Re-examining Ambrose’s *Ep.* 24.
The Exceptional Case of the Bishop’s Hearing

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Abstract

*Ep.* 24 was not simply the record of the dispute and it was entangled with unclear sentences which sometimes confused previous researches. The present study will specify the cause of its confusion and will argue the possibility of the change of the point at issue. As a result, it becomes clear that the case of *Ep.* 24 was the exceptional one of the bishop’s hearing in which bishop’s judgement was tended to be unfair to one interested party and the result of its dispute was not necessarily dependent upon Ambrose’s authority as a bishop.

Keywords

Ambrose of Milan – *episcopalis audientia* – the bishop’s hearing – the donation to the church

1 Introduction

As a result of legislation promulgated by Constantine I, Christian bishops were able to have the episcopal authority to settle cases that fell under the Roman civil law.\(^1\) This episcopal activity is usually called *episcopalis audientia* and it is translated the bishop’s hearing,\(^2\) about which there has been a great discussion

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\(^1\) Early Christians was already encouraged to resolve a disputes internally within their communities following the Bible (C. Humfress, “Bishops and Law Courts in Late Antiquity: How (Not) to Make Sense of the Legal Evidence,” *Journal of Early Christian Studies* 19 (2011), p. 381.).

\(^2\) This *episcopalis audientia* is called the bishop’s court in another way.
among excellent experts. The difficulty in researching the bishop's hearing seems to lie in the fact that, as C. Rapp noted, the actual evidence of the bishop's hearing was relatively thin on the ground: “...a small handful of imperial laws, a few papyri, scattered references to the practice in literary sources, several mentions at local synods, and none in the canons of ecumenical councils, the secondary literature on the subjects...” These evidences were namely dependent upon each specific circumstances, literary styles, and fragmentary contents, which follows that the research on the bishop's hearing needs a careful treatment for these evidences in order to examine the actual conditions of the bishop's hearing. For example, C. Humfress marked the difficulty in exploring a general definition of the nature or the scope of the bishop's hearing from imperial laws.

Ambrose's Ep. 24 has been often referred to in the discussion about the bishop's hearing. Ambrose in this letter explained his judgement of the dispute and reported the result as Ambrose noted “Thus you have all been winners...” Ambrose's Ep. 24 thus is tended to be deployed as the typical and successful one of the bishop's hearing, from which we can observe its actual circumstance. On the other hand, some previous studies took note of the complexity of examining Ep. 24 as F. Martoye pointed out: “On ne peut mettre en doute l'exactitude de cet exposé des faits et des procédures, puisque c'est saint Ambroise lui-même qui le rappelle dans sa lettre à l'évêque Marcellus; et pourtant tout y paraît incompréhensible.” This complexity of Ep. 24 also could be found in the fact that previous studies have not yet reached an agreement about the classification of the case in Ep. 24: N. McLynn classified this case into “…the category of pecuniariae actiones...” and, on the other hand, G. Vismara looked upon it as “…una vertenza patrimoniale...” and F. Martoye went fur-

3 C. Rapp, Holy Bishops in Late Antiquity, Berkeley, 2005, p. 242.
4 Humfress, “Bishops and Law Courts in Late Antiquity,” pp. 391-395.
5 Ambrosius, Ep. 24 (CSEL 82, pp. 170-175). See also, on the English version, Saint Ambrose, “Ep. 22 (82),” in: Saint Ambrose Letters, trans. Sister Mary Melchior Beyenka, Washington, 1954, pp. 120-124.
6 F.J.C. Boy, La episcopalis audientia: La justica episcopal en las causas civiles laicos, Valladolid, 1985, p. 72; M.R. Cimma, L'episcopalis audientia nelle constituizioni imperiali da Constantino a Giustiniano, Torino, 1989, pp. 72-73; G. Vismara, La giurisdizione civile dei vescovi, Milano, 1995, p. 27.
7 Ambrosius, Ep. 24, p. 174: “Vicistis ergo omnes.”
8 F. Martoye, “Une sentence arbitrale de Saint-Ambroise,” Revue Historique de Droit Français et Étranger 8 (1929), p. 302.
9 N. McLynn, Ambrose of Milan: Church and Court in a Christian Capital (The Transformation of the Classical Heritage, 22), Berkeley, 1994, p. 270.
10 G. Vismara, “Ancora sulla 'episcopalis audientia' (Ambrogio arbitro o giudice?),” Studia et Documenta Historiae et Iuris 53 (1987), p. 60.
ther in attributing it to the curial patrimonial inheritance. This disagreement leads us to image that Ep. 24 was not simply the record of the fact and it was entangled with unclear sentences which sometimes confused previous researches. The present study will specify the cause of its confusion and will illustrate the complicated nature of Ep. 24 by noting the possibility of the change of the point at issue.

