ROMAN REPRESENTATIONS OF THE ORATOR DURING THE LAST CENTURY OF THE REPUBLIC

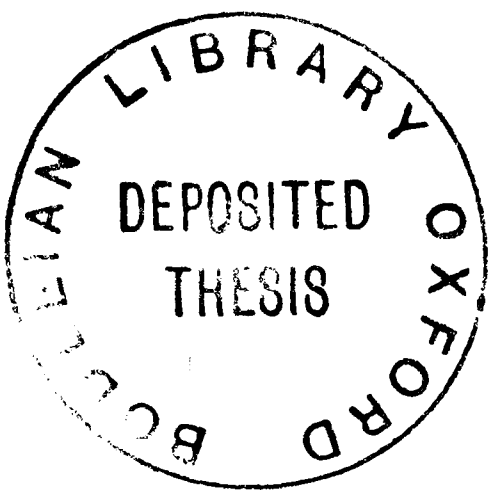
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Abstract

Title: Roman Representations of the Orator during the Last Century of the Republic
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The aim of this thesis is to explore the various ways in which Romans constructed the orator's role during this period. I emphasize that the orator was a central figure in Late Republican Rome and that a rhetorical training and an ability to speak in public - whether in the courts, in the senate house or in *contiones* - could be seen as essential attributes for the leading public figures of this time. In this way the thesis contributes to recent work which has stressed that the political system at Rome can be seen as a form of democracy. My chapters are arranged according to the texts which I have used as evidence in each.

The first examines the surviving rhetorical handbooks and dialogues, and argues that there was a thriving and agonistic market for rhetorical education at Rome. Greek ideas were reshaped to suit the Roman socio-political world and its different practices, such as advocacy. Roman orators engaged in heated polemic over the best style of speaking, providing further evidence that the world of the *forum* was highly competitive.

The second chapter uses a selection of Cicero's judicial speeches to argue that a Roman advocate could use a wide variety of strategies, both in portraying his relationship with his client, and in presenting his own persona.

The third chapter focuses upon Cicero's *Philippics*, and explores the ways in which an orator could present his relationship - and establish his authority - with his audience, through his selection of arguments, such as the use of *exempla*.

The final two chapters broaden the horizons of the work: the former uses the fragments of Cato the Elder and Gaius Gracchus to suggest that earlier Romans had used similar devices in developing their self-portrayals. The latter explores the historical texts of Caesar and Sallust, the only surviving evidence which sets the speech-act within the contexts of opposing orations and of audience responses.

I conclude with an appendix on the published versions of the speeches.

Preface

My interest in the relationship between words and deeds in Greek and Roman authors was originally stimulated by Michael Comber's undergraduate lectures and tutorials on Thucydides and Tacitus. In a sense by moving into the Roman Republic I was simply filling a personal gap, but this change of direction was not without other motivations. For, those like Tacitus who witnessed and practised oratory in the early Principate were imbued with the ideas and traditions of the Ciceronian age, and Romans in the late Republic who engaged in oratory in one way or another had in their turn been significantly influenced by the Greeks. In this thesis I do focus on the way in which contemporary Romans represented the role of the orator in my period, but throughout an important underlying theme is the way in which they responded to earlier Greek ideas.

In the course of this project I have been greatly helped by the comments and suggestions of many scholars and friends. The list is too long for all to be mentioned by name, but I would like to thank in particular: Michael Comber, for his continuing support and friendship; my other undergraduate tutor, Nicholas Purcell, for his ongoing stream of stimulating ideas; Donald Russell, for reading and greatly improving the first chapter, as well as making many other useful suggestions; Doreen Innes and Michael Winterbottom, for providing helpful guidance at various stages; Jonathan Powell, Chris Kraus, Gregory Hutchinson and Peta Fowler, for their many useful insights in seminars and elsewhere; Barbara Levick and Fergus Millar, for their generosity in giving assistance throughout; the participants in the Ancient History Work-in-Progress Seminar, which provided a conducive forum for airing ideas, and in particular George Williamson, Catherine Steel, Gordon Davies and Martha Lovell.

I am grateful to the British Academy for their postgraduate funding, and to St John's College for providing an excellent environment in which to embark upon this research. The award of a Senior Scholarship at St Hugh's College in Michaelmas 1997 offered the perfect conditions for its latter stages. Most recently, I owe a debt to John Taylor and everyone else at Tonbridge School for their friendly support as I have combined the completion of this project with the classroom.

My greatest debts are owed firstly to my triumvirate of supervisors, who have watched over my research from its inception: Chris Pelling, Greg Woolf and Andrew Lintott. Their different approaches and emphases have proved a stimulating combination, and I am grateful to all of them for their unstinting encouragement, generosity and enthusiasm. Lastly - *si magna licet componere parvis* - I would like to thank Katie for everything else.

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Introduction

ac veluti magno in populo cum saepe coorta est
seditio saevitque animis ignobile vulgus
iamque faces et saxa volant, furor arma ministrat;
tum, pietate gravem ac meritis si forte virum quem
conspexere, silent arrectisque auribus astant;
ille regit dictis animos et pectora mulcet:
sic cunctus pelagi cecidit fragor...

(Vergil, *Aeneid* 1. 148-154)

This simile, the first of the *Aeneid*, compares Neptune's calming of the stormy sea to the effects of a statesman's appearance before a riotous crowd. The use of this comparison in such a prominent position by the poet not only reflected the recent turbulence at Rome during the civil wars, but is also a sign of the power of the image of the orator addressing an audience for Vergil's readers.

The epic was written during the 20's B.C., a period when the opportunities for oratory at Rome were beginning to change in parallel to the socio-political transformation which marked the transition from Republic to Principate. But Vergil's simile reflects the circumstances which existed during the troubled final period of the republican system. Although it has been suggested that the simile's image reflects one particular event,[1] Austin rightly rejects this, preferring to see it as 'an ideal that was close to the poet's heart.'[2] As a passage written soon after the last throes of the republican system, it is illuminating to consider in greater detail some particulars of this ideal which the poet presents.[3]

The wording of the simile emphasizes the opposition between the fury of the mob (*saevit*, *volant*, *furor*) and the calming influence of the orator (*pietate*, *silent*, *mulcet*). This opposition is reinforced by the way in which the surrounding narrative affects in its turn the

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1 The favourite candidate is Cato during his praetorship of 54 B.C. (Plutarch, *Cato Minor* 44). G. Kennedy, *The Art of Rhetoric in the Roman World* (Princeton, 1972), 396-7 suggests that the figure of the peacemaker really represents Augustus himself. For Augustus' own rhetorical practice see Suetonius, *Divus Augustus* 84.

2 R. G. Austin, *Aeneidos Liber Primus* (Oxford, 1971), 69.

3 The power of the simile lies not only in its programmatic location as the first of the epic, but also in the fact that it reverses the usual practice of epic simile, in that it illuminates nature by the behaviour of man (Austin (1971), 68). Contrast Silius 7. 219ff. where the effect of Fabius' speech is compared to Neptune calming the sea.

reading of the simile. The mob resembles the raging elements of the storm, while the orator is likened to Neptune who brings calm (*placat*, *temperat*).[4] This extended opposition sets the orator firmly on the side of control, ranged against the forces of anger and emotion (*furor*).[5]

This control exercised by the statesman stems not only from his oratorical ability. Vergil describes him as *pietate gravem ac meritis*, and the crowd fall silent when they see such a man even before he has uttered a word. It is only after they have started to listen *arrectis auribus* that he can begin to speak and guide their minds. The effective statesman must possess other attributes, of character and achievement, before his words can wield influence before the assembled crowd.

But it is in the nature of the speaker's control that this simile is particularly illuminating. It is as great as that exercised by Neptune over the winds and sea: the power of the orator is compared to that of an Olympian god. This comparison also serves to emphasize the gulf between himself and his audience, described as *ignobile vulgus*. Moreover he influences them with his words on two levels: *ille regit dictis animos et pectora mulcet*. This division between *animos* and *pectora* seems to reflect the appeal of the speaker to the intellect and to the emotions, and is reinforced by the use of different verbs: *regit* of the rational influence which he exerts, and *mulcet* of the emotional.

When we add the attributes of the speaker's character, it is apparent that Vergil portrays his ideal statesman as possessing the three means of persuasion which Aristotle, of extant sources, was the first to define as the central attributes of classical rhetoric:

Τῶν δὲ διὰ τοῦ λόγου ποριζομένων πίστεων τρία εἴδη ἔστιν· αἱ μὲν γάρ εἰσιν ἐν τῷ ἤθει τοῦ λέγοντος, αἱ δὲ ἐν τῷ τὸν ἀκροατὴν διαθεῖναί πως, αἱ δὲ ἐν αὐτῷ τῷ λόγῳ, διὰ τοῦ δεικνύναι ἢ φαίνεσθαι δεικνύναι.[6]

These three categories of *ethos*, *pathos* and proof formed the structural basis of at least the first two books of Aristotle's work,[7] and at Rome it is with Cicero that we begin to see the

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4 Vergil, *Aen.* 1. 142-6.

5 Indeed Lyne sees the poet's desire to locate this opposition between *furor* and *pietas* in a political context as the major motivation for including this programmatic simile (R. O. A. M. Lyne, *Further Voices in Vergil's Aeneid* (Oxford, 1987), 28).

6 Aristotle, *Rhetoric* 1. 2. 3.

7 'This triple division is the main organizing thread of the *Rhetoric*, and was to prove very influential,' B. Vickers, *In Defence of Rhetoric* (Oxford, 1988), 20.

adoption of this division in Roman rhetorical theory. At *De oratore* 2. 115, Cicero makes Antonius say: *ita omnis ratio dicendi tribus ad persuadendum rebus est nixa: ut probemus vera esse, quae defendimus; ut conciliemus eos nobis, qui audiunt; ut animos eorum, ad quemcumque causa postulabit motum, vocemus.*[8] It is a sign of the increasing influence of this Greek division at Rome that Vergil incorporated it seamlessly into his portrayal of the orator in the first simile: the argument from *ethos* is represented by *pietate gravem ac meritis*, that from proof by *regit animos*, that from *pathos* by *pectora mulcet.*[9]

In this thesis I explore the way in which the role of the speaker in Roman public life was constructed in a variety of Roman texts during a period which preceded the writing of Vergil's *Aeneid*, from the rise of the Elder Cato at the end of the third century B.C. to the death of Cicero in 43 B.C. Although I am interested in the Roman evidence, Vergil's opening simile has already shown how important Greek ideas about oratory were at Rome. Therefore, an important underlying theme of my study is to consider the way in which the Romans reacted to these Greek ideas in developing their own vision of the orator's role.

In Greece the orator was associated with democracy, particularly during the flowering of rhetoric at Athens in the fifth and fourth centuries B.C. As a result, the importance of the orator's role in republican Rome might have significant implications for modern perceptions of the Roman political system. Recent work, particularly that of Millar, has laid a renewed stress on the fact that this system can be seen as a form of democracy, with an emphasis on the openness of its procedures and the element of popular participation within it.[10]

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8 It is true however, as Vickers (1988), 73 points out, that this division is not yet to be found in the earlier *De inventione* and *Rhetorica ad Herennium*. It should also be noted that in the *De oratore* Cicero does not maintain the Aristotelian order of *ethos*, *pathos*, proof, choosing instead that of proof, *ethos*, *pathos*.

9 It is also noteworthy that Cicero uses this threefold division as the basis for the *Orator*, where he argues that these three methods of persuasion should be matched by three different styles of speaking. On which see below p. 56 and A. E. Douglas, 'A Ciceronian Contribution to Rhetorical Theory', *Eranos* 55 (1957), 18-26.

10 Most important is his book, F. Millar, *The Crowd in Rome in the Late Republic* (Michigan, 1998), but this was preceded by a series of articles, which concentrated upon earlier periods: 'The political character of the classical Roman republic, 200-151 B.C.', *J.R.S.* 74 (1984), 1ff.; 'Politics, Persuasion, and the People before the Social War (150-90 B.C.)', *J.R.S.* 76 (1986), 1ff.; 'Political Power in Mid-Republican Rome: Curia or Comitium', *J.R.S.* 79 (1989), 138ff.; 'Popular Politics at Rome in the Late Republic', in I. Malkin and Z. Rubinsohn (edd.), *Leaders and Masses in the Roman World: Studies in Honor of Zvi Yavetz* (New York, 1995), 91ff. But others have also addressed this question recently: M. Jehne (ed.), *Demokratie in Rom? Die Rolle des Volkes in der Politik der römischen Republik* (Stuttgart, 1995); G. Laser, *Populo et scaenae serviendum est: Die Bedeutung der städtischen Masse in der Spaten Römischen Republik* (Trier, 1997); A. Yakobson, *Elections and Electioneering in Rome: A study in the Political System of the Late Republic* (Stuttgart, 1999) [Historia Einzelschriften 128].

The orator was a central figure in many of these processes, whether he was arguing for or against the passage of a new law, or was defending or prosecuting someone in court. My foremost concern is to examine the ways in which the Romans perceived, and in turn represented, the orator's various roles, and in particular his relationship with the audience. Many important questions spring to mind: did the orator present himself as one of his audience who happened to be speaking for them, or as someone distanced from them who was telling his hearers 'how it was'? Did he show off an elaborate training, or did he conceal it? Or did he need one at all? Where did he derive his authority from each time he spoke? Did he have to be consistent, or could he express contrary views on different occasions? Did speakers treat subjects generally, or did they target their words at opponents and speak *ad hominem*? When they spoke on behalf of another in court, were they acting like patrons fulfilling existing obligations towards a client, or were they behaving more in the fashion of a modern barrister?

The answers to these questions are not necessarily straightforward, but they have important implications for our overall perception of the Roman political system. As we have already seen, Greek techniques and ideas about oratory had reached Rome, but it would be wrong to conclude that the Romans adopted them unchanged. A salutary reminder of this is provided by the law courts, where Roman practice sanctioned the use of advocates in opposition to the usual procedure in Classical Athens.

The thesis is arranged according to the sources which I have used in researching and writing it, and I concentrate upon one type of text in each chapter: in the first, rhetorical handbooks and dialogues on oratory; in the second, a selection of Cicero's published judicial oratory; in the third, Cicero's *Philippics* as representatives of his political speeches; in the fourth, the surviving fragments and *testimonia* of the speeches of the Elder Cato and Gaius Gracchus; in the last, the historical writings of both Sallust and Caesar. The publication of the speeches is therefore an important issue: if the versions as we have them were very different from those that were delivered, and always tended to be different in the same respect, it would have significant implications for what we can say about actual practice in the forum. I discuss this question in an appendix, but suggest that it does not invalidate my arguments, since at the very least they were written as texts which could have been delivered in this form.

I. Constructing the Orator: Roman rhetorical theory and its response to the Greek tradition

Vergil's first simile, which I discussed in the introduction, demonstrates how integrally Greek ideas about the persuasive methods of a speaker were adopted in Roman portrayals of the orator.[1] In this chapter I examine the way in which the rhetorical texts from the last century of the republic show how these ideas were adapted to suit a Roman context. I argue that in this period there was a thriving system of education in Hellenistic rhetoric at Rome. The surviving practical handbooks on this theory, the *Rhetorica ad Herennium* and *De inventione*, provide us with a picture of the way in which rhetoric was taught in Rome at the start of the first century B.C. Their content shows a large measure of agreement, and both appear to follow Hellenistic theory closely, but are also written in an agonistic style, which suggests that they were produced for a competitive market-place.

They also both try in a limited fashion to make the material more appealing to the Roman. The author of the *Ad Herennium* in particular argues that as a Roman he is better suited to presenting the material to a Roman audience than a Greek teacher. And the young Cicero in the *De inventione* shows some signs that he is already beginning to move away from an unquestioning agreement with the Hellenistic system, concentrating more upon the classical origins of rhetoric. Moreover the first preface shows him making some preliminary arguments in defence of oratory against Roman critics.

In the second section of this chapter, I consider the picture of the ideal orator which is presented in Cicero's *De oratore*. I argue that this was intended in part as a response to the teachers of Hellenistic rhetoric, whom Cicero had earlier followed in his *De inventione*. In the later work he adapts the ideas of Aristotle and Isocrates, and uses their authority to reinforce the traditional role of the aristocratic orator at Rome. In particular I examine how Cicero reshapes the Aristotelian idea of persuasion by character to suit his own Roman context. Where the teachers offered a rhetorical education to any paying customer, the speakers of the *De oratore* assert that this is only valid at the most elementary level and that the orator must possess a broad philosophical and cultural education, which remained the preserve of the élite.

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[1] That is not to say that Vergil and other Romans represented the three different categories in the same way as Aristotle had done. Indeed I argue below that Cicero diverged greatly from Aristotle in his interpretation of *ethos* based persuasion (pp. 42-5).

In the final section I show that other contemporaries of Cicero also used the Greek tradition in a sophisticated way, and drew on different ideas to produce their own vision of Roman oratory, and in particular the style that was appropriate. As two examples I take Gaius Licinius Calvus and Marcus Iunius Brutus. I argue that Calvus and his fellow Atticists advocated a classicizing style in order to establish their own forensic authority and set themselves apart from the older generation of Roman orators, whom they depicted as debased 'Asianists' by the strict standards of Classical Athens. But I contend that Brutus' position was a much more fundamental challenge to Cicero's vision, in denying the orator any appeal to the audience's emotions. I argue that in taking this stance Brutus was inspired by his adherence to the Old Academy and the theory of the Stoics, who wished to establish a rational rhetoric as a counterpoint to dialectic, and whose ideas had been influential at Rome since the second century B.C.

1. The Greek origins of Roman rhetorical theory: continuity and change

Despite Cicero's efforts in the *Brutus*, the origins of the study of rhetoric at Rome remain obscure. It appears that Cato the Censor was the first to preserve his own speeches for posterity. Cicero claims to be acquainted with more than one hundred and fifty of them,[2] and while these were not all necessarily published by Cato (or even genuine), Gellius informs us that Cato included at least two of his own speeches in the *Origines*.[3] Kennedy sees this interest in preserving his speeches and publishing at least some of them as an extension of the Roman nobility's tradition of preserving a record of their achievements.[4] If this is the case, the inclusion of particular speeches among the deeds worthy of memory as *res gestae* is a notable development, and one which was perhaps inspired by the Greek historiographical practice of including speeches within the narrative.

Moreover Cato was also remembered as the first Roman to have written on the subject of rhetoric: *Romanorum primus (quantum ego quidem sciam) condidit aliqua in hanc materiam M. Cato ille censorius*.[5] But although Cato stands at the head of Quintilian's Roman list, there is great doubt as to precisely what form this work took.[6] Astin claims that 'Quintilian's phrase is more appropriate to a number of well-known observations than to a book,'[7] but the fact that his name follows a long list of Greek writers on the subject (to which his work is linked by the words *in hanc materiem*) implies something more coherent.

Whatever the form of his writing, only a possible three fragments survive. The preserved term *vires causae* ('the strong points of a case'),[8] applied to an argument supported

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2 Cicero, *Brutus* 65.

3 Gellius 6. 3. 7 (*On behalf of the Rhodians*: 167 B.C.); 13. 25. 15 (*Against Servius Galba*: 149 B.C.). For his preservation of speeches, see Fronto, *Ad A. Imp.* 1. 2. 9, where Cato describes the preparation of the speech *De sumptu suo*. In writing it he refers to a copy of a previous speech, preserved in a *caudex*. This however does not imply its publication.

4 Kennedy (1972), 58-9.

5 Quintilian 3. 1. 19.

6 Kennedy (1972), 55 follows the traditional view that the work on rhetoric may have formed a part of a multi-volume encyclopaedia on a variety of subjects useful for his son, the *Ad filium*; so too, for example, F. Della Corte, *Catone Censore. La vita e la fortuna*2 (Florence, 1969), 107-111: 'Dell'enciclopedia romana, che vanterà nomi gloriosi per tanti secoli, Catone si può ben dire il fondatore' (p. 110); D. Kienast, *Cato der Zensor* (Darmstadt, 1979), 104: 'Mit diesem Werk übertrug Cato als erster die griechische höhere Bildung in die römische Sphäre.' However, A. E. Astin, *Cato the Censor* (Oxford, 1978), app. 8 doubts the existence of such a work, arguing rather that the *Ad filium* was 'an assemblage of hortatory precepts.'

7 Astin (1978), 333.

8 *De adtributis personae et negotio* 308 Halm.

by attributes of persons or actions, implies some discussion of the forms of argument which could be used in a case.[9] The second and third fragments are slightly more revealing:

orator est, Marce fili, vir bonus, dicendi peritus.[10]

rem tene, verba sequentur.[11]

Both these admonitions suggest a sense of priorities in Cato's theory of rhetoric. It is the quality of the speaker, and what he has to say that counts, and the way in which he says it is only a secondary consideration.[12] The second of these pieces of advice perhaps foreshadows the direction of some later Roman rhetorical theory, where the stress on content is marked. To quote but one example from the *De oratore*: *est enim et scientia comprehendenda rerum plurimarum, sine qua verborum volubilitas inanis atque inridenda est.*[13] And while the first fragment might reflect Cato's general views on morality at Rome, the idea of the 'good man' remained important in Roman rhetorical theory. In his preface Quintilian expresses his primary demand for the perfect orator: *ideoque non dicendi modo eximiam in eo facultatem sed omnes animi virtutes exigimus.*[14]

However, in these three fragments it is difficult to see more than Astin's 'hortatory precepts'. For an idea of Cato's rhetorical training, scholars have tended to look towards the fragments of his speeches or the *De agricultura.* Leeman examines the preface to the latter work, considering in particular Cato's treatment of the utility of agriculture under the headings of *periculum* and *honestum.*[15] He argues that Cato's division reflects the Greek theoretical treatment of deliberative oratory.[16] The problem with an analysis of this preface or any fragment of a speech is that it is very difficult to be certain that the use of any particular argument reflects an existing theory. Rather it may be possible that the theory is only a later

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9 Cicero discusses the same subject at *De inventione* 1. 34.

10 Seneca, *Controversiae* 1. pr. 9.

11 Julius Victor 374 Halm.

12 These suggestions are only tentative, since there is clearly a danger of basing too much on a few fragments, which lack a context, particularly when Cato was to become seen as an important early authority for much later Roman practice in a wide variety of spheres.

13 Cicero, *De oratore* 1. 17. Kennedy (1972), 56 notes that Horace seems to echo the advice in a poetic context: *rem tibi Socraticae poterunt ostendere chartae,/ verbaque provisam rem non invita sequentur* (Horace, *Ars Poetica* 310-1). On Horace's debt to Cato see C. O. Brink, *Horace on Poetry* vol. II (Cambridge, 1971), 339-40.

14 Quintilian 1. pref. 9.

15 A. D. Leeman, *Orationis Ratio* (Amsterdam, 1963), 21-4.

16 He quotes *Ad Herennium* 3. 3, where precisely this division is made.

codification of a pre-existing practice.[17]

Cicero describes the advance from natural ability to theoretical precept in the *De oratore*:

> *ac primo quidem totius rationis ignari, qui neque exercitationis ullam viam neque aliquod praeceptum artis esse arbitrarentur, tantum, quantum ingenio et cogitatione poterant, consequebantur; post autem auditis oratoribus Graecis cognitisque eorum litteris, adhibitisque doctoribus incredibili quodam nostri homines discendi studio flagraverunt.*[18]

Where Cato stands in this development remains difficult to ascertain,[19] but the preservation of his speeches, the evidence for rhetorical writing of some sort and his general acquaintance with Greek ideas suggest that he was an important forefather of Roman rhetoric.[20]

After Cato the next Roman figure known to have written on rhetoric was Marcus Antonius, consul of 99 B.C. and one of the interlocutors of the *De oratore*. Quintilian refers to him after Cato, but his work was not complete (*hoc solum opus eius atque id ipsum imperfectum manet*),[21] and it appears that it was fairly insubstantial, since in the *Brutus* Cicero makes Brutus wish that Antonius had written more than *illum de ratione dicendi sane exilem libellum.*[22]

It is only with Cicero's *De inventione* and the anonymous *Ad Herennium* that we find extant works on the theory of Roman rhetorical education. But these works do emerge after the process described by Cicero, in the passage quoted above, has already begun. As Cicero makes clear, the vital factor was direct contact with Greek orators and teachers (*auditis*

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17 The relationship between theory and practice becomes particularly problematic when we have to rely on later texts to reconstruct so much of Hellenistic theory.

18 Cicero, *De oratore* 1. 14.

19 E. Rawson, 'The Introduction of Logical Organisation in Roman Prose Literature', in *Roman Culture And Society* (Oxford, 1991), 324-51 (originally published in *P.B.S.R.* 46 (1978), 12-34) has examined this process in a wide range of disciplines, and describes from before the start of the first century B.C. 'the Roman attempt to organize almost the whole body of their knowledge into a series of systematic and comprehensible wholes' (p. 324). However she dismisses Cato's efforts in the extant *De re rustica*, despite some slight signs of familiarity with Greek technical literature, as 'an inexplicable confusion, a conglomeration of injunctions on various subjects, recipes, charms, piled up hugger-mugger together' (p. 326).

20 For his knowledge of, and reaction to, Greek ideas, see Astin (1978), 180-1. At *Brutus* 69, Cicero refers to Cato's use of tropes and figures, but so many rhetorical tropes reflect the everyday use of language that we can say nothing of Cato's Greek knowledge as a result. On Cato's presentation of his own role as an orator, see chapter 4.

21 Quintilian 3. 1. 19.

22 Cicero, *Brutus* 163. Compare also *De oratore* 1. 94 and 208.

oratoribus Graecis, *adhibitis doctoribus*). Greek rhetoricians had been present in Rome during Cato's life, for we know that the praetor Pomponius, on consulting the senate, expelled them from the city in 161 B.C.[23] Other opportunities for contact with Greek rhetoric came with embassies from Greece to Rome. The most famous was that of Carneades, Critolaus and Diogenes in 155 B.C.[24] They gave lectures while in Rome, and Lactantius tells us that Carneades spoke for and against the existence of natural justice on successive days as a rhetorical exhibition.[25] According to Plutarch, Cato opposed their presence in Rome, φοβούμενος μὴ τὸ φιλότιμον ἐνταῦθα τρέψαντες οἱ νέοι τὴν ἐπὶ τῷ λέγειν δόξαν ἀγαπήσωσι μᾶλλον τῆς ἀπὸ τῶν ἔργων καὶ τῶν στρατειῶν.[26]

However it was not long before Romans were studying Greek rhetoric and literature seriously. In the *Brutus* Cicero charts the increasing frequency of this practice. C. Sulpicius Gallus, a younger contemporary of Cato, *maxime omnium nobilium Graecis litteris studuit* (§78); Tiberius Gracchus, the father of the tribunes, spoke in Greek before the people of Rhodes (§79); later, there is a Marcus Aemilius Lepidus, of whom Cicero says: *hoc in oratore Latino primum mihi videtur et levitas apparuisse illa Graecorum et verborum comprensio et iam artifex, ut ita dicam, stilus*.[27] C. Fannius, the son-in-law of C. Laelius, *Panaetium audiverat* (§101). Panaetius, a Rhodian Stoic, is also said to have taught P. Rutilius, candidate for the consulship of 115 B.C. (§114). Again the word used of the student is *auditor*, emphasising that the education was through personal contact at lectures.

However, it is with the education of Tiberius Gracchus (tribune of 133 B.C.), overseen by his mother, Cornelia, that Cicero particularly emphasizes Greek training: *fuit Gracchus diligentia Corneliae matris a puero doctus et Graecis litteris eruditus. nam semper habuit exquisitos e Graecia magistros, in eis iam adulescens Diophanem Mytilenaeum Graeciae temporibus illis disertissimum*.[28] We can imagine that Gaius' education was similar, and elsewhere we learn of his close association with Menelaus of Marathus and other teachers.[29] It

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23 Suetonius, *De gramm. et rhet.* 25. They are linked in the expulsion with philosophers.

24 The embassy concerned an Athenian appeal against a fine imposed on them by the Sicyonians in a dispute against Oropus (Plutarch, *Cato Maior* 22. 1).

25 Lactantius, *Inst. Div.* 5. 14. 3-4.

26 Plutarch, *Cato* 22. 4.

27 Cicero, *Brutus* 96.

28 Cicero, *Brutus* 104.

29 Cicero, *Brutus* 100: *cum ei (Graccho) Fannius de Menelao Maratheno et de ceteris obiecisset.*

was through the personal teaching of figures such as Menelaus and Diophanes that Hellenistic rhetorical theories became known at Rome.

The *De inventione* and the *Ad Herennium* are the later Latin products of this foreign education. A very revealing moment in the development of Roman rhetoric occurred during the censorship of Licinius Crassus and Domitius Ahenobarbus in 92 B.C. The censors issued an edict forbidding rhetorical teaching in Latin. This edict has generated a great deal of modern speculation. Cicero makes Crassus defend the measure in the *De oratore*.[30] He says that it was passed not to stop the minds of the youths being sharpened (*acui*), but rather because their minds were being blunted and their *impudentia* increased. This latter was all that these teachers imparted, since they lacked any true knowledge, unlike their Greek counterparts. The very fact that Cicero can sensibly portray Crassus using this argument shows how far the issue of Greek education at Rome had advanced since Cato had expressed hostility to Greek philosophers promulgating their ideas in Rome.[31]

However, this measure against the Latin teachers has often been seen as a political one, directed against a school which supported Marius and might produce future demagogues. This political interpretation is perhaps supported by the use of the word, *impudentia*, and the Marian connections of L. Plotius Gallus, the first to teach declamatory exercises in Latin.[32] This aspect is important, since it suggests that the pursuit of rhetorical studies was now highly politicized at Rome.[33] Moreover if the public speaker is to be educated by Greeks and acquainted with their complex theories, his greater knowledge elevates him above the potential audiences which he might address. That knowledge is alien and exotic, and cannot be gleaned too easily from Latin charlatans.

Cicero's portrayal of his own extended education is illustrative of how he wished to represent himself as an orator, versed in Greek learning: there was no length to which he was

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30 Cicero, *De oratore* 3. 93-4.

31 Compare also the letter of Cicero, quoted at Suetonius, *De Gramm. et rhet.* 26. Although he wished to hear Plotius Gallus, a Latin teacher, he says that he was restrained by learned men from going. These men may well be Crassus and his friends, since, at *De oratore* 2.2, Cicero tells us that he was taught by the teachers whom Crassus employed.

32 On Plotius, see Suetonius, *De gramm. et rhet.* 26. On his ties to Marius, Cicero, *Pro Archia* 20. Kennedy (1972), 95 argues against this view, suggesting that we should take Cicero's Crassus at face-value, and that his real objection was the shallow nature of the education. But it is difficult to see how such objections could be completely apolitical in Rome at this time.

33 That is politicized not in the sense of left and right, but in that the study of rhetoric in Latin might permit the lower classes and Italians to become more active in politics. So, M. Griffin, 'The Intellectual Developments of the Ciceronian Age', *CAH*^{2} IX (Cambridge, 1994), 691-92.

not prepared to go. Deterred from attending Plotius' lessons, he instead studied with Greeks who came to Rome, Philo the Academic, Molo of Rhodes and the Stoic Diodotus.[34] Then he continued to study rhetoric and philosophy in Athens and with the leading teachers of rhetoric throughout Asia Minor.[35] Moreover, Cicero tells us that he practised his daily declamations more often in Greek than in Latin, partially *quod a Graecis summis doctoribus, nisi Graece dicerem, neque corrigi possem neque doceri.*[36]

However this education in Greek is only a part of his development as an orator. He also describes how he used to listen to speakers at Rome in the courts and assemblies, particularly Philippus, Varius, Carbo, Pomponius and Cotta.[37] He also practised declamations with other Roman orators, Marcus Piso and Quintus Pompeius,[38] and he followed the instruction of the Roman Stoic, Aelius Stilo.[39] But perhaps most significantly he says that he attached himself to the legal expert, Quintus Scaevola, in order to learn from the legal opinions which he gave to his clients.[40] Knowledge of Roman law was essential for the orator, as Crassus makes clear in the *De oratore*,[41] and it was expertise which could not be provided by Greek rhetoricians.

Cicero's education was perhaps exceptional, and may be portrayed by himself in somewhat exemplary terms,[42] but this is the context within which we must interpret the rhetorical handbooks. However, it remains a matter of doubt how closely the material of these works related to actual public speaking at Rome, or whether they are dominated by the self-centred, academic concerns of competing rhetorical schools.

I summarize briefly what we know of the production of the two works on rhetoric. They both survived under Cicero's name, though only the *De inventione* is genuinely his. It is

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34 Cicero, *Brutus* 304-14.

35 *Brutus* 315-6.

36 *Brutus* 310. However, Greek education was not embraced equally by all Romans, and a later Greek such as Plutarch, in Swain's words, 'feels that good education canot be assumed for Romans as it can for Greeks' (S. Swain, 'Hellenic Culture and the Roman heroes of Plutarch', *J.H.S.* 110 (1990), 129).

37 *Brutus* 304-5.

38 *Brutus* 310.

39 *Brutus* 207.

40 *Brutus* 306.

41 Cicero, *De oratore* 165-72.

42 It is not the reality of Cicero's education that matters, so much as the way in which he chooses to represent it.

now generally agreed that this work is also marginally the earlier, written sometime in the period 91-88 B.C.[43] Cicero would have been in his late teens, an age which would suit his description of the work in the *De oratore*: *quae pueris aut adulescentulis nobis ex commentariolis nostris incohata ac rudia exciderunt.*[44] Even in the earlier work, Cicero deprecates its contents. In saying that he will deal with the material and divisions of rhetoric, he says that he will not discuss its *genus et finem et officium*, for they require a lengthy treatment.[45] Despite the Isocratean introduction in praise of rhetoric, the *De inventione* explicitly remains a compilation of previous rhetorical theory,[46] collected from notes of lessons, perhaps even of those held in the houses of Stilo and Crassus.

The *Ad Herennium* is also of uncertain date. The latest datable events to which it refers are the death of P. Sulpicius (88 B.C) and the seventh consulship of Marius in 86 B.C.[47] Moreover Caplan notes that there is no sign of any of the constitutional changes carried out by Sulla, so 82 can be set as a *terminus ante quem*.[48] Therefore, with some probability, the production of the whole work can be dated to the period 87-2 B.C., slightly later than the *De inventione*.

Of the two works, only the *Ad Herennium* is complete. The *De inventione* ends with the second book, by which stage the treatment of *inventio* is complete. Like the author of the *Ad Herennium*, Cicero chose a structure based on the five-fold division of the orator's art. These five divisions are *inventio*, *dispositio*, *elocutio*, *memoria* and *pronuntiatio*.[49] In their treatment of *inventio*, the two works demonstrate a large measure of agreement, which has

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43 There is no reference to anything later than 91 B.C. and the naming of Crassus at 2. 111 and the absence of Antonius suggests that the former was dead, and the latter alive (see Kennedy (1972), 106-110).

44 Cicero, *De oratore* 1. 5. Although this allows for a later compilation of early notes, this is not very significant for the material which the work contains, and a strong argument for an early date is the absence of Antonius and Crassus from the list of orators at *De inventione* 1. 5.

45 *De inventione* 1. 9.

46 *De inventione* 1. 5: *non alienum est videre, quae dicant ei qui quaedam eius rei praecepta nobis reliquerunt.*

47 *Ad Herennium* 1. 25 and 4. 68 respectively. The author seems to have completed the work book by book (3. 1), but these passages give a *terminus post quem* of 88 for book 1 and of 86 for book 4.

48 H. Caplan, edition of the *Ad Herennium* (Loeb, 1954), xxvi. He notes as an example that the jury addressed in the example of 4. 47 seems to comprise both senators and *equites* since there are appeals to the name of both orders, a fact which accords well with the period following the passing of the *Lex Plautia iudicaria* in 90/89, which was superseded by the Sullan law of 82/1 which gave sole control of the law-courts to the senators. G. Calboli, *Rhetorica ad C. Herennium*^{2} (Bologna, 1993), 12-17 discusses the date of the work at some length, and reaches a similar conclusion: 'Quindi per me la datazione forse più probabile rimane quella alta dell' 88/6-82' (p.17).

49 *De inventione* 1. 9; *Ad Herennium* 1. 3.

encouraged debate over their relationship.

As we have seen, Cicero ascribes the contents of his book to the notebooks which he made in his youth. The author of the *Ad Herennium* likewise refers to his teacher at 1. 18. Talking of the theory of *constitutio*, he says: *noster doctor tres putavit esse.* This theory is very important for determining the relationship and background of the two works. Each uses the term *constitutio* to render the Greek στάσις, whereas later Cicero used the more literal translation *status*. In the *De inventione* Cicero does however accept the Hermagorean version of four different types of *constitutio*, and these four are different to the three which the author of the *Ad Herennium* recognises.[50] But Cicero, like the anonymous author, is critical of the theory. He devotes seemingly excessive labour to a refutation of Hermagoras' inclusion of the subdivisions of *deliberatio* and *demonstratio* within the *generalis* group.[51]

Therefore it seems clear that what we may call *status*-theory was accepted at Rome, as a result of Hellenistic influence, while its actual division was hotly contested by Roman rhetoricians. As Caplan states, the existence of so much identical Latin terminology and the use of Roman *exempla* common to the two works precludes a common Greek source.[52] But, more than this, the combination of some shared terminology and significant differences of classification argue for a thriving rhetorical scene at Rome.

However if we seek the source of these disagreements, are we to find them arising out of debates between practising speakers over the most effective way to produce a speech on any given subject, or do the polemical qualities of the two handbooks rather reflect the more specific circumstances of the rhetorical schools or lectures where our authors learned their theories?

The two handbooks, each in a different way, seem to reflect the need for the experts to justify their own ideas in a competitive marketplace. Barton elucidates similar tendencies in her work on ancient medical practice: 'He (Galen) must always find opponents against whom to

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50 *De inventione* 1. 10. The four are *coniecturalis*, *definitiva*, *generalis* and *translativa*; the three of the *Ad Herennium* are *coniecturalis*, *legitima* and *iuridicalis*.

51 *De inv.* 1. 12-15.

52 Caplan (1954), xxvii.

define himself. Doctors were part of the Sophistic milieu.... and behaved similarly.'[53] She notes in particular Galen's tendency to indulge in producing ever more intricate and impractical classifications of various physical symptoms: 'This apparently endless subdivision takes off from its causal base with a momentum of its own, to the extent that his claim to *use* these distinctions for his diagnosis becomes problematized.'[54]

Barton explores this practice with regard to Galen's study of pulses.[55] *On the Varieties of Pulses* begins with a claim that he will avoid sophistical disputes about names, being more concerned with the practical application of the recognition of the phenomena. But this assertion proves disingenuous as the work develops ever more detailed arguments against his fellow-practitioners, offering tiny corrections of their systems of classification. This agonistic character of his works in turn jeopardizes the educational purpose of his writings on the pulse, and he can even confess that a work will be of no practical use to most people. But Barton sees this contrast between a desire to explain and a propensity to overelaborate as a constant tension which exists also in Galen's role as a teacher who must remain ahead of his potential students: 'The one thing most important for the student to learn is that the master has the key to all further knowledge.'[56]

Similar tensions have played an important role in the shaping of our two handbooks, and especially the *Ad Herennium*, although the product of different circumstances in a different age. This work claims to be written to satisfy the desire of its addressee, Gaius Herennius, for a book, written by our author, to help him to learn to speak in public, and there is an initial assurance, like Galen's, that in contrast to the practice of other teachers it will focus only on what is necessary for practical purposes, rather than for the glorification of the teacher and his

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53 T. Barton, *Power and Knowledge* (Ann Arbor, 1994), 147-8. Note also G. E. R. Lloyd, *Magic, Reason and Experience* (Cambridge, 1979), 97: 'The Hippocratic doctor thus found himself in a complex and competitive situation that often called for the exercise of skills in persuasion and debate.' And in a context closer to that of the handbooks which I am discussing, compare the discussion of Varro's *De re rustica* in Rawson (1991), 327-28. At the opening of the third book he discusses the correct categorisation of agriculture proper and *pastio*, and he includes a division of *pastio* close to the villa, which has not previously been recognised (*tametsi ab nullo satis discreta*: §3. 1. 8): earlier writers had wrongly apportioned it as a *pars* of agriculture proper (*neque explicata tota separatim, quod sciam, ab ullo*). As in the rhetorical handbooks there is an explicitly competitive thread against previous writers.

54 T. Barton (1994), 156. Compare the description of the elaboration of the status system at Vickers (1988), 27-8: 'Since all these treatises are how-to-do-it manuals an attempt at complete coverage is laudable, but even the dedicated rhetoric-student reaches the point of asking whether the subdivisions are justified, or whether they represent an impulse to classify "in excess of the facts."'

55 At pp.156-63 she discusses in detail his most fundamental work on the subject, *On the Varieties of the Pulses*.

56 T. Barton (1994), 156.

art: *quas ob res illa quae Graeci scriptores inanis adrogantiae causa sibi adsumpserunt reliquimus.*[57] But this claim to pursue practicality to the exclusion of all else is itself agonistic, in that the author compares himself favourably with others, particularly Greeks.

Indeed this competition with Greek rhetoricians is pursued vigorously in the preface to the fourth book, which is vital for an understanding of the author's aspirations for his work. The preface opens with the statement that this book, on the subject of *elocutio*, will be illustrated by examples of his own making, so departing from Greek practice. He justifies this choice in an extended preface. The elaboration of the preface marks the importance of the point for the author, as he emphasises by comparing his previous avoidance of any form of preface or digression from the subject.[58]

The preface begins by putting each of the arguments adduced by those who favour using examples drawn from other works: these are a desire for modesty, a preference for independent material as a form of testimony for the precepts, and finally the great skill required in selecting appropriate illustrations.[59] These are then repudiated in turn, before the author states his own position, firstly that if the examples be borrowed, better that they come from a single source. In this way the pupil can see that it is possible to master the whole range of the rhetorical art, rather than just a part of it.[60] Finally he puts the case for using one's own examples, relying on three arguments, that it is ridiculous for a professed teacher not to be able to follow his own precepts, that examples which are specially tailored for the purpose are more illustrative, and that in this way he could be personally responsible for a greater part of the work, when so much was translation of terminology from Greek.[61]

These three arguments are important. The first two of them again show the author's concern to claim that his work should be practical, and not theoretically remote.[62] The last however demonstrates that the work is intended to be more than the anonymous handbook that it has become. Moreover this pride is related to the author's emphasis on the work as a Roman product. He boasts that he is doing something new at Rome, which in itself brings practical

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57 *Ad Her.* 1. 1.

