin over a more than 400 year period, it is not surprising that the various authors observe change in the institution and its processes, but such variances do not undermine the

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<sup>38</sup> Cohen, 103.

evidence for the institution, indeed such diverse observations are consistent with any healthy, adapting human institution. While the vocabulary and the descriptions may vary with the author, Jewish, pagan, and Christian authors consistently attest to the existence of the Sanhedrin and its core function as a court with either original or concurrent jurisdiction over disputes along with the high priest or priests in Jerusalem.

### **B. The Sanhedrin and the process of dispute resolution**

All available evidence demonstrates that the Sanhedrin, in potentially varying institutional forms, made substantive judicial decisions either on its own authority or in collaboration with the high priest(s). While there are many issues regarding: (1.) the extent of its authority; (2.) diverse roles as both counselor and judge; (3.) its precedence especially when Roman interests were involved; and, (4.) the precise political and judicial relationship between the Sanhedrin and the high priest(s), nevertheless, the Sanhedrin decided actual disputes.<sup>39</sup> As Hugo Mantel and others have demonstrated, the Sanhedrin effectively functioned as the Bet Din ha-Gadol during the first century, the high supreme court issuing decisions that were final within its sphere of personal and subject matter jurisdiction.<sup>40</sup> The Sanhedrin's scope of judicial authority in rendering authoritative decisions on Torah is further confirmed by Sidney Hoenig, who showed that the Sanhedrin's jurisdiction extended beyond *eretz* Israel to Jewish diaspora communities.<sup>41</sup>

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<sup>39</sup> Mantel, *Studies in the History of the Sanhedrin*, 93.

<sup>40</sup> "The Great Sanhedrin was the body which regulated the religious life of Jews and gave sanction to practices connected with religious questions." Sidney M. Hoenig, *The Great Sanhedrin* (New York: Dropsie College of Hebrew and Cognate Learning, 1953), 85.

<sup>41</sup> "Halakhic literature suggests that Jews were expected to settle noncapital intra-Jewish violations of Jewish norms in local Jewish courts." Shira Lander, "I Corinthians," *Jewish Annotated New Testament* (New York: Oxford, 2011), 295. According to the Gospels this presumably did not include capital punishment. A.N. Sherwin-White, 40-41.

The Jerusalem Sanhedrin alone had the last word in regard to legislation and interpretation of the law.<sup>42</sup> There is ample evidence in ancient literature to support the observations of Hoenig and Mantel regarding the authority of the Sanhedrin as a judicial body for all Jews (at least with regard to disputes over Torah), regardless of their country of residence. For example, Philo in the Egyptian diaspora community comments about a case involving a diaspora Jewish woman residing in Egypt accused of adultery. Philo states that the trial on her alleged misconduct would be transferred to the Sanhedrin in Jerusalem for authoritative adjudication.<sup>43</sup> The complex interrelationships between various Jewish authorities, such as the tetrarchs, high priests, and temple factions, and Roman administrators, both before and after 70, complicates our understanding of the Sanhedrin's operations, but does not take away from the Sanhedrin's central function adjudicating disputes over the interpretation and application of Torah.<sup>44</sup>

The Sanhedrin's decision making was understood to be a religious function, appropriately administered by religious scholars and the high priest(s). There simply are no separate terms for crime or criminal law in Jewish jurisprudence as contained in the Torah, Mishnah, and Talmud nor are there such specific terms in ancient or Medieval Hebrew.<sup>45</sup> Instead, the fundamental premise of Jewish jurisprudence was that the revealed will of God is the substantive source of law that must be interpreted and applied.

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<sup>42</sup> Mantel, *Studies in the History of the Sanhedrin*, 83.

<sup>43</sup> Philo, *On the Decalogue, On the Special Laws*. Loeb Classical Library. F.H. Colson trans. (Cambridge: Harvard, 1937), 3.10.

<sup>44</sup> Mantel, *Studies in the History of the Sanhedrin*, 99.

<sup>45</sup> Hyman E. Goldin, *Hebrew Criminal Law and Procedure* (New York: Twayne Publishers Inc., 1952), 11.

Every violation, while it may be criminal in the modern sense, is understood as sin. In ancient Israel, there is no evidence of a distinction between religious and judicial dispute resolution. The Sanhedrin functioned as a theocratic supreme court adjudicating disputes with the full power of a theocratic state.

Within its areas of jurisdiction, and always subject to potential revision by Roman authority operating *extra ordinem*, a concept that will be unpacked in the next chapter, the Sanhedrin in Jerusalem possessed final appellate and advisory authority over legal disputes in Israel.<sup>46</sup> All unresolved questions of Torah were ultimately submitted to the Sanhedrin for adjudication.<sup>47</sup> The ultimate foundation for this adjudicatory authority arises from Deuteronomy 17:8 and its establishment of a body of priests and elders to make judicial decisions. When disparate opinions of subordinate judges or scholars differed from that of the Sanhedrin, those judges and scholars submitted to the final judgment of the Sanhedrin.<sup>48</sup>

For its part, the bulk of the content of Tractate Sanhedrin consists of the substantive principles in the form of aphorisms and answers informing the Sanhedrin's appellate review process. For example, Tractate Sanhedrin provides substantive legal guidance on how the Sanhedrin should rule on the recusal of trial judges (3.1); the testimony of witnesses (3.2-3.7); reconsideration of judgments (3.8); judicial examinations (3.9, 5.1-5.4); evidentiary standards in capital cases (4.5); procedures and

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<sup>46</sup> “[I]f these judges be unable to give a just sentence [about the causes that came before them, let them send the cause undetermined to the Holy City and let there the high priest, the prophet, and the gerousia determine as it shall seem good to them.” Josephus, *Antiquities*, 4.8.14; Hoenig, *The Great Sanhedrin*, 91.

<sup>47</sup> Mantel, *Studies in the History of the Sanhedrin*, 85.

<sup>48</sup> Danby, *Tractate Sanhedrin*, 11.2, 137-38; Neusner, *Mishnah*, Sanhedrin, 11.2, 608.

sentencing guidelines for capital offences (6.1-7.3, 9.1-9.6, 11.1); special procedural and evidentiary considerations for trials on blasphemy (7.1, 7.8), idolatry (7.6), apostasy (7.7), and sorcery (7.11); and, special rules for incorrigible children (8.1-8.5). The wide scope of these legal maxims and procedural considerations outline the broad subject matter boundaries of the Sanhedrin's competency and substantive appellate work with particular concern for capital cases where one would expect stricter appellate review.<sup>49</sup> Taken together, they function as guide to procedure for adjudication of disputes.

Tractate Sanhedrin recounts that the Sanhedrin served as a court of first instance in certain types of cases. For example, the Sanhedrin alone held original trial jurisdiction over an elder or judge.<sup>50</sup> Based on Deuteronomy 17: 8-13, a rebellious elder could only be tried by his peers on the Sanhedrin. Importantly for Paul and the early church, the Sanhedrin held sole original jurisdiction for all trials involving false prophets.<sup>51</sup> As seen in Philo's descriptions of the Sanhedrin's extended authority in Alexandria, such original jurisdiction would presumably extend to any Jew charged with being a false prophet anywhere in the Jewish diaspora. Whether this original jurisdiction formed a valid basis for the Sanhedrin's attempt to try Paul as described in Acts 24 remains an active topic of debate.<sup>52</sup> Paul objects to the Sanhedrin's personal jurisdiction over him as a Roman citizen, but never objects to its subject matter jurisdiction or the competency of the

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<sup>49</sup> While theoretically possible, the evidentiary and procedural hurdles imposed by Tractate Sanhedrin make capital punishment virtually impossible. E.P. Sanders, *Jewish Law from Jesus to the Mishnah* (London: S.C.M. Press, 1990), 18.