2 The Complexity of Ep. 24

Ambrose’s Ep. 24 as his personal letter mainly consists of his consoling words to Marcellus with bible citations. Ambrose referred to, as far as the minimum required and from the midway, to the dispute in which Marcellus got involved. It leads us to understand that Ep. 24 did not convey the total development of this dispute. Ambrose opened his account of the case with an appeal to the authority of the emperor and the blessed apostle, and next Ambrose explained the reason why the case was transferred to him, not illustrating then this case from the beginning to the end. It should be here noted that Ambrose marked the reason why Marcellus took part in the dispute with Laetus: “There has devolved upon me the business of your lawsuit, which you did not intimate but only carried on from a sense of duty and a desire to prove your generosity toward the poor.” We can only observe from this passage that Marcellus passively got involved in the dispute, which does not allow the understanding of the cause of this case.

It becomes now light that the dispute of Ep. 24 is difficult to summarize from the starting point, which follows that the prevailing summary of this dispute leaves the room for reconsideration. This prevailing summary is that the case began with the dispute that Laetus challenged Marcellus’ wish to donate the property to their sister for her support during her lifetime, and thereafter to the church. This prevailing summary was usually introduced with no citation

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11 Martoye, “Une sentence arbitrale de Saint-Ambroise,” p. 310.
12 Ambrosius, Ep. 24, CSEL 82, pp. 170-171: “Cognovi autem secundum sacrae formam praecceptionis, in quam me induit et beatissimi apostoli auctoritas et tuae doctrinae ac vitae forma et disciplina.”
13 Ambrosius, Ep. 24, CSEL 82, p. 171: “Nam cum ipse arguerem quod adhuc inter vos maneret veternosum iurgium, cognoscendi mihi necessitatem partes inposuerunt.”
14 Ambrosius, Ep. 24, CSEL 82, p. 171: “Apud me decursus est tui textus negotii, quod non intulisti, sed receptisti, quia erat et pietatis necessitas et probanda in pauperes liberalitatis voluntas.”
15 Vismara explained “Marcello, vescovo di una sede non identificabile con sicurezza...aveva donato un fondo di sua proprietà alla sorella, disponendo che alla morte di questa
from Ep. 24. The problem of this summary yet seems to lie in that we have no evidence that Marcellus initially donated the property to his sister and, after her death, to the church. It can be presumed that this summary was depended upon the above citation and moreover the passage as follows: “...if he [sc. Laetus] chooses, he may hold it without giving anything to the Church.”  

The important point is that this passage reported Marcellus’s proposal in the final phase, not the fact. It is therefore difficult to specify the initial action and consider the whole process without careful treatment of its passage as a proposal. This unclearness of the process in Ep. 24 also leads us to question Ambrose’s famous passage: “Thus you have all been winners...”  

The key here lies in Ambrose’s consoling words subsequent to this passage. It seems that Ambrose consoled Marcellus’s apparent loss and convinced him to recognize its loss as a true triumph, which allows us to reconsider the nature of Ep. 24. The present study will attempt to explore Marcellus’s proposal and his thoughtfulness, as well as its ambiguous result. We are resigned to overlook the entire process from a starting point and detect its nature. The present study instead puts its focus upon the possibility of the change of the point at issue, which will provide us with a new insight into the result of Ep. 24.