58 *Ad Her.* 4. 1. This also serves to reiterate his claim (§1. 1) to adhere to only what is practical.

59 *Ad Her.* 4. 1-3.

60 *Ad. Her.* 4. 7-8.

61 *Ad. Her.* 4. 9-10.

62 With the regard to the first, compare also §4. 6: *tum quis est qui possit id quod de arte scripserit conprobare, nisi aliquid scribat ex arte.*

difficulties of language.[63] This ambition for an independent Roman theory of rhetoric must also be responsible for the tenor of the whole preface directed as it is against the *consuetudinem Graecorum*. This also serves to resume at greater length the criticism of the irrelevance of Greek rhetoricians in the first preface.[64] Roman rhetoric is not only to rival Greek, but even to surpass it in its practical applicability.

But the location of this, the only extended preface of the work, is significant in another way. It serves to emphasize the content of this book as particularly important. As I noted above the art of rhetoric is discussed in the work under the five headings of *inventio*, *dispositio*, *pronuntiatio*, *memoria* and *elocutio*. *Inventio*, the devising of the material of the case, takes up two and a half books. The remaining four areas deal with the way in which that material is presented in the speech,[65] and three of them together take only half a book, while the fourth book, twice as long as any of the others and marked by its preface, deals only with *elocutio*.[66] Moreover, in order that *elocutio* can be given a prominent position in the final book of the work, it is postponed from its usual position, third in the order.[67]

Elocutio receives this emphasis because it is the only part of the discipline where Roman and Greek can be portrayed as distinctive. For a work written in the Greek rhetorical tradition *inventio*, *divisio*, *pronuntiatio* and *memoria* offered few opportunities for a particularly Roman treatment.[68] But *elocutio*, concerned with the style and language of a speech, demanded a fresh Roman approach. Yet even here the author is restricted by Greek theory. The three styles, the division of *elocutio* into categories such as Latinity, clarity and

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63 Compare Lucretius' expression of the same problem at *De rerum natura* 1. 136-39: *nec me animi fallit Graiorum obscura reperta| difficile inlustare Latinis versibus esse,| multa novis verbis praesertim cum sit agendum| propter egestatem linguae et rerum novitatem*; and Cicero's own difficulties in the *De officiis*.

64 This anti-Greek element of the *Ad Herennium* has encouraged many to link it with the Latin school of Plotius Gallus, but the work may rather be part of a more widely flowering Latin rhetorical scene, as a result of which Cicero also chose to write the *De inventione*.

65 This is not quite the case, because since Aristotle the distinction between *inventio* and *divisio* had become blurred, with the former assuming a great deal of the latter's scope.

66 Compare here the author's statement at the end of the first relatively short book: *nunc quoniam satis huius voluminis magnitudo crevit, commodius est in altero libro de ceteris rebus deinceps exponere* (1. 27).

67 Kennedy (1972), 118.

68 Even the Roman focus on the forensic branch of oratory was anticipated by the Hellenistic rhetoricians. Hermagoras' theory of *status*, for example, concentrated on this type, with a fourth category, *qualitas*, left to circumscribe all the issues involved in epideictic and deliberative (Quintilian 3. 6. 56 ff.).

ornateness,[69] and all of the figures of diction and of thought are traditional. As we have seen, our author has admitted that this material is not original; the categories are only translations of their Greek equivalents, for which he has only produced the new Latin terminology.[70] But as a Roman, with Latin his mother tongue, he can claim to be able to provide his own illustrations: the Greeks who wrote Latin treatises had to draw on examples from native Roman authors rather than producing their own.[71]

This openly proclaimed pride in his own ability to write Latin, is reinforced by the marked change of style in this book. We have already seen that the rest of the work eschews digressions and prefaces, but it is also written in a markedly dry manner. This helps to promote the picture of practical lucidity which the author asserts to be the central aim of the handbook. Yet the style of the fourth book has greater pretensions to match its subject. In the preface the author compares his production of a rhetorical handbook to a variety of images: athletes competing at the Olympic games,[72] merchants selling their produce, springs producing drinking water and the sculptor Lysippus teaching his art to Chares.[73] The comparisons with a spring and the plastic arts at least are traditional,[74] and the others may not be original, but their inclusion is significant for the author's self-representation in this book. He is aligning himself with other artists and the glorious activity of athletics, but his art is also more practical, and like a merchant he has something to sell in a competitive market-place. It is also possible that the author intends to portray his effort in producing a truly Roman rhetoric as epic. The section where he discusses the problems of translating Greek terms opens with a hexameter: *postremo haec quoque res nos duxit ad hanc rationem...*[75]

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69 Aristotle discussed the 'virtues of style' at *Rhetoric* 1404b, 1-8. During the Hellenistic period the exact categories seem to have become a matter of debate (like the *status* theory), but the confused system of the *Ad Herennium* is derivative. See F. Solmsen, 'Aristotelian Tradition in Ancient Rhetoric', in *A.J.P.* 62 (1941), 43-4 and 181-3.

70 *Ad Herennium* 4. 10. It is noteworthy that Caplan in his Loeb edition reverses this process by translating all the Latin terms back into their more familiar Greek equivalents.

71 *Ad Herennium* 4. 7: as popular sources he lists Cato, the Gracchi, Laelius, Scipio, Galba, Porcina, Crassus, and Antonius, as well as poets and historians. He makes the exception of negative examples, which he is prepared to borrow from others (4. 18).

72 *Ad Herennium* 4. 4.

73 *Ad Herennium* 4. 9.

74 On the spring metaphor, compare Longinus, *De sublimitate* 13. 3; on the plastic arts, compare Cicero, *De inventione* 2. 1-3 among many others (see Caplan (1954), 248-9).

75 *Ad Herennium* 4. 10. Even if the presence of a whole hexameter may not be important, the use of a dactylic rhythm is significant: compare the opening of Livy's *Preface*, Tacitus' *Annals* and Augustus' *Res gestae*.

The author has however been accused of duplicity, particularly by Marx, since the illustrations of style which he claims as his own often seem to be little more than translations of Greek examples.[76] This can appear to be often the case, as Caplan's notes to the fourth book demonstrate by citing many Greek parallels, but this criticism is too harsh: as Calboli has shown, the author often elaborates what may originally have been a Greek idea.[77] Furthermore, Marx's criticism overestimates the author's boast. This fourth book deals with the style of speeches, and his examples are at the very least newly rendered into Latin by him, and often adapted to suit Roman circumstances and even history, if they are Greek in origin. Therefore, even here, where he seems to reject most openly the Greek rhetorical tradition, his hostility is reserved for contemporary Greek teachers, who are claiming to teach Romans the art of speaking in Latin. His claim is an agonistic one directed against these competitors. It is partly ethnic, in that he, as a Roman, can draw up Latin examples, partly traditional, in that he is introducing the original Greek examples to Roman readers by producing Latin equivalents rather than a selection of illustrative quotes, and partly practical, in that he is eager to show that he can himself provide a model for writing all kinds of Latin stylishly.

Indeed the author makes no theoretical defence of rhetoric against its opponents: there is no justification of the ethics of public speaking and the power of persuasion. The boast of practicality is the author's only attempt to address the criticisms of those who attack his art:

> *deinde, si quis velit artem demonstrare nihil prodesse ad dicendum, non male utatur hoc adiumento, quod unus omnes artis partes consequi nemo potuerit. quod igitur iuvat eorum rationem qui omnino non probent artem, id non ridiculum est ipsum artis scriptorem suo iudicio conprobare?*[78]

Where other teachers avoid using their own examples, our author strives to show the practical applicability of what he is teaching. He produces his own good and bad examples of the three different styles,[79] and his *tour de force* is an elaborate, seven-part *chreia* on the question of why a wise man will shun no peril on behalf of the state.[80] It is a prototype of the *suasoria*,

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76 See F. Marx, *Ad C. Herennium Libri IV. Editio maior* (Leipzig, 1894), 114-16.

77 Calboli (1993), 46-50. On the similarity between *Ad Herennium* 4. 22 and Aeschines, *In Ctes.* 133, he says: 'il confronto dei due esempi mostra proprio quell'originalità dell'autore della *Rhet. Her.* che il Marx nega' (p. 49).

78 *Ad Herennium* 4. 8.

79 *Ad Herennium* 4. 11-16.

80 *Ad Herennium* 4. 57.

and the author argues that such a generalised theme makes for excellent practice: *multo maxime per eam exercemur ad elocutionis facultatem.*[81] But this call to a practical rhetoric and a theory which is reinforced by constant practice is as far as he goes in justifying the validity of his art:[82] he takes no interest in setting his work within the context of wider philosophical debates. His book is presented simply as a manual of theory and, while it makes some claims to novelty, for the most part it faithfully follows Hellenistic rhetoric within the Roman context.

As we have seen, the treatment of *inventio* by Cicero is largely similar, but he is more open about the Greek origins of the rhetorical tradition which he is following. Cicero begins the second book by comparing his writing of a rhetorical handbook to the manner in which Zeuxis produced a picture of Helen for the temple of Juno at Croton.[83] As his model the artist did not use one girl, but five because *neque... putavit omnia, quae quaereret ad venustatem, uno se in corpore reperire posse.* So Cicero claims to have drawn on a wide range of previous writers of rhetoric: *sed, omnibus unum in locum coactis scriptoribus, quod quisque commodissime praecipere videbatur excerpsimus et ex variis ingeniis excellentissima quaeque libavimus.*[84]

However within this previous tradition he distinguishes two particularly important figures, Aristotle and Isocrates. The former had not only produced his own work on rhetoric, but had also conveniently collated earlier writers' ideas in a more accessible form: *nominatim cuiusque praecepta magna conquisita cura perspicue conscripsit atque enodata diligenter exposuit.*[85] His followers continued to write about rhetoric, though they devoted the greater part of their energy *in maximis philosophiae partibus.*[86] This is in itself a departure from the *Ad Herennium*, since here the theory of public speaking is being viewed within a broader perspective. Moreover, though the contribution of the Isocratean school to rhetorical theory is recognised, Cicero notes that it pursues a more internally focused approach than the Aristotelian tradition, and even expresses some doubt on the benefits for oratory of such a

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81 *Ad Herennium* 4. 58.

82 This call indeed frames the whole work. At 1. 1, he advises Herennius that *artem sine adsiduitate dicendi non multum iuvare*, and at 4. 69, the final sentence of the work is *haec omnia adipiscemur, si rationes praeceptionis diligentia consequemur exercitationis.*

83 *De inventione* 2. 1-3.

84 *De inventione* 2. 4.

85 *De inventione* 2. 6.

86 *De inventione* 2. 7.

theoretical method.[87]

Cicero describes the way in which these two traditions have been fused by later rhetorical teachers to form the basis of Hellenistic rhetoric. Quintilian's account of the rhetorical tradition is markedly different.[88] He again sees a separation between the school of Isocrates and Aristotle and his Stoic and Peripatetic followers. However he sees the developments made by Hermagoras as a third strand rather than as being merely a part of the process of combining the ideas of the two schools. Solmsen has demonstrated that the descriptions of both Cicero and Quintilian are correct to a certain extent.[89] The ideas of Aristotle and Isocrates remain important for rhetoric, but are often changed enormously. So the Aristotelian idea of considering the essential qualities of any speech as proofs, style and arrangement,[90] later becomes the five-fold division, with *inventio*, *elocutio* and *dispositio* their direct equivalents, and memory and delivery - though hinted at by Aristotle - added. However, there remained in parallel with this division the older practice of dividing a speech into its parts (exordium etc.),[91] and Solmsen concludes that 'the principle of structure and organization in the section on *inventio* constitutes an important departure from the original Peripatetic system.'[92]

It is clear from the similarity of the *De inventione* and the *Ad Herennium* that in this work Cicero is for the most part following the Hellenistic tradition as it existed at Rome, and that the excerpting from earlier works must largely have already been done. Therefore it is interesting that Cicero explicitly mentions Aristotle and Isocrates as the twin founders of that tradition: the Hellenistic tradition is reduced to a mere conduit for the ideas of classical rhetoric. It appears that Cicero is attempting to justify the value of the work for his Roman readers, by asserting its classical origins rather than its more recent, and even contemporary, background. This claim is even more striking, since Cicero seems to have had little or no contact with a full

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87 *Permultum ad dicendum, si quid ars proficit, opitulati sunt* (*De inventione* 2. 7). With this perhaps compare the anonymous author's acknowledgement of an opposition to the *ars* at *Ad Her.* 4. 8 (see pp. 15-16 above).

88 *Quintilian* 1. 3. 14-16.

89 F. Solmsen (1941), 35-50; 169-90.

90 Aristotle, *Rhetoric* 3. 1. 1.

91 A practice which was probably followed by the Isocrateans (Solmsen (1941), 37).

92 Solmsen (1941), 49. He traces a similar process in the handling of proofs, the integration of *ethos* and *pathos*, the three types of speech and the question of the 'virtues of style'. Compare also Kennedy (1972), 114-15.

text of Aristotle at this time.[93] This desire to advertise classical sources rather than Hellenistic ones can perhaps be compared with the drawing up of lists of select orators and historians, which tended to include only those from the classical period, omitting Hellenistic figures.[94] The value of the work is enhanced by ensuring that it owes a debt to the correct period of the Greek world: the rhetorical theory which lay behind the speeches of the fourth century golden age of Greek oratory was more prestigious than its later, Hellenistic form.[95]

The preface to the second book closes with an assertion that if any reader points out some error of treatment, Cicero is ready to accept the correction, since *non.... parum cognosse, sed in parum cognito stulte et diu perseverasse turpe est.*[96] Cicero follows this with a statement of the doctrine of the impossibility of knowledge and an avowed readiness to suspend judgment, both perhaps owed to the influence of the New Academy under Carneades.[97] This passage demonstrates an interest in Greek philosophy on the part of Cicero, which is noticeably absent in the *Ad Herennium*, and in the preface to the first book Cicero even takes the first tentative steps towards an evaluation of the role of oratory within a broader philosophical perspective.

The starting point for the first preface is a consideration of whether men and states have derived more good or evil from oratory.[98] The earliest surviving philosophical challenge to the role of oratory was that made in the writings of Plato, for whom rhetoric represented all that

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[93] The clear Aristotelian influence on the *De oratore* (written *Aristotelio more* (*Ad Fam.* 1. 9. 23) - that is in this particular dialogue form, on which see below, p. 30, n. 125) reveals just how derivative Cicero's acquaintance with Aristotle's ideas was in this earlier period. Although it would reinforce the point, it is not necessary to suppose that Aristotle's text was lost until the rediscovery of his library in 82 B.C. (Strabo 13. 609), since, as Kennedy says, ancient scholars 'were prone to get their material from their immediate predecessors and not to consult original or basic materials' (Kennedy (1972), 115). Indeed Cicero's wording (particularly where he admits to having not seen a work by Isocrates) implies that there was some text at least. For a recent account of the availability of Aristotle at Rome, see J. Barnes, 'Roman Aristotle' in J. Barnes and M. T. Griffin (edd.), *Philosophia Togata II* (Oxford, 1997), 1-69.

[94] N. O'Sullivan, 'Caecilius, 'Canons' and the Origins of Atticism', in *Roman Eloquence*, ed. W. J. Dominik (London, 1997), 35-9.

[95] The origins of this classicism are perhaps to be attributed to the Alexandrian civil turmoil under Ptolemy VII c. 145 B.C., when the flight of scholars across the Mediterranean led Menecles of Barca to describe the Alexandrians as οἱ παιδεύσαντες τοὺς Ἕλληνας καὶ τοὺς βαρβάρους (*FGrH* 270 F9, on which see P. M. Fraser, *Ptolemaic Alexandria I* (Oxford, 1972), 86). I am indebted for this point to Professor Russell.

[96] *De inventione* 2. 9.

[97] But Isocrates also held the view that there was no science by which a man could know for certain what was right (*Antidosis* 271).

[98] It is possible that this was a traditional subject, dealt with by one or more of Cicero's teachers. Therefore it may owe a great debt to other second and first century rhetoricians, whose opinions do not survive. But if this is the case, it makes this discussion even more valuable, as evidence of a wider interest from this period in the role of oratory within human society.

was wrong with the Athenian democratic system, and which was vastly inferior to the art of dialectic. In the *Gorgias*, to give only one example, Socrates repeatedly criticizes the actions of Athenian orators who out of a desire for self-advancement pander to the desires of the populace, rather than attempt to persuade them to do what is right.[99]

Of Plato's opponents, Isocrates was perhaps the most significant figure to defend rhetoric. In the *Antidosis*, a self-defence which appears to be modelled on Plato's *Apology*, he is keen to stress that oratory enables great men to achieve what they otherwise could not, for one will find that ἔτι.... τῶν παλαιῶν τοὺς ἀρίστους ῥήτορας καὶ μεγίστην δόξαν λαβόντας πλείστων ἀγαθῶν αἰτίους τῇ πόλει γεγενημένους, ἀρξαμένους ἀπὸ Σόλωνος.[100] Later in the work, Isocrates tries to defend rhetoric from those who assert that the art can be used towards bad ends as well. An important part of his argument is that a vital part of the orator's arsenal is the public estimation of his own character. He must watch his reputation, since everyone knows τὰς πίστεις μεῖζον δυναμένας τὰς ἐκ τοῦ βίου γεγενημένας ἢ τὰς ὑπὸ τοῦ λόγου πεπορισμένας.[101]

Therefore he attempts to make the moral probity of the speaker a necessary part of any speech's success, but the problem remains that the power of an argument from *ethos* retains this enormous power even in pursuit of a less worthy cause, though the speaker's stock may indeed be reduced on a future occasion.[102] But at the heart of Isocrates' defence of rhetoric lies his assertion that it is the power of speech which differentiates mankind from the beasts.[103] Indeed at *Antidosis* 253-7 he quotes directly what he had earlier written on the subject in the preface to the *Nicocles*, which is often seen as a direct influence upon Cicero's preface in the *De inventione*.[104]

This discourse begins with a defence of λόγοι and what Isocrates calls φιλοσοφία against those who view these pursuits as self-interested, and I give a summary of his argument as a comparison for Cicero's later preface. Isocrates' initial response is to compare a similar

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99 See Vickers (1988), 86-7.

100 Isocrates, *Antidosis* 231.

101 Isocrates, *Antidosis* 278.

102 Moreover it fails to address at all the objection that a speaker may in fact become very successful by advocating popular, but unjust causes.

103 Aristotle makes a similar assertion at *Politics* 1. 1253a: λόγον δὲ μόνον ἄνθρωπος ἔχει τῶν ζώων. For him λόγος provides the foundation for justice, which in turn allows men to live in homes and cities.

104 The *Nicocles*, written by Isocrates, is put in the mouth of the king of Salamis of that name, and addressed towards his subjects.

critique of other human attributes. Just as it would be wrong to condemn strength, wealth or courage because some men put them to bad use, so rhetoric should not be criticized for this reason. Moreover all virtues (ἀρεταί) are pursued to a certain extent for personal gain.[105] There is, however, a real problem here, since there seems to be a slide in the definition of virtue in the passage, as Isocrates moves from a virtue in the sense of something that is inherently good, such as justice, piety or courage (§2), towards something that is simply an art or attribute, such as wealth or strength, which could easily be put to good or bad use (§3). He therefore blurs the distinction between these two categories, and never clarifies what sort of ἀρετή the art of eloquence is. Rather, since it can be put to good or bad use, it seems to possess no inherent ethical quality.

Next Isocrates proceeds to enumerate the benefits which λόγοι have brought to man.[106] The power of speech has helped men, who are inferior to other animals in every respect, to found cities, pass laws and discover arts. It is the basis of justice, ethics, education. Interestingly he also claims that λόγοι are the basis not only of persuasion of other men, but also of personal, internal thought: ταῖς γὰρ πίστεσιν αἷς τοὺς ἄλλους λέγοντες πείθομεν, ταῖς αὐταῖς ταύταις βουλευόμενοι χρώμεθα. He concludes that nothing done φρονίμως is done ἀλόγως. This reiterates his earlier claim that τὸ λέγειν is the outward sign of good sense, and that a truthful, lawful and just speech is the mark of a good ψυχή.

Whilst all this may be true, Isocrates still makes no attempt to defend the power of λόγος against the charge that it can be put to bad use in the wrong hands. He appears almost to possess a blind faith that the character of bad λόγοι is automatically revealed. It is only when there is a complete breakdown in the fabric of society that bad oratory can hold sway, as he argues in *On the Peace*, where he accepts that flatterers now hold sway, but only because the audience is willing to listen to those who speak to please them, rather than those who put forward arguments in the public interest.[107]

Cicero, on the other hand, starts with an open question as to whether *copia dicendi et summum eloquentiae studium* have brought more benefit or harm.[108] But the subject is also of a more restricted scope, with Cicero limiting the discussion to eloquence in public speech rather

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105 Isocrates, *Nicocles* 1-4.

106 *Nicocles* 5-9.

107 Isocrates, *On the Peace* 4-5.

108 This is also perhaps a more rhetorically effective way of attempting to win over a sceptical audience, since he offers himself as an example of someone who has advanced from a position of scepticism to one of belief.

than all λόγοι, a more relevant issue in a work on the art of rhetoric. And he accepts that in the history of the Roman *res publica* there have been men of eloquence who have contributed to disasters, as well as to the foundation of cities, the achievement of peace and the formation of alliances and friendships.[109]

His conclusion is that *sapientiam sine eloquentia parum prodesse civitatibus, eloquentiam vero sine sapientia nimium obesse plerumque, prodesse nunquam.* Unlike Isocrates he does not see eloquence and the power of persuasion as an integral part of an overarching theory of rational thought, but rather as a skill which enables wisdom to operate more effectively. Where Isocrates was involved in a bitter academic dispute, particularly with Plato, over the role of his educational system, Cicero attempts to promote the art of rhetoric to his Roman readership by arguing that it provides the only means by which wisdom and learning can benefit the whole community.[110]

Interestingly he also focuses upon the figure of the orator as Roman citizen. The orator who fails to pursue moral and ethical study is raised as a *perniciosus patriae civis.* But where the two are combined, he becomes *publicis rationibus utilissimus atque amicissimus civis.* Instead of viewing the function of rhetoric in an abstract manner, Cicero personalizes the question by looking at its effects when possessed by a single man, and attempts to focus the discussion on Rome itself, by looking at what an orator can achieve for his *patria.*[111]

This emphasis on the role of the individual orator continues in Cicero's treatment of the effect of eloquence on the process of civilisation. There is much that resembles Isocrates' account, the comparison of early man with animals, the absence of religion, ethics and laws. But Isocrates views the change to civilisation as the result of a general spread of the power of λόγος: ἐγγενομένου δ᾽ ἡμῖν τοῦ πείθειν ἀλλήλους καὶ δηλοῦν πρὸς ἡμᾶς αὐτοὺς περὶ ὧν ἂν βουληθῶμεν.[112] For Cicero, however, the catalyst is seen as a single man, the proto-orator, who saw the talents possessed by the human mind, and transformed men from beasts to more gentle beings.[113] Like a good orator he used *ratio* and *oratio* to persuade them, when they were reluctant because of the novelty of the situation. *Sapientia* that was voiceless

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109 In these last achievements he sees eloquence as helping the process of *ratio* (*De inventione* 1. 1).

110 On the dispute between Plato and Isocrates, see Vickers (1988), 156-7.

111 This is emphasized by the use of the word *utilis.*

112 Isocrates, *Nicocles* 6.

113 But this idea of a single man being responsible is itself a Greek one (the πρῶτος εὑρέτης).

and unskilled at speaking could not have achieved this.[114] Cicero argues that the same process saw the triumph of justice over brute force in the resolution of conflicts between individuals, when the latter had previously been accepted practice.

Cicero proceeds to describe how the emergence of a debased rhetoric followed, where the power of speech was divorced from virtue and a sense of *officium*. The catalyst for this process is seen as the proliferation of private suits, where the leaders of the state began to be attacked by lesser men who possessed some skill at speaking (*non incallidos*). Despite the fact that these latter men spoke on the side of falsehood (*a mendacio*), and pursued no study of *sapientia*, their ability at speaking made them appear at least the equals of their betters in the opinion of themselves and the *multitudo*.[115] This argument shows that Cicero recognizes that rhetoric can be exploited just as effectively by the unwise, or political opponents, as by the good. But his response to that is that the better citizens should strive all the harder to achieve eloquence, in order to save the state. And he enrols in his cause Cato, Laelius, Africanus and the Gracchi, who saw this need for eloquence. It is the *exempla* of great individuals from Roman history that Cicero calls upon in oratory's defence, and it is significant that he should use as his exemplars men who covered such a wide range of the Roman political spectrum. Although this may reflect the fact that at this stage of his life Cicero was not really committed to any particular political line, this inclusiveness may also be intended to demonstrate the general consensus of all shades of opinion that eloquence was important.[116]

In constructing this preface, Cicero is concerned at all times to address the Roman audience, and particularly that group which sees rhetoric within the community as a force for evil, which can equate the influence of good and thoughtless men. His response is that public speech is now a part of public life which is here to stay, and that the only way to protect the state is to strive after eloquence oneself, not to withdraw to private study and deplore the situation.[117]

He concludes this section of the preface by considering the benefits that eloquence brings to the individual as well as to the state: *laus*, *honos*, *dignitas* - strikingly Roman

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114 Cicero, *De inventione* 1. 2-3.

115 *De inventione* 1. 4.

116 Compare also the inclusion in the *Ad Herennium* of both '*popularis*' and 'optimate' examples. Another Ciceronian example is his inclusion within the *Pro Archia poeta* of both Marius and Sulla as *exempla* of noble Romans who appreciated verse eulogy of their exploits (§19 and §25 respectively).

117 *De inventione* 1. 5.

concepts - and the protection of one's friends.[118] Even the Isocratean comparison of man with the beasts becomes more focused: for the figure of the orator is particularly notable, because he excels other men in the same respect that all men excel the beasts.[119] If the theories contained in this handbook help towards this end, then they will have some use.

The existence of these two handbooks with their slightly divergent treatments of Hellenistic theory suggests a thriving and competitive rhetorical scene at Rome - into which the oratorical training which Cicero received fits nicely - and the examples which they use to illustrate their theory draw upon the full range of Roman political opinion. Moreover, both texts make an attempt to promote themselves to their putative readership, but in different manners. The author of the *Ad Herennium* makes repeated claims that his work is more practical than that of his Greek counterparts, and the last book provides a vehicle for the claim that only a Roman should be writing about the intricacies of Latin oratory, as he is uniquely able to construct Latin illustrations to match those of classical Greece, unlike his contemporary Hellenistic rhetoricians who are forced to draw upon poets and earlier speakers for their examples.

Cicero similarly accepts the greater part of Hellenistic theory in his treatment of *inventio*, but in the preface to the second book he attempts to advertise Aristotle and Isocrates as his precursors, rather than the Hellenistic figures, whom he portrays as derivative. This emphasis foreshadows the *De oratore*, where Cicero moved right away from the Hellenistic theory to concentrate on Aristotle's ideas. For the moment there is no sign of Aristotle's tripartite division of argument, *ethos* and *pathos* as means of persuasion, and the question of style, as in the *Ad Herennium*, remains divorced from the construction of a speech's arguments.

There is also no particular adaptation of the traditional Hellenistic theory to the Roman situation, but in the first preface where Cicero makes a general defence of public speech, he does so in a noticeably Roman fashion, with an admission of the possible dangers of speech and his stress on the need for *sapientia* to be combined with *eloquentia* in order for the state to benefit, instead of a generalized defence of the power of words. Moreover Cicero concentrates on the figure of the individual orator and his powers, a focus which is markedly different from

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118 Tacitus makes Aper have recourse to this idea of protecting one's friends by one's rhetorical skills at *Dialogus* 10. 8.

119 *Quare praeclarum mihi quiddam videtur adeptus is qui qua re homines bestiis praestent ea in re hominibus ipsis antecellat.*

that of Isocrates and the rest of this work which is on the art of rhetoric.[120]

Both these aspects of the preface perhaps reflect Cato and the earliest origins of Roman thought about oratory. As we have seen, two of Cato's surviving precepts about oratory are *orator est, Marce fili, vir bonus, dicendi peritus* and *rem tene, verba sequentur*. Oratory is not viewed in isolation, but in the light of the character of its practitioners and their knowledge of the subject about which they are talking. Again these are both themes which Cicero will concentrate upon in the later *De oratore*, which is less concerned with the detail of basic theory than with Roman practice, with its major interlocutors drawn from the history of Roman eloquence, and where there is a greater attempt to link Greek rhetorical ideas with this Roman practice.

120 This is a shift in focus which Cicero will make more clearly in the *De oratore*, as the title itself makes clear.

2. Cicero and the Roman orator

In the first book of the *De oratore*, Cicero makes Antonius refer to his own book on rhetoric[121]: *ipsaque illa, quae in commentarium meum rettuli, sunt eius modi, non aliqua mihi doctrina tradita, sed in rerum usu causisque tractata.*[122] Antonius is made to stress that his own book is not to be linked directly with the rhetorical tradition and the school handbooks, emphasizing instead its debt to his personal experience in the Roman forum. This theme is also one which is central to Cicero's work, which contains repeated attacks upon the rhetorical tradition, from which it distances itself not only by its literary form as a dialogue set in the Roman past, but also by having as its interlocutors aristocrats well-versed in the political life of Rome.

In this section I contend that it is in the light of this hostility to the professional teachers of rhetoric that Cicero's dialogue should be read. These teachers offered a rhetorical education to any who were able to pay for it, but in the *De oratore* Cicero was presenting an ideal representation of the orator which could only be realised by members of the traditional Roman aristocracy, and he drew selectively on the Greek tradition to reinforce this ideal.

The work cannot be interpreted without taking its literary form into account, and I begin by considering the implications of Cicero's decision to write a historical dialogue, studying in some detail its setting and the manner in which the dialogue proceeds. Then I examine more closely the way in which Cicero uses Greek ideas in developing this vision, concentrating, first, upon his adaptation of Aristotelian *ethos* and *pathos* as forms of persuasion in a new Roman context, and, secondly, the significance of the wide knowledge, deemed necessary for the perfect orator by Crassus in the third book. Cicero does not make use of the Greek tradition in a straightforward manner as a source of new theory or even simply as a means of conferring authority upon his own thesis. Rather he sedulously adapts Greek ideas to reinforce the traditional role of the Roman aristocratic orator. Where ideas do not fit, they are abandoned or changed, but the knowledge of those that are accepted will strengthen the existing social order at Rome.

Wallace-Hadrill has stressed this socio-political significance in Roman responses to Greek ideas across the full cultural spectrum: 'Greek παιδεία, as far as we can see, was

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121 On which, see above p. 9.

122 *De oratore* 1. 208.

socially undifferentiated, belonging to, even defining, the world of the leisured. It was part of the Roman response to a threat to introduce sharp differentiation. This is seen... in the differentiation of disciplines.'[123] So music was rejected by the Roman aristocracy as a pursuit unsuited to their traditional role in society, while Greek rhetoric could be accommodated, and even used to secure their position.[124] But I argue that even within an individual discipline, like rhetoric, there was similar selectivity.

Cicero himself regarded the dialogue as an educational work. In a letter to Cornelius Lentulus from September 54 B.C., the year after he had finished the work, Cicero recommends it to Lentulus' son: *scripsi igitur Aristotelio more, quem ad modum quidem volui, tris libros in disputatione ac dialogo 'de oratore', quos arbitror Lentulo tuo fore non inutilis; abhorrent enim a communibus praeceptis atque omnem antiquorum, et Aristoteliam et Isocratiam, rationem oratoriam complectuntur.*[125] This letter is important because it stresses not only the educational content of the work, but also the fact that it is written as a dialogue.

But it is precisely this attempt to produce an educational exposition in dialogue form that modern interpreters have tended to find most unsatisfactory. They criticize the way in which it seems to fall between two stools: the dialogue form is not entirely suitable for the presentation of largely technical material,[126] while Cicero's handling of the form does not win

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123 A. Wallace-Hadrill, 'Greek Knowledge, Roman Power', *Classical Philology* 83 (1988), 232. *De oratore* 1. 22 suggests that the Greeks had themselves embarked upon this process of differentiation, by delimiting the orator's role, but Cicero presents this as a matter of practicality, rather than one determined by social norms.

124 In Greece this encyclopaedic education was supported by the Aristotelian ideal of an all-encompassing παιδεία. See I. Hadot, *Arts Libéraux et Philosophie dans la pensée antique* (Paris, 1984), 18-24.

125 *Ad Fam.* 1. 9. 23. The initial *Aristotelio more* refers to the style of the dialogue, with its long expositions rather than the Platonic format of question and answer. This is slightly surprising in the light of *Ad Att.* 13. 19. 4, where Cicero, talking of dialogues, uses 'Αριστοτέλειον *morem* of those in which he takes the principal role himself, unlike the *De oratore* and *De republica* which are compared to the dialogues of Heraclides in being set in the past (compare also *Ad Q. frat.* 3. 5. 1). But Shackleton-Bailey puts the solution clearly: 'Here, as *quem ad modum quidem volui* shows, he is not thinking of any such specific feature (which would have lain within his own choice) but of the general character described in *Acad.* 2. 119: *flumen orationis aureum fundens Aristoteles* - mainly continuous exposition in well-rounded periods as opposed to Platonic conversation-drama.' (D. R. Shackleton-Bailey, *Cicero. Epistulae ad Familiares I* (Cambridge, 1977), 315.) This point is reinforced by the fact that he does continue by claiming that the content derives from all the ancient writers, and singling out, as in the *De inventione*, Isocrates and Aristotle - that implies that he meant to refer to something other than content by *Aristotelio more.*

126 So Vickers (1988), 36 concludes: 'In *De Oratore*, we may feel, content is obscured by form, as if somewhere inside the dialogue a rhetorical handbook was trying to get out.'

great plaudits.[127] In the light of these criticisms it is important to consider why Cicero, a consummate stylist, chose to give the work the form which he did: here at least we might expect the *De oratore* to succeed.

I shall begin by considering the scene of the dialogue. This is studiedly striking. In the setting of the discussion of the first book there is an explicit reference to Plato's *Phaedrus*. Scaevola suggests that those present sit down under a plane tree in the garden of Crassus' villa at Tusculum, in imitation of Socrates in that dialogue.[128] Like the Greek philosopher they will be able to enjoy the shade and rest their feet. The setting is therefore a mark that the dialogue, like its participants, is fully aware of Greek learning, and it serves to create, among the reading audience, an expectation of a significant Greek content.[129] And the content of the first afternoon's discussion is in a sense Platonic, since it discusses the nature of rhetoric, while the second book with its more technical discussion of the skills of *inventio*, often indebted to Aristotle's ideas, is appropriately given an Aristotelian location: the participants walk about - true Peripatetics.[130]

However, as Vasaly has noted, the setting for Cicero's dialogue operates in a radically different way from the Platonic model.[131] Plato's Socrates is inspired by the very nature of the place to produce his speeches (*Phaedrus* 238d), but in the *De oratore* it is the conscious imitation of the Socratic setting which is inspiring. It is not the plane tree itself, but its associations which inspire Scaevola: as Vasaly says, 'the thought of that Greek plane tree is moving not simply because the tree was beautiful but because the dialogue that occurred under it was "divine."' It is this explicitly Platonic setting which encourages Crassus to break the habit of a lifetime, and act in a very Greek fashion by participating in a discussion on rhetoric.[132]

But more importantly the artifice of Cicero's setting is notable in another respect. As Narducci remarks, the public setting of the Athenian countryside in the *Phaedrus* is recreated

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127 So Kennedy (1972), 226: 'It is entirely too much like a real conversation in which people forget what they have said or change their views for the sake of argument or politeness and in which general agreement does not represent logical necessity, but either weariness or good manners. On the other hand, the dramatic situation and the characterization are not really good enough to make the work stand as a purely literary achievement.'

128 *De oratore* 1. 28.

129 It is also notable that the reference to the growing genius of Hortensius at the end of the dialogue (*De oratore* 3. 230) echoes the reference to Isocrates at the end of the *Phaedrus*.

130 *De oratore* 2. 12: *Antonius autem inambularet cum Cotta in porticu.*

131 A. Vasaly, *Representations. Images of the World in Ciceronian Oratory* (Berkeley, 1993), 26-8.

132 Compare his renunciation the next day, particularly at *De oratore* 2. 18, on which see below p. 34.

within the closed environment of a Roman aristocrat's villa. There is a conscious emphasis on the comfortable, civilized setting of the villa with benches under the tree, and Crassus can order the slaves to fetch cushions.[133] And while any Athenian theoretically had access to Plato's Socrates, Cicero's speakers are isolated, and debate only with other members of their social circle.[134] The way in which the dialogue is set in an environment restricted to the Roman élite parallels the way in which the education of the orator is to be limited to the same social group.

If the setting of the dialogue has important implications for its intended readership, the choice of the dialogue form nevertheless seems to present problems in a work with an educational intent. For it entails some difficulty for the reader who wishes to distinguish Cicero's own views from those of the figures whose participation in the dialogue he represents. Does the dialogue give an accurate picture of the real opinions of Crassus and Antonius, or does Cicero use them only as mouthpieces for his own beliefs? There can be no simple answer, but the question perhaps needs to be approached in a different way.

In an article on the *De divinatione*, Mary Beard has argued that it is essential to take account of the dialogue form in interpreting that work.[135] She suggested that part of Cicero's purpose in using the dialogue form is that it allows him to avoid making any unambiguous authorial pronouncements on the subject: in the first book he allows his brother to put the arguments in favour of divination, while he puts those against it in the second - there is no resolution, and there is no resolution because Cicero is not able - or does not want - to offer one.[136]

But while the *De divinatione* offers two opposed points of view, the speakers of *De oratore* demonstrate a remarkable degree of agreement, and there often seems to be a lack of distinction between their opinions. Vickers is particularly critical of Cicero's failure to maintain

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133 *De oratore* 1. 29.

134 E. Narducci, *Cicerone e l'eloquenza romana* (Bari, 1997), 30: 'La villa è uno spazo ameno, ma chiuso, dove si muovono interlocutori da sempre associati in una vita di strette relazioni politiche e personali.' See also J. Linderski, 'Garden Parlors: Nobles and Birds', in R. I. Curtis (ed.) *Studia Pompeiana & Classica in Honor of W. F. Jashemski II* (New York, 1989), 105-27. In addition to the significance of the setting (p. 106), Linderski emphasizes that the majority of interlocutors in all of Cicero's dialogues reached the consulship (pp. 108-110).

135 M. Beard, 'Cicero and Divination: the Formation of a Latin Discourse', *J.R.S.* 76 (1986), 33-46. A similar point is made by M. Schofield, 'Cicero for and against Divination', *J.R.S.* 76 (1986), 47-63. 'The structure of the work as a whole would in any case suggest that Cicero saw much force in the case for divination as well as the case against it.' (p. 56.)

136 Beard (1986), 43: 'I would argue more broadly that the dialogue structure itself could be used (though was not always) as a depersonalizing, distancing device, which obviated the need for Cicero to identify with any one expressed opinion.'

the independent opinions of Antonius and Crassus over the source of eloquence, with the former's original advocacy of 'natural eloquence' being gradually weakened. On Crassus' delight at Antonius' hitherto concealed theoretical knowledge, Vickers says: 'This remark wholly destroys the characters' notional differentiation, as does Crassus' praise of Antonius' wisdom as being the product not only of practical experience but of "the most diligent study."'[137] Worst of all is the way in which Antonius is allowed to change his position on the second day, by claiming that he was only arguing against Crassus for the purposes of debate in front of the younger Cotta and Sulpicius, but that now in the presence of the more senior Catulus and Caesar he will keep to his own opinions.[138]

But since Cicero was perfectly capable of writing a dialogue where the characters were in open disagreement, these characteristics must all be intentional on the part of Cicero. Narducci has argued that the fact that the interlocutors all belong to the Roman aristocracy restricts the possibilities of open disagreement, and indeed is the cause of the dialogue's courteous tone.[139] As we have seen, this absence of disagreement does not work for other dialogues, but it is a significant factor in the *De oratore*. Rather than using the dialogue form to offer alternative positions, it seems that Cicero is instead using it to stress the large measure of agreement between the two greatest speakers of their age, even though they were often seen as possessing contradictory qualities.[140] This is not to say that different shades of opinion are not evident between the speakers, but that such conflicts are circumscribed by a much greater area of consensus.

In order to facilitate the argument of the first book, Cicero makes it clear that Antonius was not arguing for personally held views.[141] His denial that a budding orator needs a broad philosophical education is never logically answered, because it does not need to be: all the interlocutors of the dialogue agree with Crassus' position, and Cicero is not attempting to write

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137 Vickers (1988), 33.

138 *De oratore* 2. 40.

139 Narducci (1997), 32: 'L'omogeneità sociale dei protagonisti del *de oratore* esclude in partenza la possibilità di conflitti personali, o di troppo profonde divergenze di opinioni; di qui il tono di cortesia in cui la conversazione si svolge.'