<sup>50</sup> Danby, *Tractate Sanhedrin*, 1.5, 38; Neusner, *Mishnah*, Sanhedrin, 1.5, 584.

<sup>51</sup> Danby, *Tractate Sanhedrin*, 1.1:5, 139-40; Neusner, *Mishnah*, Sanhedrin, 11.5, 608-09.

<sup>52</sup> Mantel, *Studies in the History of the Sanhedrin*, 300. Mantel outlines the debate and contends that Paul would not have been tried before the Great Sanhedrin but rather a separate Sanhedrin of high priests addressing cultic disputes. See also, Paul Winter, "The Trial of Jesus and the Competence of the Sanhedrin," *New Testament Studies* 10 no. 4 (1964), 494-95.

Sanhedrin to bring him before it on the charge that he “is teaching everyone everywhere against our people, our law, and this place . . .” (Acts 21:28).

Paul was formed and lived in a world surrounded by civic and religious authorities who possessed the power to decide disputes and shape their social world. The Great Sanhedrin in Jerusalem was one such source of social authority and decision-making that ruled on matters of religious law and applied it to the lives of Jews both inside and outside of Palestine. It provided Paul with an established example of authority and regulation within his formative religious community. The Sanhedrin gave one solution to the question of collective decision making in religious matters: formal adjudication backed by political power. The legitimacy of this body grew from its scriptural foundations in Torah, well-established tradition, and the array of supporting institutions of the temple and the offices of high priest(s). The Sanhedrin therefore provided Paul, and all Jews throughout the Empire, with both a mandatory supreme body for dispute resolution and an important model for how dispute resolution can occur within religious communities.

Many, perhaps most Jews, however, lived subject to other authorities and systems of dispute resolution. While the Sanhedrin may have held binding jurisdiction to adjudicate disputes over interpretations and applications of Torah, Roman authorities also exercised social control within their spheres of interest and dominion. Both Paul and the Corinthian congregation, while no doubt aware of the Jerusalem Sanhedrin, were also subject to the far more proximate authority of Roman administration and adjudication. Roman law therefore provides another important foundation for Paul’s work in Corinth.

## Chapter Five

### Dispute Resolution and Roman Authority

In order to distinguish and illuminate Paul's unique approach to dispute resolution, it is necessary to show by way of contrast other alternative models of dispute resolution that were readily available within Paul's historic context that the Apostle chose not to employ for the Corinthian congregation. The paradigms related to Judaism have been examined, but that leaves the supreme example of authoritative decision making as adjudication in the Mediterranean world during Paul's lifetime: Roman law. The procedure, authority, jurisdiction, judgments, and sentences of Roman magistrates would have been familiar to anyone in Roman domains and often felt by citizens and subjects whose lives were often ordered by such power. Scripture recounts specific instances when Paul himself interacted with these systems before the magistrates Felix and Festus (Acts 24: 10-23; 25: 1-12; 26: 24-29). Paul, even when addressing the Corinthians, alludes to the power and authority of magistrates and advises his followers to avoid them (1 Cor. 6:1) because to access Roman justice would be to defeat Paul's entire program of community formation. Beyond the Pauline corpus, the Gospels' trial narratives recount the discretionary authority of Pilate and its deadly consequences. Finally, as recounted in Acts, Paul at the end of his public ministry is subjected to their adjudicatory power over life and death. Both pagan sources and scripture, as will be demonstrated, paint a consistent and coherent portrait of the Roman magistrate as an autonomous decision maker possessing enormous discretion and power in the resolution of disputes and the imposition of his will by lethal force if necessary.



## A. Roman Legal Context

Roman magistrates directly adjudicated disputes through the application of judgment, law, and power. Unlike Paul, Roman magistrates did not negotiate, mediate, conciliate, educate, nurture, suggest, or cajole. A Roman magistrate would never justify his authority through servanthood to the community claiming to be a “slave to all so that I might win more of them” (1 Cor. 9: 19). Like the Sanhedrin, Roman magistrates adjudicated cases and rendered judgments. In fact, the legally sanctioned power to interpret law and conclusively resolve disputes between contestants is a central defining characteristic of Late Republican and Early Imperial Roman magistrates. *Imperium*, by which this feature of Roman jurisprudence is known, is the authoritative quality of decision making in law or war from which the word empire is derived. *Imperium* is the quality that distinguished decision makers within the Roman Principate from the Emperor, down through the graded levels and channels of Roman central administration (consuls, praetors, aediles, quaestors, etc.), to local provincial administrators and its magistrates appointed by the Senate or the Emperor (proconsuls, prefects, and legates). In practical terms, *imperium* refers to “the power to give orders and to exact obedience to them.”<sup>1</sup> The scope and character of this formal power, who may wield it, and under what circumstances, largely defined the evolving Roman political order.<sup>2</sup> Curiously, no extant ancient source statutorily or constitutionally defines *imperium* although it its presence

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<sup>1</sup> Peter Sidney Derow, “*Imperium*,” in *The Oxford Classical Dictionary*, 3<sup>rd</sup> ed., Simon Hornblower and Antony Spawforth eds. (Oxford: Oxford Univ. Press, 2003), 752.

<sup>2</sup> Peter Stein, ed., *Roman Law in European History* (Cambridge: Cambridge Univ. Press, 1999), 8. This power, or *imperium*, would be held in varying degrees by all the assorted forms of Roman magistrates during their respective tenures (e.g. *consuls, praetors, censors, aediles, quaestors*, etc.). Moreover, these office holders were not formally accountable to the local population at large, only higher level officials or courts and then most often for financial mismanagement rather than errors in interpreting law.

and effects are ubiquitous in legal sources.<sup>3</sup> It is precisely this attribute of *imperium* that distinguishes adjudication from all other forms of dispute resolution.

Starting in the early Republic with praetors and defined over time through the limiting appellate jurisdiction of the Emperor during the Principate, the formal power to decide private disputes and the advisory opinions associated with such decisions (rescripts) came to be considered a recognized source of binding law of general application.<sup>4</sup> The eventual compilation of such decisions as binding authorities in the monumental *Digest of Roman Law* would, in late antiquity, provide the primary circumstantial evidence of *imperium* and its use. The redacted and codified decisions by jurists over the centuries of adjudication provided the basis for its transmission to later civilizations.<sup>5</sup> Accordingly, *imperium* is inseparably bound to adjudication in its practice and transmission.

Expressed most concisely by Cicero at the very end of the Republican era, the functions of magistrates are defined: “There will be a praetor, an arbitrator of legal disputes, who will himself judge or will arrange to have judged civil suits. He will be the administrator of the civil law. And there will be as many praetors, all with the same

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<sup>3</sup> A.N. Sherwin-White, *Roman Society and Roman Law in the New Testament* (Oxford: Oxford Univ. Press, 1963), 3.

<sup>4</sup> *Ibid*, 14.