3 The Change of the Point at Issue

The passage “...if he [sc. Laetus] chooses, he may hold it without giving anything to the Church” was entangled with the final phase of this case. Ep. 24 reported the following final phase: Marcellus proposed to donate the property to their sister, so as to provide her with profits gained from this property, also
making the contract that this property was finally transferred to Laetus. Laetus objected to this proposal on account for his fear that their sister could not manage this property.

The point to be noted in this process is that Marcellus’ proposal left the room for donating this property to the church. Namely, Marcellus made concessions that Laetus had the liberality to choose to keep the property by himself or to donate to the church after his sister’s death: “...if he [sc. Laetus] chooses, he may hold it without giving anything to the Church.” Ambrose marked the effectiveness of this Marcellus’ concession: “…Nor must anyone sue him [sc. Laetus] in your name [sc. Marcellus’ name] or in that of the Church...”19 This passage provides us with the evidence that Marcellus’ concession was expected to refrain Laetus from suffering the legal action to him by the bishops. This means that Marcellus’s concession could reassure not only Laetus but also the bishops who claimed the right of its property. The key here lies in “… in your name [sc. Marcellus’ name] or in that of the Church...” Namely, the mention of Marcellus in this sentence was separated from the name of the Church. It can be here presumed that the profits of the Church as the interested party, partly independent from Marcellus as one person, was previously involved with this property. This argument provides us with the possibility that Marcellus previously, not initially as the prevailing summary says, intended to transfer the possession of the property to the church.

This presumption is insufficient to jump to the conclusion that the trigger of this dispute was Marcellus’ wish to donate this property to the church. It would be rather some reason to withdraw proposing this Marcellus’ wish at a starting point, when considering the complexity of the time-consuming process as Ambrose noted: “I saw that the issue was doubtful, that the law was subject to dispute, while numerous pleas were being entered by each party and petitions of an invidious sort presented to the emperor which contained, in addition, charges of tampering with his decrees.”20 Anyway, the important point of Marcellus’s proposal is that that Marcellus, at a certain point, decided to rule out the option to donate first to the church. It leads us to understand that the point at issue in this case changed at least once during their discussion: the previous point at issue can be seen as the issue to donate to the church or to keep it by his family, while the final point at issue is the way how to keep it by family, which ruled out the option to donate first to the church.

19 Ambrosius, Ep. 24, CSEL 82, p. 173: “...neque quisquam eum vel tuo vel ecclesiae conveniret nomine...”

20 Ambrosius, Ep. 24, CSEL 82, p. 172: “Cum igitur anceps iudicium, ius controversum, multipes ab utraque parte actiones cernerem, invidiae plenas supplications, rescriptorum quoque obreptiones obtixerent...”
The possibility of the change of the point at issue could be well explained by the forensic rhetoric context, in which each interested party tried to persuade the other and the judge or the arbitrator in order to win the trust\textsuperscript{21}. The situation that Marcellus wished to donate to the church in the bishop's hearing under Ambrose's mediation might arise unfairness of negotiations to Laetus. In this situation, the best way to win the trust of Laetus is to appeal the virtue of fairness to him by discarding self-interest and impartially making comparison with other options as Cicero recommended\textsuperscript{22}. This forensic rhetoric way is consistent with Marcellus’ proposal not to donate first to the church. Thus, the change of the point at issue in this dispute seems to be reasonable and possible from the perspective of the forensic rhetoric context.\textsuperscript{23}