140 Compare for example their portrayal at *Brutus* 138-45.

141 But this does also furnish within the text an example of the orator's ability to argue on either side of an issue, the importance of which is stressed in 3. 80.

a philosophically rigorous exposition.[142]

Moreover there is a conscious distancing between Cicero's and Plato's dialogue forms. Repeatedly throughout the two days Crassus is made to decry the Greek habit of engaging in impractical philosophical discussions. On the second morning he repents of the previous day's debate with a bitter attack upon this Greek habit: *omnium autem ineptiarum, quae sunt innumerabiles, haud sciam an nulla sit maior quam, ut illi solent, quocumque in loco, quoscumque inter homines visum est, de rebus aut difficillimis aut non necessariis argutissime disputare.*[143] True Romans, like Laelius and Scipio, used to do absolutely nothing in their *otium*, reverting to childhood pursuits, the prerogative of an aristocratic Roman.[144] For all the dialogue's debt to Greek ideas, and the Greek inspiration of its setting, the Roman reader receives careful reassurance that there is a limit to the Greek influences at play. In the prologue to the second book, Cicero can emphasize that Crassus and Antonius were much better acquainted with the Greek tradition than they were prepared to admit in public, and they can display that knowledge throughout the dialogue, but they are portrayed as remaining self-consciously Roman aristocrats even in private discussions with their friends.

But if Cicero is at pains to distinguish his dialogue from its Greek precursors, it remains to ask what the intention of the work was. As we have seen in the previous section, Cicero presented his own rhetorical education as a mixture of Roman and Greek influences, but he describes his contact with the great Roman speakers of the day, particularly with Crassus and Antonius, as particularly formative in the preface to the second book of the *De oratore*.[145]

Under the empire Tacitus makes Messalla refer nostalgically to the practice whereby young men used to follow a patron around in order to learn about the life of the forum, the *tirocinium fori*.[146] In the *De oratore* Cicero seems to be presenting his own version of that practice in writing. In particular the presence of the younger participants, Cotta and Sulpicius, provides much of the impetus for the dialogue with their desire to hear the opinions of Crassus

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142 This is the perspective from which Kennedy (1972), 226-7 criticises the work. There could perhaps appear to be a certain unsatisfactoriness from an educational point of view in that the debate remains unresolved, but this is perhaps diminished by the fact that in the third book Crassus is allowed to restate his own case repeatedly without reply.

143 *De oratore* 2. 18.

144 *De oratore* 2. 22-4.

145 *De oratore* 2. 2-3 where he tells how he often listened to Crassus, in his own house, speaking on a variety of topics, and how he used to question Antonius on a range of issues.

146 Tacitus, *Dialogus* 34.

and Antonius on the full range of the rhetorical art.[147] In the *tirocinium fori* the trainee orator was expected to attend his 'tutor' in all his public business, and listen to his forensic and deliberative speeches. While this is not possible in the dialogue, we find the next best thing, as the participants give accounts of their most famous performances. Moreover Cotta and Sulpicius play the roles of embedded readers (or listeners), in that they offer a guide for the reader's response to the dialogue.

A study on the effect of literacy in Madagascar by Maurice Bloch provides a suggestive parallel to this idea of producing a literary version of a traditional practice.[148] He describes the way in which the introduction of literacy, in the form of the Bible, was seen as a challenge to the traditional Merina language of authority, *Kabary*. But those who had previously spoken *Kabary* now used the new medium of writing to disseminate their words more widely. 'A new technology had been harnessed for an old purpose to make a competing claim. It was rather as if the orator was using a loud-hailer.'[149]

Although literacy at Rome was not new, it was a novel idea to produce a written version of the traditional rhetorical education.[150] By producing a written work, Cicero could achieve a wider audience than was possible through personal contact,[151] and he ensured it would reach posterity.

However, there does also seem to have been a contemporary target whose authority he was seeking to undermine. As I mentioned in the introduction to this section, Cicero seems to be at pains to distance his work from the ideas of contemporary teachers of rhetoric. All the participants of the dialogue share the strong belief that Hellenistic rhetorical theory is on its own unable to create the complete orator. In the second book these teachers of rhetoric are repeatedly attacked: they state the obvious in allocating the duties of the orator,[152] they are too schematic in treating the necessary characteristics of the different parts of the speech,[153] and, in suggesting arguments for every possible eventuality, they spoon-feed their students, rather

147 On this idea see Narducci (1997), 32.

148 M. Bloch, 'Literacy and Enlightenment' in K. Schousboe and M. T. Larsen (edd.), *Literacy and Society* (Copenhagen, 1989), 15-37.

149 Bloch (1989), 22-4.

150 This is true if we discount the incomplete work of Antonius.

151 An example of Cicero at least claiming to play the role of the mentor is to be found in the *Pro Caelio*.

152 *De oratore* 2. 79; although Cicero's own dialogue is shaped around these divisions, Crassus repeatedly criticises the divisions as arbitrary.

153 *De oratore* 2. 83.

than helping them to discover the sources which provide more general topics which can be adapted to a range of circumstances.[154] Moreover they pursue the habit of dividing issues into those that are general and those that are specific. In doing this they fail to realise that every issue depends at its heart upon a universal question.[155]

These attacks serve to distance the elementary education offered by the teachers from the more advanced ideas which the interlocutors of the dialogue claim to be presenting. Antonius makes this point clear with a military simile: *sed videant quid velint: ad ludendumne an ad pugnandum arma sint sumpturi; aliud enim pugna et acies, aliud ludus campusque noster desiderat.*[156] The playful skirmishing of the schoolroom is sharply differentiated from the real battles of the forum.

This idea is reinforced by the fact that the teachers are criticized for lacking practical experience: *nec mihi opus est Graeco aliquo doctore, qui mihi pervulgata praecepta decantet, cum ipse numquam forum, numquam ullum iudicium aspexerit.*[157] Their behaviour is compared to that of Phormio, the Peripatetic, who had the nerve to lecture Hannibal for several hours on military matters. And in the third book, Crassus resumes this criticism from his own perspective when he stresses that an orator trained in rhetorical rules alone is not a true (*verus*) orator: to achieve this status one must be versed in general human knowledge.[158]

This clear distinction between training and practice is another element of the sharp differentiation which was introduced into Greek arts after their introduction to Rome. Wallace-Hadrill refers to 'a new divorce between teaching and performing. The freedman rhetorician belongs to a different social world from the noble orator.'[159] It is important for the dignity of the noble orator that he should be able to distance himself as far as possible from a profession that claimed to teach rhetoric to whoever could pay the fees. The interlocutors are all concerned to stress that these teachers cannot provide a quick and easy route to achieve oratorical excellence. The rules which they teach are of some use, but only at the most elementary educational level. In order to complete his training, the young orator must benefit from the

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154 *De oratore* 2. 117.

155 *De oratore* 2. 133-36.

156 *De oratore* 2. 84.

157 *De oratore* 2. 75.

158 *De oratore* 3. 54.

159 A. Wallace-Hadrill (1988), 232. However, it should be noted that in Athens most sophists took money and were not citizens of Athens itself.

experience of the leading speakers of the day, an experience which the *De oratore* offers to the reader.[160] Where the earlier *De inventione* had adhered very clearly to the Hellenistic rhetorical tradition, the later work reflects the aristocratic practice of learning from one's elders.[161]

By setting the dialogue when he does Cicero is able to give the leading parts to Crassus and Antonius, figures who were so important in his own education,[162] but it must remain uncertain how far the opinions they express in the dialogue represent their real opinons. We might perhaps wonder why Cicero should have chosen to put these ideas about oratory into the mouths of Antonius and Crassus, if these were to be entirely at odds with historical reality: Cicero is careful to tell us that these are not figures of the distant past to whom he can attribute any thought he fancies.[163]

There has also been a tendency to argue that the differences between the views of Antonius and Crassus in the dialogue are minimal.[164] I have argued above that this large measure of consensus contributes to Cicero's ends, but it remains the case that Crassus' view of the orator as a philosopher-statesman is a much grander one than Antonius' rather more utilitarian vision.[165]

All this is not to say that the dialogue is historical. Cicero himself highlights the artifice of the work, by stressing how utterly out of character it was for Crassus to join in such a dialogue. But particularly important for this study is the way in which the dialogue portrays the two main speakers as being far better acquainted with learning in general, and Greek ideas in particular, than they were prepared to admit in public.[166] Cicero states that this is one of the

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160 Compare a similar restriction in matters of state at *De divinatione* 2. 11-12, where Cicero allots moral and physical science to philosophers and specialists, but maintains political science as the preserve of leading Romans - *principes et delecti viri periti rerum civilium.*

161 In this context, the slight differences of emphasis between the speakers could be seen as a reflection of the various opinions to be found in the forum at Rome.

162 E. Rawson, 'Lucius Crassus and Cicero: The Formation of a Statesman', *P.C.P.S.* n.s. 17 (1971), 75-88, has also argued that Crassus, as 'a fundamentally optimate politician, with real experience of *popularis* politics in his youth,' was one of the major inspirations behind Cicero's own policy of political moderation and conciliation.

163 *De oratore* 2. 9: *edo haec eis cognoscenda, qui eos ipsos, de quibus loquor, saepe audierunt.*

164 So Vickers (1988), 32-4.

165 So Narducci (1997), 46-7, describing Antonius' orator as 'assorbito dalla *routine* giudiziaria.' Indeedthere has sometimes been the tendency to see Crassus' ideas as the truly Ciceronian ones, especially since he is granted the right to speak last, a discourse which is prefaced by the eulogy of him in the prologue to the third book; but this is surely simplistic.

166 So Cicero says that Crassus wanted to be seen as looking down upon learning and setting Roman wisdom above Greek, while Antonius that he had never engaged in study (*De oratore* 2. 4).

prime motives for writing the dialogue, *ut illa opinio, quae semper fuisset, tolleretur, alterum non doctissimum, alterum plane indoctum fuisse.*[167] And during Antonius' account of *inventio* in the second book, he make Catulus interrupt him to say how close his ideas are to those of Aristotle (§152), while Antonius himself claims that he has read various rhetorical works by Aristotle (§160).

But it is possible that Cicero is pushing the limits of credibility in order to serve his purposes: by setting the dialogue in the past and giving it an aristocratic setting he can add prestige to the role of the orator which he presents therein. The talent, carefully nurtured by training, which had helped him to advance, as a *novus homo* from Arpinum, to the consulship and the title of *pater patriae* gained immeasurable lustre if its place within the Roman state were ratified by past champions of the nobility: even better that Crassus should claim for the orator the role of statesman and philosopher as well as the daily grind of the courts. Moreover if Crassus and Antonius, at least privately, argue for the benefit of Greek philosophical and theoretical ideas in the development of the ideal orator at Rome, Cicero can portray the Roman aristocracy as the true heirs to the Greek tradition, and defuse the potential threat posed by the contemporary professional teachers.

The acknowledged debt of the *De oratore* is to earlier Greek philosophers, Plato, Isocrates, and above all Aristotle. I shall now examine the way in which the dialogue reacts to and uses their ideas for its own ends. There used to be a general assumption that where Romans used Greek ideas, they did little more than translate them into Latin. In her *magnum opus* on the Roman intellectual debt to Greece at the end of the Republic, Rawson explained the borrowing of rhetorical ideas by the absence of any worthwhile native tradition: 'There must have been many Romans of the later second century B.C. for whom the rules of rhetoric, far from appearing a straightjacket (and there was after all much choice built into them) helped to produce order out of chaos. Even the vigorous Elder Cato, as the sympathetic Aulus Gellius admits, had not managed to organise his famous speech for the Rhodians in a satisfactory fashion.'[168]

This perception of Greek ideas providing order out of chaos has been very influential in the interpretation of Cicero's philosophical dialogues. For example, the *De officiis* has often

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167 *De oratore* 2. 7.

168 E. Rawson, *Intellectual Life in the Late Roman Republic* (London, 1985), 143.

been seen as a very faithful reproduction of the Stoic Panaetius' work with only minor modifications. Brunt puts this position clearly: 'All such modifications confirm his claim that he was not slavishly copying out Panaetius' views; where he did not make changes, it was because he approved of what Panaetius had written. But it would be easy to exaggerate the extent to which he did import his own opinions.'[169] More recently, there has been growing support in favour of taking at face value Cicero's claim not to be merely translating.[170] I quote Griffin's conclusion as an example: 'Cicero clearly expected his readers to accept his claim to be using Panaetius selectively and critically, for he feels it necessary to tell them occasionally that he has Panaetius' support for a controversial view.'[171] While I do not wish to deny the influential contribution of Greek ideas towards Roman culture, it seems important to recognize that the Romans were capable of reacting to these ideas in an intelligent and selective manner. This would be particularly likely in the case of rhetoric, where the practice of public speaking was long established.

The older belief, that Cicero was incapable of assimilation and adaptation of Greek ideas in setting out his own position, has had significant consequences with regard to the *De oratore*. It has been claimed that Cicero cannot have read all of Aristotle's *Rhetoric* in its surviving form, since there are places where his treatment is so different from the Greek philosopher's. Kennedy tends towards this approach when he notes the absence of the enthymeme from Cicero's discussion of rational proof: 'It is significant that though the Aristotelian topics are discussed, the real keystone of logical proof in the *Rhetoric*, the theory of enthymeme and example, is totally lacking, which suggests that the *Rhetoric* as we know it can hardly be a major direct influence.'[172]

This type of argument has often led to the conclusion that in Cicero's day the *Rhetoric* looked very different, or that he was only aware of its arguments from a doxography or a later

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169 P. A. Brunt, 'Aspects of the Social Thought of Dio Chrysostom and the Stoics', *P.C.P.S.* 19 (1973), 27. This view has been followed recently by A. R. Dyck, *A Commentary on Cicero*, De Officiis (Ann Arbor, 1996). See especially pp. 18-21; 28; 36-39.

170 See *De officiis* 2. 60 (*non interpretatus*).

171 At M. T. Griffin and E. M. Atkins (edd.), *Cicero, On Duties* (Cambridge, 1991), p. xxi.

172 Kennedy (1972), 222.

source.[173] This tendency has been further supported by our lack of knowledge about the availability of all Aristotle's works in republican Rome. But in the most recent study of the issue, Barnes has stressed the need to treat each work as a separate case, particularly the rhetorical corpus: 'It is clear that some knowledge of Peripatetic rhetorical theory - and some interest in Aristotle's *Rhetoric* - was preserved by a tradition which had no concern to reach the other parts of Aristotle's philosophy.'[174] And although we may doubt whether Antonius had read Aristotle's rhetorical works, it cannot be absurd for Cicero to make him claim this at 2. 160.

If the *Rhetoric* was available, to assert that Cicero cannot have read it because the *De oratore* differs from it substantially is to see his role as that of a translator, which would explicitly contradict what he makes the interlocutors of the dialogue claim to be doing.[175] It would in fact be more surprising if Cicero, as a mature Roman orator, accepted Aristotle's ideas unchanged: rather we would expect him to respond to them in a selective way, particularly since the dialogue is an attempt to fuse Greek and native Roman elements. I shall now consider the form which this response takes in the light of his treatment of *ethos* and *pathos* within *inventio*.

It is universally accepted that Cicero was influenced by Aristotle, whether directly or indirectly, when he makes Antonius distinguish three means of persuasion available to the orator: proof, winning favour and stirring feelings.[176] As we have seen above,[177] this seems to parallel Aristotle's three-fold division of persuasion into *ethos*, *pathos* and argument.[178] Cicero's dialogue is the first surviving Roman work to follow Aristotle's plan, but it is clear

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173 For a thorough evaluation of the different approaches, see J. Wisse, *Ethos and Pathos: from Aristotle to Cicero* (Amsterdam, 1989), 105-89. Although he concludes (187-89) that absolute certainty is impossible, his arguments at least demonstrate that claims that Cicero cannot have read our *Rhetoric* are unfounded. A. A. Long, 'Cicero's Plato and Aristotle', in J. G. F. Powell (ed.), *Cicero the Philosopher* (Oxford, 1995), 55, favours the view that Cicero's knowledge came from a handbook, but notes that 'we should not exclude the possibility that Cicero knew something of Aristotle's *Topics* or *Rhetoric* at first hand.'

174 J. Barnes, 'Roman Aristotle' in J. Barnes and M. T. Griffin (edd.), *Philosophia Togata II* (Oxford, 1997), 54.

175 This claim could itself be rhetorical, but there is no substantial evidence to doubt it: it is too easy to postulate lost intermediate sources. A long time ago Solmsen put his position very succinctly: 'The *Rhetorica* cannot, after all, have been very heavy reading to him. But if anyone feels differently and thinks that Cicero, though conscious of a definite agreement with Aristotle on points of principle, carefully refrained from reading the *Rhetoric*, I am unable to refute him' (F. Solmsen, 'Aristotle and Cicero on the orator's playing upon the feelings', *C. Phil.* 33 (1938), 390-404).

176 *De oratore* 2. 115.

177 See pp. 2-3.

178 Aristotle, *Rhetoric* 1. 2. 3-6. The fullest treatment of this debt is in J. Wisse (1989).

that there are important changes.[179]

Before examining the nature of these changes, it is important to consider briefly the overall structure of Cicero's work. Like the *Ad Herennium*, the dialogue is organised around the five so-called *officia oratoris*, which derived in origin from Aristotle's triad of proof, style and arrangement.[180] Antonius discusses *inventio*, *dispositio* and *memoria* in book 2, and Crassus treats *elocutio* and *pronuntiatio* in book 3. Although using this system, the Hellenistic tradition created confusion over the distinction between *inventio* and *dispositio*, by partially retaining the earlier method of dealing in turn with each of the parts of the speech (the proemium etc.). By treating these parts of the speech under the heading of *inventio*, the role played by *dispositio* became problematic, and most importantly it destroyed the practical process of deciding one's arguments before putting them in order.[181]

By treating under *inventio* the different parts of the speech, the rhetorical handbooks were rather schematic: introductions should win favour, the narration of events should be lucid and usually brief, then came the arguments for one's own case and against that of the opponents, before a more emotional conclusion. Antonius in the *De oratore* criticises the simplicity of this plan in various ways,[182] but its most significant result was that it limited non-rational persuasion to the start and end of the speech.[183] By returning to the original, Aristotelian, system of *inventio*, Cicero could claim to have made an improvement over that of the Hellenistic tradition by emphasizing the benefits of introducing character-based and emotional appeals throughout the whole speech. A simile reinforces this advice: while the rational form of persuasion should be displayed openly, *reliquae duae, sicuti sanguis in corporibus, sic illae in perpetuis orationibus fusae esse debebunt.*[184] This simile in part illustrates the need for *ethos* and *pathos* to operate below the surface, unnoticed by the audience, but it also asserts the need for them to be a continuous thread, the life blood of the speech.

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179 Of course, those who do not believe that Cicero read Aristotle himself are able to ascribe these differences to an intermediary source.

180 On which see above p. 21.

181 On this contamination, see above p. 21 and Solmsen (1941), 48-50. In the *De oratore* there is great stress on the sense of choosing one's best arguments, before arranging them (2. 307-14).

182 *De oratore* 2. 315-332.

183 On this restriction in Hellenistic theory, see Solmsen (1938), 310-12. It is true however that Antonius does accept that the most appropriate (*proprius*) places for this type of appeal are the beginning and end of a speech, but not exclusively so (*De oratore* 2. 311).

184 *De oratore* 2. 310.

But if the structure is indebted to the Greek philosopher, the way in which *ethos* and *pathos* are treated as arguments is very different. This has been noticed by both Fantham and more recently Fortenbaugh: they have contended that Aristotle's category of *ethos* is problematic for Cicero.[185] The most important part of Fantham's article was to show that Cicero was proposing something very different from Aristotelian *ethos*. The dialogue gives no direct translation of the term, and the most commonly used verb is *conciliare*. She points out that this verb could equally well be used of an emotional effect, and indeed Cicero also uses this verb of the achievement of *amor* in the section on *pathos*.[186] 'Cicero's choice of the verb *conciliare*, appropriate to the purpose of this, as of other categories of proof, is too general, and prevents him from distinguishing between the descriptive role of the 'ethical' proof... and the emotive role of the πίστις διὰ τῶν ἀκροατῶν.'[187] This blurs the original distinction between *ethos* and *pathos*, where *ethos* confined itself to the question of the speaker portraying himself to his audience as trustworthy (ἀξιόπιστος):[188] for Aristotle, the issue was not so much for the speaker to win the goodwill of the audience (*conciliare benevolentiam*), but for the speaker to show his own goodwill towards the audience (εὔνοια).[189]

Fortenbaugh argued that Cicero made this change from a more rational form of *ethos* towards one which is more closely tied to emotional response because he had a different sort of audience in mind. He suggested that Aristotle was envisaging the possibility of an 'impartial auditor', who might base his judgment upon the character of the orator as presented by the speech.[190] He also stresses the emotional aspect of Ciceronian '*ethos*', and although he denies the confusion that Fantham detects,[191] he does argue that Cicero's treatment owes more to the

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185 E. Fantham, 'Ciceronian *Conciliare* and Aristotelian *Ethos*', *Phoenix* 27 (1973), 262-75; W. W. Fortenbaugh, '*Benevolentiam conciliare* and *animos permovere*: some remarks on Cicero's *De oratore* 2. 178-216', *Rhetorica* 6. 3 (1988), 259-73.

186 *De oratore* 2. 206.

187 Fantham (1973), 272.

188 Aristotle, *Rhetoric* 1. 2. 4.

189 Aristotle, *Rhetoric* 2. 1. 5. To establish one's εὔνοια towards the audience was particularly important in Greek political oratory, since a speaker's loyalty towards the δῆμος or the membership of a broad oligarchy would not be assumed. At Rome such loyalty was expected towards the *res publica*, although real concern for the members of the *populus Romanus* was another matter.

190 Fortenbaugh (1988), 262.

191 He prefers to see the two forms of persuasion operating at different places on the same scale (like hot and cold), with '*ethos*' affecting the gentler emotions, and '*pathos*' the stronger ones (p. 268), but he does also accept that there is some qualitative difference, in that favour is won by a presentation of character alone (p. 269).

Hellenistic tradition than to the explicit model, Aristotle.[192] These articles both illuminate the differences between Aristotle and Cicero, but I contend that these differences were not problematic for Cicero. I shall argue rather that this is an excellent example of the way in which Greek theory was adapted to suit the new context of the Roman dialogue. It is important to examine the relevant passages in detail, in order to consider the reasons for the changes made by Cicero.[193]

Aristotle's account of *ethos* isolates three factors which make a speaker trustworthy, good sense (φρόνησις), virtue (ἀρετή) and goodwill (εὔνοια).[194] These qualities ensure that the speaker is capable of good advice, that he actually offers the best advice, and that this advice is to the benefit of his audience.[195] He concludes the section by referring to other parts of the work which provide the means for the orator to show that he possesses these three qualities. It is immediately apparent from this summary that for Aristotle *ethos* plays a subordinate role to rational persuasion. Its main purpose is to convince the audience that the advice contained in the speech comes from a reliable source. Moreover the three necessary qualities are intellectual and moral, and permanent attributes of the speaker. There is no emotional element, and there is no explicit reference to any factors external to the speech, such as previous achievements.[196]

When we turn to Cicero, the contrast is clear.[197] We have already seen how Cicero emphasizes the emotional effect, expressed by the word *benevolentia*, but the way in which this effect is to be achieved is also markedly different. To this end the orator can have recourse to the *mores et instituta et facta et vitam eorum, qui agent causas, et eorum, pro quibus.*[198] These terms suggest that a broader range of considerations are admissible, drawn from the

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192 Fortenbaugh (1988), 273.

193 Wisse (1989), 9-76 and 222-49 contains a careful analysis, but is cautious in explaining the changes made by Cicero, and tends to underplay the different political role of oratory at Rome.

194 Aristotle's treatment of *ethos* proper is at *Rhetoric* 2. 1. 5-7.

195 Aristotle, *Rhetoric* 2. 1. 6: ἢ γὰρ δι' ἀφροσύνην οὐκ ὀρθῶς δοξάξουσιν, ἢ δοξάξοντες ὀρθῶς διὰ μοχθηρίαν οὐ τὰ δοκοῦντα λέγουσιν, ἢ φρόνιμοι μὲν καὶ ἐπιεικεῖς εἰσιν ἀλλ' οὐκ εὔνοι, διόπερ ἐνδέχεται μὴ τὰ βέλτιστα συμβουλεύειν γιγνώσκοντας.

196 But it is worth noting that such external elements might have a subordinate role to play within each of these categories.

197 In this section, I shall use 'Cicero' and 'Ciceronian' rather than repeating 'Cicero makes Antonius say...'

198 *De oratore* 2. 182.

whole course of the life of the speaker and his client.[199] But the importance of social status is made explicit in the next sentence: *conciliantur autem animi dignitate hominis, rebus gestis, existimatione vitae. Dignitas* is a term associated with the upper classes at Rome and particularly the senate,[200] and *res gestae* are a noble's achievements. The qualities which Cicero sees contributing to the achievement of *benevolentia* are aristocratic attributes, whether on the part of the patron or his client.

Moreover the impact of these qualities is no longer subservient to the content of the rational argument: *et hoc vel in principiis vel in re narranda vel in peroranda tantam habet vim, si est suaviter et cum sensu tractatum, ut saepe plus quam causa valeat.*[201] The man, in all his accomplishments, is to stand surety for the whole issue, not merely the objectivity of the speech. But although scholars are correct to stress that Ciceronian '*ethos*' has a partially emotional effect, there is something more substantial to it, since the noble Roman qualities of the antagonists are envisaged as more influential than the strengths of the case itself (*causa*).

In the *Brutus* Cicero gives several examples of the contribution which status and authority could make to the effectiveness of the speaker at Rome, in both judicial and bouleutic contexts.[202] This extension of the scope of *ethos* is marked very clearly by the fact that in the *De oratore* Cicero discusses it during his treatment of judicial oratory. Where Aristotle sees *ethos* as having a role primarily in deliberative speeches,[203] Cicero's account emphasizes the court scenario by adding the blackening of the opposition's characters as a further technique.[204]

Furthermore, the Roman judicial custom whereby a patron spoke for and represented his client lent itself to the practice of the former using his status to support the latter's case, and Cicero again marks this change by carefully distinguishing between the patron and client in his discussion of *ethos*. The use of *ethos*-based persuasion in a judicial context immediately marks

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199 Isocrates, *Antidosis* 2. 78 (see above, p. 23) allows some importance to the whole conduct of the speaker's life, but the idea is not so developed as in Cicero.

200 Compare, for example, line 5 of the Larinum S. C., where senators and their relatives are banned from actions which are *contra dignitatem ordinis sui* (B. Levick, 'The *Senatus Consultum* from Larinum', *J.R.S.* 73 (1983) 97-115.

201 *De oratore* 2. 184.

202 Note for example *Brutus* 56: the consul Marcus Popilius calming the mob; §111, the style of Marcus Scaurus' defence speeches. J. M. May, *Trials of Character* (North Carolina, 1988), 6 describes Ciceronian ethos as 'radically influenced and conditioned by the idiosyncrasies of the sociopolitical environment at Rome.'

203 Aristotle associates *ethos* with deliberative speeches in particular at *Rhetoric* 2. 1. 4.

204 *De oratore* 2. 182: *itaque eadem sunt in adversarios ex contrario conferenda.*

a great shift from Aristotle's position. In a deliberative speech there is the scope for 'rational' *ethos* aimed at an impartial auditor, but in a court when the advocate's prime task is to put his client's case as strongly as possible, his concern for the interests of his listeners can only be secondary.

In the next chapter I shall argue that actual Roman practice reflected the alterations to Aristotelian theory made by Cicero, but here I note one instance which illustrates the importance of a noble's authority in affecting the outcome of court cases. In his defence of Lucius Murena, Cicero tries to counter the prestige of the accuser, Cato the Younger, by telling of the trial *de repetundis* of L. Aurelius Cotta, consul of 144 B.C.[205] Scipio Africanus had spoken against him, but Cicero argues that the latter's prestige contributed to an acquittal, since the jury could not bring themselves to condemn a man who was faced with the weight of such authority ranged against him.

The jurors may have had other reasons, good or bad, for acquittal, but Cicero's version of the story cannot have appeared ridiculous, as it would do unless the weight contributed to a case by a man's *auctoritas* was considerable. And it is notable that the qualities which Cicero marks as contributing to Scipio's prestige in the publicly delivered *Pro Murena* of 63 B.C. correspond very closely with the list he gives in the later *De oratore*. His two consulships and his victories over the two greatest enemies of Rome, Carthage and Numantia, to which Cicero refers, are his greatest *res gestae*. He then proceeds to list Scipio's attributes which endangered Cotta: *summa eloquentia, summa fides, summa integritas, auctoritas*. These are summed up finally as his *eximiam vim et dignitatem*, and *dignitas* was the same word that Cicero later used in the dialogue.

Of course Cicero's story is a counter-example, the occasion when the *auctoritas* of the prosecutor was too great, but it depends for its impact upon an environment where aristocratic attributes were expected to hold sway. And it is clear that for Cicero and his Roman audience, the impact made by the protagonists' characters and achievements was more than just emotional, as Fantham argued: it was a distinct contribution to the armoury available to the élite speaker.

Fortenbaugh, as we have seen, contended that much of Cicero's treatment was in fact indebted to the handbooks. If we compare the *Ad Herennium*, we do indeed find some similarities. That author argues that in the introduction to a speech it is necessary to make one's

205 Cicero, *Pro Murena* 58.

audience receptive, well-disposed and attentive.[206] The noun used of the second aim is *benevolentia*, the same as Cicero uses. Unfortunately the passage which describes how *benevolentia* is to be won is lacunose, but there is reference to the speaker's *officium* and the attitude which he has shown towards the *res publica*, as well as to his friends.[207] There is also a discussion of the way in which the speaker can blacken the character of his opponents.

But these similarities are in no way an embarrassment for Cicero's hostility towards the teachers of rhetoric. It is his stress on the overwhelming importance of the role of *ethos* throughout the whole of the speech which distinguishes Cicero's work. Antonius' account of the non-rational forms of persuasion reaches a climax with the summary of the speech which he made defending C. Norbanus against the charge of *maiestas* in the 90's B.C.[208] This oration is held up as an example of what can be achieved with emotional and character-based proofs: *ita magis adfectis animis iudicum quam doctis, tua, Sulpici, est a nobis tum accusatio victa.*[209] And the speech, as Antonius recalls it, provides an excellent illustration of his own account of the use of character in speeches.[210]

He began with mentioning his personal ties with Norbanus as an excuse for making a speech in his defence, that is Norbanus' quaestorship during his command against the pirates in 101 B.C.[211] Not only would this have emphasized Antonius' loyalty towards his friends, but also the mention of Norbanus' service would have served to remind the jurors of his own victorious command, culminating in a triumph in 100.

The next section was an ostensibly emotional one, justifying Norbanus' action with reference to previous moments of Roman history when civil discord achieved worthy ends, but it culminated with an attack upon Norbanus' victim, Caepio. This seems to be an example of negative characterisation being used against one's opponents, and according to Sulpicius it was

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206 *Ad Herennium* 1. 6.

207 *Ad Herennium* 1. 8.

208 *De oratore* 2. 197-204. Norbanus, while tribune in 103 B.C, had prosecuted Q. Servilius Caepio for his contribution to the defeat suffered against the Cimbri at Arausio in 105 B.C. His own prosecution for *maiestas* stemmed from the charge that he had used force against two fellow tribunes, T. Didius and L. Aurelius Cotta, who tried to block the prosecution.

209 *De oratore* 2. 201. Both types of proof are here represented by *adfectis animis*.

210 Wisse (1989) attempts a reconstruction at 269-82 (with scheme on p. 278), but he fails to underline just how thorough the use of *ethos* is within the speech, even in the sections explicitly associated with *pathos*.

211 Antonius does refer to this introduction, albeit obliquely, at 2. 198 (*mihi tenuis quaedam venia daretur excusationis, quod tamen eum defenderem, qui mihi quaestor fuisset*), but Sulpicius' version is fuller on this part of the speech (2. 202).

wide-ranging: *deinde qui locus a te praetermissus est in Caepionem?*[212] Antonius attacked his 'flight', the loss of the army and even his jury reform to win sympathy from the equestrian jurors.[213] After this he introduced the appeal from his own character. Again he emphasized his loyalty towards his friends, but he explicitly asked for his personal grief to be excused in the light of his age, his career and his achievements (*aetati meae*, *honoribus*, *rebus gestis*).[214]

This speech, as reported, is exemplary in several respects. First of all, appeals from character run throughout the speech, present in even the more emotional section which involved the blackening of Caepio. They are certainly not confined to the introduction, as the rhetorical tradition prescribes, and the most heavily character-based section actually comes at the end, where the books taught to focus upon the emotions.[215] Secondly, it shows how even the characters of men not directly connected with the issue can be introduced. Antonius, as Norbanus' patron, has a great deal to say about himself, but even Caepio, now in exile at Smyrna, is introduced as a 'bad' counterpoint. Thirdly, the issues that contribute to the character portrayals reflect Antonius' own treatment earlier in the book: not only faithfulness to one's friends, but military achievements and honours won. Finally, the reconstruction shows how these factors are introduced tangentially, not directly. In the introduction and at the end, Antonius mentions the quaestorship as an excuse for the defence and for his own grief, but it does well to remind the jury of Norbanus' service and his own glory, to be strongly contrasted with Caepio's achievements. This exemplifies Antonius' advice that the non-rational forms of persuasion should not be introduced openly, but run like blood under the surface of the speech.[216]

Cicero resurrects the triad of rational proof, *ethos* and *pathos*, but not because he accepts Aristotle's categories unchanged.[217] Rather, the Greek philosopher's framework can add authority to his own account, which is so critical of the rhetoric teachers. Moreover, in Cicero's hands the prestige of Aristotle helps to reinforce the status of the aristocratic orator at

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212 *De oratore* 2. 203.

213 *De oratore* 2. 199.

214 *De oratore* 2. 201.

215 Narducci (1997) notes this inversion of the rhetorical precepts (p. 60).

216 *De oratore* 2. 310.

217 For similar differences between the treatment of *pathos* by Aristotle and Cicero, see Wisse (1989), 250-300. He considers that significant additions were made to the Aristotelian model: 'The above comparisons have to my mind shown that Cicero by no means merely copied what he found useful.' He ascribes most of the changes to Cicero's desire for a greater practicality.

Rome. *Ethos*, as presented in the *Rhetoric*, demanded that the speaker should win the audience's trust by his self-presentation within the speech, and was aimed at an impartial auditor. This version might actually challenge the strong social determination which characterized the system of forensic and deliberative rhetoric at Rome, but Cicero's interpretation, by accommodating Roman practice within the original system, enlists Aristotle on the side of the Roman élite.[218]

If the climax to the second book of the *De oratore* is Antonius' account of his own defence of Norbanus, that of the whole work is Crassus' discourse in the last book. Cicero's introduction to the third book begins by remarking that Crassus was to die less than a fortnight after the occasion of the dialogue. This echoes Plato once more and helps to link Crassus with the Socrates of the *Phaedo*.[219] Görler has argued that there is a more general presentation of Crassus as a philosophical hero, with his isolated meditation before the final discussion can begin, the repeated assertions of the divinely inspired nature of his speech and his defiance in the face of the consul Philippus in the senate.[220] But, as Görler points out, the portrayal of Crassus is not a simple one, and his last speech shows him as a heroic defender of the Roman senate against the revolutionary threats of the consul: Cicero shows Crassus, for all his Greek knowledge and associations, as the most steadfast supporter of the existing social order at Rome, and we should not expect anything at odds with this in the final book of the dialogue: for Cicero's readers, this discourse is to be as much Crassus' swan-song as that last speech in the senate.

The subjects which remain for discussion are style and delivery, but the most elevated passages of Crassus' exposition are the two digressions where he returns to his rallying-call of the first book, that the ideal orator be educated in every field of learning, although now the

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218 This discussion has not treated exhaustively all of Cicero's divergences from the Greek model, and in particular his stress upon style as a means of demonstrating character, which Fantham (1973) discussed. But I reserve a discussion on the style of speaking for the next section, where I will treat the question in the context of its political significance.

219 The technique of setting a dialogue just prior to the death of one of its main participants on the Socratic model was also used by Cicero in the *Cato maior* and the *De Re Publica*, and later by Tacitus in the *Dialogus*. See R. G. G. Coleman, 'The Dream of Cicero', *P.C.P.S.* n.s. 10 (1964), p.2, n. 2.

220 On the meditation, see *De oratore* 3. 17. On the inspiration, see 1. 26 (predictions of Rome's future), 2. 7 (the debate 'preserved' in the *De oratore*), 3. 4 and 6 (his final performance in the senate), 3. 22 (a philosophical flight of discovery). On the 'swan-song', see 2. 2-6. For the associations of this presentation of Crassus, see W. Görler, 'From Athens to Tusculum: Gleaning the Background of Cicero's *De Oratore*', *Rhetorica* 6. 3 (1988), 215-35.

issue is restricted to the benefits which philosophy can bring to the practice of oratory.[221] These digressions have been criticised extensively by Vickers, not only for their intrusive place within the scheme of the whole,[222] but also for their unsubstantiated content. However, I believe that these criticisms arise from a failure to see these sections in the context of the dialogue as a whole. A brief critique of Vickers' views is necessary in order to demonstrate the difficulties which arise if the ideological purpose of the work is not taken into account. He views Cicero's espousal of the philosophically educated orator as a response to Plato's criticisms:

> 'Cicero's advocacy of a training in philosophy seems designed to answer Plato's objection that the rhetorician has no knowledge of such things... The demands that Cicero makes on the ideal orator are widened until they take in virtually the whole field of human knowledge... Such claims may indeed answer Plato, but they leave rhetoric in the unfortunate position of having been propelled from nothing to too much. To demand such omni-competence is likely to deter students of rhetoric and alienate its critics.'[223]

It is important to consider the context of Vickers' remarks. They are made in a book entitled 'In defence of Rhetoric', and within a chapter called 'Territorial Disputes: Philosophy versus Rhetoric', where he treats the way in which different writers on rhetoric are able to answer Plato. But in writing the *De oratore*, Cicero was not attempting to produce a Platonic-style dialogue: in fact he makes the interlocutors protest that such debates are a waste of time, and inappropriate for the Roman aristocrat.

The precise context for the digressions is Crassus's insistence that ornate style depends primarily upon the content of the speech: *rerum enim copia verborum copiam gignit; et si est honestas in rebus ipsis, de quibus dicitur, exsistit ex re naturalis quidam splendor in verbis.*[224] This reflects Cato's injunction of *rem tene, verba sequentur*, and the introduction to Cicero's own *De inventione*. It is within this Roman tradition that we should understand Crassus' exhortation to study Greek philosophy. It is therefore not surprising that Crassus is made to refer to a series of Roman 'philosophers' who benefited the Roman state by engaging in public

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221 *De oratore* 3. 55-90; 107-43.

222 Vickers (1988), 34: 'Crassus, and Cicero, complete the allotted task ungraciously.'

223 Vickers (1988), 164-5. One may again compare Horace's similar advice on poetry at *Ars Poetica* 309-11.

224 *De oratore* 3. 125.

business, rather than confining themselves to specialist study.[225] Cato himself is the culmination of this list: *denique nihil in hac civitate temporibus illis sciri discive potuit, quod ille non cum investigarit et scierit tum etiam conscripserit.* It is true that Cato's knowledge was limited by the age in which he lived (*illis temporibus*), and that Cicero's dialogue openly mentions the need to engage with the ideas of the Greek philosophical schools, particularly the Academy and the Peripatos, but the contact is to be made on strictly Roman terms.[226]

Moreover, while Plato and Socrates are mentioned, there is no attempt to answer their criticisms. Rather, they are dismissed out of hand as the figures who were responsible for the original break between philosophy and rhetoric: *hinc discidium illud exstitit quasi linguae atque cordis, absurdum sane et inutile et reprehendendum, ut alii nos sapere, alii dicere docerent.*[227] Their action was self-evidently ridiculous in Cicero's eyes, and he saw no need for an argument to win over his Roman readers. The absurdity is illustrated by the fact that it was Socrates' own eloquence which allowed him to triumph: if he really overcame Gorgias, that can only be because he was an even better orator.[228]

Indeed, Crassus argues that it is a sign of the decline within Greek philosophy that the original unity of knowledge represented by men such as Lycurgus, Pittacus, Solon and even Homer's Phoenix through to later figures such as Themistocles, Pericles, Theramenes and Demosthenes, was allowed to be destroyed.[229] The image used is that of a watershed, with the streams of eloquence and philosophy flowing in their separate directions.[230] By reuniting these two streams, by adopting the Peripatetic and Academic practice of arguing 'for and against' on the most general issues, the prestige of the orator can be elevated still further.[231] But care is taken to show that the study of this material, though exotically Greek, would fit easily into the traditional Roman aristocratic education. It is also clear that the only group of people who might have the time and money to dedicate to this form of study are the Roman élite, and once

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225 *De oratore* 3. 133-5.

226 The desire to see the Greek tradition as compatible with the Roman is illustrated by the parallel lists of early Greek and Roman savants at 3. 56.

227 *De oratore* 3. 61.

228 *De oratore* 3. 129: *si est victus, eloquentior videlicet fuit et disertior Socrates et, ut tu appellas, copiosor et melior orator.* Compare also 3. 60, where it is said that his wisdom was complemented by his *eloquentia*, *varietas* and *copia.*

229 *De oratore* 3. 56-59.

230 *De oratore* 3. 69.

231 On the need to return to the philosophical tradition to reclaim this ground, see 3. 107-125.

again Cicero's vision of the ideal orator helps to reinforce the existing social system. Vickers' assertion that Cicero's vision might discourage potential trainees is valid, but that would seem to be part of the point: the restricted access to that type of knowledge would ensure that Roman oratory, at the highest level, remained the province of the aristocracy.[232]

But there is another aspect of Crassus' presentation which makes this knowledge more accessible than it first seems, since the orator can acquire his knowledge of philosophy without spending as much time on it as the philosophers themselves. His innate ability and acquaintance with Roman institutions renders in-depth study unnecessary: *non tantum ingenioso homini et ei, qui forum, qui curiam, qui causas, qui rem publicam spectet, opus esse arbitror temporis, quantum sibi ei sumpserunt, quos discentis vita defecit.*[233] This, in part, serves once more to represent the study of Greek philosophy as something which is not entirely alien, but by playing down the effort required, Crassus is also able to assert the primacy of the statesman/orator over the professional philosopher.