<sup>5</sup> Andrew M. Riggsby, *Roman Law and the Legal World of the Romans* (Cambridge: Cambridge Univ. Press, 2010), 52-53; O.F. Robinson, T.D. Fergus, & W.M. Gordon, *European Legal History* 3<sup>rd</sup> ed. (Oxford: Oxford Univ. Press, 2000), 2. The largest collection of Roman legal decisions and analysis and the form in which it was transmitted to later legal traditions, the sixth century *Digest of Roman law* compiled during the reign of Justinian consists precisely of such edited compilations of decisions.

power, as the Senate shall decree or the people order. . . .”<sup>6</sup> Subject only to the possibility of an appeal or complaint of extortion, a Roman magistrate had few bounds to the scope of his exercise of *imperium*.<sup>7</sup> Cicero himself illustrates the breadth of this authority as he recites a list of crimes and misconduct committed by Verres during his various governorships in Asia Minor and most egregiously in Sicily. Cicero recounts a parade of Verres’ misdeeds including: releasing captured slaves in the midst of a rebellion, wrongful imprisonment of Roman citizens, extrajudicial torture, and adultery.<sup>8</sup> Unfortunately for Cicero, he acknowledges that none of those alleged offenses may be reviewed by the Senate as they all fell within the scope of Verres’ *imperium*. Reflecting on the vast scope of that authority, Cicero laments,

[I]t never crossed your mind that those rods and axes, that crushing weight of authority, that position of majestic splendor, were not given you in order that you might use their force and their authority to break through every barrier of decency or duty, or that you might treat all men’s property as your prey, or that it might be impossible for anyone’s possessions to be safe, anyone’s house secure, anyone’s life defended, or anyone’s chastity guarded, against your cupidity and your unscrupulous wickedness.”<sup>9</sup>

Despite all his oratorical bluster, Cicero concedes that while he and other advocates may question the magistrate’s decisions, the Senate has no authority to second guess the provincial magistrate’s adjudication of disputes in the exercise of his *imperium*.<sup>10</sup>

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<sup>6</sup> Cicero, *On the Republic, On the Laws*. Loeb Classical Library. Clinton W. Keyes trans. (Cambridge: Harvard, 1928), 3.3.7-8; JoAnn Shelton, *As the Romans Did, A Sourcebook in Roman Social History* (Oxford: Oxford Univ. Press, 1988), 211.

<sup>7</sup> Sherwin-White, *Roman Society and Roman Law*, 2.

<sup>8</sup> Cicero, *Against Verres II*. Loeb Classical Library. L.H.G. Greenwood trans. (Cambridge: Harvard, 1935), 5.4.10-11; 5.6.15; 5.8.21; 5.9.23; 5.11.28; 5.14.34; 479-511.

<sup>9</sup> Cicero, *Against Verres II*, 5.15.39.

<sup>10</sup> Cicero, *Against Verres II*, 5.18: 45.

Verres' "position of majestic splendor" in the adjudication of disputes stands in sharp contrast to Paul's claim to be the "slave of all" as he strives to form the Corinthian congregation rather than rule over it.

Outside of Italy in the Imperial and Senatorial provinces of the first century, Roman magistrates would have possessed enormous discretionary authority. Roman governors were required to make themselves available to settle disputes from throughout their province and designated cities within the province would serve as locations for periodic adjudications.<sup>11</sup> As governors they were free to conduct investigations and reach factual determinations by themselves through the process of *cognitio extra ordinem* or *cognitio extraordinaria*.<sup>12</sup> This process was essentially the grant of broad adjudicatory latitude to the governor and his advisors in crafting decisions. It is this *extra ordinary* discretionary authority with which Paul and his peers would have been most familiar throughout the Eastern Mediterranean, at least outside of Roman colonies. The only available check on the decision-making authority of such magistrates in matters of public order would have been the remote possibility that, similar to the case against Verres mentioned above, well-connected and well-financed Roman citizens within the province could have brought formal proceedings against him for public corruption or bribery.<sup>13</sup> No ordinary appellate or administrative review would have occurred in the normal course of business. Absent an automatic right or mechanism for appeal, provincials were left largely to the tender mercies of magistrates.

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<sup>11</sup> Clifford Ando, "The Administration of the Provinces," *A Companion to the Roman Empire*, David S. Potter ed. (Chichester, UK: Wiley Blackwell, 2010), 190.

<sup>12</sup> *Ibid.*

<sup>13</sup> Sherwin-White, *Roman Society and Roman Law*, 2.

Just as Cicero laid out the vast adjudicatory discretion of Roman magistrates during the last waning years of the Republic, a century later, Pliny the Younger describes similar adjudicatory authority and discretion of Roman magistrates in the decades following the Corinthian correspondence. Around the year 100 C.E., Pliny the Younger, himself a former consul, acknowledged that even Roman citizens had good cause to fear the discretionary and sometimes arbitrary power, “the fear of the rods,” of a Roman proconsul.<sup>14</sup> This broad proconsular authority, whether exercised by prefects as in Judea or by an Imperial legate in Syria, provides the immediate political and legal context for decision making in the Roman Empire during the First Century.

In addition to the formal structures of power and decision making within the early Roman Empire there were also more informal systems of alternative dispute resolution of civil disputes through practices of arbitration and other methods of resolving disputes. While there is no mention of arbitration in the Corinthian correspondence, its general availability in the Roman empire cannot be overlooked. Seeking to avoid the excessive formality and punctilious requirements of Roman civil procedure, in which the smallest error in the formulas of pleading could lead to a dismissal of a dispute, alternative methods of assessing damages grew in popularity in the late Republic. For example, the ancient Centurion Assembly, dating to the emergence of the Republic, provided an alternative forum to that of the law courts and the magistrates for assessing damages in

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<sup>14</sup> A.N. Sherwin-White, *The Letters of Pliny, a historical and social commentary* (Oxford: Oxford Univ. Press, 1966), 233; Pliny the younger, *Letters and Panegyricus I*. Loeb Classical Library., Betty Radice trans. (Cambridge: Harvard Univ. Press, 1969), 3.9.15. Pliny’s admission of judicial beatings administered by lictors provides a context for Paul’s objection to judicial beatings because of his status as a Roman citizen.

matters related to disputed wills and inheritances.<sup>15</sup> The assembly then functioned as an informal court in which decision makers voted as a body to resolve disputes.<sup>16</sup>

Simple practices of informal arbitration of civil disputes between voluntary parties also developed during the Republic and expanded during the Empire. The simplest and most common form of arbitration was mutual reliance upon a “good man” or *bonus vir* to resolve disputes.<sup>17</sup> Literary references from the Latin comedian Plautus evince the use of informal, private arbitration no later than the second century BCE.<sup>18</sup> Plautus describes the classical form of voluntary arbitration in which two individuals could voluntarily agree on an arbiter without restriction by class. The arbiter had no authority to enforce an award or decision relying entirely on the voluntary agreement and cooperation of the parties to honor the process and its outcome. The use of informal arbitration became widespread in the late Republic and is recommended especially for agricultural and property disputes.<sup>19</sup> Later in the early Empire, the use of informal *bonus vir* arbitration became formally recognized by magistrates as an integral and necessary alternative form of resolution in a variety of commercial and contract disputes.<sup>20</sup> Merchant cities with extensive trade connections, like Corinth, would no doubt have benefitted from this flexible and efficient method for resolving disputes.

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<sup>15</sup> J.M. Kelly, *Studies in the Civil Judicature of the Roman Republic* (Oxford: Clarendon Press, 1976) , 34-35.

<sup>16</sup> Derek Roebuck and Bruno de Loynes de Fumichon. *Roman Arbitration* (Oxford: Holo Press, 2004), 31.

<sup>17</sup> *Ibid*, 46.

<sup>18</sup> *Ibid*, 47-58.

<sup>19</sup> *Ibid*, 52-53, 64-65.