4 The Exceptional Case of the Bishop’s Hearing

The insight about the change of the point at issue permits us to reexamine the result of the dispute in Ep. 24. Ambrose looked back on Ambrose's final decision that Marcellus lost the right of its property. Ambrose consoled him: "Nothing is lost to the Church…"\textsuperscript{24}; "Perhaps you feel you are in a worse state because of the loss of the suit and the monetary costs. But, indeed, for bishops the losses of this world are better than its gains…"\textsuperscript{25}; "Fear not that Church will be rendered destitute and out of reach of your generosity."\textsuperscript{26} It is here important that Marcellus’ loss was linked with the loss of the church, not Marcellus

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\item See, on this point, Cicero's reference: "Vt inveniat, quem ad modum fidem faciat eis qui-bus velit persuadere, et quem ad modum motum eorum animis adferat." (Cicero, \textit{Partitiones Oratoriae}, SCBO, 1, 5).
\item Cicero noted the importance of fairness in the forensic rhetoric discourse: "Atque eius quidem generis finis est aequitas; quae non simpliciter spectatur sed ex comparatione non numquam..."(Cicero, \textit{Partitiones Oratoriae}, SCBO, 28, 98).
\item Humfress mentioned about the relation between the Christian ability and the forensic rhetoric skill in late antiquity: “Christian communities needed skilled forensic practitioners in order to exploit the structures of Empire to their advantage.”(C. Humfress, \textit{Orthodoxy and the Courts in Late Antiquity}, Oxford, 2007, p. 144). It can be here presumed that not only Ambrose but also Marcellus appreciated the importance of forensic rhetoric skills. It is thus natural that Marcellus’ side proposed the more attractive and fairer option not to donate first to the church.
\item Ambrosius, \textit{Ep.} 24, \textit{CSEL} 82, p. 174: “Nihil autem adimitur ecclesiae….”
\item Ambrosius, \textit{Ep.} 24, \textit{CSEL} 82, p. 172: “Sed putas te gravatum iactura iuris, damno pecuniae? Meliora utique sacerdotibus damna quam lucre saeculi sunt.”
\item Ambrosius, \textit{Ep.} 24, \textit{CSEL} 82, p. 174: “Nec vereare, ne immunis sit adque exors ecclesia liberalitatis tuae.”
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himself. This point suggests that Marcellus’ side as the interested party represented the profit of the organization, not of person.

With this in mind, the description of the result leads us to think that Ambrose finally seemed to pass judgement against not only Marcellus but also the church. This respect suggests that Ambrose fairly settled the complicated dispute not mainly depending upon his authority as a bishop belonged to the church, although the property in question was deeply entangled with the profit of the church. This fact permits us to think that the cause to conciliate this dispute was mainly based on Ambrose’s social personal background. Ambrose was a peculiarly high-level operator due to his family connection and his previous career path dispensing justice in the imperial bureaucracy.27 We can observe that general disputes concerning the property were mainly resolved by the act of arbitration, which was understood as a fundamental public role to be undertaken by an influential man within any given community, not as a public office.28 With this in mind, it becomes clear that Ambrose’s social background as an influential man could have an influence upon the settlement of this complicated dispute.29

Moreover, the insight about the change of the point at issue allows us to a better understanding of Ambrose’s decision to manage this case as arbitrator, not as judge. When Ambrose undertook this dispute, the previous option to donate first the church seemed to be the profit for not only Marcellus, but also the judge Ambrose himself as bishop. Ambrose naturally noticed this unfairness and considered that Laetus would question the fairness of judges: “The favor resulting from our [sc. Ambrose and Marcellus] priestly relationship might have seemed suspect to them [sc. Marcellus and his party]...”30 This is one of the reasons why Ambrose did not accept this case as a judge.31 It might be here said that the substitution of a bishop for a judge did not sufficiently