But this dismissiveness has been criticized as much as Crassus' insistence that the orator should possess a knowledge of all subjects. The digression concludes with the statement that a man must learn a subject quickly or not at all,[234] an attitude which Kennedy abhors: 'Of all the ideas expressed in *De oratore* perhaps the most objectionable is Crassus' claim that unless a man can learn a subject quickly he can never learn it at all... and it belongs in the Roman tradition of deliberate superficiality.'[235] The approach may be superficial, but that is in part the point. At one level it is practical, since it would be unfeasible for the practising orator to be acquainted with all the philosophical controversies, but more important is the presentation of the Roman orator as a man who knows the time and the place for recherché pursuits.

Throughout the first digression Crassus is critical of philosophy which is too far removed from the sphere of public life. Men such as Pythagoras, Democritus and Anaxagoras abandoned politics as a result of the allure of science, and in greater numbers than was healthy

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232 Compare Narducci (1997), 70: 'una concezione dell'unità della cultura cui non è estranea la preoccupazione di mantenere unite le forme di sapere che concorrono al rafforzamento del potere dell'aristocrazia; l'oratore deve essere insieme filosofo, giurista e uomo di stato anche per custodire con la propria *auctoritas* le istituzioni e le tradizioni.'

233 *De oratore* 3. 86.

234 *De oratore* 3. 89: *res quidem se mea sententia sic habet, ut, nisi quod quisque cito potuerit, nunquam omnino possit perdiscere.*

235 Kennedy (1972), 228.

for the state.[236] The Epicurean doctrine of pleasure is fine in itself, but not everyone can pursue it, or there would be no-one left to run public affairs,[237] and the Stoics hold some ideas that run entirely counter to public opinion, which is unhelpful in an orator.[238] The ultimate statement of his position comes at 3. 57: *itaque, ut ei studio se excellentissimis ingeniis homines dediderunt, ex ea summa facultate vacui ac liberi temporis multo plura, quam erat necesse, doctissimi homines otio nimio et ingeniis uberrimis adfluentes curanda sibi esse ac quaerenda et investiganda duxerunt.* In Crassus' view philosophy can become introspective, as its practitioners indulge themselves in excessive *otium*.

A Roman aristocrat must have his moments of *otium*, when he can be free from public duties - Crassus has insisted as much this very morning[239] - but those duties are paramount and remain the most important defining feature of the governing class. Philosophy can help, but the orator, as a member of that class, must remember that it is not an end in itself.[240] There is an element of the 'gentleman dilettante' in Crassus' vision, and this is another example of differentiation being added to Greek παιδεία at Rome. While other groups, such as Greeks, can devote their lives to philosophical minutiae, the Roman élite must distinguish themselves by taking only a passing interest: they both need less time to study, since they possess greater natural attributes, and they have more important things to do. Crassus makes this distinction explicit: *omnes enim artes aliter ab eis tractantur qui eas ad usum transferunt, aliter ab eis, qui ipsarum artium tractatu delectati nihil in vita sunt aliud acturi.*[241] The parallel which Crassus draws is that of the professional trainer of gladiators, and the noble for whom fencing was only one of his boyhood pursuits.

If there is a Greek writer to whom Cicero is indebted in the third book, both for the need for a philosophical education in the development of the orator, and at the same time for the limitation of that education, it is Isocrates. In the *Antidosis*, while he emphasizes the need for the nascent orator to be educated, preferably by himself, he criticizes those who pursue branches of philosophy, such as astronomy and geometry, which are less applicable to public

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236 *De oratore* 3. 56.

237 *De oratore* 3. 64.

238 *De oratore* 3. 65: *valde autem est absurdum ei contionem aut senatum aut ullum coetum hominum committere, cui nemo illorum, qui adsint, sanus, nemo civis, nemo liber esse videatur.*

239 *De oratore* 2. 22.

240 This is why Cicero's stress here remains firmly upon ethical philosophy.

241 *De oratore* 3. 86. This expression of the distinction is remarkably close to that of Wallace-Hadrill (1988), 232.

affairs. But, like Cicero, he accepts that even they have a place in the educational process, since they help to train the mind for greater tasks.[242]

But it is important to note the very different contexts in which the two authors are arguing this case. Isocrates introduces this criticism as a response to the attacks upon rhetoric by οἱ περὶ τὰς ἔριδας σπουδάζοντες, and the dispute is one between rival schools. In the *Deoratore*, Crassus is keen to keep philosophy as a whole in its place. He may be happy for his ideal figure to be called a *philosophus* or an *orator*,[243] but the dispute is often expressed in military terms as invasion and counter-invasion, and Crassus utters his final words on the subject as one knowingly superior: *sin eos diiungent, hoc erunt inferiores, quod in oratore perfecto inest illorum omnis scientia, in philosophorum autem cognitione non continuo inest eloquentia.*[244] As Narducci emphasises, the suspicion of specialist philosophy may be present in Isocrates and Aristotle, but it is enhanced by Cicero's own background as a member of the Roman governing class.[245] And where Isocrates' *Antidosis* is written, ostensibly at least, as a self-defence before the Athenian public,[246] Cicero, as we have seen, was writing for an explicitly circumscribed readership who were members of the Roman élite.

As I have suggested above,[247] the dialogue can be seen in part as a literary *tirocinium fori* and in a letter Cicero recommends it to the son of a friend.[248] It is within this context that the dialogue and its injunctions must be understood. Although much of the *Deoratore* can be traced back to a Greek ancestry, it would be wrong to see the introduction of this material as an attempt to revolutionize Roman oratory. Rather it was an attempt to reinforce the traditional methods of training young Romans in oratory, in the light of the perceived threat to the established order posed by the professors of rhetoric.

As we saw in the last section, when Cicero came to write the *Deoratore*, contact with

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242 Isocrates, *Antidosis* 261-69.

243 *De oratore* 3. 142.

244 *De oratore* 3. 143. Note, as military language, *involaverunt* and *expilati sumus* (3. 122-3).

245 Narducci (1997), 70: 'Da Aristotele e da Isocrate Cicerone desume il sospetto verso un approfondimento specialistico che segna il confine tra una compiuta educazione liberale e le discipline professionali, sempre pericolosamente vicine a ricadere nell' attività «banausica»; ma questo atteggiamento è ovviamente rafforzato dalle tradizioni aristocratiche romane: come Cicerone ribadirà anche altrove, il rischio di un sapere perseguito oltre i giusti limiti è il disimpegno dalla vita publica.'

246 Note in particular *Antidosis* 309.

247 See pp. 34-5.

248 *Ad Fam.* 1. 9. 23.

Greek rhetorical theory had already been shaping Roman oratory for more than a century. Cicero himself, by setting the dialogue in the past, was perhaps trying to attribute an even greater influence to Greek ideas over previous generations. However, I have considered two areas, persuasion through character and philosophy, where Cicero was adopting ideas that were substantially new to Rome, in that the debt to the classical Greek tradition was explicitly recognised. Yet even in these instances he did not introduce the ideas unchanged and unquestioningly, but followed a practical and eclectic method, so that the socially restricted class of Roman orators was not merely maintained, but enhanced by the authority of the 'Greek' tradition.

Similarly, in choosing to produce a written version of the *tirocinium fori*, which was almost certainly the first of its kind, Cicero was ensuring a wider and longer-lasting audience among the youth of the Roman aristocracy than was possible through personal contact. The implicit contrast is with Antonius and Crassus themselves, since Cicero has written the work in part *ut laudem eorum iam prope senescentem, quantum ego possem, ab oblivione hominum atque a silentio vindicarem.*[249] By producing a written piece, he was using the 'technology' of both Aristotle and the school handbooks. In competition with the latter he produced his own book and marked its distinctiveness by the literary form which he adopted, and by reasserting the impossibility of teaching oratory with the help of simple rules, which might make it potentially accessible to all. Moreover he trumped their use of the Greek tradition by going back to Aristotle and reuniting the twin streams of philosophy and rhetoric.

In her discussion of Cicero's *De divinatione*, Mary Beard has persuasively argued that the contradictions evident within this reflect Cicero's difficulties as a pioneer, attempting to integrate Hellenizing philosophy with traditional Roman practice in a new religious discourse.[250] This was not the case with rhetoric, which had already been a subject of significant discussion at Rome over a long period. Cicero's facility at adopting Greek ideas without disrupting the already Hellenized tradition is a sign of the maturity of rhetorical discourse at Rome, and many of the ideas are adapted so greatly and used in such a different context that their Greek provenance has often been doubted. And as a result of this maturity, we should not be surprised when Romans other than Cicero could use the same Greek traditions in support of their own positions, which is the subject of the next section.

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249 *De oratore* 2. 7.

250 M. Beard (1986), 33-46.

3. *De optimo genere dicendi*

> 'These names which groups of writers and artists give themselves are the delight of professors and historians of literature, but should not be taken very seriously; their chief value is temporary and political - that, simply, of helping to make the authors known to a contemporary public.'[251]

Douglas quotes Eliot's words approvingly in order to support his view that the so-called Atticist controversy was not of lasting significance at Rome. But Eliot does recognise the temporary and political value of such labels, and there seems to be important evidence to suggest the Atticism was a heated issue in the 50's and 40's B.C., not least the fact that Cicero himself wrote the *Brutus* and the *Orator* in 46 B.C.

In this section I argue that, to an important extent, the general consensus over the ideal Roman orator which Cicero had portrayed in the *De oratore* was tendentious, and that there was an ongoing debate at Rome about the form that oratory should take, and particularly the style of speaking that was appropriate. I concentrate upon two contemporaries of Cicero, who disagreed strongly with his own style of speaking, Calvus and Brutus.

Calvus was a leading figure in the polemic of the Atticist-Asianist controversy, a topic which has generated almost equal vitriol amongst modern scholars.[252] I do not intend to resume the arguments over who was, and who was not a true 'Atticist',[253] but will instead focus upon the debate which arose between Cicero and Calvus, in order to argue that this particular rhetorical controversy was only one manifestation of the polemic generated between leading Roman orators as they attempted to establish their own place in the *forum*. I also argue that while Roman concerns were always of paramount importance, an appeal to some part of the Greek tradition, whether philosophical or in the form of an oratorical exemplar, was one of the most frequently deployed arguments. While the apparent unanimity of the *De oratore* may

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251 T. S. Eliot, *After Strange Gods: a primer of modern heresy* (London, 1934), 25 - quoted by A. E. Douglas, 'Marcus Calidius and the Atticists', *C.Q.* 5 (1955), 247.

252 See in particular A. E. Douglas, 'The Intellectual Background of Cicero's *Rhetorica*: A Study in Method', *ANRW* I. 3 (1973), 95-138, an article which Narducci (at (1997), p. 125) describes nicely as 'non senza qualche forzatura polemica.'

253 For the most forthright exposition of the 'minimalist' view of Atticism, see A. E. Douglas (1973), who argues that Calvus is the only certain member of the movement, a movement which was of Roman origin and of little lasting significance; A. D. Leeman (1986), 142-167 puts forward the opposite point of view on each of these three issues. Modern discussion of the subject is highly indebted to the article of U. von Wilamowitz-Moellendorff, 'Asianismus und Attizismus', *Hermes* 35 (1900), 1-52.

be seen to break down, Cicero was not alone in seeking to use the authority of Greece to support his own vision of Roman rhetoric.

In the second part of this section, I focus upon the figure of Brutus. I argue that his vision of oratory was a much more fundamental challenge to Cicero's view of Roman rhetoric, and belonged to a well established tradition which wanted public persuasion to operate in a more rational and less emotional manner. I will again suggest that this tradition was inspired in part by Greek antecedents.

In the *Orator* Cicero, responding to Brutus' request to state what he thought to be the best oratorical style,[254] emphasizes that there must be a link between style and content. The central part of the work is the argument that the three functions of the orator (*probare*, *delectare* and *flectere*)[255] should be matched by three different styles of speaking: *sed quot officia oratoris, tot sunt genera dicendi: subtile in probando, modicum in delectando, vehemens in flectendo.*[256] Douglas has shown that this precise matching of the three styles with the three functions is a rhetorical innovation on Cicero's part,[257] and Cicero exploits this match in his polemic against the self-proclaimed Atticists: in confining themselves to the *genus subtile* they fail to fulfil all the duties of the orator.[258]

But Cicero was following well-established theory in insisting that style should always be appropriate to the subject. Aristotle had already emphasized this, in his brief discussion of style, saying that its most important quality was clarity, but that it should also be μήτε ταπεινὴν μήτε ὑπὲρ τὸ ἀξίωμα, ἀλλὰ πρέπουσαν.[259] And he reiterates this need for appropriateness in his discussion of metaphors.[260] Theophrastus developed his master's ideas, and wrote a book *On Style*, in which he seems to have ascribed four qualities to good style:

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254 Cic., *Orator* 2-3. See below pp. 65-6.

255 This tripartite division seems to be a development of that which the *De oratore* advocates, with *delectare* replacing *conciliare*. On reasons for this development see Fantham (1973), 262-75.

256 *Orator* 69.

257 A. E. Douglas, 'A Ciceronian Contribution to Rhetorical Theory', *Eranos* 55 (1957), 18-26.

258 *Orator* 28.

259 Aristotle, *Rhetoric* 3. 2. 1.

260 Aristotle, *Rhetoric* 3. 2. 9: δεῖ δὲ καὶ τα ἐπίθετα καὶ τὰς μεταφορὰς ἁρμοττούσας λέγειν. τοῦτο δ' ἔσται ἐκ τοῦ ἀνάλογον· εἰ δὲ μή, ἀπρεπὲς φανεῖται διὰ τὸ παρ ' ἄλληλα τὰ ἐναντία μάλιστα φαίνεσθαι. ἀλλὰ δεῖ σκοπεῖν, ὡς νέῳ φοινικίς, οὕτω γέροντι τί (οὐ γὰρ ἡ αὐτὴ πρέπει ἐσθής).

correct Greek, clarity, appropriateness and ornament.[261]

The earliest Latin text to discuss rhetorical style is the *Ad Herennium*, and although the author omits any explicit mention of appropriateness, he does give examples of the three styles which Cicero was to insist upon in the *Orator*.[262] The parts of the speech which the anonymous author uses to illustrate the three different styles are significant: the grand style is exemplified by an emotional passage on the wickedness of treachery which seems to belong to a peroration, the middle style by a section of *argumentatio*, and the plain by a simple *narratio*. This linking of the styles with particular areas of the speech suggests that the anonymous author was implicitly aware of the need for appropriateness, even if he did not spell it out.

So far I have concentrated upon the appropriateness of style with regard to the subject matter of the speech, but Cicero also contended that the style which an orator used should suit the other circumstances of a speech. He states this case most fully in the *Orator*:

> *non enim omnis fortuna, non omnis honos, non omnis auctoritas, non omnis aetas nec vero locus aut tempus aut auditor omnis eodem aut verborum genere tractandus est aut sententiarum semperque in omni parte orationis ut vitae quid deceat est considerandum; quod et in re de qua agitur positum est et in personis et eorum qui dicunt et eorum qui audiunt.*[263]

Style must not only match the subject, but also the character of the speaker and his audience. This stress on the role of style in helping to represent the character of the speaker had already been evident in the *De oratore*, where Antonius argues that a *lenitas vocis* was the appropriate tone to adopt when trying to win over the audience.[264] He believes that a certain style is proof of a good character: *genere enim quodam sententiarum et genere verborum, adhibita etiam actione leni facilitatemque significante efficitur, ut probi, ut bene morati, ut boni viri esse videamur.*[265] Fantham has noted that this is another area where Cicero has reshaped

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261 This reconstruction depends upon Cicero's wording at *Orator* 79: (1) *sermo purus erit et Latinus,* (2) *dilucide planeque dicetur,* (3) *quid deceat circumspicietur. unum aberit, quod quartum numerat Theophrastus in orationis laudibus:* (4) *ornatum illud, suave et adfluens.*

262 *Ad Herennium* 4. 11-16.

263 *Orator* 71.

264 *De oratore* 2. 182.

265 *De oratore* 2. 184.

the Aristotelian theory of *ethos*, in which the part to be played by style was not mentioned.[266] She ascribes this addition to 'Cicero's intense faith in the effect of style'.[267]

But this faith was not Cicero's alone.[268] For we possess evidence of contemporary criticisms of the style which Cicero chose to employ. Quintilian, in his discussion of oratorical style, remarks that there were those who attacked him as *tumidiorem et Asianum et redundantem et in repetitionibus nimium et in salibus aliquando frigidum et in compositione fractum, exultantem ac paene, quod procul absit, viro molliorem.*[269] These adjectives, used here to describe Cicero himself,[270] could be used interchangeably of style and of character. Particularly striking is the accusation that he was softer than a man: Cicero's choice of style was seen as revealing his own effeminate character. Aper, in Tacitus' *Dialogus*, makes reference to the same criticisms, and this time we are furnished with names: Brutus and Calvus.[271] He refers to letters in which Cicero was criticised by Calvus as *solutus* and *enervis*, and by Brutus as *fractus* and *elumbis*.[272] Again the adjectives can have a dual reference to Cicero's style and *persona*. The meanings of *enervis* and *elumbis* in particular suggest physical characteristics, and both denote a certain effeminacy.

The use of these adjectives by Cicero's opponents strongly suggest that a close link between style and character was generally recognized, and that the demand for the style to be appropriate to the speaker was not unique to him. But if this was agreed, there was certainly

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266 But there may be a suggestion that Aristotle may have recognised the need for style to be appropriate to the speaker as well as the subject matter. At *Rhetoric* 3. 2. 9 (quoted in note 254 above), the simile used to illustrate appropriateness refers to two characters - ἀλλὰ δεῖ σκοπεῖν, ὡς νέῳ φοινικίς, οὕτω γέροντι τί (οὐ γὰρ ἡ αὐτὴ πρέπει ἐσθής) - as a different garment suits an old man and a youth, perhaps each needs to use a different style?

267 Fantham (1973), 266. She finds it particularly difficult that the style used by the speaker should somehow affect the way in which the character of his client is viewed by the jury, but this does not appear to have any part in the argument of §§182-4. It is the speaker's character which is thus portrayed, and this view seems to be reinforced by Antonius' account of his defence of Norbanus (§200), where he notes that he used the gentle style (*genus illud alterum... lenitatis et mansuetudinis coepi*), in the section of the speech where he was concentrating upon his own character.

268 On the connection between character and rhetorical style, see M. W. Gleason, *Making Men. Sophists and self-presentation in Ancient Rome* (Princeton, 1995), especially pp.103-30.

269 Quintilian 12. 10. 12.

270 This usage could be due to Quintilian, but it seems that they were originally applied contemporarily, since it is also found at Tacitus, *Dialogus* 18 (discussed below), where accurate reportage is claimed: *ut ipsius (Bruti) verbis utar.* But whether or not the adjectives were used in an explicitly personal attribution by Cicero's contemporaries is not crucial to my argument.

271 Tacitus, *Dialogus* 18. 5.

272 On this correspondence see G. L. Hendrickson, 'Cicero's correspondence with Brutus and Calvus on Oratorical Style', *A. J. P.* 47 (1926), 234-58. Quintilian probably also refers to these letters at 9. 4. 1.

little agreement over the style which really did suit a man's *fortuna, honos, auctoritas* and *aetas*.[273] So, while Brutus and Calvus thought Cicero effeminate, he in turn thought Calvus passionless (*exsanguem*) and Brutus disjointed (*diiunctum*).[274]

The final area where Cicero demands appropriateness of style at *Orator* 71 is in terms of the audience and circumstances of a speech. In this case we have no access to the views of Cicero's opponents, but this was another area where he was critical of others' efforts. In the *Brutus*, this is the first attack that he made upon Calvus' style: *itaque eius oratio nimia religione attenuata doctis et attente audientibus erat inlustris, a multitudine autem et a foro, cui nata eloquentia est, devorabatur.*[275] He contends that Calvus had failed to realise that he was speaking to the audience of the *forum* and not for a group of learned *literati*. He makes a similar criticism of others who had written speeches in defence of Milo as a literary exercise, since their efforts had failed to take account of the magnitude of the case: *sed si eodem modo putant exercitu in foro et in omnibus templis, quae circum forum sunt, conlocato dici pro Milone decuisse, ut si de re privata ad unum iudicem diceremus, vim eloquentiae sua facultate, non rei natura metiuntur.*[276] Brutus himself may be one of the targets of this criticism since we know that he was one of those who had composed his own defence of Milo.[277]

Although Eliot may be right to emphasize that this polemic and name-calling between contemporaries is not very fruitful for the later critic, it does testify to how competitive the world of Roman rhetoric was at the end of the Roman Republic, and these controversies must have been important for the speakers concerned in establishing their public reputation with regard to their competitors. I have already noted that there was between the different parties a shared assumption that style should be appropriate. But more significantly the appeal to Greek precedent was a technique used by both Cicero and his opponents, particularly the Atticists.

The very name which this group used to describe themselves, *Attici*, makes clear that theirs was a classicizing movement. The one person whom we can securely ascribe to the group is Gaius Licinius Calvus, and Cicero makes Brutus say of him: *Atticum se... Calvus*

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273 *Orator* 71.

274 Tacitus, *Dialogus* 18. 5.

275 *Brutus* 283.

276 Cicero, *De optimo genere oratorum* 10.

277 So Quintilian 3. 6. 93. For further references to this piece, see Malcovati, *Oratorum Romanorum Fragmenta* (= *O.R.F.*), no. 158, frags. 18-21.

noster dici oratorem volebat.[278] According to Cicero his style was marked by *ieiunitas*, *siccitas* and *inopia* and these weaknesses resulted from a failure to understand the true range of the classical Attic orators: Lysias was an excellent model to imitate, yet Demosthenes was an Athenian too, but a very different style of speaker.

What is notable is that Cicero's response is not to deny that the Attic orators were worthy of imitation, but that Calvus and his followers were mistaken in understanding what true Atticism entailed. He does not boast that it is fine to be an Asianist, but rather selects a new Atticist model, namely Demosthenes. Indeed, he even went to the length of producing Latin translations of Aeschines' and Demosthenes' speeches from the Ctesiphon trial, and as a preface he wrote the work which survives under the title of *De optimo genere oratorum.* In this he states that the purpose of the translations is to show that there are Attic orators who spoke in the grand style, and that Atticism is not the equivalent of plainness: *(Attici) id vero desinant dicere, qui subtiliter dicant, eos solos Attice dicere, id est quasi sicce et integre. et ample et ornate et copiose cum eadem integritate Atticorum est.*[279]

But the so-called Atticists whom Cicero attacks were not an entirely homogeneous group. Cicero makes clear that some imitated Lysias,[280] while others selected Thucydides as their model.[281] Moreover the Elder Seneca even suggests that there was something of Demosthenes in Calvus' arrangement of words: *compositio quoque eius in actionibus ad exemplum Demosthenis riget: nihil in illa placidum, nihil lene est, omnia excitata et fluctuantia.*[282]

This description is enough to suggest that Cicero's own portrayal of Calvus in the *Brutus* is not entirely fair, both in terms of the style he used and the Greek model which he followed, and it is worth considering Calvus' rhetorical ideas in greater detail. Apart from in the *Brutus*, Cicero also refers to Calvus' oratory in a letter to Trebonius of 46 B.C.[283] In this he discusses a letter which he had written to Calvus, and which Trebonius has managed to see.

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278 *Brutus* 284.

279 *De opt. gen orat.* 12.

280 *De opt. gen. orat.* 9.

281 *De opt. gen. orat.* 15f. See R. Syme, *Sallust* (Cambridge, 1964), 53. He stresses Cicero's hostility to the use of Thucydides as a rhetorical model not only because of his antiquity, but because he wrote history, not oratory: 'No orator among the Greeks ever owed anything to Thucydides.'

282 Seneca, *Controversia* 7. 4. 8. Compare also Pliny, *Epist.* 1. 2. 2 (discussed below), where Calvus is again linked with Demosthenes.

283 *Ad Fam.* 15. 21. 4.

Trebonius seems to have felt that Cicero had been more complimentary to Calvus in that letter than he was normally. Cicero defends his letter by stating that he really did think highly of Calvus' learning and ability, and had written in a favourable manner in order to encourage him to improve.[284] The 'improvement' which Calvus is to make is to add more *vis* to his style of speaking. This seems to parallel Cicero's criticism of the *Brutus*, where Calvus was said to lack *sanguis*, and his style of speaking to be marked by *exilitas*.

But Calvus' own criticisms of Cicero as effeminate would seem to imply that he recognized the importance of *vis* in speaking, and other sources seem to imply that he did himself possess this attribute. Pliny the Younger explicitly notes this quality in his oratory: *temptavi enim imitari Demosthenen semper tuum, Calvum nuper meum, dumtaxat figuris orationis; nam vim tantorum virorum, 'pauci quos aequus...' adsequi possunt.*[285] Seneca the Elder also praises the vigour of Calvus' speeches, in an extended passage, a section of which I have already quoted above.[286] In it he describes Calvus as a *violentus actor* (an adjective derived from the same root as *vis*), and his practice of ranging across the whole court in delivering his speeches. He also considers his poems to be equally vigorous (*pleni animi*). Another piece of testimony to Calvus' effectiveness as a speaker is to be found in a poem of his friend Catullus, where he describes how Calvus' performance in prosecuting Vatinius led a bystander to call out and describe him as a *salaputium disertum*.[287]

It is for his speeches against Vatinius that Calvus seems to have been particularly remembered.[288] The circumstances of their delivery are uncertain, but there seem to have been at least three, delivered between 58 and 54 B.C.,[289] and even Aper, the hostile critic of

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284 *In excitando autem et in acuendo plurimum valet si laudes eum quem cohortere.*

285 Pliny, *Epist.* 1. 2. 2 (written to Maturus Arrianus). *pauci quos aequus* is a reference to Vergil, *Aeneid* 6. 129-30, where the Cumaean Sibyl is describing the difficulty of returning from Hades and states that Jupiter allows few men to do so.

286 Sen., *Controv.* 7. 4. 6-8.

287 Catullus, *Carmina* 53. 5. Sen., *Controv.* 7. 4. 7 explains *salaputium* as a reference to Calvus' diminutive stature.

288 Of the fragments of Calvus' speeches collected by Malcovati (*O.R.F.* no. 165), well over half (15 out of 24) refer to these speeches.

289 There seem to be at least three, because Tac., *Dial.* 21. 2 mentions *secunda ex his oratio.* On the circumstances in which they were delivered, see E. S. Gruen, 'Cicero and Licinius Calvus', *H.S.C.Ph.* 71 (1967), 217-221. He doubts whether Calvus had ever brought Vatinius to trial before 54, although he may have delivered speeches against him before that date.

Tacitus' *Dialogus*, accepts that these speeches possessed some merit.[290] Aper states that Calvus left for posterity twenty-one books of speeches, yet he claims to be satisfied with at most one or two.[291] The second speech is singled out for particular praise, and is described as *verbis ornata et sententiis, auribus iudicum accommodata.* We even possess a fragment of Calvus, perhaps from this very speech, which is an example of just such an ornate figure of thought, *gradatio*: *non ergo pecuniarum magis repetundarum quam maiestatis, neque maiestatis magis quam Plautiae legis, neque Plautiae legis magis quam ambitus, neque ambitus magis quam omnium legum omnia iudicia perierunt.*[292] Such a style of speaking which can be described as stylistically ornate and well-suited to the predilections of the audience does not fit easily with Cicero's criticisms.

It might be possible that this stylistic disagreement between the two men was the result of some political disagreement, and the Vatinius trial of 54 B.C. might appear a feasible occasion. Although Calvus maintained his hostility and led the prosecution, Cicero, at the request of the triumvirs, had to perform an embarrassing *volte-face* and defend him.[293] But, as Gruen has argued, we should not necessarily see this as a major break between the two men, since in the same year (54), the two men collaborated in a defence of Pompeius Messius,[294] and Calvus defended another supporter of the triumviral régime, Gaius Porcius Cato, for whom he seems to have felt little affection.[295] It was a recognized factor of republican life that friends might at times speak on opposing sides in cases, and there is no evidence for a breakdown in personal relations between Cicero and Calvus. Although they were mutually critical of each other, this criticism in part took the form of letters to each other, and we have seen how Trebonius had got hold of a letter in which Cicero expressed a largely favourable assessment of Calvus' rhetorical ability.

It would equally be wrong to suggest that Calvus was hostile towards active

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290 It must be noted that these dismissive references towards Calvus' oratory do belong to Aper's speech, which is a sustained attack on the standard of republican oratory in comparison with more recent developments. In the *Dialogus* this attack is balanced by Messalla's criticism of the decline of oratory which has occurred since the end of the Republic.

291 Tac., *Dial.* 21. 1-4.

292 Aquila Romanus, *Rh. L.* p. 35. 4, and Quintilian 9. 3. 56 (see *O.R.F.* no. 165, frag. 25).

293 He attempts to defend this action in a letter to Lentulus of December 54 (*Ad Fam.* 1. 9. 19).

294 *Ad Att.* 4. 15. 9; Sen. *Controv.* 7. 4. 8.

295 Seneca reports how Calvus threatened to bring a suit against Cato himself if his supporters continued to manhandle his prosecutor, Asinius Pollio (*Controv.* 7. 4. 7).

participation in Roman public life as Portalupi has suggested.[296] It is to be admitted that we have no record of Calvus holding any office, but we have secure testimony that he was involved in at least six cases, some of which were highly political.[297] One of his broadsides against Vatinius instructed him: *perfrica frontem et dic te digniorem, qui praetor fieres, quam Catonem.*[298] There is no evidence to suggest any political reticence.

As we have seen, Aper refers to twenty-one books of speeches, which in itself suggests an active forensic life. But the act of this publication is itself interesting, since it resembles Cicero's own practice of producing written versions of his speeches in order to enhance his own public reputation. The existence of these books, coupled with his public disagreements with Cicero over the form that Roman oratory ought to take, show a Calvus who was eager to demonstrate his prowess by taking on the leading orator of the day. We might compare Cicero's own early years in the *forum*, where he portrays himself as being in direct competition with Hortensius. The Verres case is seen as a duel: *tum in patrocinio Siciliensi maximum in certamen veni designatus aedilis cum designato consule Hortensio.*[299] And Cicero says that after his own consulship Hortensius pursued his forensic career with renewed vigour in order to avoid being surpassed, *ne cum pares honore essemus, aliqua re superior esse viderer.*[300]

By using the label 'Atticist', Calvus could distance himself from Cicero, and advertize himself as one of an up-and-coming group of new orators. It did not matter if these Atticists were actually quite a diverse bunch; they were all reacting against the established order. Calvus' poetry offers a suggestive parallel. Like his friend Catullus, he seems to have been one of those poets whom Cicero labelled 'neoterics',[301] that other literary group about which we know as little as we do about the Atticists. These poets seem to have affected a learned style of

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296 F. Portalupi, *Bruto e I Neo-Atticisti* (Turin, 1955), 25-7. In adopting this position, he follows P. Giuffrida ('Significati e limiti del neo-atticismo', *Maia* 7 (1955), 83-124), who wishes to see the Atticists as inspired by Epicurean doctrines, and hence hostile both to the Academic-Peripatetic rhetorical tradition and to Roman public life (pp.105-7). None of the steps of this argument appear to be necessary.

297 For the six cases see *O.R.F.* pp. 494-99.

298 Quintilian 9. 2. 25.

299 *Brutus* 319.

300 *Brutus* 323.

301 *Ad Att.* 7. 2. 1: οἱ νεώτεροι; *Orator* 161: *novi poetae*. In the letter Cicero notes their faddishness for fifth-foot spondees in hexameters, and in the *Orator* passage he notes their avoidance of the archaic elision of the final 's' in '-us' endings.

poetry, and to have modelled themselves on the Alexandrians, particularly Callimachus.[302]

These poets had some similar ideas to the Atticist orators, most notably in the way in which they eschewed the grand style, but what is particularly noteworthy for my purpose is their vilification of other Roman poets. In one poem Catullus describes how Calvus has sent him an anthology of dreadful writers, and he promises that he will repay him with his own collection in return.[303] Elsewhere Cinna's painstakingly composed *Zmyrna* is contrasted favourably with the voluminous Volusius.[304] Like the Atticists, the neoterics had a model, and those who did not follow the same model were viciously excoriated. While the poets had chosen to emulate the Alexandrians, the orators looked to Classical Athens, and it is significant that it is at this period that we first encounter 'canonic' lists of Greek orators.

O'Sullivan has noted that the first person to have drawn up such a list may have been Caecilius of Calacte, a Sicilian *rhetor* known to Dionysius of Halicarnassus, and who wrote a work entitled *On the Character of the Ten Orators*.[305] It is noteworthy that the same man also wrote *How the Attic Style Differs from the Asianic* and *Against the Phrygians*, and it seems likely that his list of ten orators was selected in order to illustrate the qualities which distinguished Attic oratory from its 'debased' descendant. O'Sullivan also notes that Cicero's own lists of Greek orators undergo a shift between the *De oratore* of 55, and the *Brutus* of 46. Where he had included the Hellenistic Menecles and Hierocles in the earlier work, in the latter he ends his lists much earlier with Demetrius or Democharés.[306] Most significantly of all, in 46 Cicero also produces the translations of Aeschines' and Demosthenes' speeches from the Ctesiphon trial.

Cicero could play the same game as Calvus and the other Atticists. Models could be interpreted in different ways, and Cicero thought that Calvus had misunderstood his model, and failed to recapture Demosthenes' *vis*. They in their turn thought of Cicero that his copiousness was a sign of effeminacy. But we should not make too much out of the Atticist movement, in that it was probably not a very coherent group: Demosthenes, Lysias and

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302 For the aims of this group, see R. O. A. M. Lyne, 'The Neoteric Poets' *C.Q.* 28 (1978), 167-87.

303 Catullus, *Carm.* 14.

304 Cat., *Carm.* 95.

305 N. O'Sullivan, 'Caecilius, the 'canons' of writers, and the origins of Atticism', in W. J. Dominik (ed.), *Roman Eloquence* (London, 1997), 40.

306 *De oratore* 2. 93-5; *Brutus* 37-8, 286. O'Sullivan (1997), 36-7. He also notes a similar change over the same period in the lists of historians and philosophers which Cicero produces.

Thucydides all seem to have had their followers.[307] Cicero could use this diversity to label them all as plain-speaking and unpopular, but he did not deny their initial premise that Attic oratory was the right sort to imitate: again the Greek tradition did not dictate the course which different Romans took, but only offered an authority to which the different parties could apply.[308]

This challenge to Cicero's position did not substantially undermine any aspect of the vision which he had portrayed in the *De oratore*. Calvus and the other Atticists may have disliked Cicero's use of periods and prose rhythm, to judge by the importance which these are given in the *Orator*,[309] but these had not been central tenets of the earlier dialogue. Calvus himself certainly seemed to aspire to an emotional form of oratory, even if Cicero never accepted this, and the aim of his polemic seems to have been to establish himself as the leading orator at Rome. This is how Seneca saw it, for he says of Calvus: *diu cum Cicerone iniquissimam litem de principatu eloquentiae habuit*.[310]

The case of Marcus Iunius Brutus appears to be intriguingly different. Brutus, as we have seen, had like Calvus been extremely critical of Cicero's style of speaking, but there seems to be even less evidence of any personal animosity in this case. It was to Brutus that Cicero dedicated the two rhetorical works of 46 B.C., the *Brutus* and the *Orator*, which are particularly concerned with the issue of the best style of speaking. Whilst I pass by the specific question of whether Brutus was an 'Atticist',[311] it is clear that Brutus had an opinion of the *optimum genus dicendi*, very different to Cicero's.

Important here are Cicero's stated reasons for writing the *Orator*. At the start of the work, Cicero says that he has produced it in response to Brutus' requests: *quaeris igitur idque iam saepius, quod eloquentiae genus probem maxime et quale mihi videatur illud, quo nihil addi possit, quod ego summum et perfectissimum iudicem.*[312] The implication behind Brutus' enquiry is that there is one style of speaking which is appropriate on every occasion. Cicero

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307 However, it is possible that the followers of Thucydides were few in number, and that Cicero at *Orator* 30-32 takes issue with those who use him as a rhetorical model precisely because they offered such an easy target.

308 In a similar way it is possible that some of the poets whom Catullus attacked would have claimed to be neoterics themselves.

309 §§ 149-236.

310 Seneca, *Controv.* 7. 4. 6.

311 This relationship has been treated well by F. Portalupi (1955).

312 Cic., *Orator* 3.

responds by immediately sliding into a discussion of the ideal *orator*, that is of the person, rather than the art.[313] Moreover, in the course of the dialogue he proceeds to insist that the orator must not rigidly adhere to any one way of speaking, but must tailor his style according to his material. Such a marked divergence from Brutus' original request suggests that they held widely differing views on oratory, with Cicero advocating a pragmatic approach and Brutus seeking an ideal form which persuasion should take.[314]

In contrast, the Brutus whom Cicero presents in the dialogue bearing his name appears to be largely in agreement with Cicero's own opinions. He is concerned at Sulpicius' lack of *lepos*, he praises Marcellus for possessing a similar style of oratory to Cicero, and he declares the ability to inflame the audience's emotions as the most important characteristic of an orator.[315] He even recognizes the greatness of the arch-Asianist Hortensius.[316] But it was realised as long ago as 1911 that Cicero was not at pains to present a historically accurate picture of Brutus in the work.[317] This is not 'misrepresentation', but Cicero is exploiting the literary conventions of the dialogue form to show the interlocutors in agreement with his own position.

The *locus classicus* for stylistic disagreement between Brutus and Cicero is the latter's reaction to Brutus' speech on the Capitol in the aftermath of Caesar's assassination. Brutus sent the speech to Cicero, so that, according to Cicero, he might improve it before publication. Cicero writes to Atticus to give his opinion of the speech: *est autem oratio scripta elegantissime sententiis, verbis, ut nihil possit ultra. ego tamen si illam causam habuissem, scripsissem ardentius.*[318] He is therefore unable to offer any alterations to the speech, since he accepts that the speech cannot be improved upon in the context of Brutus' own judgment *de optimo genere dicendi*.[319] Cicero proceeds to ask Atticus' own opinion of the speech, and though he fears that Atticus' reaction may be over-Attic (ὑπεραττικὸς) in deference to his own name, he

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313 Cic., *Orator* 3: *in quo vereor ne, si id quod vis effecero eumque oratorem quem quaeris expressero, tardem studia multorum, qui desperatione debilitati experiri id nolent quod se assequi posse diffidant.* Compare also §7.

314 It would be attractive also to draw the title of the *Orator* into this discussion, but Cicero seems to have referred to this work as the *de optimo genere dicendi* (*Ad Att.* 14. 20. 3; 15. 1a. 2).

315 *Brutus* 204; 249-50; 279.

316 *Brutus* 328.

317 E. J. Filbey, 'Concerning the Oratory of Brutus', *C. Phil.* 6 (1911), 333: 'He does not, therefore, represent correctly the point of view of Brutus.' See also A. E. Douglas, *Brutus* (Oxford, 1966), xx-xxi.

318 Cicero, *Ad Atticum* 15. 1a. 2.

319 The use of this precise phrase is probably a reference to the *Orator* itself which Cicero had referred to by using the very same words in an earlier letter of the same year (*Ad Att.* 14. 20. 3), quoted below.

returns to the theme of *Brutus* 284-91, by mentioning that Demosthenes' thunderbolts were also Attic.

This letter is important evidence for the different choices made by Brutus and Cicero, but it should first be noted, as Portalupi emphasizes, that the very fact that Brutus sent the speech to Cicero for revision implies that Brutus for one did not perceive there to be a complete gulf between them over stylistic issues.[320] However the letter also provides a useful commentary on the two rhetorical works of 46, since it reveals that whatever Brutus' explicit attitude to Calvus' opinions, Cicero saw this speech as one which bore the hallmark of 'Atticism', and used the same arguments to criticize it as he had previously against Calvus, namely that the style of Demosthenes' oratory had not been correctly appreciated.

This also supports the idea that Cicero chose to dedicate the *Orator* to Brutus, and to give him a role in the *Brutus*, precisely because he knew that Brutus' own views were different from his own. This view is reinforced by another letter to Atticus, where Cicero describes Brutus' reaction to the appearance of the *Orator*: *quin etiam cum ipsius precibus paene adductus scripsissem ad eum de optimo genere dicendi, non modo mihi sed etiam tibi scripsit sibi illud quod mihi placeret non probari.*[321] Although it appears that Cicero was put out by Brutus' response, it can hardly have surprised him given that the whole premise of the work conflicted with Brutus' request, as I argued above. Moreover, the closing sections of the *Orator* seem to accept that there is a strong possibility that Brutus will disagree: *habes meum de oratore, Brute, iudicium; quod aut sequere, si probaveris, aut tuo stabis, si aliud quoddam est tuum.*[322]

Cicero had referred politely to Brutus' performances in the past, particularly in the *Brutus*. There he made favourable mention of Brutus' defence of Deiotarus: *erat a me mentio facta causam Deiotari fidelissimi atque optimi regis ornatissime et copiosissime a Bruto me audisse defensam.*[323] *Ornatus* and *copiosus* are not adjectives which we find used of Brutus' speeches elsewhere. Moreover the dialogue is framed by Cicero's laments that the civil war will deny Brutus the opportunity to achieve the preeminence in the *forum* which his oratory deserved.[324] But, as I have already shown, the Brutus of the dialogue is not the real Brutus,

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320 Portalupi (1955), 33. Admittedly we have only Cicero's testimony for Brutus' request for editorial assistance, but the fact that Cicero can present it as such is itself significant.

321 *Ad Atticus* 14. 20. 3.

322 *Orator* 237.

323 *Brutus* 21.

324 *Brutus* 21-22; 331-32.

and Cicero's letter to Trebonius, in which he is positive about Calvus, suggests another interpretation:[325] by writing in such a fulsome way about Brutus' abilities Cicero may have been hoping to encourage him towards a different style of speaking.