<sup>20</sup> *Ibid.*, 55, 64-65

A key characteristic of a Roman arbitrator was the quality of trust *fides* in his sense of equitable fairness, which evolves into the modern concepts of bona fides and fiduciary duties.<sup>21</sup> Lacking formal arbitration or mediation rules or procedures, *bona viri* employed methods of mediation and arbitration interchangeably as needs required. Practical, functional, and informal, *arbitrium bona viri* used any consensual means at their disposal to resolve disputes.<sup>22</sup> Institutionally, this practice evolved alongside Roman civil procedure so that as all lawful promises came to be enforceable agreements, *stipulatio* to enter arbitration if a dispute arose in the performance of the contract came to be judicially enforceable by the state.<sup>23</sup> Like modern binding arbitration agreements, Roman arbitration practices became a useful and necessary part of Roman contract law permitting the efficient resolution of commercial disputes.

Given the availability and utility of arbitration as an efficient and effective means of dispute resolution, it is all the more surprising that it is never mentioned in the Corinthian correspondence. Even in the Vulgate, the distinctive word *arbitrari* never appears in First Corinthians. There is no mention of parties seeking out Paul's opinion, let alone a formal judgment. While Paul may have possessed all the necessary qualifications, and was likely viewed to be good, he was never described as or called upon to act as one of the *bona viri*. Arbitration must therefore be considered an alternative means of dispute resolution that remained readily available, but untried by the Corinthian community.

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<sup>21</sup> Roebuck, 56.

<sup>22</sup> Ibid, 65.

<sup>23</sup> Ibid, 94.

## B. New Testament depictions of Roman Law

In addition to the broader judicial and political context of the Roman Empire, early Christian understanding and imagination of dispute resolution methods was shaped by literary accounts of Roman decision making in action. The Acts of the Apostles, for example, describes Paul's own encounter with the systems of Roman justice and legal decision-making in his trials before the procurators Felix and later Festus. These texts, while perhaps of marginal interest to legal historians, nonetheless inform and reflect how the Christian community viewed and understood the authority of Roman magistrates, or *imperium*, and the way in which they made binding decisions without regard to local opinion and with limited opportunity for review.

To summarize the pericope, Acts describes Paul's ongoing conflicts with Jewish authorities in Jerusalem culminating in his seizure by a Jewish mob while in the Temple. Transferred from Jewish to Roman custody, Paul interacts with the systems of Roman justice as he claims the privileges and immunities of a Roman citizen (Acts 22:25).<sup>24</sup> Initially, Paul appears first before the Sanhedrin in Jerusalem, which examines him on apparent charges of blasphemy concerning religious doctrine which Paul seeks to amplify as he summarizes the charge against him: "I am on trial concerning the hope of the resurrection of the dead" (Acts 23:6). While Paul appears so that the Sanhedrin may adjudicate this allegation, it does not convene in this case because of disagreement between Pharisee and Sadducee factions and the Sanhedrin's consequent failure to reach

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<sup>24</sup> Setting aside the debate regarding Paul's Roman citizenship, the important thing is that the text of Acts, and thereby the early community associated with it presumed that citizenship would have accorded Paul certain special rights. As Cicero notes in the Verrine orations, "to bind a Roman citizen is a crime, to flog him is an abomination, and to slay him is almost an act of murder." <sup>24</sup> Cicero, *Against Verres* vol. II, 5.66.170.



sufficient consensus to judge Paul's fate.<sup>25</sup> In order to avoid an extra-judicial lynch mob, the Roman tribune Claudius Lysias refers the whole dispute to the governor, Antonius Felix for adjudication. Lysias' referral of Paul to the magistrate reflects the limits of a tribune's judicial power once public order and safety had been restored.<sup>26</sup> Upon arriving in Caesarea, the magistrate Felix inquires about Paul's domicile in order to establish personal jurisdiction over the dispute (Acts 23:34).<sup>27</sup> Felix waits for the arrival of Paul's accusers, the chief priest Ananias and his legal advisors. An advocate for the chief priest rather obsequiously levels a charge of sedition against Paul, however the evidence of such an offense is largely religious: violating temple purity and leading a heretical sect of Nazarenes.<sup>28</sup> After hearing Paul's answer to the charges, Felix recesses the hearing until he can hear from the tribune Lysias (Acts 24:23). While the text assumes that Felix possesses the necessary authority (*imperium*) to serve as an adjudicator over the dispute, the trial does not resume and Felix decides nothing.

The author of the Book of Acts suggests that Felix delays the adjudication not because of some lack of authority but rather that he hopes to use his authority for personal gain. "He hoped that money might be given him by Paul." (Acts 24:26). Lysias never arrives, the hearing never proceeds, and Paul sits in prison while Lysias hopes to purloin some or all of the Jerusalem offering. Holding a prisoner indefinitely without

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<sup>25</sup> Here the division of the Jewish Sanhedrin prevents it from reaching any judgment whereas the solitary decision maker, Felix, chooses not to decide.

<sup>26</sup> A.N. Sherwin-White, *Roman Society and Roman Law*, 54.

<sup>27</sup> This may have been a normal means for summary dismissal or referral of charges at the convenience of the magistrate. *Ibid.*, 31.

<sup>28</sup> The charge expressly concerns "seditio" sedition and profaning the temple. Hans Conzelman, *Acts of the Apostles*. Hermeneia (Philadelphia: Fortress Press, 1987), 199.

resolution of charges against him or her is certainly consistent with the portrait of Antoninus Felix drawn by both Josephus and Tacitus.<sup>29</sup> Avarice and extortion do not undermine the reality of Felix's *imperium*.<sup>30</sup> Instead, the apparent lack of legal remedies for Paul, other than a potential complaint of attempted bribery, demonstrates the nearly unfettered scope of the magistrate's authority.

Two years later, Porcius Festus, succeeded Felix as procurator of Judea. Josephus notes that Festus ruled during a time of increasing anti-Roman violence throughout Judea.<sup>31</sup> Perhaps politically attuned to Jewish sensibilities, Festus proposes changing the venue for Paul's trial to Jerusalem (Acts 25:9). Festus does not and likely could not relinquish capital jurisdiction to the Sanhedrin or any other local officials.<sup>32</sup> A.N. Sherwin-White notes, in interpreting Ulpian's reflections on proconsular jurisdiction, that a defining characteristic of a magistrate's *imperium* is that it may not be delegated or assigned.<sup>33</sup> Nothing however, would prevent a magistrate from informally consulting with the Sanhedrin or individual members of it as his own *consilium* in the process of adjudicating an issue.<sup>34</sup> Such a consultation with his Jewish opponents may be precisely what Paul fears and leads him to invoke his right of appeal, as a Roman citizen, to the

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<sup>29</sup> Conzelman, *Acts of the Apostles*, 201; Luke Timothy Johnson, *The Acts of the Apostles*, Sacra Pagina (Collegeville, MN: Liturgical Press, 1992), 419. Josephus, *Antiquities*, 20.8.8-9; Tacitus, *Annals*, Alfred John Church and William Jackson Brodribb, trans. (New York: McGraw Hill, 1942), 12.54.9.

<sup>30</sup> Tacitus recognizes both Felix's greed as well as his *Imperium*: "[He] thought he could do any evil act with impunity, backed up as he was by such power." Tacitus, *Annals*, 12.54.1.

<sup>31</sup> Josephus, *Antiquities* LOEB CLASSICAL LIBRARY, 20.8.9-10.

<sup>32</sup> A.N. Sherwin-White, *Roman Society and Roman Law*, 67.

<sup>33</sup> *Ibid*, 4.