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27 McLynn indicated that details of this case were practically trashed out with the advocates and mentioned: “Ambrose’s easy cooperation with the lawyers reminds us of his barrister’s past...” (McLynn, *Ambrose of Milan*, p. 270.).
28 Humfress, “Bishops and Law Courts in Late Antiquity,” p. 377.
29 J.C. Lamoreaux’s suggestion would be considerable: “There is little evidence to suggest that the parties at suit were generally represented by lawyers, perhaps with the exception of cases that might involve great amounts of money, as is evidenced by the letter of Ambrose of Milan to Marcellus mentioned above.” (J.C. Lamoreaux, “Episcopal Courts in Late Antiquity,” *Journal Early Christian Studies* 3 (1995), p. 158.).
30 Ambrosius, Ep. 24, CSEL 82, p. 172: “Posset etinam illis videri suspecta necessitudinis sacerdotalis gratia.”
31 See, on another reason of the money costs, Ambrosius, Ep. 24, CSEL 82, p. 172: “Et quod verum est, errant vetusti iurgii intolerabilia utrisque parti dispendia, si finis eius aut fructi caret aut liberalitatis solacio.”
win the trust in the case concerning the donation to the church,32 although the
duty of the judge was to rule a neutral judgement and especially the fairness of
the bishop's hearing was expected.33 This leads us to think that the dispute
concerning the donation to the church was the exceptional case of the bishop's
hearing, which did not necessarily ensure the fairness. The reason is that bi-
shop's judgement appeared to be unfair to another interested party who con-
flicted with the church. We should not forget the fact in late antiquity that
there were many recommendations to Christians and records to abandon the
possessions, and to distribute its profits or property gained by inheritances to
the needy.34 This fact allows us to think that the dispute case concerning the
donation to the church was not peculiar in late antiquity. Some ancient sources
reported that families objected to the donation to the church, in which ad-
vantages between the family and the church were so vividly contrasted as to
be unreconciled.35 This circumstance explained us that the case concerning
the donation to the church like Ep. 24 could be, in late antiquity, the focus of
a much discussion in which the question was argued whether to select the
bishop's hearing is appropriate or not.

5 Conclusion

Ambrose's Ep. 24 was often cited in the discussion of the bishop's hearing and
yet Ep. 24 was not simply the report of the fact, entangled with unclear sen-
tences which imply the initial action of this dispute and of the successful
result. The present study resolved the confusion of previous studies and it
illustrated the possibility of the change of the point at issue, which ruled out
the previous option to donate first to the church. This insight leads us to

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32 Hurries have already indicated the possibility that the bishop's hearing became partial:
“Although acting as a conciliator, the bishop was also, inevitably, exerting and displaying
his auctoritas, and was motivated by concern for his own position as well as the interests
of his clients.” (Hurries, “Resolving Disputes” p. 80.). The present study will point out one
concrete case of its possibility.

33 Lamoreaux, “Episcopal Courts,” p. 151. Lamoreaux pointed out other two important ele-
ments of the bishop's hearing: the saving of time and money (p. 152.) and the religious
piousness (p. 153.).

34 See, on this respect, A. Arjava, Women and Law in Late Antiquity, Oxford, 1996, p. 159;
C. Humfress, “Gift-giving and inheritance strategies in late Roman law and legal practice,”
in: Donations, Inheritance and Property in the Nordic and Western World from Late Antiquity
until Today (Routledge studies in cultural history), ed. O-A Rønning, London, 2017, pp. 26-
27.

35 Arjava, Women and Law, p. 159.
understand that the settlement of this complicated dispute was depended upon Ambrose's personality as an influential man. We can also observe that the dispute of Ep. 24 concerning the donation to the church was the exceptional case of the bishop's hearing, in which the fairness of the judgement was not expected. These results permit us to conclude that Ep. 24 needs a careful treatment and it is difficult to use it as the typical and successful case of the bishop's hearing. On the other hand, when compared to the expectation of the fairness of the bishop's hearing, Ep. 24 is the essential source showing its exceptional case which was the frequent trouble between Christians and their families. Ep. 24 also provides us with the importance of bishop’s personality in the bishop’s hearing, which could not be found in extant formal legal sources. Therefore, Ep. 24 still has a great value which sheds a new light on the actual circumstance of the bishop’s hearing.