But in the case of Brutus, unlike that of Calvus, Cicero was not alone in a negative estimate of his powers. Quintilian's assessment is that he was more suited to philosophy: *egregius vero (in philosophia) multoque quam in orationibus praestantior Brutus suffecit ponderi rerum; scias eum sentire quae dicit.*[326] This is similar to the judgment of the hostile Aper in Tacitus' *Dialogus*: *Brutum philosophiae suae relinquamus; nam in orationibus minorem esse fama sua etiam admiratores eius fatentur.*[327] Where Aper had been made to grant Calvus some ability, Brutus is dismissed as a philosopher, with the consent of his own supporters; even Messalla, the advocate of republican oratory, can only grant his speeches *gravitas*, a quality which fits easily with his portrayal as a philosophically minded orator.[328] We have no testimony contradictory to Cicero's, as we do in the case of Calvus from Pliny, Seneca and, to a certain extent, Quintilian.

The other common feature of these assessments is the stress which is laid upon Brutus' philosophical interests. Brutus was a follower of the so-called Old Academy, a school which had reacted against the New Academy and sought to return to the original teachings of Plato.[329] In the *Brutus*, Cicero is generous in his praise for this philosophical influence upon Brutus' oratory: *philosophorum sectam secutus es, quorum in doctrina atque praeceptis disserendi ratio coniugitur cum suavitate dicendi et copia.*[330] We should not take this generosity too seriously, since it is due to the favourable attitude towards Brutus which we have already noted as a characteristic of the dialogue: *suavitas* and *copia* correspond to Cicero's praise of the speech for Deiotarus as *ornatus* and *copiosus*.

Most revealingly this praise of Brutus' choice of school arises from critical comments towards the Stoics. Indeed Brutus himself has just been made to describe Stoic orators as *ad dicendum inopes*, and this criticism is surely another sign that Cicero's Brutus is fictionalized.

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325 Cic, *Ad Fam.* 15. 21. 4 (on which see above pp. 60-1).

326 Quintilian 10. 1. 123.

327 Tac., *Dial.* 21. 5.

328 Tac., *Dial.* 25. 4. Quintilian also singles this out as the prime quality of Brutus' oratory in a list which otherwise assesses the merits of the various speakers quite differently to Messalla (12. 10. 11).

329 Cicero, *Brutus* 149: *vestra vetus Academia*; Plutarch, *Brutus* 2. 1: διαφέροντως δ' ἐσπουδάκει πρὸς τοὺς ἀπὸ Πλάτωνος.

330 *Brutus* 120.

For we know from Plutarch that the two key figures of Brutus' philosophical education were Antiochus and his brother Aristus.[331] The first of these was the re-founder of the 'Old Academy', and we know that in fact his teaching largely resembled that of the Stoics. In the *Academica*, Cicero says of him: *appellabatur Academicus, erat quidem, si perpauca mutavisset, germanissimus Stoicus*.[332] Moreover, his uncle Cato, the most famous Stoic of the generation, must have been a major influence, even if Brutus had chosen to follow the Old Academy.[333]

These factors must have had a major impact upon Brutus' style of oratory. As a member of the Old Academy, he will have been well acquainted with the Platonic criticisms of the rhetorical tradition,[334] and to balance this negative influence there was the positive model of Stoic rhetoric which had a significant tradition both in Greece and at Rome.[335] Cicero discusses that tradition at *Brutus* 113-117, and he counts as its prime example Publius Rutilius Rufus, a pupil of Panaetius. Stoic oratory is described as *peracutum et artis plenum... tamen exile nec satis populari adsensioni accommodatum.*[336] This failure to please the audience resembles Cicero's critique of the Atticists, but it is an assessment with which the Stoics themselves would not have been unhappy. As Atherton has argued, they avoided emotional appeal and excessive ornament, making no distinction between dialectic and oratory: 'The purpose of the Stoic stylistic precepts will then be to provide a model for presenting impressions in language such that nothing extraneous or inappropriate impinges on the proposition (say) being presented for assent, such that nothing gets in the way between the potential assenter and rational assessment of that proposition.'[337]

The Stoic response to Plato was an attempt to produce a truly rational version of oratory, and so the stylistic requirement of this oratory was that it should be plain, avoiding

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331 Plut., *Brut.* 2. 2.

332 Cic., *Academica* 2. 132, although Cicero does procede to enumerate significant differences between the thought of the two schools. Compare also *De finibus* 5. 89-90. D. Sedley, 'The Ethics of Brutus and Cassius', *J.R.S.* 87 (1997), 41-53, argues strongly against Brutus being a Stoic or even his being a Stoic sympathizer, but any differences were perhaps not felt strongly in the sphere of rhetoric, and Sedley does not deny Stoicism's 'pervasive influence' (p. 44).

333 And it is noteworthy that Cicero does at least allow Brutus to make an exception of Cato, when he denigrates other Stoic speakers (*Brutus* 118). And, at *Paradoxa Stoicorum* pref. 3, Cicero speaks warmly of Cato's eloquence on specifically Stoic subjects.

334 On which see above pp. 22-3 and Vickers (1988), 83-147.

335 For a very useful account of Stoic rhetoric, see C. Atherton, 'Hand over Fist: the Failure of Stoic Rhetoric', *C.Q.* 38 (1988), 392-427.

336 *Brutus* 114.

337 Atherton (1988), 409.

any devices which might obscure the meaning of the words, even hyperbaton.[338] We have evidence that Rutilius himself made this link between Stoicism and the plain style explicit. Gellius in his discussion of the three rhetorical styles records that Varro had seen Rutilius' account of the philosophers' embassy of 155 to Rome: *tum admirationi fuisse aiunt Rutilius et Polybius philosophorum trium sui cuiusque generis facundiam: 'Violenta,' inquiunt, 'et rapida Carneades dicebat, scita et teretia Critolaus, modesta Diogenes et sobria.'*[339] Each of the three philosophers exemplifies one of the three styles, Carneades of the New Academy, the grand style, Critolaus of the Peripatos, the middle style, and Diogenes of the Stoa, the plain style.[340]

As a good Stoic Rutilius seems to have followed the example set by Diogenes, and Cicero notes that he refused to enlist the support of the best orators of the day when prosecuted for *repetundae* in 92.[341] In the *De oratore* Cicero makes Antonius draw an explicit parallel with the trial of Socrates, saying that the case was lost because it was conducted as if *in illa commenticia Platonis civitate*.[342] This takes us back to the issue that the style of a speech should fit its context. Brutus, like the Stoics, could accept that the style might represent the character of the speaker - so Cicero could be depicted as effeminate as a result of his choice. However they could not accept that there could be more than one *optimum genus dicendi*, since they did not believe that style should be affected by the circumstances of the speech: the audience should always be treated like a philosophical interlocutor, and be exposed only to rational forms of argumentation. As good philosophers they should not yield to any other form of persuasion, since they would then be denying their own beliefs.[343]

We have already noted the example of Brutus' speech after the death of Caesar as an occasion when, in Cicero's opinion, he failed to meet the needs of the situation, but there is

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338 Theon, *Rhet.* 81. 30 - 83. 13.

339 Gellius, *Noctes Atticae* 6. 14. 10.

340 G. L. Hendrickson, 'The Origin and Meaning of the Ancient Characters of style', *A. J. P.* 26 (1905), 270-71, argues that this linking of the different philosophies with the three styles was Varro's not Rutilius'. However he fails to notice that Gellius in the rest of the section, following Varro, maintains an order where the middle style is placed last of the three, and this quote is the only place where that order is broken: the philosophers are first introduced in the order Carneades, Diogenes, Critolaus. This must be a strong argument for the original link to have been made by Rutilius, perhaps under the influence of Polybius.

341 *Brutus* 115.

342 *De oratore* 1. 230-33. One mght compare Cicero's remark on the oratory of his Stoic contemporary, Cato, in a letter to Atticus (2. 1. 8): *dicit enim tamquam in Platonis πολιτείᾳ, non tamquam in Romuli faece, sententiam.*

343 So Atherton (1988), 403: 'At stake is something deeply serious: what people should and do find persuasive, especially where what is at stake for them is the state of their souls and the whole conduct of life.'

one sentence from Cicero's letter to Atticus which is particularly revealing. He says that if he had written the speech he would have made it more fiery, since, he explains, *ὑπόθεσις vides quae sit <et> persona dicentis*.[344] The reasons which Cicero uses to support his demand for a more impassioned performance are the occasion of the speech and the person who delivered it, that is the man who had killed Caesar in order to restore liberty. For Brutus these circumstances made no difference, his style was not negotiable. And where Cicero would have rather Brutus had used the speech to present himself as the republican hero, Brutus adhered to his own *persona*, that of the Academic rationalist.

It appears that Brutus was also faithful to the Stoic tradition in his avoidance of stylistic devices. Cicero's criticism of him for being *diiunctus* suggests that he aimed for a certain ruggedness and simplicity.[345] Quintilian also notes this tendency, when he remarks that Brutus was particularly liberal with iambic clausulae, the rhythm which most closely approximated to speech. He ascribes this choice to Brutus' *ipso componendi durius studio*.[346]

But we also know of another occasion when Brutus' philosophical ideals affected the entire approach which he took to a case. This was not a speech which he ever delivered, but the one which he composed as a written piece in defence of Milo, perhaps as an alternative to Cicero's own approach.[347] Cicero had decided to make the plea of self-defence on Milo's behalf, presenting a highly tendentious *narratio*in support of this version of events. We know from several sources that Brutus' line of defence was that Milo had murdered Clodius for the good of the state.[348] Apart from being suggestive with regard to his later assassination of Caesar, this choice of line can perhaps be ascribed to Brutus' desire to put the best rational case for Milo's action, irrespective of the illegality of the action in the court's eyes. The criticism of Rutilius for behaving as if he was in Plato's Republic seems equally applicable to Brutus' own choice here.[349]

It would be wrong to ascribe these choices entirely to Greek inspiration. Narducci, following David, has suggested that there was a long tradition at Rome of avoiding excessive

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344 Cic., *Ad Att.* 15. 1a. 2.

345 Tac. *Dial.* 18. 5.

346 Quint. 9. 4. 76.

347 However, it is possible that Brutus' composition was simply a pamphlet and was not written in the form of a speech at all.

348 Collected at *O.R.F.* no. 158, frags. 18-21.

349 Cicero in the *Pro Milone*, as we now have it, also offers this line of argument, but only in conjunction with that of self-defence.

emotion in public speaking. While the political and legal developments of the second century encouraged a more populist type of rhetoric, rich in appeals to pity and the like,[350] Narducci argues that another tradition, hostile to this populism may also have emerged, which regarded such behaviour as beneath the orator's dignity.[351] Cicero himself argues that Marcus Scaurus was the prime example of such a tradition: *in Scauri oratione, sapientis hominis et recti, gravitas summa et naturalis quaedam inerat auctoritas, non ut causam, sed ut testimonium dicere putares, cum pro reo diceret.*[352] And he links Scaurus' oratory quite closely with that of Rutilius, although he sees them as examples of two different schools, the former an old-style (*antiquus*) Roman, the latter a Stoic.[353]

Miriam Griffin has argued that the particular philosophical adherence of any Roman did not dictate the way that he might behave in any given situation, owing to the flexibility of the ethical doctrines which they espoused. She suggests that the importance of the philosophical schools lay rather in the way in which they offered the language for argument: 'They provided the moral vocabulary for weighing alternatives and justifying decisions. To write or speak in philosophical terms, even insincerely, is to think in those terms.'[354] In this section I have suggested that philosophical choices could also affect the way in which language was used at a different level, in public political discourse. Brutus followed an established Roman tradition, inspired largely by Stoicism, in rejecting many of the major ideas of mainstream classical Greek and Hellenistic rhetoric which were fundamental to Cicero's own theory and practice.

Although Brutus, as we have seen, is criticised by Cicero in similar terms to those which he uses against the Atticists such as Calvus, the latter group, as far as we can tell from other sources, never challenged the idea that emotional power and stylistic ornament had a place in oratory, but only had a different interpretation over their most effective use. It is to Brutus that Cicero dedicated so many rhetorical works, not perhaps in the hope of changing his

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350 We might include as such factors the setting up of permanent courts, the appearance of non-aristocratic prosecutors and the Gracchan tribunates. Servius Sulpicius Galba's self-defence of 149 anticipates these developments: on this occasion he famously appealed to the Roman people's pity for his children in order to avoid punishment for an atrocity which he had committed against the Lusitanians (Cic., *Brutus* 89-90). However, this speech was not actually delivered in a trial, but before a popular assembly against a tribunician bill.

351 J.-M. David, *Le Patronat Judiciaire au Dernier Siècle de la République Romaine* (Rome, 1992), 446ff., 552ff., 617ff.; Narducci (1997), 120-4.

352 *Brutus* 111.

353 *Brutus* 116.

354 M. Griffin, 'Philosophy, Politics and Politicians at Rome', in M. Griffin and J. Barnes (edd.), *Philosophia Togata I* (Oxford, 1989).

mind, but to defend his own brand of oratory against Brutus' hard line stance.

This defence largely took the form of stressing the need for oratory to be effective, and hence he focused on the end result, namely the success a speech achieved with its audience. This is the subject of the central digression of the *Brutus*, namely that an orator can only be judged to be good by the public, not by the expert: *etenim necesse est, qui ita dicat, ut a multitudine probetur, eundem doctis probari.*[355] This is an important addition in the rhetorical works of 46, since in the *De oratore* of 55 Cicero had not felt the need to spell this out as the aim of good oratory, and in that dialogue he was not attempting to produce a philosophical defence of the irrational aspects of rhetoric.

Brutus was dissatisfied with Cicero's productions of 46, and it is easy to see why.[356] Cicero based his affirmation of the *optimum genus dicendi* on a premise which Brutus did not accept, namely that persuasion of the audience was the only criterion for evaluating oratory, and that as a result different styles were appropriate on different occasions. Brutus, as is illustrated by his original request,[357] thought one style of persuasion - and that a rational one - should always be employed. Their debate could never get beyond this *impasse*. So Cicero judged Brutus' effort on the Capitol to be unsuited to circumstances, and when he attempted to write an edict for Brutus in his own style, it did not go down well: *meum mihi placebat, illi suum.*

355 *Brutus* 184. This is of course also the criterion which he uses in order to denigrate 'Atticist' oratory.

356 Cic., *Ad Att.* 14. 20. 3.

357 Cic., *Orator* 2-3.

4. Conclusion

I began with a Vergilian simile which seemed to illustrate how integrally Greek rhetorical theories had been adopted at Rome towards the end of the Republic. However I have shown that this model of wholesale 'Hellenization' fails to do justice to the many and varied Roman responses to Greek ideas about public speaking. Here I summarise some key points which emerge from the chapter as a whole.

First it is important to stress that the Greek background upon which the Romans could draw was not monolithic. Even the most basic and, perhaps coincidentally, the earliest relevant texts, the *De inventione* and the *Ad Herennium*, make a significant attempt to distance themselves from the contemporary Hellenistic tradition, to which they nevertheless seem to owe the majority of their content. I have argued that this agonistic nature of the works testifies to a Rome where access to Hellenistic education was widespread, but also one where all the Roman texts which I have studied respond to this competition by appealing to the ideas of the Classical Greeks which might be seen as superior to those of their debased successors.

Secondly it is apparent that particular Greek ideas do not in themselves revolutionize Roman practice, but are rather used in the development of existing Roman debates, and often on both sides of the same issue. This is most clearly shown by the way in which the authority of an idea's original provenance is used to reinforce a traditional Roman position, although the idea, if left unchanged, may actually have radically challenged this position.

Finally it is evident that these rhetorical works did not exist in a world of theory which had no contact with the practical arena of Roman politics. The Atticist/Asianist debate and Cicero's controversy with Brutus show that the open expression, and even publication in written form, of polemical opinions about one's own oratory and that of one's contemporaries formed an important part of the competitive politics of the Late Republic. Therefore we should not view Cicero's rhetorical works as the abstract musings of the scholar, but as an integral part of his attempt to establish his own oratorical preeminence in the senate, in *contiones* and at the Roman bar.

II. The Orator in Court

Ut corpora nostra sine mente, sic civitas sine lege suis partibus ut nervis ac sanguine et membris uti non potest. legum ministri magistratus, legum interpretes iudices, legum denique idcirco omnes servi sumus ut liberi esse possimus.[1]

In this passage of the *Pro Cluentio* Cicero argues that the corpus of laws is the guiding principle of the Roman state: it is the intellect which directs the body of that state. Perhaps more importantly, obedience towards the laws is presented as the foundation of liberty for all within the state. Cicero continues by insisting that the laws are the sole support for the procedures of the court within which he is now speaking: the laws allow Quintus Voconius Naso to preside and they dictate the presence of court functionaries such as scribes.

But most significant is what Cicero says of the jurors and himself. The men of the jury owe their privileged position to the laws: *vos autem, iudices, quam ob rem ex tanta multitudine civium tam pauci de hominum fortunis sententiam fertis?*[2] But despite their status as *legum interpretes* and their own high social standing,[3] Cicero is here emphasizing to the jurors that in some way they are acting on behalf of the larger mass of the *populus Romanus* (*ex tanta multitudine civium*). This idea is importantly reinforced by the public nature of the trial's location, in the *forum.* This feature of Roman trials has been stressed by Millar: 'Every aspect of the working of the *quaestio* was required to be open to observation and judgment by spectators in the Forum, as was also the conduct and performance of the orators who addressed them.'[4] And, as Millar points out, Cicero could remind the jurors of this public gaze very clearly, as in his prosecution of Verres: *hoc est iudicium in quo vos de reo, populus Romanus de vobis iudicabit: in hoc homine statuetur, possitne senatoribus iudicantibus homo*

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1 Cicero, *Pro Cluentio* 146. Compare the picture at *De legibus* 3. 2-5, where the emphasis is much more sharply focused on the relationship between the magistrates and the laws, and there is less emphasis on the process of the laws' operation.

2 *Pro Cluent.* 147.

3 By now (66 B.C.) Sulla's restoration of the *quaestiones* to the senate had been overturned by a law of L. Aurelius Cotta in 70, but the ability to serve as a juror still depended on being a senator, an *eques* or a *tribunus aerarius.*

4 F. G. B. Millar, *The Crowd in Rome in the Late Republic* (Michigan, 1998), 217.

nocentissimus pecuniosissimusque damnari.[5]

The laws also provide the context for men such as Cicero and Attius, the prosecutor, to appear and deliver long speeches in the court: they too were acting under the public scrutiny. But it could be claimed that the prime duty of the ancient advocate was to make his client's case in the best possible manner, and therefore his broader duty to the laws and the state as a whole was immediately problematized since the two might come into conflict in any given case. In certain contexts Cicero can say quite clearly that the duty towards his client trumped any other. Again in the *pro Cluentio*, he describes his earlier conduct in defending Scamander, freedman of a certain Fabricius: *sic pugnavi, sic omni ratione contendi, sic ad omnia confugi, quantum ego adsequi potui, remedia ac perfugia causarum ut hoc quod timide dicam consecutus sim, ne quis illi causae patronum defuisse arbitraretur.*[6]

But Cicero does also stress that the advocate was speaking within the context of the Roman system, and that he spoke publicly before the crowd of Roman citizens who happened to be in the forum at the time. On occasion he could even advertize his duty to the broader *populus*, a duty which he might represent as contrary to the interests of his client.[7]

In the first half of this chapter I study these allegiances which the Roman advocate owed when he stood up to speak in court.[8] I begin by reviewing the duty which he owed to his client, and consider some of the different ways in which he could fulfil that duty. In particular I examine how Ciceronian advocacy with its increased professionalism marked a development from, and an extension of, the traditional idea of advocate as *patronus*. I also argue that, equally significantly, he could advertize his obligation towards the process of law within the Roman state. The role of the advocate was not set in stone: rather it was continually open to renegotiation and nuancing by different advocates as they pleaded their various cases.

In the second half of the chapter I turn to the broader issue of the role of the criminal courts within the state. Again this was a role which was continually redefined by the different

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5 Cic., *In Verrem I* 47. This speech was delivered in 70 before the *lex Aurelia* had been passed, and hence the jurors were still all senators at this time. Athenian juries could likewise be reminded of their duty to the process of law, a duty which they undertook in making the dikastic oath: so Demosthenes reminds the jury at *De Corona* 2. They could also be reminded that they too would be judged by others for their verdicts; see, for example (Demosthenes), *In Neaeram* 126: καὶ ταῦτα ποιήσαντες δόξετε πᾶσι καλῶς καὶ δικαίως δικάσαι ταῦτην τὴν γραφήν.

6 *Pro Cluent.* 51.

7 Of course he did not really make points which were contrary to his client's interests, but it remains nonethless significant that he can advertize this greater allegiance in making his client's case.

8 I refer in particular to the *Pro Caelio*, the *Pro Archia Poeta*, the *Pro Roscio Amerino* and the *Pro Cluentio*.

orators who rose to speak in the courts, but this process of redefinition was itself significant for the orators' own self-representation as men who made a significant contribution to the Roman legal system.

My argument will be based upon a selection of the speeches which Cicero delivered in court in defence of various clients. The arguments which he used were always suited to the context of the particular case which he was pleading at that time. At one level this dictates that it is always important to take the circumstances of the different speeches into consideration when attempting to draw broader conclusions from the arguments which he uses. But more significantly we should not expect to find harmonious consistency between the different speeches. Rather, my concern is to explore a more ill-defined area, namely the area of arguments which it was *possible* for Cicero to deploy before the jury and the wider audience within the forum. Indeed, the very fluidity of the representations which were made is significant: it suggests that there were few, or no, universally agreed ideas on the precise nature of the advocate's role, or even that of the courts themselves. This is not to say that the area of negotiation was unlimited, since it was bounded and defined by another, negative region, containing those representations of the advocate's role which were avoided by all speakers.[9]

9 It is of course not possible for the modern historian to draw up the boundaries even of this negative region, since we do not possess all the speeches in which other representations of the advocate's role may have been expressed. Moreover the boundaries of this region are likely to have shifted gradually over time. However, neither of these observations contradict the fact that in any period there were arguments about the advocate's role which no speaker will have been able to make.

1. The Patron and his Client

Cicero's defence of Sextus Roscius of Ameria in 80 B.C. was his first criminal case and, in his own opinion, contributed significantly to the flourishing of his career: *prima causa publica pro Sex. Roscio dicta tantum commendationis habuit ut non ulla esset quae non digna nostro patrocinio videretur.*[10] In the surviving version of this speech, the orator is explicit about his own inexperience: *credo ego vos, iudices, mirari quid sit quod, cum tot summi oratores hominesque nobilissimi sedeant, ego potissimum surrexerim, is qui neque aetate neque ingenio neque auctoritate sim cum his qui sedeant comparandus.*[11]

Throughout the speech this theme of Cicero's greenness remains important, and it is exploited for a variety of ends. As Kennedy has noted, Cicero deploys it ostensibly in order to win the jury's goodwill.[12] He beseeches the members of the jury to make allowances for his rhetorical failings, but if they will not show good faith, he professes his determination to battle on bravely against the odds: *quod si perferre non potero, opprimi me onere offici malo quam id quod mihi cum fide semel impositum est aut propter perfidiam abicere aut propter infirmitatem animi deponere.*[13] Cicero's own heroism dominates the opening of the speech, an approach which is strikingly different from that of a modern advocate. This tactic exemplifies the words which Cicero was to put in the mouth of Antonius in the *De oratore*: *valet igitur multum ad vincendum probari mores et instituta et facta et vitam eorum, qui agent causas, et eorum, pro quibus.*[14] So at the start of his defence, Cicero is as keen to establish his own credentials as those of Roscius. In this case, as a new figure in the Roman courts, only in his mid-twenties, he chose rather to play upon his absence of past achievements, in an attempt to emphasize his boldness in challenging a freedman of Sulla, Chrysogonus, when so inexperienced. Indeed he highlights this bravura in the opening sentence, quoted above, when he refers to the better qualified speakers sitting around the court who were too afraid to conduct the defence themselves.

In contrast, Cicero conducted his defence of Marcus Caelius Rufus in 56 B.C. when

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10 Cic., *Brutus* 312.

11 Cic., *Pro Roscio Amerino* 1.

12 G. Kennedy, 'The Rhetoric of Advocacy in Greece and Rome', *A.J.P.* 89 (1968), 430.

13 *Pro Rosc. Am.* 10. Cicero adopts a similar pose in the *Pro Quinctio*, another early speech: in §§2-9, for example, he pleads his own inexperience and a lack of preparation - owing to the fact that he was a late substitute.

14 Cic., *De oratore* 2. 182. See the previous chapter, pp. 43-7.

he was a distinguished consular, who could claim to have saved the state against Catiline and who had more recently returned in triumph from exile. In the speech he delivered in defence of Caelius his approach to his own *persona* is very different from that evident in the *Pro Roscio*. Now Kennedy sees Cicero as 'the dignified consular, the saviour of the republic, the wise mentor of the young at Rome.'[15] He is explicit about his own rhetorical renown: *equidem, ut ad me revertar, ab his fontibus profluxi ad hominum famam, et meus hic forensis labor vitaeque ratio demanavit ad existimationem hominum paulo latius commendatione ac iudicio meorum.*[16] Moreover, in his response to Atratinus' prosecution speech Cicero draws upon his seniority in the forum to patronize his younger and more inexperienced opponent with criticism of his rhetorical performance. He chides him for making a speech in which he attacked Caelius' character, as being inappropriate for such a modest person to make, and he dismisses him as a pawn of the greater forces which lay behind the prosecution.[17] He assumes the role of tutor, offering Atratinus advice for the conduct of future cases: *illud tamen te esse admonitum volo, primum ut...*[18]

Elsewhere in the speech, Cicero takes a similar stance with regard to his own client. At one point he explicitly adopts the role of a father to question him over his allegedly wanton behaviour: *redeo nunc ad te, Caeli, vicissim ac mihi auctoritatem patriam severitatemque suscipio.*[19] He also allows himself to be gently critical of Caelius' decision to make his name by prosecuting Cicero's own fellow-consul C. Antonius.[20]

It was the Roman system of advocacy which allowed the pleader to make such great play out of his own self-portrayal. The Greek legal system expected the defendant or prosecutor to plead their case in person. This led to the evolution of the system of logography, whereby those involved in lawsuits could approach an expert who, presumably after a degree of consultation, would produce a speech for his client to deliver in the court.[21] Therefore the

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15 Kennedy (1968), 432.

16 Cic., *Cael.* 6.

17 Cic., *Cael.* 7-8.

18 Cic., *Cael.* 8. In Nisbet's words 'His kindness to the youthful prosecutor must have been infuriating' (R. G. M. Nisbet, 'The Speeches', in T. A. Dorey (ed.), *Cicero* (London, 1964), 68.)

19 Cic., *Cael.* 37.

20 Cic., *Cael.* 74: *vellem alio potius eum cupiditas gloriae detulisset; sed abiit huius tempus querelae.*

21 It will always remain uncertain whether the expert essentially produced the text of the speech on his own, or the client had a greater input. Perhaps the client's level of participation varied on different occasions, but Dover has suggested that we should not underestimate the client's contribution in his *Lysias and the* Corpus Lysiacum (Berkeley, 1968), 150-51. See also S. C. Todd, *The Shape of Athenian Law* (Oxford, 1993), 95-96.

client's presentation of his own character within his speech was important, but, unless he was a major political figure, this generally had to be done within the limits of the speech, and there was certainly no room for the intrusion of another party as was the case in the Roman system.[22] Advocacy was permitted in Greece, even in private cases,[23] but it is probable that an advocate spoke only after the person actually involved had opened his case, as in the Neaira trial when the plaintiff, Theomnestus, began himself and handed over to Apollodorus (at §15 of modern texts).[24]

Moreover, in the Greek context, it appears that the advocate in question was advised to make clear to the court that he had good reason to be appearing.[25] The author of the *Rhetorica ad Alexandrum* says that the advocate should point to friendship with the person he was representing or enmity with the opponent, should claim to have been present at the event in question, or should aver that the public good is involved.[26] As Kennedy notes, the concern is that the advocate should not be thought to be appearing for mercenary reasons, since it could be seen to strike at the very heart of the democratic system if the richer man were to have access to assistance that was not available to the poor.[27]

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[22] D. A. Russell has traced the very different way in which the Greek logographers developed the character of the actual plaintiff in his '*Ethos* in Oratory and Rhetoric', in C. B. R. Pelling (ed.), *Characterization and Individuality in Greek Literature* (Oxford, 1990), 197-212: 'Such a speech-writer - Lysias is the most celebrated - has to put himself in his client's case, make him say nothing inconsistent with his visible personality, and at the same time make him a representative of an acceptable type' (p. 199).

[23] Kennedy (1968), 419, cites the speech against Neaira (Demosthenes 59) as a notable example.

[24] Even in this case there is no way in which Apollodorus elaborates on his own character and personal importance on Theomnestus' behalf: it is simply that he is more experienced and better acquainted with the legal process (§15). The *De Corona* does offer an example of a speech in which the advocate, Demosthenes, expands upon his own record to such a degree that he overshadows his client Ctesiphon. But this was dictated by the circumstances of the case in which Demosthenes presents himself as being the man who was really on trial: εἶτα κατηγορεῖ μὲν ἐμου, κρίνει δὲ τουτονί, καὶ τοῦ μὲν ἀγῶνος ὅλου τὴν πρὸς ἔμ ' ἔχθραν προίσταται, οὐδαμοῦ δ ' ἐπὶ ταύτην ἀπηντηκὼς ἐμοὶ τὴν ἑτέρου ζητῶν ἐπιτιμίαν ἀφελέσθαι φαίνεται (§15).

[25] Again in the Neaera case, Theomnestus is at pains to note Apollodorus' personal involvement in the case: καὶ ἠδίκηται ὑπὸ Στεφάνου τουτουί, ὥστε καὶ ἀνεπίφθονον αὐτῷ τιμωρεῖσθαι τὸν ὑπάρξαντα (§15).

[26] *Rhet. ad Alex.* 1442b 12-16.

[27] The services of a logographer also cost money, and this will have ensured that the operation of Athenian law was not as fair as it appeared, but keeping up appearances is precisely what was important. So Todd (1993), 95: 'The whole purpose of his activity (the logographer's) was to offer the litigant professional assistance in a form that could be denied, precisely in order to maintain the amateur illusion in front of a dikastic jury suspicious of professional cleverness.' Rich young Athenians could also pay for an extensive rhetorical training which would not have been available for poorer citizens, but as with the logographer the services of a teacher remained less visible than those of an advocate.

At Rome, although again the advocate was not strictly allowed to appear for pay,[28] the idea that one man might speak on another's behalf was accepted practice. It is generally agreed that the origins of this practice lay in the traditional relationship between *patronus* and *cliens* at Rome. David, in particular, has emphasized this aspect of Roman advocacy: 'le plus modeste (citoyen) - que l'on nommait client - offrait sa disponibilité et son dévouement au plus puissant - le patron - qui répondait en faisant bénéficier le premier de sa richesse et de sa puissance. Il le protégeait et intervenait pour lui chaque fois que cela était nécessaire; tout particulièrement lorsqu'il avait à répondre de quelque affaire devant les tribunaux.'[29] This origin is perhaps most clearly reflected in the continued use of the word *patronus* to refer to the Roman advocate in formal prose.[30]

However, it is questionable how far the traditional ties of patronage were still applicable to the system of advocacy in the Late Republic.[31] The use of the word *patronus*, as Crook has argued, may well have continued to colour the way in which the relationship between the advocate and his client was perceived, but it can equally well be seen as a linguistic survival which subsequently broadened its meaning to refer to any form of advocacy. Where David has argued that the practice of advocacy can be seen as an extension of patronage,[32] it is also possible to see advocacy, in its turn, shaping the way in which Romans viewed the traditional form of patronage. As I have noted above, it was possible for the advocate to present this relationship differently in different cases.

In the last chapter,[33] I considered how Cicero presented Antonius' defence of C. Norbanus, particularly the way in which Antonius made reference to his own character and achievements. Antonius justifies his choice to defend Norbanus by pleading their close relationship: *me pro meo sodali, qui mihi in liberum loco more maiorum esse deberet, et pro mea omni fama prope fortunisque decernere.*[34] Since Norbanus had served as Antonius'

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28 The *lex Cincia* of 204 B.C. forbade all payments and gifts over a certain limit to advocates.

29 J.-M. David, *Le Patronat Judiciaire au Dernier Siècle de la République Romaine* (Rome, 1992), p. ix.

30 J. A. Crook, *Legal Advocacy in the Roman World* (London, 1995), 122.

31 W. Neuhauser's lexicographical study, *Patronus und Orator* (Innsbruck, 1958), 19-64 argues that the original obligation for the *patronus* to speak on behalf of his *cliens* in court developed into a looser bond where mutual interest was uppermost.

32 J.-M. David (1992), 656: 'La plupart de ceux qui plaidaient appartenaient déjà à l'aristocratie sénatoriale et ne faisaient que prolonger par l'assistance judiciaire l'exercice d'une relation de patronat qu'ils s'étaient gagnée ailleurs.'

33 See pp. 46-7.

34 Cic., *De oratore* 2. 200.

quaestor, the advocate could make the plea to the court that he owed a duty to defend him, almost as a father might a son. This establishes the advocate in a dominant relationship with his client, and might be seen as forming a parallel to the traditional ties between *patronus* and *cliens*. Hence Antonius presents himself with the opportunity to produce his own record for the court on his client's behalf, since by impressing the jurors with his own achievements in the service of the state he might hope to influence their thinking. This influence could have taken one or both of two forms: firstly Antonius might have hoped that the jury would think that an advocate who had done so much for Rome would never have a client who might be found guilty of stirring up violence to the detriment of the state; secondly that they would see that, irrespective of the question of guilt, the state owed a debt of gratitude to Antonius himself.

Cicero himself never rivalled Antonius' military achievements, and could therefore never deploy precisely the same arguments on behalf of his clients. However, we have already seen - albeit briefly - how Cicero could himself play a very different role in the conduct of a defence after the year 63, when as a consular he was happy to boast of having saved the state during his tenure of that office by suppressing the Catilinarian conspiracy. Moreover, as the preeminent advocate of the day, he could deploy his past rhetorical achievements on behalf of clients. However, as I shall argue below, he did not draw his self-portrayal in each case, without considering the figure whom he was defending: in the *Pro Roscio* he is nervous and inexperienced, like the man he is defending; in the *Pro Archia* he is learned and literate, like the poet Archias; in the *Pro Caelio* he is urbane and witty, just as Caelius himself is said to have been.

This is not to say that at certain times Cicero did not also distance himself from his client, and there are examples of this in each of the speeches. Moreover, in doing this Cicero could again draw upon a range of self-portrayals: on certain occasions, such as in the *Pro Caelio*, he might emphasize his role as a major public figure, but at others, as in the *Pro Cluentio*, he sought to stress his role as a regular participant in the world of the courts. On each occasion that Cicero rose to speak as an advocate, there was a complex series of choices for him to make, and in order to understand them more fully it is necessary to turn to a selection of these speeches in greater detail.

2. *Humanitas* and *urbanitas* in the *Pro Caelio*

Marcus Caelius Rufus was prosecuted for *vis* by Lucius Sempronius Atratinus in April 56. Caelius, aged twenty-five,[35] was already an accomplished speaker and active in the court. He had made his name by successfully prosecuting Gaius Antonius Hybrida, Cicero's colleague as consul in 63,[36] when the latter spoke for the defence, and earlier in 56 he had prosecuted Atratinus' own father, Lucius Calpurnius Bestia, for *ambitus*, an action which inspired the present case to be brought against him. Caelius spoke in his own defence, but also called upon the aid of Crassus and Cicero as advocates.

These two were eminent men of the day and impressive figures to have as supporters: on the model of Antonius' speech in defence of Norbanus, we might expect that both of them would deploy their own *dignitas* and achievements on their client's behalf. Indeed, in Cicero's speech there are reminders of the services which he has himself performed for the state, and he does exploit his role as a senior figure in the courts.

The most obvious references are to Catiline. The prosecution had accused Caelius of associating with Catiline, and even taking part in his conspiracy, and Cicero deals with these allegations early in the speech, denying any active participation on his client's part, but accepting that he had become a supporter of Catiline's second campaign for the consulship in 63. Cicero excuses this behaviour by pointing out that many others were taken in by Catiline's better qualities: *et multi hoc idem ex omni ordine atque ex omni aetate fecerunt. habuit enim ille, sicuti meminisse vos arbitror, permulta maximarum non expressa signa sed adumbrata virtutum.*[37] Cicero proceeds to delineate Catiline's character in greater detail spelling out its more appealing aspects, and he caps this with the confession that he himself had been taken in by Catiline's charms: *me ipsum, me, inquam, quondam paene ille decepit, cum et civis mihi bonus et optimi cuiusque cupidus et firmus amicus ac fidelis videretur; cuius ego facinora oculis prius quam opinione, manibus ante quam suspicione deprendi.*[38] In making this

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35 Pliny dates his birth as 28 May 82 B.C. (*N. H.* 7. 165).

36 The charge appears to have been one of *maiestas* or *repetundae*, and the fact that Caelius introduced the allegation that Antonius had colluded with Catiline is not decisive, since this may have been technically extraneous to the precise charge. See R. G. Austin, *M. Tulli Ciceronis pro M. Caelio oratio*3 (Oxford, 1960), 158-59.

37 Cic., *Pro Caelio* 12.

38 Cic., *Cael.* 14. Cicero once considered defending Catiline against the charge of *repetundae* in 65 (*ad Att.* 1. 2. 1).

confession Cicero aligns himself with his defendant, but it is all the more impressive because of his later suppression of Catiline: if even Cicero had been taken in (*me ipsum, me, inquam*), there can be no surprise that Caelius was also deceived. Cicero does not need to play heavily upon his actions in 63, but he cannot resist including a small but explicit reminder (*deprendi*).

As I noted in the previous section, there are also many occasions throughout the speech when Cicero adopts the role of the senior figure, who can offer advice to the other participants in the case on the basis of his greater experience. Furthermore, the whole speech is in many ways a showpiece for his rhetorical art. In the first instance there are the famous character impersonations, where he adopts the persona of first the austere Appius Claudius Caecus and then the easy-going Clodius in order to demonstrate the different ways in which Clodia's behaviour could be treated, before taking on the role of comic fathers from Caecilius and Terence to address Caelius.[39] These *prosopopoeiae* not only involved expressing sentiments which suited the individual characters in question, but as Quintilian makes clear called for full-blown acting skills to bring the figures to life: *utimur enim fictione personarum et velut ore alieno loquimur, dandique sunt iis, quibus vocem accommodamus, sui mores. aliter enim P. Clodius, aliter Appius Caecus, aliter Caecilianus ille, aliter Terentianus pater fingitur.*[40] Indeed, Cicero himself uses the vocabulary of the theatre, as he introduces the different characters onto the 'stage': *ita gravem personam induxi ut verear...*[41]

But Cicero's borrowings from the theatre in this speech were not restricted to character impersonations. Geffcken has suggested that the sections of the speech in which Cicero describes the incident at the baths are heavily indebted to mime.[42] Particularly noteworthy is the way in which he describes the moment at which Licinius is about to hand over the pyxis, and in recounting this incident Cicero uses a form of the verb *trado* twelve times.[43] We can imagine Cicero playing the part of Licinius and acting out his movements, holding out the pyxis repeatedly, always on the point of handing it over, until finally the trap is sprung too soon, and he takes to his heels with the incriminating evidence.

Indeed the speech as a whole is a vehicle for Cicero's ability to entertain and make the

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39 Cic., *Cael.* 33-38.

40 Quintilian 11. 1. 39.

41 Cic., *Cael.* 35. On these explicit references to the theatre, see K. A. Geffcken, *Comedy in the* Pro Caelio (Leiden, 1973), 17.

42 Geffcken (1973), 24-27.

43 Cic., *Cael.* 61-65.

jury laugh.[44] Different reasons have been suggested for his decision to play the humour card so forcefully. These have ranged from the general weakness of his case,[45] to the date on which the trial was taking place, namely during the *Ludi Megalenses*, when the rest of Rome might be in the theatre, at the circus or watching games. As Geffcken suggests, the jurors might have been resentful at having to sit in court while all this was going on: 'His solution for these problems was to bring the holiday mood into the Forum, to turn the court into the comic theater, to play a variety of roles...'[46]

There can be no simple explanation for Cicero's choice of approach, and there is a risk of pursuing red herrings of authorial intention. However, the decision to stage a spectacular performance will have helped Cicero to develop his own persona as the Roman orator *par excellence*, the leading pleader of the day. And he could exploit this preeminence to add weight to his guarantee to the jurors that Caelius would henceforth follow him closely in his political career. Another notable feature of the speech is that it is unusually full of literary references: poets are frequently quoted, including Ennius, Caecilius and Terence.[47] This openness about literary culture fits well with the general tenor of the speech, where Cicero describes many of those involved as possessing *humanitas*, both supporters and opponents.[48]

Vasaly has argued persuasively that Cicero is describing this world of *humanitas* as the background against which Caelius himself must be judged. It defines the literary and cultured world of the city:

> 'The word implies, first, the possession of a broad literary education, including familiarity with and enjoyment of poetry, as well as knowledge -

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[44] Cicero notes the benefits of possessing the ability to make the jury laugh at *Brutus* 322, but there, in contrast with the *Pro Caelio*, he is referring to a brief note of humour as an interruption to the serious business of the rest of the case. Indeed the strategy of the *Pro Caelio* could have been a risky one, since an excessive use of humour might have been seen as beneath the *dignitas* of a consular. In such a vein Plutarch records Cato's quip at Cicero's similar approach in certain sections of the *Pro Murena*: ὦ ἄνδρες, ὡς γελοῖον ὕπατον ἔχομεν (*Cato minor* 21. 5). Perhaps in the present trial the extensive use of humour was facilitated by the fact that Clodia was a woman.