<sup>34</sup> *Ibid*, 67.

emperor. This right of appeal grounded in the *Lex Iulia* protected Roman citizens from judgment and sentencing, as well as execution or torture without trial, by magistrates outside of Italy.<sup>35</sup> Because the *Lex Iulia* forbade only judgment and sentencing, Festus could have proceeded with his judicial inquiry in Caesarea or in Jerusalem.<sup>36</sup> But, for a provincial governor to ignore a formal appeal to the Emperor that has already been filed would expose the magistrate to the possibility of undue attention or perhaps even the frustration of the Imperial court. These political considerations provided a practical limitation on a provincial magistrate's jurisdiction. Festus' political astuteness is further demonstrated by his extensive consultations with King Agrippa II evincing sensitivity to local custom and concerns. While demonstrating comity to Agrippa and Jewish leaders, Festus never relinquishes or attempts to relinquish his actual adjudicatory authority. Together, Felix and Festus provided the early church with a lasting image, perhaps a caricature—but a model nonetheless, of Roman magistrates' autonomous, largely unfettered, and frequently corrupt adjudicatory power limited only by the magistrates' own political and economic self-interests and those of his political rivals.

The other, far more famous, and far more contested scriptural depiction of a Roman provincial magistrate's adjudication of a criminal dispute is that of Pontius Pilate and the trial of Jesus on the charge of treason or sedition (*maiestasis*) recounted in the Gospels. Outside of scripture, Pilate is known for his decisive yet arbitrary and

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<sup>35</sup> A.N. Sherwin-White, *Roman Society and Roman Law*, 58. Perhaps the most famous example of this sort of removal is Pliny the Younger's inquiry to Trajan whether to refer Roman citizens residing in Pontus accused of Christianity to Rome for trial. In that case it is not clear whether Pliny is referring the matter to Trajan as a matter of course or because the allegation of Christian identity, without evidence of conduct, presents a novel legal question for the curia. Pliny, *Epistles*, 10.96.4 ; A.N. Sherwin-White, *Pliny*, 699-700.

<sup>36</sup> A.N. Sherwin-White, *Roman Society and Roman Law*, 64.

capricious rule, greed, and violence.<sup>37</sup> While debates rage over the accuracy of the various Gospel accounts of the trial and their consistency with Roman practice, all four Gospel accounts of Jesus' trial depict Pilate as a Roman magistrate with the uncontested decision making authority to sentence Jesus to death.

The procedure of the trial demonstrates Pilate's broad authority. Whatever surprise or reluctance Pilate may or may not have felt, Jewish officials appear before him in his role as prefect and provincial magistrate with a charge against Jesus of disturbing the civic peace. Luke is the most explicit in naming the charges: "We found this man perverting our nation, forbidding us to pay taxes to the emperor, and saying that he himself is the Messiah, a king" (Luke 23:2).<sup>38</sup> Following the normal *extra ordinem* criminal procedure, Pilate then inquired of the accused as to his answer to the charges.<sup>39</sup> Jesus, however, does not directly respond to the charges. Absent any defense or alternative pleading, the only correct and customary response in an *extra ordinem* procedure is to convict the accused.<sup>40</sup> But, Pilate does not move directly to judgment. Instead, he proceeds with his own judicial inquiry (*cognitio*). Nothing in the text

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<sup>37</sup> Philo, *On the Embassy to Gaius*. Loeb Classical Library. F.H. Colson, trans. (Cambridge: Harvard, 1962), 299-302; Josephus, *Antiquities*, 17.6.2-3, 18.3.2, 4; Raymond Brown, *The Death of the Messiah*, v.1 (New Haven: Yale, 1994), 696.

<sup>38</sup> A claim to be a King within Roman dominions would likely have been deemed a violation of the *Lex Iulia de maiestate*, which bore the death penalty as its sanction. A.T. Innes, *The Trial of Jesus Christ: A Legal Monograph* (Edinburgh: T.T. Clark, 1899), 85. Under Tiberius, who was particularly sensitive about treason, violations of this statute were regularly punished with lengthy banishments or execution. Brown, *The Death of the Messiah*, vol. 1, 718.

<sup>39</sup> Brown, *The Death of the Messiah*, 715.

<sup>40</sup> A.N. Sherwin-White, *Roman Society and Roman Law*, 25.

suggests that such diligence was required of Pilate absent a plea or defense.<sup>41</sup> Judicial investigation would have been the normal process in capital cases.<sup>42</sup> According to Matthew and John, Pilate assumes the magistrate's formal judgment seat (*bema*) in order to pronounce judgment and sentence upon Jesus *pro tribunali* (Matthew 27: 19; John 19:13).<sup>43</sup>

While disputes about the descriptive accuracy of the Gospel accounts of Jesus' trial and Pilate's process will continue to rage, it is uncontested that a Roman prefect of a recently created and frequently rebellious imperial province like Judea would have possessed and exercised enormous discretionary authority to make and impose judgments and sentences upon non-citizen provincials, especially when individuals were implicated in disturbances of civic order. Despite the diversity of details recorded in the Gospels and the paucity of court records, the Gospel writers consistently depict Pilate wielding precisely such broad and discretionary authority. He could draw information from local witnesses or authorities, receive counsel from both his own and local advisors, and impose sentence without fear of intervention by his superior, the governor of Syria.<sup>44</sup>

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<sup>41</sup> Luke's account of Pilate referring Jesus to the Tetrarch Herod Antipas may bear more than a coincidental resemblance to Luke's later description of Festus' referral of Paul to Herod Agrippa II as the Gospel writer establishes continuity between Jesus' own trials and those of his followers including Stephen and Paul. But, nothing in Luke suggests that this referral was required jurisdictionally. Instead Luke, in using the technical vocabulary for judicial investigation (*επηρώτησεν*) suggests that Pilate referred Jesus to Antipas as a part of his discretionary *cognitio* much as Festus would later do. A.N. Sherwin-White, *Roman Society and Roman Law*, 28.

<sup>42</sup> Brown, *The Death of the Messiah*, vol. 1, 717.

<sup>43</sup> The alternative reading of the John passage is that Pilate sat Jesus upon the *bema*. At issue is whether Pilate sits upon the seat in the conventional manner, or places Jesus upon the seat in mockery of his charged status as "king." The latter reading of course is also ironic given John's strong emphasis on Jesus' kingship. If the verb describing Pilate's action (*εκάθισεν*) is translated as transitive, then Pilate caused Jesus to sit. If, however, the verb is translated as intransitive, then there is no direct object and Pilate simply sat.

<sup>44</sup> Brown, *The Death of the Messiah*, vol. 1, 716.

While tradition has interpreted and reinterpreted the particular facts and causes of Jesus' trial, the scriptural accounts unambiguously present Pilate as a magistrate who could and did make autonomous judgments over life and death.

The authority and autonomy, as well as the frequent severity, greed, and capriciousness of Roman magistrates shaped the social and theological imagination of the early church. Roman dominion and its law provided the background political and cultural context of early Christianity informing its social assumptions and institutional imagination. Characterized by the supreme quality of *imperium*, Roman magistrates and their enormous decision making power in adjudicating disputes presented the early church with a readily understood, ubiquitous, traditional, effective, and frequently dangerous approach to dispute resolution as well as a recurrent threat to the early church's existence.

## Chapter Six

### The Distinctive Shape of Paul's Method of Dispute Resolution

Paul's distinctive work in addressing conflicts within the Corinthian community sharply contrasts with the practices of contemporary Jewish and Roman institutions and illuminates the originality of his approach. Paul is confronted by conflict, division, and discord in Corinth not unlike that which would confront any new community as it seeks to establish its own patterns, practices, and institutions. Instead of turning to the models readily available to him and the Corinthian community for solutions or inspiration-- adjudication by Roman magistrates, adjudication by the Jewish Sanhedrin, or Roman practices of private arbitration--Paul elects to do something altogether different. Paul reframes the problem.

Presented with faction and dispute in the Corinthian congregation, Paul refuses to adjudicate, arbitrate, or even mediate. Paul redefines the problem by pointing to a new category of solution beyond declarative judgments. He will not treat disputes themselves as the objects of his efforts nor will he consider final judgments, however wise, as the sought-after goal of conflict. Faced with the dialectic choices of conflict—right or wrong, win or lose—Paul redefines the goal of conflict and repurposes conflicts as opportunities to point toward, describe, demonstrate, and form a new community grounded in solidarity as the expression of Christ's body on earth. The end goal of dispute resolution for Paul is therefore neither a correct decision nor the resolution of the dispute itself, but rather the formation of community grounded in love. Such a community would not require adjudication, arbitration, or mediation. Such a community would instead organically produce negotiated outcomes between parties, one that does

not require an authority figure to wield *imperium*, which Paul assiduously resists doing throughout the course of his letter. In this work, Paul is guided not so much by practical politics or administrative efficiencies as the example of the cross.

#### **A. Paul's role and identity as an agent of dispute resolution**

Traditionally rabbis would be to serve as arbitrators over inter-communal disputes.<sup>1</sup> As has been demonstrated in chapter four, Jesus accepts and reinforces this role when he articulates a three-step process for dispute resolution culminating in arbitration by the assembly of elders (Matt.:18: 17-20). Surprisingly, given his Pharisaic and Apostolic formation, Paul rejects that role of arbitrator and plays by altogether different rules towards a different end. Paul treats disputes within Corinth not as finite arbitrations to be definitively resolved through a final apostolic judgment, but rather as ongoing negotiations between members of the community. Seen as negotiations between individuals and factions within the community, the focus of dispute resolution is shifted from external standards, such as law from whatever source, to the actual quality and content of the relationships between the parties. Moreover, the relationship between Paul and the parties to the dispute becomes relevant as he presents himself as a partner and sympathetic co-worker rather than aloof adjudicator to their disputes.

Paul claims a curious identity for one seeking to resolve disputes in the first century. While not wanting to cede one iota of Apostolic authority, especially with regard to rival teachers, Paul does not appear to view himself as an authoritative arbitrator of disputes at all. He instead submits himself to the parties to the dispute as a

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<sup>1</sup> “Halakhic literature suggests that Jews were expected to settle noncapital intra-Jewish violations of Jewish norms in local Jewish courts.” Shira Lander, “I Corinthians,” *Jewish Annotated New Testament* (New York: Oxford, 2011), 295.



teacher, mentor, and guide who is not apart from the disputes but directly aggrieved by them. Unlike James and the Jerusalem assembly, let alone High Priests and the Sanhedrin or a Roman magistrate, Paul does not render first-person declarative judgments to binding effect. Paul subordinates himself not only to the community, but to the dispute itself by refusing to dispose of the issue even when it is an obvious irritant to him.

Paul's humility allows him to do things that a normal adjudicator could not do. First, his refusal to assume a functional role of arbitrator upends beliefs about power, dominance, and authority that the parties to a dispute may bring. Paul's own humility overturns the assumption that disputes are about winning and losing in relation to a dominant system of norms. Instead, Paul's identity demonstrates a kenotic quality in dispute resolutions that appears to be more closely aligned with Jesus' own identity than Jesus' own teachings on dispute resolution with their conventional assumptions of religious authorities serving as a board of arbitration.

Paul's refusal to adjudicate or arbitrate disputes places him with and alongside the disputants so he may better instruct them from alongside rather than from above. Standing in solidarity with the disputants, Paul may offer his views on opinions, practices, and teachings while still maintaining the sympathy and the attention of the disputants. By claiming a modest status alongside the disputants, Paul is able to pursue his ultimate goals that would not be available to a formal adjudicator. The gap between the power and authority that Paul claims as an apostle and the power and authority he actually exercises within the Corinthian congregation corresponds to the developing frontier of church authority within this new community.

## **B. Paul's method of addressing disputes**

The second distinctive characteristic of Paul's work is the method he employs to engage disputants. Paul does not engage detailed factual inquisition. He does not seek to hear the parties' arguments. He does not separately deliberate upon the strengths and weaknesses of each disputant's case. In short, Paul does not arbitrate disputes. He also does not seek to mediate between the parties as a disinterested party. Nowhere do we hear of Paul going between the parties as a neutral intermediary. Diverging from these expected norms and practices, Paul seeks to educate and form the disputants so that they may negotiate their own resolution to the dispute. Contrary to Roman and Jewish traditions, contrary even to the methods described by Jesus in Matthew, Paul sets out to resolve disputes through formation of the community. He applies this approach both to individuals and to the community as an organic whole, such that disputes either do not occur, or if they occur, are addressed through direct negotiation and reconciliation between the parties. Paul nudges, but will not judge. Paul, instructs and coaches, but will not mandate. Paul relies entirely upon teaching and example in order to shape the disputants so that they may resolve their own conflicts. While Paul claims the authority of an arbitrator, he never exercises that latent authority. Instead, he limits his methods to teaching, through lesson and example. Paul even gently mocks himself for his own modest means: "[w]hat would you prefer? Am I to come to you with a stick, or with love in a spirit of gentleness?" (1 Cor. 4:21).

The third distinctive feature of Paul's work of dispute resolution is the end goal to which it is directed. Paul's ends shape the means he employs. Unlike most disputes that are resolved so that finality can permit the parties and the community to proceed with

their lives and business, Paul's aims extend beyond the dispute itself. Those aims lie well beyond the timeline and ambition of both Roman and Jewish magistrates and assemblies. Ordered life, finality, predictability, and social order as the chief goods of the rule of law are never Paul's objectives. Paul is focused on a far distant horizon. Paul seeks to form the Corinthian community as a provisional demonstration of the Kingdom of God on earth, a living synecdoche for resurrection life. It is no coincidence that Paul's most extensive writings on conflict are followed by his most extensive reflections on resurrection in 1 Corinthians 15. Paul's vision of community is shaped by his imminent and ever-present eschatology. Paul explicitly states this eschatological goal and rationale for all his efforts in resolving disputes within the Corinthian community, "so that you may be blameless on the day of our Lord Jesus Christ." (1Cor. 1:8).

Paul's methods of dispute resolution appear modest in contrast to Jewish and Roman efforts and his interventions appear reticent precisely because Paul's goals are audacious as he seeks to build up the entire community into the body of Christ, "[f]or in one Spirit, we were all baptized into one body . . ." (1 Cor. 12: 13). Formation of the human heart as alongside community norms and processes requires the voluntary participation of all parties. It cannot be mandated through adjudication or fiat, only voluntary shared negotiation. This is the exact opposite of the intended aim of those encouraging faction and division who seek to separate, differentiate, and rank different groups to which Paul poignantly asks, "Has Christ been divided?" (1 Cor. 1:13). Paul appeals to the community here not as an outside judge, but rather as loving parent: "I became your father through the Gospel, I appeal to you then, be imitators of me" (1 Cor.

4: 15-16). And so like a parent, Paul seeks the healthy maturity of the Corinthian community, which transcends the immediate issues of a presenting dispute.