[45] Nisbet (1964), 66-67: 'The *Pro Caelio*... is a less earnest speech, and Caelius is one of Cicero's most unconvincing clients.'

[46] Geffcken (1973), 10. W. Stroh, *Taxis und Taktik. Die advokatische Dispositionskunst in Ciceros Gerichtsreden* (Stuttgart, 1975), 272f., 296ff. suggests that Cicero was the first to mention in court the Clodia-Caelius relationship (and indeed that he might have invented it): if this was the case it would have made his humorous attacks on Clodia an even more unexpected tactic.

[47] He quotes Ennius' *Medea* at §18, Caecilius at § 37, Terence's *Adelphi* at § 37-38.

[48] He ascribes this quality to Atratinus (§2), the Coponii (§24), L. Herennius Balbus (§25), L. Lucceius (§54), the jurors (§75).

> although not a specialist's knowledge - of history and philosophy... the word refers as well to a standard of style and external conduct: the wit, polished manners, and civilities of speech of which the *Pro Caelio* is itself an example.'[49]

Cicero uses the speech to establish these parameters within which individual figures should be judged, and his own performance shows these qualities in abundance: he reveals himself as the outstanding product of this world.

But this is not simply Cicero's self-preening, since he can draw upon his own prestige to reinforce his client's position. When such a man gives his word to the jurors, they ought to listen and acquit: *conservate igitur rei publicae, iudices, civem bonarum artium, bonarum partium, bonorum virorum. promitto hoc vobis et rei publicae spondeo, si modo nos ipsi rei publicae satis fecimus, numquam hunc a nostris rationibus seiunctum fore.*[50] Again it is not simply a matter of guilt and innocence; rather Cicero insists that the state needs men such as Caelius.[51] This might appear to be advocacy as patronage in its purest form. Cicero bases his appeal on his own achievements (*si modo nos ipsi rei publicae satis fecimus*), and as a preeminent figure of the Roman forum, a preeminence which this very speech has demonstrated: on the basis of these claims Cicero stands surety for Caelius' future good behaviour.

However, this was a particularly suitable occasion for Cicero to develop the advocate-client relationship in this way, for he was, in one sense of the word, Caelius' patron, since once Caelius had received his *toga virilis* his father had entrusted his son to Cicero's care so that he should be introduced to the life of the forum and the law-courts, the *tirocinium fori*.[52] Cicero is able to vouch personally for his education from that point onwards: *nemo hunc M. Caelium in illo aetatis flore vidit nisi aut cum patre aut mecum aut in M. Crassi castissima domo cum artibus honestissimis erudiretur.*[53] The defendant's two advocates were therefore both men who had supervised his formative years, and this fact will have added weight to Cicero's promise for Caelius' good behaviour in future.

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49 A. Vasaly, *Representations. Images of the World in Ciceronian Oratory* (Berkeley, 1993), 183-84.

50 Cic., *Cael.* 77.

51 However, it remains true that elsewhere in the speech he does argue for his client's innocence: he cannot simply disregard this issue altogether.

52 On this see previous chapter, pp. 34-5.

53 Cic., *Cael.* 9.

But Cicero's argument is more subtle than simply to insist that his word should be taken for his protégé's good character, for Caelius had now developed into a successful orator in his own right, and this fact is made into a major plank of his defence by Cicero. The jurors and other onlookers are themselves witnesses to the success of Caelius' training: *audistis cum pro se diceret, audistis antea cum accusaret... genus orationis, facultatem, copiam sententiarum atque verborum, quae vestra prudentia est, perspexistis.*[54] Cicero, as one who knows, is able to inform the jurors why the rewards for good oratory are so great: *obterendae sunt omnes voluptates, relinquenda studia delectationis, ludus, iocus, convivium, sermo paene est familiarium deserendus.*[55]

Caelius' skill was not merely a matter of natural talent, but had been enhanced by theoretical knowledge, general literary study and lots of practice (*ratio et bonis artibus instituta et cura et vigiliis elaborata*).[56] We might compare here Cicero's own training which he was to describe in the *Brutus*, where he lays repeated emphasis on its unremitting nature in listening to others speaking, practising declamation and preparing and conducting actual cases in the courts.[57] This takes the argument beyond a simple claim that Caelius will henceforth be faithful to Cicero's own ideas, rather he underlines that Caelius has been undergoing this same training as he had himself done earlier, and the implicit suggestion is that Caelius will in the future develop into a second Cicero - after all they came from similar backgrounds, as Cicero pointed out early in the speech.[58]

Cicero's speech does not therefore represent his relationship with his client as the traditional one between a *patronus* and his *cliens*, for that would be absurd in the case of someone of Caelius' status. However, Cicero can use the fact that he had acted as Caelius' tutor to present the picture to the jurors that he was a figure of some authority for the defendant, which would add weight to his promise about Caelius' future behaviour.[59] In order for such a strategy to be effective it is important that there should be seen to be some distance

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54 Cic., *Cael.* 45.

55 Cic., *Cael.* 46.

56 Cic., *Cael.* 45.

57 Cic., *Brut.* 308: *at vero ego hoc tempore omni noctes et dies in omnium doctrinarum meditatione versabar.* This theme of constant work recurs throughout §§308-21.

58 Cic., *Cael.* 6: *ab his fontibus profluxi ad hominum famam.*

59 Of course this does not dictate that Cicero really did have such close ties with his client - indeed the Catiline episode, and Caelius' subsequent prosecution of C. Antonius suggest that, for a period of time at the very least, the two men may have moved significantly apart. Rather Cicero chose to depict the relationship as a close one for the purpose of making his case.

between the advocate and the defendant, and he helps to create this by adopting the role of the father-figure.[60]

However, the argument of the speech also suggests that a Roman advocate could most effectively deploy his own authority on behalf of a client if he did so in an area in which he had common interests with that client, that is, in this case, the art of oratory and performance in the law courts. It was relevant for Cicero to parade his rhetorical talents so ostentatiously in the speech, because this was the specific area in which he was basing his assessment of Caelius' character: the client, like his advocate, was following in his master's footsteps in embarking upon what Cicero portrays as a quasi-professional life at the Roman Bar - and in such a life, there was no room for the personal excesses of which he was accused. As Vasaly has noted, this has important implications for Cicero's representation of the orator's role within the state: 'The *Pro Caelio*... celebrates the possibilities to be realised in the modern and urban environment... the hope of the state resided in the orator and the statesman educated and trained in the sophisticated intellectual and political milieu of the city.'[61]

But Cicero's speech on behalf of Caelius may have been even more closely tailored to his client. I have already noted that the Roman legal system was readier to accept the practice of advocacy than the Greek, and the very idea of advocacy dictates that one man was able to appear and speak on another's behalf. However, the degree to which the advocate may differentiate himself from his client is open to variation, both between speeches and even within the same speech. In his discussion of the practice of advocacy in Greece and Rome, Kennedy argued that Cicero was flexible in his approach to this question of differentiation. In particular he considers the *Pro Roscio*, arguing that in places he identifies himself closely with Roscius to win pity, while elsewhere distancing himself in order to take the opportunity to say things which the client could not.[62] But with regard to the *Pro Caelio*, he argues that Cicero is keen to distance himself from his client: 'Caelius is young, lively, charming... Cicero, on the other hand, is the dignified consular.'[63] This is true in so far as Cicero attempts to use his own authority to bolster his young protégé's case, as we have seen, but in the speech Cicero, while he can do nothing about his age, does seem to develop his own character as a 'lively' and 'charming' individual.

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60 See especially Cic., *Cael.* 37-8.

61 Vasaly (1993), 186.

62 Kennedy (1968), 430-31.

63 Kennedy (1968), 432.

Cicero does adopt a paternal stance in considering Caelius' behaviour, but he is explicit in rejecting a hoary, old disciplinarian attitude for one that is more accommodating to the life-style of Caelius and his contemporaries. The man who denies himself all the pleasures of the senses might be blessed by the gods, but the majority of men would consider him accursed: let the young have their fun, if they do no-one harm and return to sobriety after they have vented their excess energies.[64] If he has behaved with indiscretion towards Clodia, that is hardly his fault. She has offered him so many inducements that she deserved no better: *si vidua libere, proterva petulanter, dives effuse, libidinosa meretricio more viveret, adulterum ego putarem si quis hanc paulo liberius salutasset?*[65] Cicero does not actually reach the point of admitting to any youthful foibles of his own, or even of explicitly condoning Caelius' activities, but he does extend sympathy to his client's attitude to life.

In addition to showing an understanding of Caelius' behaviour, Cicero also adopts a style of speaking which is congruent with that of his client. In the note with which he closes his commentary, Austin hints at this assimilation: 'Cicero would not simply be speaking *for* Caelius: in a certain sense, he would *be* Caelius, just as a great actor assumes the character of his part.' I have already noted that the *Pro Caelio* is a particularly lively and comic speech, replete with literary allusion, and the way in which this contributes to the background within which he wishes Caelius to be judged. But in choosing to deliver such a speech, Cicero may also have been influenced by Caelius' own style of speaking. In his assessment of Caelius' style in the *Brutus*, after lamenting his abandonment of the optimate cause, Cicero comments on its wit and polish: *antiquam eius actionem multum tamen et splendida et grandis et eadem in primis faceta et perurbana commendabat oratio.*[66]

Quintilian has preserved two examples of Caelius' humour in the category of *aenigmata*, namely his references to Clodia as *quadrantariam Clytaemnestram* and *in triclinio coam, in cubiculo nolam.*[67] The first of these fragments is not only an example of low-brow humour with its reference to the low rate at which Clodia sold herself,[68] but also contains a literary reference to the most famous husband-killer, as a hint at the rumour that Clodia had

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64 Cic., *Cael.* 42.

65 Cic., *Cael.* 38.

66 Cic., *Brutus* 273.

67 Quintilian 8. 6. 53.

68 Cicero picks up on this joke with a reference to *quadrantaria illa permutatione* as the means by which Clodia may have got the better of the bath attendant.

killed her husband. Quintilian also preserves one longer fragment of Caelius' speech against C. Antonius, in which he describes the defendant in the drunken aftermath of a bawdy banquet, surrounded by the prostrate bodies of his *praeclarae contubernales*.[69] Quintilian praises the passage for its plausibility, vehemence and vividness, qualities which might also be applied to some of the invective which Cicero delivers against Clodia in the *Pro Caelio*.

I do not wish to suggest that this assimilation to suit his client's nature and character operated in a crude or mechanical way. Cicero could not simply adopt the persona of his client as a family member might put on a mask of an ancestor at a funeral, nor would it have benefited him to do so. Rather he established a common ground which they both shared, and emphasized this while playing down other aspects of his own character: he could not hope to match Caelius, but he could present himself as an older, staider model. In this way, by a process involving both distancing and identification, he might hope to bring his own authority to bear on his client's behalf more effectively than if they were seen as linked only by the circumstances of the case.[70] This need for the orator to tailor his performance to his various clients' characteristics demanded more than an actor's playing of different roles, as there was no dramatic convention to call upon: he had to demonstrate to his listeners that he really was sympathetic to his client's character, and draw upon his own background to support this identification. In the *Pro Caelio* this dictated an emphasis upon rhetorical skill, witticism and literary sophistication in order to help the jurors reach the conclusion that Caelius was an embryonic Cicero, but in other cases he might have to concentrate in other areas, and it is to another speech that I now turn.

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69 Quintilian 4. 2. 123-24.

70 This does not mean that there was no place for some detachment between client and advocate, as I shall outline with reference to other cases.

3. The orator and the poet: the *Pro Archia*

In the summer of 62 B.C. the Greek poet, Aulus Licinius Archias, was prosecuted on the grounds that he had no legal right to the Roman citizenship since his name was to be found neither in the citizen list of Heraclea nor in the Roman census rolls.[71] Archias enjoyed connections with several noble Romans, who cultivated his friendship as a Greek literary figure,[72] and perhaps more specifically as someone who might celebrate their achievements in verse.[73] In defending him Cicero chose to devote remarkably little effort to the substantial facts of the case, that is the legality of Archias' claim to the citizenship. These issues are dealt with in §§4-11, while the remainder of the speech (§§12-32: over twice as long) is devoted to a digression on the value of literature and culture.[74] This decision was perhaps motivated by the absence of any written confirmation of Archias' citizenship, and hence a weakness on the explicitly legal side of his defence. Rather Cicero chooses to emphasize the argument from equity, making the claim that Archias *deserves* the Roman citizenship even if his legal claim to it is not particularly strong: *perficiam profecto ut hunc A. Licinium*[75] *non modo non segregandum, cum sit civis, a numero civium verum etiam, si non esset, putetis asciscendum fuisse.*[76] And as a basis for this argument for equity, Cicero first has to demonstrate that Archias' achievements - that is, his poems - are worthy of such a reward, and to establish this he must demonstrate to the jury the worth to Rome of literature in general.

Cicero is explicit from the start that this will demand a style of speech which departs

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71 The significance of Heraclea is that having received honorary citizenship of that *municipium* Archias could have claimed Roman citizenship on the passing of the *Lex Plautia Papiria* in 89 by *professio* at Rome, providing he was domiciled in Italy. Cicero claims that Heraclea was a problem case because its citizen records had been destroyed by fire in the course of the Social War, although he promises to produce witnesses from Heraclea to attest to Archias' possession of the citizenship of that place (*Pro Archia Poeta* 8).

72 Cic., *Arch. Poet.* 6.

73 See Cic., *Arch. Poet.* 19-21, where he mentions Archias' compositions on Marius' Cimbrian campaign and Lucullus' eastern victories.

74 On this division see H. Vretska and K. Vretska, *Marcus Tullius Cicero. Pro Archia Poeta* (Darmstadt, 1979), 17-19, who, more precisely, ascribe §§4-7 to the *narratio*, leaving only §§8-11 as the *argumentatio* concerned with the *causa ipsa*. As Narducci points out, it is possible that Cicero devoted more energy to the legal issues in the actual speech which he delivered, only to prune this section for the published version (E. Narducci, *Cicerone e l'eloquenza romana* (Rome, 1997), p. 4, n. 2). However he dismisses this as unlikely, owing to the fact that the legal weakness of Archias' case dictates that Cicero should focus elsewhere, and the approach fits the precepts of rhetorical theory, namely to concentrate on the stronger points of your case, while passing rapidly over the weaker areas.

75 Cicero uses Archias' Roman name as a means of suggesting his natural right to the citizenship.

76 Cic., *Arch. Poet.* 4.

from the forensic norm, a style *quod non modo a consuetudine iudiciorum verum etiam a forensi sermone abhorreat.*[77] But he makes clear that this new style is one which is precisely suited to the demands of the situation, asking the jury:

> *ut me pro summo poeta atque eruditissimo homine dicentem hoc concursu hominum litteratissimorum, hac vestra humanitate, hoc denique praetore exercente iudicium, patiamini de studiis humanitatis ac litterarum paulo loqui liberius, et in eius modi persona quae propter otium ac studium minime in iudiciis periculisque tractata est uti prope novo quodam et inusitato genere dicendi.*

As in the *Pro Caelio* Cicero is establishing the Roman forum as a literate and cultured milieu within which the decision about Archias' citizenship must be made: it is not only the defendant who possesses *humanitas*, but the presiding praetor, the jurors, and the bystanders as well, who will therefore be sympathetic to his case.[78] Before such an audience Cicero does not hesitate to play his own part (*persona*) differently in order to suit his own client's character and talents.[79]

But, again as in the *Pro Caelio*, Cicero is not content to give himself (and the jurors) a new role like a chameleon; rather he seeks to establish that this is where his sympathies have always lain, and that he has always enjoyed and benefited from the study of literature (as have the jurors) - convention and force of circumstance usually do not offer him the chance to be so explicit about his tastes in the forum. Therefore in the very opening sentence of the speech he

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[77] Cic., *Arch. Poet.* 3.

[78] It is possible to compare Cicero's digression on Stoicism in the *Pro Murena*, which he introduces as follows: *et quoniam non est nobis haec oratio habenda aut in imperita multitudine aut in aliquo conventu agrestium, audacius paulo de studiis humanitatis quae et mihi et vobis nota et iucunda sunt disputabo* (§61). Here there is the same generosity to the jurors, although Cicero perhaps presents a greater reluctance to touch upon these rather recondite matters (*audacius*), and proceeds to be intolerant of Cato's perfectionism and detachment from the real world. In Athens, speakers used similar techniques in promoting the idea that their audiences were of the same stamp as themselves, whether intellectually or financially. C. B. R. Pelling, *Literary Texts and the Greek Historian* (London, 2000), 14-16 discusses these methods, noting that 'the assimilation goes upward much more often than downward, towards the richer, more established, and more well-born' (p. 15). Aristophanes' flattery of his audience in the parabasis is not dissimilar, particularly at *Clouds* 518-36, where he attributes his readiness to produce a more sophisticated type of comedy to the education and intelligence of his audience. However, there is a certain irony in Aristophanes' words (T. K. Hubbard, *The Mask of Comedy. Aristophanes and the Intertextual Parabasis* (Cornell, 1991), 90-100), which a public speaker such as Cicero could never risk when praising his audience.

[79] This does not of course provide us with any substantial evidence as to the jurors' actual acquaintance with literature, and Cicero in his less public moments was dismissive, writing of the same jury before which he had delivered the *Pro Murena* (see previous note): *apud imperitos tum illa dicta sunt* (*De finibus* 4. 74).

contends that Archias has the strongest claim to his services as an advocate, since he has contributed greatly to Cicero's own development: *nam quoad longissime potest mens mea respicere spatium praeteriti temporis et pueritiae memoriam recordari ultimam, inde usque repetens hunc video mihi principem et ad suscipiendam et ad ingrediendam rationem horum studiorum exstitisse.*[80] Although it may not be immediately obvious that the spheres of oratory and poetry are so closely linked, Cicero argues that they are: *etenim omnes artes quae ad humanitatem pertinent habent quoddam commune vinculum et quasi cognatione quadam inter se continentur.*[81] Cicero does not stop at arguing that poetry is important, and therefore the jury should allow Archias his citizenship; indeed he does not even start from this point. As his advocate, Cicero begins by stating how important poetry has been for himself personally, throwing his own authority behind his client's case, as Narducci notes: 'Il *patronus* presenta per prima cosa ai giudici l'autorevole prestigio della propria stessa personalità, quasi a indiscutibile garanzia della veredicità delle parole che sta per pronunciare.'[82] Cicero's own oratorical ability is the visible basis on which he establishes his client's case to the jury.

Personal interest is again the starting-point for Cicero's discussion of the value of literature when he returns to the subject after his brief treatment of the legal aspect of the case: *quaeres a nobis, Gratti, cur tanto opere hoc homine delectemur.*[83] His first point is that literature offers him respite when the daily grind of the courts is over, but he is careful to emphasize that even this pursuit during his hours of *otium* is of value in performing his duty in the courts. He contrasts his own approach with those who fail to achieve any common good through their reading,[84] insisting that he be granted greater indulgence than those who play or do the like in their leisure time, since his literary pursuits help others, as they have helped him to develop his rhetorical ability: *atque id eo mihi concedendum est magis quod ex his studiis haec quoque crescit oratio et facultas quae, quantacumque est in me, numquam amicorum periculis defuit.*[85]

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80 Cic., *Arch. Poet.* 1.

81 Cic., *Arch. Poet.* 2.

82 Narducci (1997), 5.

83 Cic., *Arch. Poet.* 12. Grattius was the prosecutor.

84 *Ego vero fateor me his studiis esse deditum. ceteros pudeat, si qui ita se litteris abdiderunt ut nihil possint ex eis neque ad communem adferre fructum neque in aspectum lucemque proferre* (Cic., *Arch. Poet.* 12). However Cicero is not prepared to abandon altogether the idea of pleasure derived from reading, and returns to it once more in §16.

85 Cic., *Arch. Poet.* 13.

This claim that one's leisure pursuits were worthwhile had become a traditional Roman idea, and Cicero elsewhere refers to the elder Scipio and Cato making this point. In the *Pro Plancio* he reports Cato's remark from the beginning of the *Origines*: *clarorum virorum atque magnorum non minus oti quam negoti rationem exstare oportere*;[86] in the *De officiis*, while defending his decision to write the work, he recalls Scipio's saying: *numquam se minus otiosum esse quam cum otiosus esset.*[87] In making this point, Cicero is taking care not to alienate the jury: he, and likewise his client, is not engaged in some recherché pursuit. Indeed, even if individual members of the jury are totally uninterested in literary study, Cicero is intent on emphasizing the indirect benefits which they have enjoyed from it as a result of his own career defending fellow Romans in the courts.

The second area in which Cicero argues for the usefulness of literature is the way in which it can inspire men to greater deeds. Again he begins from his personal experience, claiming that it was only his reading since childhood which had encouraged him to pursue glory and honour, and which had steeled him to face dangers in Rome and the punishment of exile. Without this help, he says, *numquam me pro salute vestra in tot ac tantas dimicationes atque in hos profligatorum hominum cotidianos impetus obiecissem.*[88] As he did in making the first point, he begins with the benefits he has himself derived from literature, but expands his scope to incorporate the good which other men have gained indirectly from his own devotion to literature, namely his service to the state.

On this occasion he is explicit that in drawing his inspiration from literature he is following a noble Roman tradition. While accepting that there had been great Romans who had derived no benefit from culture, he argues that the cultured character is unsurpassable, and he offers a list of such heroes:

> *ex hoc esse hunc numero quem patres nostri viderunt, divinum hominem, Africanum, ex hoc C. Laelium, L. Furium, moderatissimos homines et continentissimos, ex hoc fortissimum virum et illis temporibus doctissimum, M. Catonem illum senem.*[89]

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86 Cic., *Pro Plancio* 66.

87 Cic., *De officiis* 3. 1. Compare also Sallust's defence of his decision to write history in his *otium*, as a superior activity to other pursuits, where he seems to be drawing on the same tradition: *non fuit consilium socordia atque desidia bonum otium conterere, neque vero agrum colundo aut venando, servilibus officiis, intentum aetatem agere* (*Catilinae coniuratio* 4.1).

88 Cic., *Arch. Poet.* 14.

89 Cic., *Arch. Poet.* 16.

The advocate is not content to enlist only his own authority to aid his client, but by enrolling these figures on Archias' side he can add the weight of their own achievements to the scales. Again patronal authority carries more influence when the patron's own interests are shown to be inextricably bound up with those of his client.

When he turns from literature in general to the particular genre of poetry, Cicero goes into still greater detail about those who have benefited from poetry, and he expands his horizons to draw upon Greek examples as well as Roman, moving freely between them. So he passes immediately from Ennius, who is quoted for calling poets *sanctos*,[90] to the mythical figures of Amphion and Orpheus,[91] and then to Homer, a poet so esteemed that many different Greek cities claim him as their own, including Colophon, Chios, Salamis and Smyrna. Cicero asks the jurors whether Rome should, by contrast, disown a poet who had done so much to celebrate the Roman people.[92]

This observation leads Cicero to make his third point on the value of poetry, its ability to celebrate and preserve the deeds of other men. Here the advocate does not begin with the desire to preserve his own deeds, but he does return to this later. Instead he concentrates upon others, both Greeks and Romans, who have taken pleasure in such preservation in order to reinforce his premise: *neque enim quisquam est tam aversus a Musis qui non mandari versibus aeternum suorum laborum praeconium facile patiatur.*[93] Cicero enlists Themistocles, Marius, whose deeds were celebrated by Lucius Plotius and Archias,[94] Lucullus, again celebrated by Archias, then those who were glorified by the works of Ennius, including the elder Africanus, Cato, Fabius Maximus Cunctator, Marcellus and Fulvius.[95] This section of the speech culminates with the figure of Alexander the Great and his words upon visiting the tomb of Achilles: *atque is tamen, cum in Sigeo ad Achillis tumulum astitisset: 'o fortunate,' inquit, 'adulescens, qui tuae virtutis Homerum praeconem inveneris!' et vere. nam, nisi Ilias illa*

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90 Cic., *Arch. Poet.* 18.

91 He does not refer to them by name, but recounts their most famous mythical exploits: *saxa et solitudines voci respondent, bestiae saepe immanes cantu flectuntur atque consistunt* (§19). The first of these clauses is a reference to Amphion raising the walls of Thebes by playing his lyre.

92 *Praesertim cum omne olim studium atque omne ingenium contulerit Archias ad populi Romani gloriam laudemque celebrandam?* (Cic., *Arch. Poet.* 19).

93 Cic., *Arch. Poet.* 20.

94 Themistocles and Marius are noteworthy examples: the latter was usually regarded as uncultured (§19: *durior ad haec studia videbatur*), while the former was notorious for lacking a traditional Greek upper-class education, and boasted of his inability to sing or play the lyre (Plut., *Them.* 2. 4, *Cimon* 9. 1; Thuc. 1. 138. 3).

95 Cic., *Arch. Poet.* 19-22.

exstitisset, idem tumulus qui corpus eius contexerat nomen etiam obruisset.[96]

Cicero uses Alexander and Achilles to exemplify the fact that deeds, however great, are not remembered unless there is someone to celebrate them: Alexander met this difficulty by taking historians and poets with him to record his achievements, and other Romans had more recently followed his example.[97] But there was a danger that, in citing all the figures, the advocate might alienate the jury, since these men were all élite individuals, with whom the jurors might not immediately identify. Therefore Cicero emphasizes that the poets have also commemorated the achievements of ordinary Romans,[98] or of the Roman people as a whole. In his description of Archias' treatment of Lucullus' campaigns in the east against Mithridates, which extends over three sentences, Cicero mentions the *populus Romanus* five times, and in the final section uses the first person plural: *nostra sunt tropaea, nostra monumenta, nostri triumphi. quae quorum ingeniis efferuntur, ab eis populi Romani fama celebratur.*[99]

Moreover the extent of this renown, according to Cicero, ought to be as great as possible, and this dictates that even a poet writing in Greek, such as Archias, ought to be valued, even more so perhaps, since Greek is the universal language, not Latin: *Graeca leguntur in omnibus fere gentibus, Latina suis finibus exiguis sane continentur.*[100] The fact that Archias wrote in Greek also helps to explain why Cicero devotes so much more attention than usual to Greek examples since he wants to portray a common literary and cultural world, where Greek and Roman mix freely, and his own speech containing just such a mélange of cultural history exemplifies this 'international' milieu.

As I mentioned above Cicero does not introduce his own interest in literature as commemoration from the start, but he does turn to himself at the end: *iam me vobis, iudices, indicabo et de meo quodam amore gloriae nimis acri fortasse, verum tamen honesto vobis confitebor.*[101] This 'confession' allows Cicero to introduce his own achievements as a consul

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96 Cic., *Arch. Poet.* 24.

97 Cicero goes on to mention Pompey, Sulla, Q. Metellus Pius, D. Brutus and others whom he has already mentioned (§§24-27). In particular, by citing Pompey and Sulla, after his earlier references to Marius and Lucullus, Cicero is striving to demonstrate that literary commemoration was valued across the whole political spectrum.

98 He records the delight of Pompey's soldiers when their leader rewarded Theophanes for his commemoration of his achievements: *nostri illi fortes viri, sed rustici ac milites, dulcedine quadam gloriae commoti quasi participes eiusdem laudis magno illud clamore approbaverunt* (§24).

99 Cic., *Arch. Poet.* 21.

100 Cic., *Arch. Poet.* 23.

101 Cic., *Arch. Poet.* 28.

on behalf of the state, which Archias has already begun to describe in a poem. Therefore the advocate and his client are shown as inextricably tied together in a similar symbiotic relationship between patron and poet to that of the other examples which Cicero has described throughout this section of the speech. The poet depends upon the orator for his skill in defending him, but Cicero in turn claims to owe his future renown to the poet's verses, a renown which in his eyes makes the tribulations of the present worthwhile.[102]

This close attachment between orator and defendant helps Cicero to exploit his own *auctoritas* on his client's behalf, since he can contend that the client has a share in his own achievements. He does not simply say to the court (to put it crudely) that they should find in favour of his client, because he, Cicero, has done so much on behalf of the state. He does introduce his own *res gestae*, albeit obliquely, but he insists that he has been inspired to such deeds by poets like Archias, and by the comforting prospect that he is there to make them immortal by commemorating them in verse.

Moreover, as in the *Pro Caelio*, the style of the whole speech is suited to the client on whose behalf it is being made. To begin with it is replete with references to a series of poets ranging from those of myth to those of the present day, encompassing Greeks and Romans in-between: in giving this potted history, Cicero advertizes his own acquaintance with the literary world. He also mentions with approval the idea of poetry as divine inspiration,[103] and exhorts the jurors to honour the Muses by finding in favour of his client.[104] Moreover, as Cicero himself declares early in the speech, he employs a different *genus dicendi* in the light of the character of the client he is defending.[105] At one level there are the allusive references to the mythical poets,[106] but throughout Cicero in a leisurely manner devotes much time to broad cultural issues, which I have discussed above: the use of *otium*, the inspiration of literature and the desire for fame in posterity. The significance lies not only in the content of the digressions, but in the very fact that he is ready to devote so much time to these questions in what might seem to be the unlikely context of a forensic speech.[107]

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102 Cic., *Arch. Poet.* 30: *an vero tam parvi animi videamur esse omnes qui in re publica atque in his vitae periculis laboribusque versamur ut, cum usque ad extremum spatium nullum tranquillum atque otiosum spiritum duxerimus, nobiscum simul moritura omnia arbitremur?*

103 Cic., *Arch. Poet.* 18.

104 Cic., *Arch. Poet.* 27.

105 Cic., *Arch. Poet.* 3.

106 Cic., *Arch. Poet.* 19. See above, p. 95, n. 91.

107 However, there is no emphasis on the excessively 'arty' issue of whether Archias was a *good* poet.

4. The inexperience of youth: the *Pro Roscio*

I began my consideration of Cicero's style of advocacy with his first criminal case from 80 B.C.[108] As I noted briefly, Cicero chose to develop his own inexperience as a strategy for winning the sympathy of his audience. This approach was naturally facilitated by the advocate's own very real inexperience in the courts, but it also fits well with the pattern which I have been describing in the *Pro Caelio* and the *Pro Archia.* In the present speech Cicero takes great pains to portray his client as someone for whom the world of Rome is entirely unfamiliar, since n this way, he can establish a bond of shared inexperience between himself and his client.

So, towards the end of his speech, Cicero represents Roscius as having simple desires - he does not ask for his father's property back, only to be allowed to live: *putat homo imperitus morum, agricola et rusticus, ista omnia quae vos per Sullam gesta esse dicitis more, lege, iure gentium facta.*[109] Moreover, he is characterized as a countryman, and Cicero uses this as one of the major planks of his case, arguing that the life of the country which Roscius enjoyed was completely unsuited to the magnitude of the crime of which he stood accused.

It appears that the prosecutor, Erucius, had attempted to establish this background as a suitable motive for the crime, alleging that Roscius had killed his father as a result of the latter relegating him to a dull life in the country.[110] In his portrayal, the defendant was a boorish rustic who had never enjoyed the parties and other pleasures of urban life.[111] Cicero turns this argument on its head, contending that his client was privileged to enjoy the benefits of a rural life. Cicero claims that he and many of the others in the court have met fathers who hope that their sons pursue agricultural careers: *vitamque hanc rusticam, quam tu probro et crimini putas esse oportere, et honestissimam et suavissimam esse arbitrantur.*[112] This is a world apart from the forum. Roscius is an expert in the fields, Erucius in the forum: *ut ex his propinquis eius, hominibus honestissimis, audio, non tu in isto artificio accusatorio callidior es quam hic in suo.*[113]

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108 See above, p. 78.

109 Cic., *Rosc. Am.* 143.

110 Cicero pretends to quote from Erucius' accusation: *'fuisse odium intellego quia antea, cum duos filios haberet, illum alterum qui mortuus est secum omni tempore volebat esse, hunc in praedia rustica relegarat'* (Cic., *Rosc. Am.* 42).

111 See for example Cic., *Rosc. Am.* 74, describing him as *ferum atque agrestem.*

112 Cic., *Rosc. Am.* 48.

113 Cic., *Rosc. Am.* 49.

Cicero does not pretend that he has exactly the same feelings for the country as his client - he had been too visible a figure around the forum - but he does attempt to evoke a strong emotional sympathy for such a life. First he recalls the traditional Roman celebration of men such as Atilius Regulus who had been called from their ploughs to serve as consuls: *at hercule maiores nostri longe aliter et de illo et de ceteris talibus viris existimabant itaque ex minima tenuissimaque re publica maximam et florentissimam nobis reliquerunt.*[114] But such men were not only responsible for expanding Rome's power, they also possessed more innocent characters with regard to personal gain: *suos enim agros studiose colebant, non alienos cupide appetebant.* Like these men, Roscius was totally out of place in contemporary Rome, untainted by ambition or greed, a relic of a previous era.

A second tradition which Cicero draws upon to support the rural life is the literary one. In replying to Erucius' insinuation that Roscius had been banished to the country by his father, Cicero draws upon Caecilian comedy once more:

> *ecquid tandem tibi videtur, ut ad fabulas veniamus, senex ille Caecilianus minoris facere Eutychum, filium rusticum, quam illum alterum, Chaerestratum? - nam, ut opinor, hoc nomine est - alterum in urbe secum honoris causa habere, alterum rus supplici causa relegasse.*[115]

At first this reference might appear to be akin to those which Cicero was to use later in the *Pro Caelio*, but it is notable that he introduces a note of doubt into his knowledge of the name of the second son. Whilst this well suits Cicero's own rawness in the forum - he does not want to appear too clever - it is also appropriate in avoiding too great a differentiation between his own learning and the character of his client which he is presenting.[116]

Indeed, advocate and client are united in facing much greater and more experienced forces. Roscius is *imperitus* and frightened by the sight of the city, let alone the court.[117] Just as Sextus Roscius is faced by the more worldy-wise Titi Roscii, so Cicero is faced by a practised opponent, Erucius. Just as Roscius is afraid of the city, so Cicero confesses to his

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114 Cic., *Rosc. Am.* 50.

115 *Rosc. Am.* 46.

116 The use of the expression *nam, ut opinor, hoc nomine est* also helps to draw attention to the two names, and the significance of their meanings, 'lucky' and 'army-boy'.

117 At *Rosc. Am.* 88, Cicero describes him as a man who *propter fori iudiciorumque insolentiam non modo subsellia verum etiam urbem ipsam reformidet.*

own fear at taking on the case: *huc accedit summus timor quem mihi natura pudorque meus attribuit et vestra dignitas et vis adversariorum et Sex. Rosci pericula.*[118] Moreover Cicero alleges that even the prosecutor, the experienced Erucius, took his opponent too lightly: *credo, cum vidisset qui homines in hisce subselliis sederent, quaesisse num ille aut ille defensurus esset; de me ne suspicatum quidem esse, quod antea causam publicam nullam dixerim.*[119] As a result, he had descended to arrogant conduct - even ordering his dinner in the middle of the speech according to Cicero - treating the jury with contempt, and relaxing completely when he saw that Cicero had risen to make the defence.[120]

It was at this point that he dropped his bombshell by mentioning Sulla's freedman, Chrysogonus, which at first stunned the prosecution and then sent men scurrying in all directions.[121] As an outsider, Cicero was prepared to speak out freely: *quae quoniam te fefellerunt, Eruci, quoniamque vides versa esse omnia, causam pro Sex. Roscio, si non commode, at libere dici, quem dedi putabas defendi intellegis.*[122] Although at the start of the speech he shows great deference towards the more experienced speakers who, he claims, were too afraid to take the case, he becomes increasingly bold in vaunting his own willingness to stand up and defend Roscius. When he praises Marcus Messala for assisting Roscius in conducting his defence, although being debarred from speaking by his youth, he indicates that other nobles should be readier to follow his example: *quod si omnes qui eodem loco nati sunt facerent, et res publica ex illis et ipsi ex invidia minus laborarent.*[123] Cicero represents himself, like his client, as coming from outside the establishment, an establishment which has become corrupt and is in desperate need of reform.[124]

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118 *Rosc. Am.* 9. This can be compared with the opening of the *Pro Milone*, where in contrast with his client's composure Cicero expresses his own fear, but this stems from his belief that a court surrounded by armed men is scarcely any place for an advocate at all (*Pro Mil.* 1-3).

119 *Rosc. Am.* 59.

120 Kennedy (1968), 431 following Humbert (J. Humbert, *Les Plaidoyers écrits et les Plaidoiries réelles de Cicéron* (Paris, 1925), 100-11) is tempted to believe that this passage was inserted only for publication. While it is impossible to disprove this suggestion, it is important to emphasize that such a passage is consistent with the ability to improvise, which must have been essential in such a lively outdoor arena as the Roman courts. Even more importantly the passage seems intrinsic to the force of the speech as a whole, with its emphasis upon Cicero as an outsider: who better to call as a witness in support of this presentation than the opposing speaker?

121 Cic., *Rosc. Am.* 60.

122 Cic., *Rosc. Am.* 61.

123 Cic., *Rosc. Am.* 149.

124 On this see especially the peroration (§§153-54).

Two of the modern treatments of Ciceronian advocacy, those of Kennedy and May, begin with a consideration of the *Pro Roscio*.[125] This is perhaps because it is his earliest performance in the criminal-courts, but both authors also refer to two famous sections of the speech where the advocate goes so far as to adopt the first person and speak as Roscius:

> *patrem meum, cum proscriptus non esset, iugulastis, occisum in proscriptorum numerum rettulistis, me domo mea per vim expulistis, patrimonium meum possidetis. quid voltis amplius?*[126]

> *praedia mea tu possides, ego aliena misericordia vivo; concedo, et quod animus aequus est et quia necesse est. mea domus tibi patet, mihi clausa est; fero. familia mea maxima tu uteris, ego servum habeo nullum; patior et ferendum puto. quid vis amplius? quid insequeris, quid oppugnas? qua in re tuam voluntatem laedi a me putas?*[127]

These passages are both emotional climaxes, the former closely preceding the *divisio* of the speech at §35, and the latter coming before the *peroratio*. Their impact is heightened by Cicero grammatically adopting the *persona* of his client in order to gain maximum effect. This is the furthest that the advocate can go in subsuming his own personality under that of the defendant. In the *Pro Caelio* and the *Pro Archia* the advocate had emphasized those elements of his character which were congruent with those of his clients, but here he identifies himself so closely with Roscius that he speaks as Roscius, a feeling enhanced by the absence of any transition marking the change of speaker.[128] But such identification is facilitated because Cicero has been so careful elsewhere in the speech to align his own and his client's character closely with that of his client.

This practice of Cicero of identifying himself with his client so that his personal authority might carry as much weight as possible demanded versatility as an orator. It is true that in these three speeches which I have considered he was helped in his self-representation by

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125 Kennedy (1968), 429-432; J. M. May, 'The rhetoric of advocacy and patron-client identification: a variation on a theme', *A.J.P.* 102 (1981), 308.

126 Cic., *Rosc. Am.* 32.

127 Cic., *Rosc. Am.* 145.

128 Nicol in his commentary compares *In Catilinam* 1. 18, the famous passage where Cicero makes the *patria* address Catiline directly, where the orator again speaks as his client - this time the state itself (see J. C. Nicol, *M. Tulli Ciceronis pro Sexto Roscio Amerino oratio*, (Cambridge, 1905), 77). But there is a significant difference since on that occasion Cicero does actually make clear the transition, introducing the change of 'speaker': *quae (patria) tecum, Catilina, sic agit et quodam modo tacita loquitur.*

external factors: he had acted as Caelius' tutor, Archias had been writing a poem commemorating his consulship of 63, and when he defended Roscius he was a newcomer to the courts. But his technique in these speeches is more systematic and thoroughgoing than a simple exploitation of circumstances: he composes each speech to stress the naturalness of his advocacy on behalf of each particular client, and therefore goes far beyond the idea that advocacy is merely an extension of traditional patronage.

But this development also demanded much more of the orator than a simple ability to speak persuasively: he had to be able to play a wide range of characters, and do so convincingly, whether this meant showing sympathy with the urbane youth of the day in the *Pro Caelio*, extolling the virtues of a simpler age, free of corruption in the *Pro Roscio Amerino*, or advertizing his wide knowledge of Greek and Latin literature in the *Pro Archia Poeta*. As Vasaly has argued, such an ability to argue such different - and sometimes contradictory - causes will have been fostered by rhetorical training, which demanded an ability to plead cases *in utramque partem*.[129] In doing this, he might draw upon his own mixed feelings about city and country, and even as a forum regular 'for the defence of Roscius he drew not only on the commonplaces of rhetoric but on his own deep attachment to the rural countryside and to the life of the old municipal towns.'[130] Such claims on Cicero's part could not seem implausible as a real personal statement, but the ability to identify so closely with so many characters over the course of his career[131] must at root derive from the training which he could portray in the *Pro Caelio* as so demanding that it left little or no time for personal pleasures. Therefore this ability to play what appeared to approximate to the traditional role of the patron can be attributed - ironically - to a greater degree of professionalism on the part of Cicero, and perhaps other contemporaries. This is not only a matter of an orator's self-representation, but part of his technical skill. However, this versatility of portrayal is important for the holistic view of the orator-advocate since his forensic audience will have seen him in a variety of guises.

However this quasi-professionalism also facilitated a development in another direction,

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129 Vasaly (1993), 187-88.