Functional assessment of Paul's work of dispute resolution yields a coherent and distinctive picture of Paul's work characterized by his own self-proclaimed identity as a self-humbling apostle who would rather teach than rule through apostolic decree; employ methods focused on instruction and formation rather than deliberation and judgment; and focus on end goals aimed more towards emulating the Kingdom of God through the body of Christ on earth than the social stability and predictability of the rule of law. Relying only upon what Paul says, what he claims and how he argues, one would be left with a far more domineering and assertive portrait of the apostle as authoritative arbitrator and decision maker for the community. But, what Paul says and what he does are two distinctly different things. Through a functional examination of Paul's work—looking only at what he actually does--the distinctiveness of Paul's method becomes apparent as he establishes a new method for his new community distinct from Jewish and Roman antecedents.

## **Epilogue**

### **Constructive re-appropriation of Paul's work of dispute resolution**

As noted at the beginning of this examination: leaders resolve disputes. The question is how they do so. Paul utilizes one distinctive approach while Roman magistrates and the Sanhedrin follow others. Industrial and social psychology, law, alternative dispute resolution, and various other disciplines all contribute to an enormously rich variety of approaches to dispute resolution for the church and its leaders from which to choose. But there often does not seem to be any theological or scriptural foundation for how the church chooses its method of dispute resolution. Although general platitudes about reconciliation abound, often the primary methods of dispute resolution are drawn from the secular models of adversarial adjudication or the decisive forms of arbitration demonstrated by the Sanhedrin. Given the vast anxieties and roiling disputes plaguing so many Christian communities today, it is important to mine all relevant resources for constructive dispute resolution and perhaps even explore Paul's alternatives. Paul's alternative process would be a radical departure from how mainline churches resolve conflicts today.

#### **A. Dispute Resolution in Mainline Churches Today**

The primary model of dispute resolution employed in the Presbyterian Church (U.S.A.) and the United Methodist Church (UMC), as will be demonstrated, is arbitration. Disputants voluntarily submit to a formal investigative process culminating in some form of hearing before a disinterested judge, either an individual or a panel. That individual or panel, after due deliberation, issues a binding decision on the parties

enforceable up to exclusion from the community. This method parallels that found in secular courts and corresponds closely to Roman and Jewish methods with which Paul would have been familiar in his day. Examination of the methods of dispute resolution in the UMC and PCUSA demonstrates these similarities and distinguishes both denominations' methods of dispute resolution from Paul's own.

The UMC authoritative source for methods of dispute resolution is the *Book of Discipline*.<sup>1</sup> The Judicial Council of the United Methodist Church has declared that the Book of Discipline "is the only official and authoritative law book of the Church."<sup>2</sup> Focused on structure and process the *Book of Discipline*'s description of dispute resolution does not begin with any reflections on scriptural foundations or spiritual ends of dispute resolution, but rather begins with a claim of jurisdictional authority to resolve disputes.<sup>3</sup> Detailed rules pertain to who may exercise such authority in tightly defined roles with due consideration of representation. A process is described to provide for a formal investigation of complaints, followed by a hearing before a tribunal.<sup>4</sup> Trials are regulated by detailed rules of evidence.<sup>5</sup> Finally, the decisions of the tribunal, while subject to appeal, are otherwise considered binding and final and published as an affirmative source of law.<sup>6</sup> In all of this the UMC mirrors the secular rules for civil and

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<sup>1</sup> The General Assembly of the United Methodist Church, *The Book of Discipline of the United Methodist Church* (Nashville: United Methodist Publishing House, 2012).

<sup>2</sup> Judicial Council of the United Methodist Church, "In Re: Is the Discipline of The Methodist Church a Book of Law?" No. 96 (June 25, 1953).

<sup>3</sup> *The Book of Discipline*, 765.

<sup>4</sup> *Ibid*, 774-75.

<sup>5</sup> *Ibid*, 791, 794-95.

<sup>6</sup> *Ibid*, 771, 795-96.

criminal procedure as applied to those who voluntarily submit to its jurisdiction. The dispute resolution mechanisms of the UMC provide a text-book example of a formalized arbitration process developed for members of a particular organization or community emphasizing the authority of the agents of dispute resolution directed towards finality and predictability.

The PCUSA, unlike the UMC, begins its rules of discipline with a preamble outlining the purpose for its methods: “to honor God by making clear the significance of membership in the body of Christ . . . [and] to restore the unity of the church by removing the causes of discord and division.”<sup>7</sup> The *Book of Order* then goes on to acknowledge the need to conciliate and mediate differences as a biblical obligation regardless of the rules of discipline within the denomination.<sup>8</sup> “It remains the duty of every church member to try (prayerfully and seriously) to bring about an adjustment or settlement of the quarrel, complaint, delinquency, or irregularity asserted, and to avoid formal proceedings, unless after prayerful deliberation, they are determined to be necessary to preserve the purity and purposes of the church.”<sup>9</sup> By beginning with an assumption of and preference for negotiation and mediation, the *Book of Order* places its formal dispute resolution procedures at the end of the process dispute resolution.

After formal dispute resolution procedures are engaged, the PCUSA’s *Book of Order*’s process unfolds similarly to that described in the UMC’s *Book of Discipline*. In

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<sup>7</sup> The Office of the General Assembly of the Presbyterian Church (U.S.A.), *The Book of Order 2013-2015* (Louisville, KY: The Office of the General Assembly of the Presbyterian Church (U.S.A.)), § D1.0101, 153.

<sup>8</sup> *The Book of Order*, § D-1.0103, 153.

<sup>9</sup> *Ibid.*

a normal disciplinary matter an investigative panel would be formed and bring an adversarial action if that is found necessary.<sup>10</sup> The dispute is then brought to a tribunal of disinterested parties as a formal arbitration.<sup>11</sup> This trial culminates in a published binding judgment that is subject to appeal.<sup>12</sup> As with the UMC, the PCUSA's official mechanisms for dispute resolution imitate the procedures of the secular courts as procedures for binding arbitration between and among members. The entire process presumes adversarial proceedings that will be judged by detached outsiders to the dispute, who are supposed to be disinterested church members, issuing an authoritative ruling on the parties.

Transparency, efficiency, accountability, and familiarity all contribute to reasons why churches would seek to emulate the procedures of the civil courts in their own denominational arbitrations when resolving disputes. Litigation, while perhaps not the path of least resistance, is certainly the path of most familiarity especially in large national denominations where participants to a dispute and agents of dispute resolution may have no prior connection to each other prior to litigation.

Public familiarity with the process of adjudication in the secular courts also contributes legitimacy in the eyes of the broader community to church arbitrations as they appear to follow culturally familiar forms. Characteristic qualities of arbitration and adjudication such as adversarial process, the opportunity to confront accusers, the opportunity to present evidence and testimony, disinterested decision maker(s), and

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<sup>10</sup> *The Book of Order*, § D-10.202, 187.

<sup>11</sup> *Ibid*, § D-11.0300, et seq., 194-196.

<sup>12</sup> *Ibid*, § D-11.0403, 197-97.



written decisions that explain the rationale for the outcome using formal rationality to support their public legitimacy become synonymous with commonly held assumptions of what constitutes fundamental fairness and due process. Curiously for church communities, following Jesus' methods for dispute resolution in Matthew 18 may actually undermine public legitimacy of decisions precisely because scripturally defined methods now appear impractical. Indeed, any competent council would advise against employing Jesus's methods because of the possible danger of making an admission against interest.