130 Vasaly (1993), 188.

131 On this ability traced through further speeches, see May (1981) and in greater detail his *Trials of Character: The Eloquence of Ciceronian Ethos* (North Carolina, 1988).

indeed in perhaps the opposite direction.[132] For Kennedy emphasizes another important strand in the *Pro Roscio*, where Cicero portrays his relationship with his client rather differently: 'Elsewhere we saw that an advocate could gain an advantage from the distinction between himself and his client. He can say things which his client cannot say.'[133] In the *divisio* of his speech, Cicero promises to deal with three distinct subjects in his speech, all of which threaten his client: the actual accusation, the violence of his opponents and their power.[134] The third of these encompasses the figure of Chrysogonus, to whom Cicero turns at §124. But in dealing with Sulla's freedman he takes pains to insist that he is speaking in his own person now, and not that of his client:

> *verum quaeso a vobis, iudices, ut haec pauca quae restant ita audiatis ut partim me dicere pro me ipso putetis, partim pro Sex. Roscio. quae enim mihi ipsi indigna et intolerabilia videntur quaeque ad omnis, nisi providemus, arbitror pertinere, ea pro me ipso ex animi mei sensu ac dolore pronuntio; quae ad huius vitae casum causamque pertinent et quid hic pro se dici velit et qua condicione contentus sit iam in extrema oratione nostra, iudices, audietis.*[135]

This passage helps Cicero in the present case because he can attack Chrysogonus, while at the same time distancing Roscius from that attack. Indeed, the speech from §83 onwards reads much more like a prosecution speech than one for the defence, as he attacks first Magnus and Capito, and then Chrysogonus.[136] Such a technique, whilst useful in the particular circumstances of the case ran the risk of losing sympathy for the defendant. Therefore Cicero is careful to distance his client from the attack on Chrysogonus here, just as he had taken pains to advertize his own unwillingness in earlier turning upon Magnus and

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132 My use of the term 'quasi-professional' is intentional, and I do not wish to suggest that Roman advocates collectively formed a profession in any narrowly defined sense of the word. See below, p. 108.

133 Kennedy (1968), 431.

134 Cic., *Rosc. Am.* 35.

135 Cic., *Rosc. Am.* 129.

136 Stroh (1975), 57-61 argues that Chrysogonus was Cicero's only real target, and that he only attacks Magnus and Capito to deflect the blame from the dangerous Chrysogonus: 'Er attackiert zwar Chrysogonus, den unsympathischen Günstling Sullas; er entlastet ihn aber doch auch zugleich, indem er bei der *retorsio criminis* den größten Teil der Verantwortung auf andere abwälzt' (p. 61).

Capito.[137]

However, the attack on Chrysogonus also serves, in the words of Kennedy as a means of 'broadening the significance of the case', in accordance with Cicero's own later rhetorical teachings.[138] Cicero in the *Orator* was to argue that by broadening the issue to the general level, the specific point was made more forcefully: *latius enim de genere quam de parte disceptare licet, ut quod in universo sit probatum id in parte sit probari necesse.*[139] There is a circular relationship between the general and the specific: the particular case may be shown to exemplify a universal issue - so Roscius' suffering is symptomatic of contemporary injustices at Rome - and the significance of the general issue dictates in its turn that the present occasion is an important one - if Roscius is acquitted a start will have been made in turning Rome's fortunes around.

But this transference of the particular case to a universal level also has important implications for the role of the advocate. For in order to make this leap, the orator is implicitly recognizing that there are bigger and more important issues at stake than simply the present case in which he is involved. And in the passage of the *Pro Roscio*, which I quoted above, Cicero is explicit about these matters which transcend Roscius and are a concern for all (*quae ad omnis arbitror pertinere*). Cicero portrays himself as owing a greater duty than that which he owes his client, and is prepared to explicitly abandon his own case for a sizeable section of the speech: *ego haec a Chrysogono mea sponte remoto Sex. Roscio quaero, primum qua re...*[140] I must emphasize that I agree with Kennedy that this section, whatever Cicero's pronouncements, is intended to add to Roscius' case, but that is not my point. What seems important is that Cicero can represent his role as one which goes beyond the simple interests of his particular clients: as an advocate pleading in the courts he can claim to have a duty towards the state as a whole.

This duty is made explicit at the end of the section where he reverts to the particular

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137 Cic., *Rosc. Am.* 83: *venio nunc eo quo me non cupiditas ducit sed fides. nam si mihi liberet accusare, accusarem alios potius ex quibus possem crescere; quod certum est non facere, dum utrumvis licebit. is enim mihi videtur amplissimus qui sua virtute in altiorem locum pervenit, non qui ascendit per alterius incommodum et calamitatem.* Here Cicero emphasizes that it is his duty towards his client which is making him take this rather unappealing line, but he does not pass up the chance to claim that his own preference for defending people is a nobler pursuit than that of prosecuting.

138 Kennedy (1968), 431. He refers to *De Orat.* 3. 120 and *Orator* 45. At *Brut.* 322 Cicero argues that the ideal orator must be able to generalize the issue in question in a wide variety of ways.

139 Cic., *Orator* 45.

140 Cic, *Rosc. Am.* 130.

case at hand: *verum haec omnis oratio, ut iam ante dixi, mea est, qua me uti res publica et dolor meus et istorum iniuria coegit.*[141] There is a level at which Cicero presents the 'digression' as a personal one (*dolor meus*), but he also has consideration for the *res publica.* Here the disjunction with his client is greatest, for it is at this point that Cicero describes him as *imperitus morum, agricola et rusticus.*[142] Such a rustic figure can have no concern with the material of the 'digression', with its explicit statements about post-dictatorship Rome.[143] Cicero takes a similarly universalizing approach in the peroration of the speech, abandoning Roscius and urging the jurors to think about Rome: *vestrum nemo est quin intellegat populum Romanum qui quondam in hostis lenissimus existimabatur hoc tempore domestica crudelitate laborare.*[144] It is in the jurors' power to reverse this process and save the state.

In addition to this broader duty which is owed by Cicero - and the jurors - there is another level at which the advocate differentiates himself from his client, namely his skill at speaking. Where Cicero was to use rhetorical ability to identify himself with Caelius, in his defence of Roscius his own eloquence - whatever his protestations of inexperience - was in marked contrast to the portrayal of his frightened client. The most famous passage of the whole speech was, and remains, the description of the Roman punishment for parricides, and the orator's praise of the *maiores* for inventing such an appropriately unique punishment.[145] Cicero discusses and quotes part of this passage in his second rhetorical work of the year 46, the *Orator.* The starting-point for his discussion is the claim that he was the first Roman to introduce the Roman public to the delights of the complete rhetorical palette: *ieiunas igitur huius multiplicis et aequabiliter in omnia genera fusae orationis auris civitatis accepimus, easque nos primi, quicumque eramus et quantulumcumque dicebamus, ad huius generis audiendi incredibilia studia convertimus.*[146] According to this portrayal there was an eager audience for the elevated passages of his first performance, and he describes its rapturous reception although he now acknowledges that he may have been a bit carried away.[147]

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141 Cic., *Rosc. Am.* 143.

142 It is striking that it is soon after this, at §145, that Cicero speaks for the second time as if he was Roscius: perhaps he was sensitive to the fact that he should not distance himself too far from his client.

143 See in particular §§136-42.

144 Cic., *Rosc. Am.* 154.

145 Cic., *Rosc. Am.* 71-73.

146 Cic., *Orator* 106.

147 Cic., *Orat.* 107: *quae nequaquam satis defervisse post aliquanto sentire coepimus.*

If so much emphasis is to be laid on the rhetorical performance, the orator becomes a much more important figure in his own right, independent of the client whom he is defending. Moreover, in the speech there are important suggestions that Cicero did feel he was involved in a rhetorical contest with the prosecutor Erucius. I have already noted the passage where he attacks the prosecutor for his lazy approach in making the prosecution, and elsewhere he is even more derogatory about his opponent's capabilities. After a highly stylized section where Cicero compares the character and background of his own client with those of the Titi Roscii, asking the jurors who they think the more likely perpetrators of the crime, he pretends that Erucius would have been unable to show such great restraint as himself, if the case had allowed him the opportunity to elaborate on a similar subject: *haec tu, Eruci, tot et tanta si nanctus esses in reo, quam diu diceres! quo te modo iactares! tempus hercule te citius quam oratio deficeret. etenim in singulis rebus eius modi materies est ut dies singulos possis consumere.*[148] Moreover Cicero asserts that he could do just the same (*neque ego non possum*), since he admits that, however great his modesty, he is unable to concede that Erucius can surpass him in abundance (*copiosius*).

Indeed Cicero asserts that Erucius' prominence as an accuser is not to be ascribed to his skill, but to the absence of many rivals after the proscriptions: *te pugna Cannensis accusatorem sat bonum fecit.* Cicero continues by listing the names of other accusers who have now been lost to the courts, and it is significant that he talks about these men as if they formed a coherent group with an important role to play in society: *nihil enim mali est canes ibi quam plurimos esse ubi permulti observandi multaque servanda sunt.*[149] Earlier in the speech Cicero had discussed the role of these prosecutors in greater detail, arguing that they had an important role to play in discouraging men from committing crime.[150] It was naturally valuable for them to accuse guilty men, and it did not matter if they brought accusations against innocents whom they genuinely believed to be guilty: what was not acceptable was to behave as Erucius was doing, that is bringing a charge against a man who had offered no grounds for being suspected of any crime. Here Cicero develops the comparison of accusers and guard-dogs more extensively, mentioning the dogs and geese on the Capitol in particular. These animals barked (or cackled) if anyone appeared on the Capitol at night: they could not identify who was a thief

148 Cic., *Rosc. Am.* 89.

149 Cic., *Rosc. Am.* 90.

150 Cic., *Rosc. Am.* 56-7.

and who was not, but no-one expected them to. However, Cicero points out, they would not be tolerated for very long if they barked when anyone came up to the Capitol during the day.

This comparison with the animals of the Capitol suggests that Cicero recognized the existence of a group of men who played a quasi-professional role in bringing accusations against other Romans: just as the dogs and geese existed for the sole purpose of warding off intruders, so these accusers had a duty to prosecute wrongdoers.[151] And as a speaker for the defence Cicero seems to have envisaged a similar role for himself, not only as a man who could appeal to the state's broader interests in making the present case, but as someone who was serving the state by defending the innocent within it.[152] For the existence of quasi-professionals like Erucius also brought its own dangers. Not only might they become arrogantly casual in their conduct of the cases, but more worryingly they could offer their services for pay in order to bring malicious prosecutions against innocent individuals.[153] So Cicero portrays Erucius as saying: *ego quid acceperim scio, quid dicam nescio.*[154] By challenging such an established figure of the forum and boasting of his own superior rhetorical ability and moral rectitude, as well as by making an unrestrained attack on Chrysogonus, a freedman of Sulla himself,[155] Cicero could hope to secure his own position within this quasi-professional world and according to the *Brutus* this is what he did succeed in doing, the result of his success being that *non ulla esset quae non digna nostro patrocinio videretur.*[156] Now he became a figure whom men would seek out to act as a defence advocate, like the accuser Erucius a quasi-professional figure.

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151 That this responsibility devolved on such specialist individuals is not surprising in the absence of any state prosecution service.

152 In the *Pro Roscio* Cicero does suggest that there was also a group of men who were ready to act as defence advocates (*patroni*) on a regular basis: *verum ego forsitan propter multitudinem patronorum in grege adnumerer* (§89).

153 Indeed in his list of dead accusers at §90 Cicero includes an Antistius, proscribed by Sulla as a Marian, *quem non modo aetas sed etiam leges pugnare prohibebant.* Perhaps he was debarred from appearing as a result of a conviction for *calumnia* under the *Lex Remmia.*

154 Cic., *Rosc. Am.* 58.

155 Cicero's biographers tend to take this bravery at face-value; so D. Stockton, *Cicero. A Political Biography* (Oxford, 1971), 11: 'For all that, to undertake the case was a courageous act for a young advocate of Marian connections in the face of the power and influence of Chrysogonus.' But it is possible that Cicero was playing up Chrysogonus' importance as a means of enhancing his own bravery in attacking him publicly in court, as Nicol (1905), p. xxiv admits, albeit in a concessive clause: 'his youthful vanity may have tended to exaggeration of all that enhanced the display of his courage.' Moreover, whatever Chrysogonus' status, Cicero is careful to exonerate Sulla personally. For example: *nam Sullam et oratio mea ab initio et ipsius eximia vitus omni tempore purgavit* (§127).

156 Cic., *Brut.* 312.

I use the term 'quasi-professional', since the term professional used on its own might imply that Roman republican advocacy was a profession, and all that this entails. Crook examines this problem in a balanced way, concluding that the word 'profession' can be used provided that it does not mislead with anachronistic connotations.[157] In particular, use of the word 'profession' raises the issue of payment, and in this regard the *Lex Cincia* of 204 B.C. was explicit in outlawing advocates' fees and gifts above a certain limit. However, there is agreement that these prohibitions could have easily been evaded, especially by means of legacies and men such as the Caepasii may have depended upon some form of payment for their livelihood.[158] Therefore, in using 'quasi-professional' I wish to suggest that there was a group of people at Rome who had shared a similar rhetorical education, who spent a great deal of their time in the courts, and who perhaps at least augmented their living through doing so.

157 J. A. Crook, *Law and Life of Rome* (London, 1967), 41-45.

158 J. A. Crook (1967), 90-91.

5. The advocate as professional: the *Pro Cluentio*

As a window on to this quasi-professional world of the forum, the *Pro Cluentio* is an important source. Cicero delivered this speech while defending Aulus Cluentius Habitus in a trial of 66 B.C., a trial for which the background is quite complicated. Cluentius was an *eques* from Larinum, a town 125 miles east of Rome. In 74 B.C. he had successfully prosecuted his stepfather Statius Abbius Oppianicus on the charge of attempting to murder him, that is Cluentius himself, with poison. This trial had become notorious for the suspicion that bribery of the jurors had been carried out by both prosecution and defence. Two years later Oppianicus himself had died, and later still in 66 B.C. Oppianicus' son, who shared his father's *cognomen*, charged Cluentius with the poisoning of his stepfather and two other figures.[159] However, according to Cicero,[160] the prosecution passed very briefly over the actual charge of poisoning and devoted the bulk of its efforts to the earlier trial, alleging that Cluentius had committed 'judicial murder' against Oppianicus Senior by bribing the jury.[161]

Cicero's defence speech is similarly weighted, and he deals directly with the charge of the stepfather's murder and other poisonings only in a small proportion of the speech.[162] He marks the transition to this section clearly, and he emphasizes his brevity: *cognoscite nunc id quod ad vestrum ius iurandum pertinet, quod vestri iudici est, quod vobis oneris imposuit ea lex qua coacti huc convenistis, de criminibus veneni, ut omnes intellegant quam paucis verbis*

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159 Henceforth I refer to the father as Oppianicus Senior, and to his son as Oppianicus Junior.

160 This is an important *caveat*, since Cicero may have chosen to portray the prosecution speech in this light so that he could fight on the most favourable ground. Classen in particular has focused on Cicero's sleight of hand in conducting this case: 'Thus, in a most extraordinary and impressive piece of advocatory art, Cicero endeavours to obtain a favourable judgment for his client by almost entirely ignoring the issue which the court has been set up to decide, while emphasizing the essential functions of the laws, and by misleading the members of the court as much as possible - a fact he later freely admitted' (C. J. Classen, 'Cicero, the Laws and the Law-courts', *Latomus* 37 (1978), 610). This thesis is developed more fully in the chapter entitled 'La riuscita diversione dell'accusa', in C. J. Classen, *Diritto, retorica, politica. La strategia retorica di Cicerone* (Bologna, 1998) [an extended and corrected Italian translation of his *Recht-Rhetorik-Politik. Untersuchungen zu Ciceros rhetorischer Strategie* (Darmstadt, 1985)], pp. 31-121.

161 But the prosecution may have argued that the charge of bribing the jury was relevant to this court on the basis of the law quoted by Cicero at §148, despite the latter's protestations at §2. Indeed the issue of the precise charge has generated a great deal of controversy. Stroh (1975), 228-42, for one, has argued that Cluentius was actually charged with both poisoning and bribery of jurors, but the majority of scholars take the other view: see for example Classen (1978), 604-10; P. A. Brunt, 'Patronage and Politics in the Verrines', *Chiron* 10 (1980) [= Brunt (1980b)], p. 287, n. 74.

162 At §160 Cicero apologizes to the jurors for spending so long on the question of the allegedly corrupt trial, assuring them that he will spend little time on the actual charges: *atque ut existimetis me necessario de his rebus de quibus iam dixerim pluribus egisse verbis, attendite reliqua; profecto intellegetis ea quae paucis demonstrari potuerint brevissime esse defensa.*

haec causa perorari potuerit.[163] And the orator is as good as his word, dealing with these charges only in §§164-87 in a speech of over two hundred sections in total.

Since so great a proportion of the speech is devoted to previous legal processes and the problem of corruption in the courts it has a lot to say about Roman forensic practice. What is immediately striking is that it depicts a world where the advocates dominate the courts. Apart from Cicero as speaker for the defence, Titus Attius had conducted the prosecution on behalf of Oppianicus Junior. In the earlier trial of Oppianicus Senior in 74 B.C., the tribune Lucius Quinctius had been the defence advocate, whilst Publius Cannutius had conducted the prosecution.[164] But Cicero also refers to the prosecutions of Scamander and C. Fabricius which were preliminary to the trial of Oppianicus Senior, and mentions other trials, in which we find as advocates two sets of brothers, the Caepasii and the Cominii, as well as further appearances by Cannutius and Cicero himself.[165]

Cicero refers to all these men in his historical account of Roman oratory in the *Brutus*, and it is clear that, with the exception of Lucius Quinctius, they all came from a non-senatorial background.[166] Whilst most of them remained *equites*, the two Caepasii showed what could be achieved by hard work, albeit on a less spectacular scale than Cicero himself: *eodem tempore C. L. Caepasii fratres fuerunt, qui multa opera, ignoti homines et repentini, quaestores celeriter facti sunt, oppidano quodam et incondito genere dicendi.*[167] Although Cicero is equally dismissive of their rhetorical ability in the *Pro Cluentio*, these men seem to have pursued what amounted to a career at the Bar, offering their services to any man who applied for their help, and he calls them *homines industrios atque eo animo ut quaecumque dicendi potestas esset data in honore atque in beneficio ponerent.*[168] The pressures of such continuous work in the Roman

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163 Cic., *Pro Cluentio* 164.

164 On Quinctius acting as defence advocate for Oppianicus Senior see §74; on Cannutius prosecuting on behalf of Cluentius see §29.

165 Cannutius prosecutes Oppianicus' accomplices, Scamander and Gaius Fabricius, on behalf of Cluentius (*Clu.* 50, 58); Cicero appears as defence advocate for Scamander (*Clu.* 50), and in 69 B.C. for the aedile's clerk, Decimus Matrinius (*Clu.* 126); Gaius and Lucius Caepasius defend Gaius Fabricius (*Clu.* 57); Publius and Lucius Cominius prosecute Gaius Aelius Staienus, one of the jurors in the trial of Oppianicus Senior (*Clu.* 100). In addition, there is a reference to a man called Ennius, whom Cicero accuses of specializing in false prosecutions. In bringing these Cicero envisages him employing the services of an advocate (*Clu.* 163).

166 Cannutius (Cic., *Brut.* 205); the Caepasii (*Brut.* 242); Attius (*Brut.* 271); Quinctius (*Brut.* 223); Publius Cominius (*Brut.* 271).

167 Cic., *Brut.* 242.

168 Cic., *Clu.* 57. Compare Horace's description of mediocre lawyers at *Ars poetica* 469-72: *consultis iuris et actor| causarum mediocris abest virtute diserti| Messallae, nec scit quantum Cascellius Aulus,| sed tamen in pretio est.* It is important to note that Horace does at least accept that such men do serve a useful function.

courts are well illustrated by a passage of the *De Oratore*.[169] Here Cicero makes Antonius criticise advocates who are keen to advertize the popularity of their services by taking on too many cases at the same time, and who therefore fail to master the facts of the different cases successfully: better to concentrate on one case at a time, and ensure that you conduct each one satisfactorily.

Cicero's own record in the early stages of his career reinforces this picture of a quasi-professional body of advocates, who were sought out by complete strangers to plead their causes. While David had viewed this development as an evolutionary one from the traditional form of patronage, one of his tables demonstrates that Cicero seems to have undertaken all but two of his known cases before 64 B.C., not as the result of any personal ties with the client, but because they enlisted his skills, presumably as an up-and-coming talent.[170] This does not mean that Cicero was not winning his briefs through his own contacts, as young barristers do today, but it emphasizes how, as a *novus homo*, he could exploit his well-rehearsed rhetorical talents to flourish in the world of the forum. Such a system is far removed from that of the traditional *patronus*. Moreover, the rhetorical skill of the advocates and their regular presence in the courts offered new opportunities with regard to the arguments which they might employ, and Cicero's defence of Cluentius provides ample evidence of these changes.

One of the most important themes of the speech as a whole is Cicero's insistence that a law-court must maintain much higher standards of evidence and proof than those practised by speakers in public meetings, and so should ignore any existing prejudice that existed against his client, Cluentius.[171] As a culmination for this impassioned plea, Cicero refers to the court, and his own role within it, as offering Cluentius a haven and a refuge from ill-fortune.[172]

Such an appeal must have carried much more weight coming from Cicero who was a regular pleader and was seen in the courts on a frequent basis. However this was a sensitive issue for Cicero since, in his speech against Verres, he had denounced the corruption of the senatorial courts, and Attius, the prosecutor in the present trial, had quoted a particularly embarrassing assertion from that speech: *cognoscet ex me populus Romanus quid sit... quod*

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169 Cic., *De Or.* 2. 101.

170 David (1992), 224.

171 For example Cic., *Clu.* 5. I return to consider this theme in more detail in the next section of this chapter.

172 Cic., *Clu.* 7: *quam ob rem magna me spes tenet, si quae sunt in causa explicare atque omnia dicendo consequi potuero, hunc locum consessumque vestrum, quem illi horribilem A. Cluentio ac formidolosum fore putaverunt, eum tandem eius fortunae miserae multumque iactatae portum ac perfugium futurum.*

inventus est senator qui, cum iudex esset, in eodem iudicio et ab reo pecuniam acciperet quam iudicibus divideret, et ab accusatore ut reum condemnaret.[173] This poses a notable difficulty for Cicero in the present case, since while he admits that bribery had occurred in the trial of Oppianicus Senior, he is insistent that the bribery was attempted by Oppianicus, and he is extremely careful to avoid any mention of the possibility that both the prosecution and the defence were attempting to subvert the course of justice.[174] Although he admits the problem of his own inconsistency, Cicero is nevertheless bullish in his dismissal of this attack. It is here that he insists that an advocate's job was not to advance his own personal opinions, but those arguments which best support his client's case:

> *sed errat vehementer, si quis in orationibus nostris quas in iudiciis habuimus auctoritates nostras consignatas se habere arbitratur. omnes enim illae causarum ac temporum sunt, non hominum ipsorum aut patronorum. nam si causae ipsae pro se loqui possent, nemo adhiberet oratorem. nunc adhibemur ut ea dicamus, non quae auctoritate nostra constituantur sed quae ex re ipsa causaque ducantur.*[175]

It is clear that Cicero is deploying this argument to suit the particular circumstances of the case. On this occasion he is trying to explain the inconsistency of his own pronouncements, but it remains significant that he can express the advocate's duties in this way, and it represents an important departure from the idea of the *patronus* as a figure who deployed his own authority in order to secure the victory of his client. He supports this interpretation of his role with an anecdote about Lucius Licinius Crassus while he was defending Cn. Plancus.[176]

The prosecutor M. Brutus had highlighted Crassus' personal inconsistency in the past by having sections of two of his earlier speeches read out in which he expressed contrasting sentiments about the senate. It is not entirely clear what bearing this had upon the case in hand, but Crassus replied by insisting that his contradictory opinions were dictated by differing circumstances,[177] and retaliated by reading from treatises written by Brutus' father which

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173 Cic., *In Verrem* 1. 38-39.

174 Cic., *Clu.* 64: *unum quidem certe nemo erit tam inimicus Cluentio qui mihi non concedat, si constet corruptum illud esse iudicium, aut ab Habito aut ab Oppianico esse corruptum; si doceo non ab Habito, vinco ab Oppianico; si ostendo ab Oppianico, purgo Habitum.*

175 Cic., *Clu.* 139.

176 Cic., *Clu.* 140-41.

177 Cic., *Clu.* 141: *itaque in respondendo primum exposuit utriusque rationem temporis ut oratio ex re et ex causa habita videretur.*

displayed how much of his inheritance Brutus had wasted. This resort to witticism again seems rather inconsequential, but Cicero's conclusion is important: *moleste enim (Crassus) fortasse tulerat se in eis orationibus reprehensum quas de re publica habuisset, in quibus forsitan magis requiratur constantia. ego autem illa recitata esse non moleste fero.*[178] Whereas Crassus ought to have been consistent in speaking about the state, Cicero has no such qualms in his own case since on both occasions he had been acting as an advocate in the courts. However, it should be noted that in raising this point, the prosecutor clearly hoped that the jurors would be prepared to take the views which Cicero had expressed in the earlier trial to be his own. Therefore, Cicero is putting forward what must have been a contestable thesis, but in doing so he attempts to distinguish the role of the advocate not only from that of the traditional *patronus*, but from that of the orator speaking in the senate or at *contiones*.

This is not to say that Cicero does not want his own authority and affable character to carry some weight with the jurors in the present trial, a point which Nisbet has made in describing Cicero's 'easy and confiding manner'.[179] It is in this vein that he admits his own earlier error in following popular prejudice against Cluentius: *quod si velim confiteri me causam A. Cluenti nunc cognosse, antea fuisse in ea opinione populari, quis tandem id possit reprehendere?*[180] However this does not detract from the significance of Cicero's earlier assertion, and Cicero's admission of his own error serves to reinforce the idea that the advocate's own opinion is not important. For he presents the job of the pleader as distinct from his own personal authority: his task is merely to put the particular case which he is making in the best possible way, and so he can set out contradictory arguments in different cases. This closely approaches the role expected of a modern advocate, and Pannick sets out the duty of the latter in similar terms: 'He earns his living propounding views to which he does not necessarily subscribe, and which are sometimes anathema to him, on behalf of clients whose conduct may not interest him, will often offend him, and can occasionally cause him outrage.'[181]

Cicero has already painted a similar picture earlier in the speech. For he had to suffer a second embarrassment in this case, having previously acted as the unsuccessful defence

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178 Cic., *Clu.* 141-42.

179 Nisbet (1965), 59.

180 Cic., *Clu.* 142.

181 D. Pannick, *Advocates* (Oxford, 1992), 1. He also quotes Lord Macmillan: '(The advocate is there to) present to the court all that can be said on behalf of his client's case, all that his client would have said for himself if he had possessed the requisite skill and knowledge.' (H. P. Macmillan, 'The Ethics of Advocacy', in *Law and Other Things* (Cambridge, 1937), 181.)

counsel for the freedman Scamander who was supposed to have purchased the poison for Oppianicus Senior's attempt upon Cluentius' life. Of course, now that Cicero is speaking for Cluentius it is in his interest to admit that Scamander's case was weak, but it is significant that he can say that his duty was to make the best possible case for Scamander, though he himself had little faith in his own arguments.[182] Again there is a close parallel with the role of the modern advocate: 'The advocate is entitled to take all possible points, bad as well as good. He has no right "to set himself up as a judge of his client's case".'[183]

Particularly noteworthy is Cicero's description of his own anxieties at speaking: *quotienscumque dico, totiens mihi videor in iudicium venire non ingeni solum sed etiam virtutis atque offici.*[184] His two concerns are that he should be talented enough to put his case well, and that he should be dutiful enough towards his client to employ the full range of those talents. That is, he is concerned with his professional authority as an advocate, not so much with the personal authority which he might display as *patronus* on behalf of his *cliens*. And just as he had been eager to make the best possible case on Scamander's behalf, so he insists that he will not let anything obstruct him from defending Cluentius to the best of his ability in the present trial. In this way he expresses regret to Oppianicus Junior that he has to make mention of the conviction of his father: *abs te peto, Oppianice, ut me invitum de patris tui causa dicere existimes adductum fide atque officio defensionis.*[185] Similarly he is ready to criticize the actions of the censors for stigmatizing two of the jurors who had sat in the trial of Oppianicus Senior, although he claims one of those censors, Cn. Cornelius Lentulus, as a friend: *facile hoc, iudices, impetrabo ut, quam ipse adhibere consuevit in amicorum periculis cum fidem et diligentiam tum vim animi libertatemque dicendi, ex hac mihi concedat ut tantum mihi sumam quantum sine huius periculo praeterire non possim.*[186] Upon taking a case one's private

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182 Cic. *Clu.* 51. Compare also his description of the advocate's role at *Off.* 2. 51: *iudicis est semper in causis verum sequi, patroni nonnumquam veri simile, etiam si minus sit verum, defendere.* We might also compare Cicero's later pride in winning Cluentius' acquittal in the present case through deception of the jurors (Quintilian 2. 17. 21). Quintilian refers to the matter in his discussion of how it is possible for the orator to persuade his audience with bad arguments while himself remaining unpersuaded.

183 Pannick (1992), 92-3, quoting T. Humphreys, *Criminal Days* (London, 1946), 105. There is a striking contrast here with the line which Cicero takes in his earliest work on rhetorical theory, the *De inventione*, where he ascribes the origins of harmful rhetoric to advocates who were prepared to sacrifice the interests of truth: *quibus in controversiis cum saepe a mendacio contra verum stare homines consuescerent, dicendi assiduitas induit audaciam, ut necessario superiores illi propter iniurias civium resistere audacibus et opitulari suis quisque necessariis cogeretur* (*De inv.* 1. 4).

184 Cic., *Clu.* 51.

185 Cic., *Clu.* 10.

186 Cic., *Clu.* 118.

obligations had to be temporarily sacrificed to the greater duty owed to one's client.[187]

However, as in the *Pro Roscio*,[188] this duty did not preclude Cicero from distancing himself from his client at certain times.[189] He does this in order to raise a point of law which, so he alleges, Cluentius had asked him to avoid as a dishonourable argument. The point was that Cluentius could not legally be accused of the judicial murder of Oppianicus Senior since he was an *eques*, while the law held only senators responsible under this charge.[190] Cicero asserts that he has restrained himself from this line out of deference towards his client's wishes, but, as a matter of personal pride, he is not prepared altogether to drop arguments over the legal minutiae:

> *hic (Cluentius) sua putat interesse se re ipsa et gesto negotio, non lege defendi; ego autem mea existimo interesse me nulla in disputatione ab Attio videri esse superatum... neque hoc loco pro te dico, sed ea quae a me desiderari arbitror non relinquam.*[191]

It is clear that Cicero, by emphasizing his independence, is again trying to have the best of both worlds: he can use the argument, while maintaining his client's good honour. However it is important that he can talk about - and exploit - his own reputation as an independent performer, irrespective of his ties to the client.[192]

This separation also meant that the advocate could make the plea that he owed a broader

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187 But Cicero does say that he should do his utmost to avoid causing offence if this did not obstruct the defence: *a me tamen, ut aequum est, omnia caute pedetemptimque dicentur ut neque fides huius defensionis relicta neque cuiusquam aut dignitas laesa aut amicitia violata esse videatur* (§118).

188 Discussed above, see pp. 102-4.

189 Similarly in defence of Milo, he makes an appeal to the jury's pity, although his client is unwilling to make such a plea himself (*Mil.* 92). In the present case, apart from the instance which I discuss above, Cicero also exploits this differentiation between himself and his client in making his virulent attacks upon Cluentius' mother, Sassia: it would perhaps have appeared less acceptable if the son had been making these criticisms in person. At *De amic.* 57 Cicero explicitly recognizes this greater licence when acting on behalf of one's friends, rather than speaking for oneself.

190 This was originally a Gracchan law which sought to punish senators who tried to frame innocent individuals rather than one simply directed against jurors taking bribes. See D. Stockton, *The Gracchi* (Oxford, 1979), 122-26 and U. Ewins, '*Ne Quis Iudicio Circumveniatur*', *J.R.S.* 50 (1960), 94-107.

191 Cic., *Clu.* 149.

192 Cicero's modern biographers also tend to give particular weight to this section of the speech, emphasizing that it enabled the orator to set out his own patronage of the *equites*, while hinting for the first time at his idea of a *concordia ordinum* between the senate and *equites* (§152): see E. Rawson, *Cicero* (London, 1975), 53-54, M. Gelzer, *Cicero* (Wiesbaden, 1969), 58, and D. Stockton (1971), 62. However, this broader motivation, if it does represent Cicero's thinking, does not detract from the significance of the manner in which he presents his role as an advocate in the present case.

allegiance than the obvious one towards his client. For in the same section, he is explicit about his 'profession': *non enim mihi haec causa sola dicenda est; omnibus hic labor meus propositus est quicumque hac facultate defensionis contenti esse possunt.* He has to think of prospective clients, whom he must attract by his performance in the present case, but Cicero can make this same point in a more attractive way, advertizing his duty to the Roman people at large as a justification for introducing the legal niceties: *hic nunc est quiddam quod ad me pertineat, de quo ante dixi, quod ego populo Romano praestare debeam, quoniam is meae vitae status est ut omnis mihi cura et opera posita sit in hominum periculis defendendis.*[193]

Cicero proceeds to assert that he will personally defend anyone else who, as a non-senator, is unfairly charged under this law. This is an impressive pledge for an advocate to make since it suggests that he is a true servant of other citizens who are struggling to achieve justice. Unlike modern barristers there was no obligation for Roman advocates to take on any briefs which they received, but Cicero's promise does approach the idea that the advocate owed some duty to his fellow citizens.[194] The pledge does serve the rhetorical needs of Cicero's argument since, by a kind of *praeteritio*, it allows him to make the legal point while distancing Cluentius from it, but that does not detract from the fact that he feels able to make the promise. Moreover Cicero is better able to make it because he does appear regularly in court, offering his rhetorical services to those who approach him.[195]

But more specifically than a general duty towards individual citizens, Cicero can attach himself very closely to the service of the law itself. This issue is raised in his impassioned defence of the principle of law in §§146-7. Magistrates are ministers of the law, judges its interpreters and all its slaves (*servi sumus*). Advocates, like judges and the clerks of the court are the visible apparatus of the law: *opinor haec omnia lege fieri totumque hoc iudicium, ut ante*

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193 Cic., *Clu.* 157.

194 The idea that a modern barrister must accept any brief for which he or she is competent is referred to as the 'cab-rank rule'. R. Du Cann, *The Art of the Advocate* (London, 1993), 37: 'The barrister is bound to accept any brief which will take him into the courts in which he professes to practise.' See also Pannick (1992), 135-7. On Cicero's readiness to defend all his fellow-citizens, compare the opening of *Rab. Perd.* where he claims that he did not need to justify taking on cases (although he proceeds to explain his decision to defend Rabirius).

195 We might also compare the way in which he had taken up the brief of Scamander, when, according to Cicero, he was responding to pressure from Fabricius' fellow-townsmen of Aletrium (*Clu.* 49-50). But it is important to note that even Antonius in the *De Oratore* is made to excuse his defence of his friend Norbanus by using an *a fortiori* argument, which depends on the fact that he too had represented men previously unknown to him: he asked that he should be permitted to defend a close friend as advocate who *saepe alienissimis a me, sed meis tamen civibus saluti existimarer fuisse* (2. 200).

dixi, quasi mente quadam regi legis et administrari.[196] While this certainly does not amount to the duty towards a court which a modern barrister owes, it approximates to the idea that, out of public interest, the advocate must act as 'a helper in the administration of justice', as Lord Justice Singleton put it.[197] Cicero emphasizes that the laws dictate the framework within which the advocate must operate in the fulfilment of his obligation towards his client. In the light of the fact that Cicero feels able to make these arguments, Crook perhaps goes too far in insisting that the Roman advocate spoke only for one master, the client.[198]

In the *De Officiis* Cicero is clear about the gratitude and reputation that can be won by a pleader offering himself as a guardian for the needier members of society, who can see the advocate as a champion of their cause: *si opulentum fortunatumque defenderis, in uno illo aut, si forte, in liberis eius manet gratia; sin autem inopem, probum tamen et modestum, omnes non improbi humiles, quae magna in populo multitudo est, praesidium sibi paratum vident.*[199] And he can be explicit about such a role in a political context. A striking testimony is provided in his *Sixth Philippic*, delivered before the people during Cicero's final crisis against Antony: the orator refers to his continued forensic practice as a token of his goodwill towards the people - he has expended the same labour in the forum, after his honours were won, as he did when seeking them. How could he display greater gratitude towards the people than this?[200]

It would be impossible for Cicero to make this appeal to the Roman people, if they saw his forensic practice merely as an extension of the personal relationships of traditional patronage. Advocacy of this type did continue to play a role, although importantly altered by the increasing 'professionalism' of the pleaders - I have noted such advocacy in the *Pro Caelio*, the *Pro Archia* and the *Pro Roscio* - nor do I wish to represent Roman advocates as the exact equivalents of modern barristers. However the arguments which Cicero deploys in the *Pro Cluentio* do depend for their efficacy upon the perceived existence of a skilled, quasi-professional, group of advocates.

It is important to recognize that these arguments, in the same way as those which suggest the more traditional type of advocacy, are usually introduced as the particular circumstances of Cicero's case demand. Indeed, the very fact that he develops at such length

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196 Cic., *Clu.* 147.

197 Lord Justice Singleton in *Beevis v. Dawson* (1957) in *Law Reports 1: Queen's Bench Division* 195.

198 J. A. Crook (1995), 163.

199 Cic., *Off.* 2. 70.

200 Cic., *Phil.* 6. 17. On this, see the next chapter, p. 195.

these arguments about the orator's role implies that the precise nature of advocacy was constantly being renegotiated. As in his defence of Caelius, Cicero could exploit his relationship with the client in order to emphasize his role as patron and draw upon his own authority for the client's benefit; but on other occasions, particularly when no such ties existed, he could stress a more disinterested professionalism. It was on the basis of this professionalism that Cicero, and perhaps other advocates, did seek to establish an independent authority centred upon their contribution to the fair working of the Roman laws and the legal rights of individual citizens. Therefore, in the rest of this chapter I turn to consider the way in which Cicero depicts this working of Roman law, and hence the context in which his own performance takes place.

6. *Illa definitio iudiciorum aequorum*

As I mentioned in the preceding section,[201] one of the major themes of the *Pro Cluentio* is Cicero's insistence that the judgments made in a court of law should be qualitatively different from the opinions of ordinary men. In particular he stresses that there can be no room for prejudice against his client based on the mistaken belief that he had bribed the jury at his step-father's trial, since prejudice is something *quae procul ab iudicio remota est, quae contionibus seditiose concitatis accommodatior est quam tranquillis moderatisque iudiciis.*[202] Cicero maintains this distinction throughout the proemium of the speech, insisting that more rigorous standards of proof are required than in *contiones*: *denique illa definitio iudiciorum aequorum quae nobis a maioribus tradita est retineatur, ut in iudiciis et sine invidia culpa plectatur et sine culpa invidia ponatur.*[203]

The emphasis which Cicero places on this disjunction at the start of the speech implies that he was concerned that the jurors would be prejudiced into finding Cluentius guilty, but this does not detract from the importance of his argument: he was able to insist to the jurors that they were vested with a task which required a readiness to disengage from the rumours of the world in which they lived. This means that the court offers a significant refuge for the accused man, in which he will be able to clear his name (*portus ac perfugium*),[204] but it can also be represented as having an important role for the safety of the community at large. Prejudice is portrayed as a scourge affecting the *populus* as a whole and which the court can put an end to: *agitur enim in criminibus A. Cluenti proprium periculum, in invidia causa communis.*[205]

Cicero is not content to distance judicial decisions only from the popular opinions of the forum: even decisions taken by the censors do not carry comparable authority. Therefore, in urging the jurors to discount the censorial decision of 70 B.C. to stigmatize two of the jurors of the Oppianicus trial, he states: *hic illud primum commune proponam, numquam*

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201 See p. 111.

202 Cic., *Clu.* 2.

203 Cic., *Clu.* 5.

204 Cic., *Clu.* 7.

205 Cic., *Clu.* 3. Compare §4: *non est nostri ingeni, vestri auxili est, iudices, huius innocentiae sic in hac calamitosa fama quasi in aliqua perniciossima flamma atque in communi incendio subvenire.* This is again a means of enlarging the issue from the specific to the general (see above, pp. 104-5), but this does not detract from the import of the argument.

animadversionibus censoriis hanc civitatem ita contentam ut rebus iudicatis fuisse.[206] Cicero proceeds to adduce examples drawn from Roman history to show that censorial decisions could always be reversed or at least ignored by the people, the courts, other magistrates and subsequent censors.[207] Particularly suggestive is Cicero's admonition to the jurors that they should not assume his client's guilt as a result of the censors' decision:

> *videte quid agatis ne in unum quemque nostrum censoribus in posterum potestatem regiam permittatis, ne subscriptio censoria non minus calamitatis civibus quam illa acerbissima proscriptio possit adferre, ne censorium stilum cuius mucronem multis remediis maiores nostri rettuderunt aeque posthac atque illum dictatorium gladium pertimescamus.*[208]

Cicero warns the jurors not to make the censors into figures as fearful for the citizens as kings, the authors of the proscriptions or dictators, but it was these same powers which he claimed were entrusted to the courts, for judgments made here could destroy a man's subsequent career.[209] It was this power which dictated that a superior level of proof was required, and which determined that the correct procedures should be followed. At the most basic level the possibility of bribery threatened the fair operation of justice, which was Cicero's point when he commented unfavourably on Oppianicus Senior's trial in his prosecution of Verres, and which enabled the defence advocate on that occasion, Lucius Quinctius, to argue that bribery threatened the survival of the state: *accepisse pecuniam iudices ut innocentem reum condemnarent tribunus plebis clamitabat; agi fortunas omnium dicebat; nulla esse iudicia; qui pecuniosum inimicum haberet, incolumem esse neminem posse.*[210]

More importantly Cicero insists that the court must operate within the remit of the laws. He enters upon this argument in response to Attius' contention that it was unfair for senators to be exposed to the force of the law of 'judicial murder' while *equites* were exempt.[211] Attius had presumably contended that if Cluentius had been involved in bribing the court, he should

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206 Cic., *Clu.* 119.