Another reason why secular methods of arbitration appear so firmly entrenched is that such processes are embedded in vested bureaucracies. Denominational officials, like their Roman antecedents, serve as gate keepers to complex processes and derive position, authority, and often income from their mastery of the arcana of dispute resolution requiring the services of ecclesial lawyers to resolve disputes. Usually only parties to a dispute have a direct interest in questioning let alone reforming such processes and disputants' attention is understandably focused on their conflict. Outside parties that do not avail themselves of these procedures have little or no direct interest in questioning or reforming them. Absent action by an outside force, bureaucratic inertia would tend to preserve the status quo, especially one that serves the interests of the bureaucracy.

Contemporary methods of dispute resolution in mainline churches are further embedded in a particular notion of power in the church. Despite various Protestant notions of the church as a called body, mainline dispute resolution bodies presume that authority to resolve disputes flows from the top down--from God to assemblies of church leaders to which all disputants are deemed subordinate. This notion aligns with Jesus'

own teaching in Matthew 18 apparently granting dispute resolution tribunals, when acting in concert, the authority to bind and loosen sins. This understanding of power develops flows from conceptions of power and authority arising from diverse sources such as the Jewish Sanhedrin, Roman law, and Medieval Common Law, none of which appear directly corresponds to Paul's project. Interestingly, mainline churches appear reluctant to suggest that such work may be sacramental in character despite Jesus' express promise that he would be present with such arbitrators whenever they acted in one accord to resolve disputes (Matt.:18:20).<sup>13</sup>

### **B. A Pauline Alternative Approach to Dispute Resolution**

Paul shows (us) another way. The resolution of disputes can be much more than the maintenance of the community's peace; it can be a means to form community itself. Such work would require radically different understandings of power, process, and goals to be achieved. It may look alien to many observers inside and outside the church and may offend many who look to the Christian community to imitate the secular world. It may even draw into tension Jesus' own teachings on dispute resolution. But, Paul's method of dispute resolution promises nothing less than Christian community formed in love as a provisional demonstration of the Kingdom of God.

In order to even consider re-appropriating Paul's functional work of building interdependent communities grounded in love and solidarity in lieu of reliance on the adjudication and arbitration of disputes, the church would need to distinguish between what Paul says and what Paul does. This would require loosening the single-minded

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<sup>13</sup> Given the very high esteem and authority that Matthew places on dispute resolution, it raises a fascinating question whether dispute resolution itself may be deemed either a sacrament or sacramental as those terms are understood by various Protestant traditions regardless of Matthew's understandings.

fascination with deriving theological propositions as the primary product of scriptural studies and instead focusing on actions and consequences. Examining scripture functionally rather than propositionally may seem at odds with Protestant sensibilities shaped by the Enlightenment, but may permit a way around an endless impasse over what Paul actually thought. What Paul thought, this approach would urge, is secondary to what Paul did.

The first characteristic of any attempt to re-appropriate Paul's work in addressing conflict would be a radical shift in the understanding of power and authority in the church, or rather the lack of it. What Paul did was act as if he had no direct power to resolve disputes. He did not order, adjudicate, arbitrate, mediate, officiate, find liability, or sentence. Paul does not judge. He says he could, but chooses not to do so. This subordination reflects Paul's dual understanding of power. He repeatedly and publicly asserts his authority as an apostle whenever his voice, prestige, and rank are challenged. But in a dispute precisely when one would expect Paul to use that power, he declines to employ it. Paul claims latent authority that he never uses.

One following Paul's precedent may publicly claim authority over all intra-church disputes but would then refuse to act from above on the basis of such authority to impose a decision or judgment on disputants. Instead, the church would identify itself alongside, perhaps even beneath the dispute and the disputants recognizing that formation of community and not finality of judgments or the maintenance of authority is the product and goal of church order. Such an approach would differentiate between the understanding of power and authority embraced by the Jerusalem assembly and the dispute resolution method described by Jesus in Matthew 18, both influenced by Jewish

tradition and the Sanhedrin, and the understanding of power that underlay Paul's work in Corinth. Rather than merely accept the magisterial role assumed by the Jerusalem assembly and Jesus' hypothetical assembly of elders in Matthew 18:20 and their institutional antecedent and model in the Sanhedrin, this approach would assume a posture of reticence and humility towards the parties to a dispute. Through this approach, disputes would be approached not as problems to solved, but rather opportunities for community formation to be embraced. This would, of course, require a change of mind and heart, letting go of all secular presumptions of what constitutes power and authority. Such a change (μετάνοια) may be the essence of what the church is called to do and show.

The second characteristic of re-appropriating Paul's work with conflict would be a constructive emphasis on teaching and mimesis directed towards the formation of the individual and the community. Such an approach would replace what are commonly thought of as the functional tasks of dispute resolution such as collecting information, evaluating evidence, reaching factual conclusions, applying those conclusions to external norms and standards, and reaching final evaluations, often at a distance from the disputants, with far more involved activities in which the dispute resolver would participate directly with the disputants. Paul's functional approach would emphasize the instruction and formation of the disputants seeking not so much resolution, but transformation. Instruction would take the form of returning to the question of *how* we engage with each other in community. How does our manner of living, sharing, and disputing not merely reflect a common identity as the body of Christ but more importantly how do we actually form such an identity through our practices? This

approach would require a dispute resolver to set aside presumptions of objectivity and enter into intimate and vulnerable relationship with the disputants. Either/or judgments and simplistic pronouncements would need to be discarded for empathetic nuance and nurture. Paul's approach would require the dispute resolver to instruct by modelling behavior as much as didactic teaching. Deep listening, empathy, and various forms of spiritual direction would supplant evaluation of evidence and law. Such an approach would require the dispute resolver to coach as much as teach. Dispute resolution would become indistinguishable from community formation as the dispute resolver's focus shifts from applying power in community to negotiating and mediating it through community.

Any church community seeking to claim and embrace Paul's functional method of dispute resolution would also need to reconsider the goal(s) of dispute resolution. As the ultimate aim of dispute resolution, maintenance of social peace in orderly equipoise would need to be replaced by formation of a new community living into a new identity as an intentional reflection, however provision, of an anticipated eschatological community. Peace and order are the tangible products and goals of external arbitration and adjudication. Peace and order can be imposed from the outside through the application of power, either voluntarily or coercively, whether through secular courts, mainline church tribunals, the Jerusalem assembly, the Sanhedrin, or a Roman magistrate. But peace and order are not the goals or aim of Paul's functional method. He desires nothing less than a new community transformed by and through the Spirit into a social demonstration of resurrection life. Power cannot achieve such an audacious goal. Only love can, which Paul concludes so eloquently in First Corinthians 13.

Paul's method of constructively engaging and redirecting conflict would be both difficult and demanding, requiring far more intimacy of connection that would be comfortable to most mainline church communities in the United States. Admittedly, Paul's functional methods may not be possible to implement on the scale of a national denomination consisting of largely autonomous congregations that do not know each other let alone share in a deep sense of communion. One could just as easily raise the question whether Paul would ever consider as Christ's church a national denomination consisting of largely autonomous congregations that do not know each other let alone share in a deep sense of communion. If peace and order in predictable relationships are the only goals of a dispute resolution process, then Paul's methods are unnecessary and perhaps nonsense. The methods of the Jerusalem assembly, Roman magistrates, and the Sanhedrin are admittedly profoundly orderly. If however, a church community aims for a higher goal and wishes to set aside childish ways, Paul's functional method of dispute resolution invites us to follow the path not chosen in Methodist and Presbyterian church. Merely because a method has not been chosen in the past does not mean that it could not be chosen in the future. Through the example of his actions in Corinth, Paul invites us to make a different choice as he shows us a more excellent way.

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