207 Cic., *Clu.* 119-22.

208 Cic., *Clu.* 123.

209 Cic., *Clu.* 119: *quod si illud iudicium putaretur, ut ceteri turpi iudicio damnati in perpetuum omni honore ac dignitate privantur, sic hominibus ignominia notatis neque ad honorem aditus neque in curiam reditus esset.*

210 Cic., *Clu.* 77.

211 Cic., *Clu.* 145. On this law, see U. Ewins (1960), and above, p. 115, n. 190.

be open to the charge, even if this contradicted the letter of the law.[212] Arguing for the spirit of the law against a literal interpretation was a recognized rhetorical technique,[213] but Cicero rebuts it by insisting on the precise application of the laws, and an encomium of the laws' role within the state, which he insists is the basis for a stable state: *circumspicite omnis rei publicae partis; omnia legum imperio et praescripto fieri videbitis.*[214]

Those who participate in a court's activity - president, advocates and jurors - are the servants of the laws, and they must not take it upon themselves to extend or alter the sphere within which these laws operate:

> *simul et illud quam sit iniquum cogitemus, populum Romanum aliud nunc agere, vobis rem publicam et fortunas suas commisisse, sine cura esse, non metuere ne lege ea quam numquam ipse iusserit et quaestione qua se solutum liberumque esse arbitretur per paucos iudices astringatur.*[215]

The Roman people can be said to have entrusted a significant duty to the courts, but it remains the people's prerogative to pass new laws or amend old ones (*lege ea quam numquam ipse iusserit*).[216]

If we return briefly to the *Pro Roscio Amerino*, we find a different emphasis since the circumstances of that case do not dictate that Cicero insists upon the jurors' respecting the letter of the law. However, the idea that the Roman people have entrusted the courts with an important duty remains a major theme. In the *divisio* the orator contends that the jurors have been entrusted with the responsibility of putting an end to violence and tyrannical power within the state.[217] The present circumstances offer an overturning of the natural order since,

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212 So Cicero asserts at §160: *haec si T. Attius aut cognovisset aut cogitasset, profecto ne conatus quidem esset dicere, id quod multis verbis egit, iudicem quod ei videatur statuere et non devinctum legibus esse oportere.* It seems likely, however, that this was not one of the explicit charges, but introduced by Attius at most in order to colour the jurors' views of Cluentius.

213 Cicero himself was happy to use this argument. See, for example, *Pro Caecina* 54ff.

214 Cic., *Clu.* 147. See also the passages which I discussed at the start of this chapter.

215 Cic., *Clu.* 155.

216 One can compare the evidence provided by the surviving epigraphy of the Late Republic, where it is recorded that jurors in those *quaestiones* set up by plebiscites were made openly to swear obedience to the provisions of the particular law. An example is provided by the *Lex Latina Tabulae Bantinae* (M. H. Crawford (ed.), *Roman Statutes* (London, 1996), no. 7). At ll. 18-19, the inscription records what the jurors must swear: *[seese quae ex h(ace) l(ege) oport]ebit facturum neque sese advorsum h(ance) l(egem) facturum scientem d(olo) m(alo) neque seese facturum neque intercessurum [esse q(uo) h(aece) l(ex) minus setiusve fiat.]*

217 Cic., *Rosc. Am.* 36. Also see §91, where Cicero is noting the role of accusers in repressing crime, asserting that while the state exists there will be courts: *dum civitas erit, iudicia fient.*

according to Cicero, the prosecution is attempting to use the court to complete what they had failed to achieve by violence.[218] He appeals to them to prevent the outbreak of open violence,[219] and promises to explain why the safety of the state is threatened.[220] In the peroration (§§150-54) he reprises these themes, insisting that the jurors possess the power to restore order and save the state: *homines sapientes et ista auctoritate et potestate praeditos qua vos estis ex quibus rebus maxime res publica laborat, eis maxime mederi convenit.*[221]

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218 Cic., *Rosc. Am.* 8.

219 Cic., *Rosc. Am.* 12.

220 Cic., *Rosc Am.* 14: *ab initio res quem ad modum gesta sit vobis exponemus, quo facilius et huius hominis innocentissimi miserias et illorum audacias cognoscere possitis et rei publicae calamitatem.*

221 Cic., *Rosc. Am.* 154.

7. The orator and the courts in the *Pro Murena*

Since Cicero invested the courts with such an important, albeit circumscribed, role within the state, his own responsibilities in assisting the legal process were also significant. If the jurors were to make the right decision, it was up to him to put his client's case to them in the most persuasive way, and therefore he could claim in a very real sense to be a useful servant of the Roman state. I now turn to consider a later speech in which some of these ideas gain a sharper focus as a result of Cicero's activities during his consulship, and where the weight of his appeal to the jurors to save the state takes a rather different form. I begin by considering the way in which he portrays the role of the jurors and the court as a whole, before examining how he presents that of the advocates.

During Cicero's consulship in 63 B.C. Lucius Licinius Murena, who had been elected to the consulship for the following year, was prosecuted by Cato and Servius Sulpicius Rufus for *ambitus*. Cicero appeared in court to defend his designated successor,[222] delivering the *Pro Murena*. The trial occurred between 8th November and 3rd December, when Catiline had been driven from Rome but was still at large in Italy, and the final crisis in the capital had not yet been reached. Unsurprisingly the speech makes great play of the problems faced by the state, and Cicero adds the weight of his own authority as consul to support his prospective successor. In particular he employs the technique which I outlined at the start of this chapter, presenting himself and Murena as similar characters, both of whom had a role to play as saviours of Rome:

> *hi et integrum consulem et bonum imperatorem et natura et fortuna cum rei publicae salute coniunctum deici de urbis praesidio et de custodia civitatis vestris sententiis deturbari volunt. quorum ego ferrum et audaciam reieci in campo, debilitavi in foro, compressi etiam domi meae saepe, iudices, his vos si alterum consulem tradideritis, plus multo erunt vestris sententiis quam suis gladiis consecuti.*[223]

Just as Cicero had saved the state over the past year, so he hints that Murena is the man with all the qualities (*bonum imperatorem*) to maintain the fight against Catiline. As Stockton suggested, it is here that the weight of Cicero's argument lies: 'National security demanded that

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222 Hortensius and Crassus shared the defence with him.

223 Cic., *Pro Murena* 79.

Murena should assume his consulship on 1 January.'[224] 'These men' (*hi*) who would be delighted with Murena's conviction are Catiline's supporters within the city who, Cicero says, have been left behind as an ambush, and he compares them with the most famous of all urban ambushes, in the process taking the opportunity to remind them of his own services as consul: *intus, intus, inquam, est equus Troianus; a quo numquam me consule dormientes opprimemini.*[225] Just as Troy fell, so Cicero insists that Catiline is aiming at the overthrow of Rome: *nolite arbitrari, mediocribus consiliis aut usitatis viis eos uti. non lex improba, non perniciosa largitio, non auditum aliquando aliquod malum rei publicae quaeritur.*[226]

Again the structure of Cicero's peroration is suggestive. The direct appeal to the jury runs from §83 to §90, and within this section of the speech the advocate does attempt to win pity for his client's plight in a traditional manner:

> *modo maximo beneficio populi Romani ornatus fortunatus videbatur, quod primus in familiam veterem, primus in municipium antiquissimum consulatum attulisset; nunc idem in squalore et sordibus, confectus morbo, lacrimis ac maerore perditus vester est supplex, iudices, vestram fidem obtestatur, vestram misericordiam implorat, vestram potestatem ac vestras opes intuetur.*[227]

This resembles a traditional *miseratio*, emphasizing to the jurors how the defendant has been plunged from the greatest pinnacle of achievement to clothes of mourning in a short period of time, and the appeal highlights once more the jurors' importance, since the defendant is a suppliant (*supplex*) to their power (*potestas*). But even in the course of making this appeal Cicero is careful to introduce those points which he has claimed elsewhere demand an acquittal. For the consulship which he seeks is no honorific sinecure: *invidiam vero his temporibus habere consulatus ipse nullam potest; obicitur enim contionibus seditiosorum, insidiis coniuratorum, telis Catilinae, ad omne denique periculum atque ad omnem iniuriam solus opponitur.*[228] With this argument Cicero inverts the traditional form of *miseratio*, by portraying not Murena, but the state as the real victim: he has lost only a source of hardship, Rome will

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224 D. Stockton (1971), 122.
225 Cic., *Mur.* 78.
226 Cic., *Mur.* 80.
227 Cic., *Mur.* 86.
228 Cic., *Mur.* 87.

lose her saviour.

Indeed the personal appeal to pity Murena's plight (§§86-89) is sandwiched within a broader appeal on behalf of the state as a whole, and Cicero is explicit about this two-fold approach: *quae cum ita sint, iudices, primum rei publicae causa... moneo... hortor... obtestor... deinde ego idem et defensoris et amici officio adductus oro atque obsecro, iudices...*[229] It is the state's case which he pleads first, insisting that its safety lies in the jury's hands,[230] and he portrays the disaster which will befall the city as vividly as that which has come upon Murena:

> *illa pestis immanis importuna Catilinae prorumpet... in agros suburbanos repente advolabit; versabitur in urbe furor, in curia timor, in foro coniuratio, in campo exercitus, in agris vastitas; omni autem in sede ac loco ferrum flammamque metuemus.*[231]

It is a *miseratio* for the city as much as it is for Murena, and the appeal to the jurors on behalf of the *res publica* is a direct one. Where in the *Pro Roscio* and the *Pro Cluentio* he appealed to the jurors to save the *res publica*, he urged that they ought to do so by enforcing the laws; in the present case he does not go so far as to instruct them to ignore the laws, but he does not mention them in his appeal, saying only that they should preserve the life of the city in its present form.[232]

In making the prosecution Cato had criticized Cicero's decision to accept Murena's defence, since the consul had that year overseen the passing of a new law which enforced a stricter penalty, one of banishment from Rome, for those who were convicted of *ambitus*: *me reprehendis, quod idem defendam quod lege punierim.*[233] Cicero's response is that he is defending an innocent man, and so is not guilty of inconsistency, and he offers to join Cato in

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229 Cic., *Mur.* 86.

230 Cic., *Mur.* 83: *quamquam huiusce rei potestas omnis in vobis sita est, iudices; totam rem publicam vos in hac causa tenetis, vos gubernatis.*

231 Cic., *Mur.* 85.

232 Cic., *Mur.* 86: *pro magnitudine periculi obtestor, ut otio, ut paci, ut saluti, ut vitae vestrae et ceterorum civium consulatis.* Classen (1998), 123-80, especially 174ff., argues that the main thrust of the speech lies in this insistence that the political situation should override everything else. In other cases the laws are defended as being central to the preservation of the state, and so the same end remains in view: however, in the present instance he adopts an importantly different approach in making that plea.

233 Cic., *Mur.* 67. Compare also §3: *negat fuisse rectum Cato me et consulem et legis ambitus latorem et tam severe gesto consulatu causam L. Murenae attingere.*

prosecuting anyone who really was guilty of the crime. Therefore Cicero never reaches the point of urging the jurors to make their decision in contravention of the laws, but in his critique of Cato for being excessive in his pursuit of his Stoicism and being too idealistic in his pursuit of morality he stresses that there must be some flexibility and toleration in the real world.[234] Roman tradition has sanctioned crowds of supporters attending candidates as long as they are not paid, and allows the staging of shows and dinners to win popularity: he goes so far as to accuse Cato of criticizing the *maiores* who allowed such practices.[235] Therefore Cicero is not prepared to abandon the authority of the laws altogether, alleging that Cato has claimed that the law is more rigorous in its terms than it really is: just as he had opposed Attius' alteration to the *Lex Cornelia* in the *Pro Cluentio*, so he rebuts Cato's attempt to expand the bribery law.[236]

But if Cicero has little opportunity to appeal to the strict enforcement of the laws in this case, he can appeal to the supreme authority of the Roman people. For Murena had been elected consul by the vote of the sovereign people, and it would be a significant step for the court to overthrow this decision. There is a clear circularity in this argument because, if Murena had been guilty of bribery in the campaign, that election would be unsound; however, Cicero repeatedly reminds the jurors that Murena is the choice of the people. He achieves this from the very beginning since he opens his speech with the same prayer which he made on the day of the election asking for the gods to bestow good fortune on Murena and the state. Now he prays

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234 Cic., *Mur.* 65: *ac te ipsum, quantum ego opinione auguror, nunc et animi quodam impetu concitatum et vi naturae atque ingeni elatum et recentibus praeceptorum studiis flagrantem iam usus flectet, dies leniet, aetas mitigabit.*

235 Cic., *Mur.* 75: *qua re noli, Cato, maiorum instituta quae res ipsa, quae diuturnitas imperi conprobat nimium severa oratione reprehendere.* A similarly positive view of the practice of holding dinner parties during election campaigns is taken at *Commentariolum Petitionis* 44. In fact excessive expenditure on dinners had been an offence against the sumptuary legislation since the *lex Orchia* of 181 (Macrobius 3. 17. 1-3), one of whose restrictions was to limit the number of guests. But, as in modern elections, it was possible to get one's friends to hold dinners for you. On the issues raised by such electoral practices, see A. W. Lintott, 'Electoral Bribery in the Roman Republic', *J.R.S.* 80 (1990), 1-16, who tends to play down their influence on election results when set beside violence and intimidation (p. 15). However, others have emphasized the gains achieved through public largesse. I. Shatzman, *Senatorial Wealth and Roman Politics* (Brussels, 1975) [Latomus vol. 142], 159-67, suggested that the celebration of games by curule aediles was particularly beneficial for future candidacies. The apparent prevalence of bribery and other munificence on the part of candidates has led Yakobson to draw the conclusion that the urban *plebs* held important influence in the elections of the centuriate assembly (A. Yakobson, '*Petitio et Largitio*: Popular participation in the Centuriate Assembly of the Late Republic', *J. R. S.* 82 (1992), 32-52). He has now developed this argument in the second chapter of his *Elections and Electioneering in Rome: A study in the Political System of the Late Republic* (Stuttgart, 1999) [Historia Einzelschriften 128], 20-64, and it forms an important part of his thesis that Rome was a democratic oligarchy (p. 233). Millar (1998) also sees in the existence and visibility of bribery an important reminder that elections were competitive, and that 'all rival forms of influence counted' (p. 69).

236 It is likely that Cato called only for the law to be applied strictly, and that he did claim that Murena had spent money in raising support, but Cicero's 'rebuttal' is no less significant.

ut vestrae mentes atque sententiae cum populi Romani voluntatibus suffragiisque consentiant.[237] He also refers to Murena's consulship as a *beneficium populi Romani* both at the start and end of the speech,[238] and a large proportion of his speech is devoted to explaining how Murena deserved to attain the consulship without needing any recourse to bribery.[239] Therefore, although he suggests that the jurors have been entrusted with their task by the gods,[240] and he repeatedly emphasizes that they now have the opportunity to save the state with their judgment, he contends that they have to make that decision within limits, those imposed by the laws to a degree, but more importantly those imposed by the sovereign *populus*.

But just as Cicero's speech has much to say about the jury's duty towards and within the state, he is also explicit about the role which ought to be played by the advocates. In the *Pro Cluentio* I noted how Cicero advertized his service as an advocate benefiting the state at large, and the way in which he insisted that he was acting as a quasi-professional with the duty to put the case in the best possible way whether or not he was persuaded by it himself. In the present case, Cicero's depiction of an advocate's duty is less clear, and at times contradictory, but this is important in demonstrating that there was no universal agreement about the matter even in the course of a single case.

I have already noted that Cato accused Cicero of inconsistency in taking the case, but the other prosecutor, the defeated candidate Sulpicius, also criticized Cicero's decision in another respect, namely that as a friend of Sulpicius himself and a supporter of his candidature for the consulship it was not proper that he should appear to defend Murena.[241] But Cicero argues that he owes a greater obligation to his role as an advocate than any personal obligations to his friends: *atque hoc non modo non laudari sed ne concedi quidem potest ut amicis nostris accusantibus non etiam alienissimos defendamus.*[242] For his greatest debt is to the people who have rewarded his services as an advocate with their support for him in elections: *nam cum*

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237 Cic., *Mur.* 1.

238 Cic., *Mur.* 2; 90. Compare also §8 and his description of him as *hominis et suis et populi Romani ornamentis amplissimi.*

239 Cic., *Mur.* 15-46. In particular he argues why Murena's candidature was stronger than that of Sulpicius.

240 Cic., *Mur.* 2: *iudices, cum omnis deorum immortalium potestas aut translata sit ad vos aut certe communicata vobiscum...*

241 Cic., *Mur.* 7: *(Sulpicius) gravissime et acerbissime se ferre dixit me familiaritatis necessitudinisque oblitum causam L. Murenae contra se defendere.*

242 Cic., *Mur.* 8.

praemia mihi tanta pro hac industria sint data quanta antea nemini, sic existimo, labores quos in petitione exceperis, eos, cum adeptus sis, deponere, esse hominis et astuti et ingrati.

And if Cicero stresses the fact that in defending Murena he is only doing what is expected of him, he is equally anxious to defuse the threat posed by Cato's own reputation for old fashioned morality:

> *nam si quis hoc forte dicet, Catonem descensurum ad accusandum non fuisse, nisi prius de causa iudicasset, iniquam legem, iudices, et miseram condicionem instituet periculis hominum, si existimabit iudicium accusatoris in reum pro aliquo praeiudicio valere oportere.*[243]

It is here that Cicero has recourse to anecdotes about prosecutions conducted by the younger Africanus and Cato the Elder, the present prosecutor's own great-grandfather.[244] The advocate claims that the men they prosecuted, Lucius Cotta and Servius Galba respectively, were aided in achieving acquittals by their prosecutors' prestige and the jurors' consequent fear that they could not enjoy a fair trial with such authority ranged against them. As in the *Pro Cluentio*, Cicero's portrayal approaches more closely the role of a modern advocate, whose duty is to put the case skilfully, but where his personal achievements or opinions should be irrelevant for the court. And he is even able to produce earlier examples to count against the view - expressed with particular force by David - that advocacy was simply an extension of patronage: jurors could be represented as throwing excessive personal influence out of court. However, it is again important to note that it is a contestable thesis: Cicero introduces these comparisons because he fears the strength of Cato's patronage in speaking for the prosecution, and in the earlier cases the juries threw the cases out - according to Cicero - precisely because they had similar fears about the massive authority of the prosecutors.

However, Cicero's portrayal of the advocate's role as a quasi-professional one is also prominent in his comparison of the services rendered to the state by orators, jurisconsults and military men.[245] The advocate embarks upon this three-fold comparison in order to argue that it was reasonable that Murena, a soldier, and Cicero, an orator, had both attained the consulship, while Sulpicius, only a jurisconsult, had failed in his attempt to be elected. It is presented as a

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243 Cic., *Mur.* 60.

244 Cic., *Mur.* 58-59. On this passage, see the previous chapter, p. 45.

245 Cic., *Mur.* 19-30.

response to Sulpicius who seems to have argued that Murena's extensive military career made him an unfamiliar figure in the forum and therefore unlikely to have succeeded in an election against such a familiar figure as himself. Throughout this passage Cicero treats the three areas as distinct *artes* or *studia* to be pursued on an almost full-time basis.[246] Where Sulpicius boasts of his familiarity with the world of the forum, Cicero agrees, but argues that the jurisconsult, like himself, was so frequently to be seen that he ran the risk of becoming an object of boredom.[247]

But the bulk of Cicero's argument is devoted to the respective usefulness of the three 'professions'. He mocks the importance of jurisprudence when set beside military skill, claiming that the latter has brought glory to Rome and protects the world of the forum by ensuring Rome's safety.[248] More significant is his presentation of the orator's role. Cicero's emphasis here is naturally upon the orator's ability to speak in *contiones* and in the senate, since these were the places where the consul might be expected to perform, and this approach also helps to distance the orator more visibly from the jurisconsult.[249]

However he does refer to the allegiances that an orator can win during his career, and hence as support for his election campaigns: *non mirum, si ob hanc facultatem homines saepe etiam non nobiles consulatum consecuti sunt, praesertim cum haec eadem res plurimas gratias, firmissimas amicitias, maxima studia pariat.*[250] Past clients in the courts are grateful to the advocates who have saved them, those of the jurisconsults are not. For speaking, so Cicero claims, is a tougher pursuit, and men only take up jurisprudence when they find that they cannot succeed fully in an oratorical career.[251] The primacy of oratory is expressed succinctly:

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246 Cicero does play up the distinctions between the *artes* of jurisprudence and oratory more than he does elsewhere. In the rhetorical treatises and some speeches (the *Pro Cluentio* for example) he expands upon the need for an orator to possess great legal knowledge; equally, in the *Brutus* while he does concentrate on Sulpicius' legal expertise, he also allows him some rhetorical ability referring to his *loquendi eloquentiam* (§153). However even here he ascribes Sulpicius' eventual achievement of the consulship to his albeit limited rhetorical studies (§155).

247 Cic., *Mur.* 21: *mihi quidem vehementer expediit positam in oculis esse gratiam; sed tamen ego mei satietatem magno meo labore superavi et tu item fortasse.*

248 Cic., *Mur.* 22: *haec nomen populo Romano, haec huic urbi aeternam gloriam peperit, haec orbem terrarum parere huic imperio coegit; omnes urbanae res, omnia haec nostra praeclara studia et haec forensis laus et industria latet in tutela ac praesidio bellicae virtutis.*

249 Cic., *Mur.* 24: *quaeritur consul qui dicendo non numquam comprimat tribunicios furores, qui concitatum populum flectat, qui largitioni resistat.*

250 Cic., *Mur.* 24.

251 He compares Greek singers: those who accompanied the pipes only did so because they were unable to sing to the lyre.

> *magnus dicendi labor, magna res, magna dignitas, summa autem gratia. etenim a vobis salubritas quaedam, ab eis qui dicunt salus ipsa petitur. deinde vestra responsa atque decreta et evertuntur saepe dicendo et sine defensione orationis firma esse non possunt.*[252]

There is no hint here of the orator as traditional *patronus*: Cicero presents a picture where the orator is the leading figure of the Roman courts, interpreting and providing the context for the relevant laws in presenting cases to the jurors, and in the process winning the goodwill of his clients for saving their lives. His role is an honourable one (*magna dignitas*), but success is primarily the result of hard work (*magnus labor*).

However, as I mentioned above, Cicero's picture does not always highlight the same points. Rather he seems to want to have the best of both worlds, for just as he emphasizes the idea of oratory as a quasi-profession, he also wishes to bring his own authority to bear upon the jurors. Indeed this trial seems to have been a struggle between two prominent figures, Cato and Cicero, who both possessed considerable *auctoritas*. While Cicero was concerned to remove Cato's moral authority from the equation, it is clear from the emphasis which he devotes to the matter that he did fear the influence which Cato would have with the jury:

> *in quo ego accusatore, iudices, primum illud deprecabor ne quid L. Murenae dignitas illius, ne quid exspectatio tribunatus, ne quid totius vitae splendor et gravitas noceat, denique ne ea soli huic obsint bona M. Catonis quae ille adeptus est ut multis prodesse possit.*[253]

Cicero's extensive digression on Cato's character and Stoicism also belies his call for the personalities of the advocates to remain without influence on the case: he is not content to exclude Cato as a factor, but attempts to present his excessively rigorous morals as a negative element of the prosecution, arguing that he is not really a traditional Roman at all.

Likewise, despite his representations to the contrary, Cicero is concerned that his own personality is a factor. As I argued at the start of this section, he attempts to present Murena and himself as united in their role as saviours of the state. His introduction of oratory into the comparison of Murena's military skill and Sulpicius' expertise in jurisprudence is not entirely

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252 Cic., *Mur.* 29.

253 Cic., *Mur.* 58.

pertinent to the case, but it enables him to present himself and Murena as equally worthy of the consulship, while Sulpicius has been understandably deprived of that office. For Cicero makes this idea explicit from the start of the speech, that it is appropriate for a consul to defend another potential consul: *profecto etiam rectius in iudicio consulis designati is potissimum consul qui consulem declaravit auctor beneficii populi Romani defensorque periculi esse debebit.*[254] On the purely 'professional' view of advocacy, the status of the defence advocate would be irrelevant, but Cicero is not shy about introducing this argument. Indeed, in introducing the digression in which he justifies his decision to take the case he explains that he hopes thereby to gain greater *auctoritas* in making his case: *ante quam pro L. Murena dicere instituo, pro me ipso pauca dicam... ut meo facto vobis probato maiore auctoritate ab huius honore fama fortunisque omnibus inimicorum impetus propulsare possim.*[255]

Even in the section where he is replying to Sulpicius' contention that it was inappropriate for Cicero to oppose himself in a court of law after supporting him in his campaign for the consulship, Cicero again strives to get the best of both worlds. While he does insist that personal friendships are not a decisive consideration when it comes to taking on court cases, he is still eager to advertize his own friendship with his client: *mihi autem cum Murena, iudices, et magna et vetus amicitia est.*[256]

This speech presents a complicated web of representations of the court's role, and particularly that of the advocate within it: there is much less insistence upon the centrality of the role to be played by the laws within the courts; the relationship between the advocates and their clients is much more ambiguous, but there is still the insistence that both jurors and advocates should be serving the state at large as well as the narrower interests of the participants in the particular case. Cicero appeals to the jurors to save the state and even to the prosecutor, Cato,[257] but he is particularly explicit about his own role, asserting that the state is his client as much as Murena is: *quod si ita est, non tam me officium debuit ad hominis amici fortunas quam res publica consulem ad communem salutem defendendam vocare.*[258]

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254 Cic., *Mur.* 3.

255 Cic., *Mur.* 2.

256 Cic., *Mur.* 8.

257 Cic., *Mur.* 83: *his tantis in rebus tantisque in periculis est tuum, M. Cato, qui mihi non tibi, sed patriae natus esse videris, videre quid agatur, retinere adiutorem, defensorem, socium in re publica, consulem non cupidum, consulem, quod maxime tempus hoc postulat, fortuna constitutum ad amplexandum otium, scientia ad bellum gerendum, animo et usu ad quod velis negotium sustinendum.*

258 Cic., *Mur.* 5.

8. The orator and the state: the *Pro Sestio*

Of all Cicero's forensic speeches, it is in the *Pro Sestio* that he develops his connection with the client most closely, whilst at the same time asserting his patronage of the state as a whole. The speech is also unusual for its digression in which Cicero expands at length upon the operation of the *res publica*:[259] it is striking that he devotes so much time to a discussion of the 'state of the nation' in what is a criminal case. Before considering the nature of Cicero's speech, it is important to describe in outline the historical background which lay behind the prosecution.

After Cicero had gone into exile in March 58 B.C. during Clodius' tribunate, his supporters began to push for his return as early as 1st June, when a tribune, L. Ninnius Quadratus, successfully proposed a motion for Cicero's recall in the senate, only for it to be vetoed by another tribune, Aelius Ligus.[260] But in the elections for the magistracies of 57 several of Cicero's supporters were victorious, and one of these was Publius Sestius who was elected to the tribunate. This year introduced a violent period when the supporters of Cicero, particularly Sestius and his fellow-tribune Titus Annius Milo, responded to the threat posed by Clodius' armed gangs by recruiting their own.[261]

According to Cicero a tribune, Atilius Gavianus, had threatened a veto in the senate on 1st January blocking a senatorial resolution which was to support Cicero's return and put the question to the people.[262] Open violence seems to have broken out on 23rd January, when another tribune, Quintus Fabricius, was intending to put the question of Cicero's recall to the people, only for Clodius' gangs to break up the meeting.[263] Sestius himself was the victim of violence on a later occasion when he announced unfavourable omens to one of the consuls, presumably in order to block a measure hostile to Cicero.[264] Milo retaliated by raising a troop

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259 Cic., *Pro Sestio* 96-143.

260 Cic., *Pro Sestio* 68.

261 See D. Stockton, *Cicero. A Political Biography* (Oxford, 1971), 192-93, and his terse comment: 'Gang warfare raged.' On the make-up of these gangs, see A. W. Lintott, *Violence in Republican Rome*^{2}, (Oxford, 1999)[= Lintott (1999a)], 74-88.

262 Cic., *Sest.* 72-74.

263 Cic., *Sest.* 75-78.

264 Cic., *Sest.* 79-80. The consul is likely to have been Metellus Nepos, since the other, P. Lentulus Spinther, was a supporter of Cicero.

of gladiators,[265] and in his defence Cicero does not deny that Sestius too employed a bodyguard, but asserts that he did so only in self-defence: *eademque ratio fuit Sesti, si minus in accusando... at certe in necessitate defendendae salutis suae praesidioque contra vim et manum comparando.*[266]

Later that year, as is well known, the tide turned in Cicero's favour, and his return was finally sanctioned by a meeting of the *comitia centuriata* on 4th August, and he was welcomed back in Rome on 4th September. But violence continued between the warring factions as Clodius attacked Cicero and his house which was in the process of being rebuilt. Judicial action against Clodius was blocked first by delaying tactics and then by his election to the aedileship on 20th January 56. During the course of February he in turn initiated a prosecution of Milo on the charge of *vis*, although after various postponements nothing came of it. Soon afterwards, on 10th February, Sestius also was faced with prosecution on two charges, *ambitus* and *vis*.

Some details of the process are provided by two letters of Cicero written to his brother at the time.[267] The first of these provides all the evidence we have concerning the first charge, brought by a Cn. Nerius, and which is likely to have concerned bribery in the course of Sestius' successful election to the tribunate of 57.[268] The second charge was brought by a Tullius Albinovanus, although, as Cicero suggests, Clodius is likely to have been the real mover behind the prosecution.[269] Four men spoke in Sestius' defence, Hortensius, C. Licinius Calvus Macer, Crassus and Cicero, and Sestius was finally acquitted on 14th March by a unanimous vote.[270]

Cicero had voluntarily offered his services as an advocate to Sestius, going round to his house as soon as he heard of his indictment, but it is apparent from both of the letters that there was some friction between the two men. He describes Sestius as *morosus* and says that his willingness to take the case surprised some observers: *idque fecimus praeter hominum opinionem, qui nos ei iure suscensere putabant, ut humanissimi gratissimique et ipsi et*

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265 Cassius Dio 39. 8. 1; Cic. *Sest.* 90.

266 Cic., *Sest.* 92. For Cicero's attitude on this decision to resort to violence see A. W. Lintott (1999a), 61-63.

267 Cic., *Ad Quintum fratrem* 2. 3 and 2. 4.

268 Cic., *Ad Quint. frat.* 2. 3. 5.

269 Cic., *Sest.* 95: *(Clodius) accusat eum, qui aliqua ex parte eius furorem exsultantem repressit.* He also points to Vatinius' involvement in the prosecution (§135).

270 Cic., *Ad Quint. frat.* 2. 4. 1: *Sestius noster absolutus est a. d. II Id. Mart. et, quod vehementer interfuit rei publicae, nullam videri in eius modi causa dissensionem esse, omnibus sententiis absolutus est.*

omnibus videremur, itaque faciemus.[271]

Although there is - for obvious reasons - no sign of this hostility in the speech itself, Cicero devotes very little time in his defence to Sestius himself. In §§1-14 after the proemium he treats Sestius' career prior to the tribunate and in §§71-95 he deals with the events of Sestius' tribunate, although even here he includes a lot of material on Milo and Clodius in particular. He returns to Sestius only in the peroration (§§144-47), where again he is not the only focus of the orator's appeal. In total well under a third of the speech is devoted to the defendant's particular case.

The absence of much detail about the precise accusations can be explained on the grounds that Hortensius had already dealt with such material.[272] However, in addition to the digression on the *optimi* and *populares*, most of the rest of the speech is devoted to Cicero himself, and he portrays himself as being on trial as much as Sestius himself.[273] Again the peroration is illuminating; Cicero ends the digression suddenly, pretending to be overcome by the sight of so many of his friends dressed in mourning: *sed me repente, iudices, de fortissimorum et clarissimorum civium dignitate et gloria dicentem et plura etiam dicere parantem horum aspectus in ipso cursu orationis repressit.*[274] In succession he mentions Sestius, Milo and Publius Lentulus, the son of the consul of 57.[275] This list leads Cicero to turn to himself, for he claims that it is on his behalf that these men are now threatened:

> *atque hic tot et talium civium squalor, hic luctus, hae sordes susceptae sunt propter unum me, quia me defenderunt, quia meum casum luctumque doluerunt, quia me lugenti patriae, flagitanti senatui, poscenti Italiae, vobis omnibus orantibus reddiderunt.*[276]

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271 Cic., *Ad Quint. frat.* 2. 3. 5. Compare also *Ad Quint. frat.* 2. 4. 1: *illud quod tibi curae saepe esse intellexeram, ne cui iniquo relinqueremus vituperandi locum qui nos ingratos esse diceret nisi illius perversitatem quibusdam in rebus quam humanissime ferremus, scito hoc nos in eo iudicio consecutos esse, ut omnium gratissimi iudicaremur.*

272 Cic., *Sest.* 3: *et quamquam a Q. Hortensio, clarissimo viro atque eloquentissimo, causa est P. Sesti perorata, nihilque ab eo praetermissum est quod aut pro re publica conquerendum fuit aut pro reo disputandum...* Cicero, himself spoke last.

273 On the issue of publication, and the extent to which the speech may have been adapted from the form in which it was originally delivered, see the appendix and below, p. 142, n. 307.

274 Cic., *Sest.* 144.

275 Cicero imagines all these men as being present in the court, but this was perhaps not necessarily the case.

276 Cic., *Sest.* 145.

Thereafter the *miseratio* is constructed so as to win sympathy for Cicero himself, as he lists the sufferings which he has undergone on behalf of the state, and promises that he would rather go into exile again than see his friends suffering in this way. This is his rationale for concentrating so greatly on himself throughout the speech, for in this way he can hope to use his own present popularity to achieve the acquittal of his own supporter: *qua re vos obtestor atque obsecro ut, si me salvum esse voluistis, eos conservetis per quos me recuperavistis.*[277] This is another example of the type of pleading which I have traced in Cicero's other defence speeches, but on this occasion Cicero allows himself to take centre-stage to such an extent that he presents the possible conviction of Sestius as a bigger blow for himself than for the defendant.[278]

Moreover, he uses this association of Sestius with himself to emphasize the importance of the trial to the state as a whole, since he portrays his own survival and restoration as implicitly bound up with the continued existence of the *res publica.* He presents himself as the voice of the courts and the Roman people at large: *ea (voce) nunc uti cogor in eorum periculis depellendis, ut iis potissimum vox haec serviat quorum opera et mihi et populo Romano restituta est.*[279] Throughout the speech this connection between Cicero and the state remains a major theme: in describing Clodius' adoption by a plebeian in 59 so that he could stand as a tribune, Cicero says: *intentus est arcus in me unum, sicut vulgo ignari rerum loquebantur, re quidem vera in universam rem publicam.*[280] Likewise he justifies his decision to endure exile on the grounds that he had to preserve his life in order to return as a totemic figure: *in qua quidem nunc me restituto vivit mecum simul exemplum fidei publicae.*[281] He makes the logic of his argument explicit when describing his exile as the *maximum rei publicae vulnus.*[282] He asks the jurors to excuse his long digressions into the deeper past, asserting that Sestius was

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277 Cic., *Sest.* 147.

278 A similar point is made by Demosthenes in the *De Corona*, where he is explicit in saying that the trial matters to himself as much as it does to the named defendant, Ctesiphon, and that a defeat would cause them equal grief: οἶμαι δ' ὑμᾶς, ὦ ἄνδρες Ἀθηναῖοι, πάντας ἂν ὁμολογῆσαι κοινὸν εἶναι τουτονὶ τὸν ἀγῶν' ἐμοὶ καὶ Κτησιφῶντι καὶ οὐδὲν ἐλάττονος ἄξιον σπουδῆς ἐμοί· πάντων μὲν γὰρ ἀποστερεῖσθαι λυπηρόν ἐστι καὶ χαλεπόν, ἄλλως τε κἂν ὑπ' ἐχθροῦ τῳ τοῦτο συμβαίνῃ, μάλιστα δὲ τῆς παρ' ὑμῶν εὐνοίας καὶ φιλανθρωπίας, ὅσῳπερ καὶ τὸ τυχεῖν τούτων μέγιστόν ἐστιν (Dem., *De Corona* 5).

279 Cic., *Sest.* 2.

280 Cic., *Sest.* 15.

281 Cic., *Sest.* 50.

282 Cic., *Sest.* 31.

motivated in his tribunate by one desire, to heal the wounds of the *res publica*, and was therefore particularly anxious to bring about Cicero's recall: as a result the orator claims that he has no choice but to link Sestius' case with his own in the past (*meam causam praeteriti temporis*).

In this way Cicero can associate Sestius' preservation with that of the state through his own person, but he also makes the role of the law-courts an important theme of the speech. Indeed, he associates Sestius' - and therefore his own - victory with the triumph of the laws over violence: it is not enough for the advocates involved in the case to argue the letter of the law, if, like the prosecution, they oppose the maintenance of Roman laws in general. In the proemium he expresses his indignation that Sestius' opponents have brought the case to court:

> *tum nihil minus est ferendum quam quod iam non per latrones suos, non per homines egestate et scelere perditos, sed per vos nobis, per optimos viros optimis civibus periculum inferre conantur, et quos lapidibus, quos ferro, quos facibus, quos vi manu copiis delere non potuerunt, hos vestra auctoritate, vestra religione, vestris sententiis se oppressuros arbitrantur.*[283]

He alleges that the prosecutors are attempting to pursue their violence by other means in bringing the case to court, and therefore implies that the jurors must acquit in order to preserve the rule of law. Indeed, the courts had played an important, if rather ineffective, role in the conflict between Cicero's supporters and opponents. In 57, Milo had attempted to prosecute Clodius on the charge of *vis* for the violence which had occurred on 23rd January of that year, and later in the year again tried to resort to the courts, only to be foiled by Clodius' subsequent election to the aedileship. The present bout of prosecutions against Sestius and Milo look to have been a counter-attack by Clodius' side, now that he was safe as a result of the immunity from prosecution which his magistracy conferred.

It appears that the opposition between the rule of law and violence was also a theme in the prosecutor's speech, since he had praised Milo's conduct in showing an initial reluctance to turn to violence and match that of Clodius, instead choosing to face him in the courts (§89), and only took to violence as the final option. He seems to have suggested that Sestius on the other hand was excessively eager to retaliate.[284] Cicero is happy to agree with the general sentiment and concurs in the praise of Milo: *mihi unus ex omnibus civibus videtur re docuisse,*

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283 Cic., *Sest.* 2.

284 Cic., *Sest.* 84: *'at nondum erat maturum; nondum res ipsa ad eius modi praesidia viros bonos compellebat.'*

non verbis... oportere hominum audacium, eversorum rei publicae, sceleri legibus et iudiciis resistere.[285] The small section of the speech which Cicero does devote to Sestius' own conduct in 57 is directed towards arguing that Sestius, like Milo, had only moved to violence in the last resort, and glosses over the fact that, shunning the courts, he may have taken this step earlier than Milo.[286]

Cicero's defence is based around three strands. First he portrays a complete breakdown of law and order within the heart of Rome, for example describing the scene on 23rd January 57 as if war had broken out, with armed men filling the forum, the *comitium* and the senate-house and the Tiber packed with bodies.[287] This tone is maintained throughout the *narratio* of 57, but is balanced by a second strand which maintains that Sestius was an unarmed innocent and an upholder of the law. On that day of violence Cicero insists that Sestius was not attended by any armed gang,[288] and that even thereafter he refused to take up arms.[289] In portraying the attack on Sestius in the Temple of Castor, Cicero describes the tribune as unprotected, trusting in the sanctity of his magistracy: *itaque fretus sanctitate tribunatus, cum se non modo contra vim et ferrum sed etiam contra verba atque interfationem legibus sacratis esse armatum putaret, venit in templum Castoris.*[290] Armed men rush upon him when he is unarmed and unprepared, and he is left for dead. Moreover, Cicero emphasizes that he was attacked when in the process of fulfilling a legal obligation, that of announcing an evil omen.[291]

This opposition between legal innocence and armed violence leads to his third point, which is that, when faced with violence and obstruction of justice, legal process can achieve little. Cicero describes Milo's realisation of this fact, when he is forced to abandon his prosecution of Clodius in the course of 57: *quid ageret vir ad virtutem, dignitatem, gloriam natus vi sceleratorum hominum conroborata, legibus iudiciisque sublatis?*[292] But the advocate

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285 Cic., *Sest.* 86.

286 Cic., *Sest.* 90-92.

287 Cic., *Sest.* 75-77.

288 Cic., *Sest.* 78: *hic iam de ipso accusatore quaero, qui P. Sestium queritur cum multitudine in tribunatu et cum praesidio magno fuisse, num illo die fuerit? certe non fuit.*

289 Cic., *Sest. 79: atqui ne ex eo quidem tempore id egit Sestius ut a suis munitus tuto in foro magistratum gereret.*

290 Cic., *Sest.* 79.

291 He was attacked *cum auspiciis religionique parens obnuntiaret* (Cic., *Sest.* 83). This action of reporting an evil omen was of course a partisan act, but Cicero's emphasis is that it was one made according to the principles of religious law.

292 Cic., *Sest.* 89.

turns to prehistory to justify his supporters resorting to force. He describes the state of the earliest men, when strength and violence were the sole means of gaining possessions, and when neither natural nor civil law yet had force.[293] Wise men subsequently gathered together the scattered men and introduced them to *iustitia*, and hence enabled the foundation of cities. This foundation myth is a familiar, ancient one, but it is notable that in this version Cicero emphasizes justice as the single civilizing principle, and on this basis argues for the mutual exclusivity of law and violence:[294]

> *atque inter hanc vitam perpolitam humanitate et illam immanem nihil tam interest quam ius atque vis. horum utro uti nolumus, altero est utendum. vim volumus exstingui; ius valeat necesse est, id est iudicia, quibus omne ius continetur. iudicia displicent aut nulla sunt; vis dominetur necesse est. hoc vident omnes.*[295]

This opposition is central to the whole of Cicero's speech. It justifies Milo and Sestius' decision to resort to violence themselves in the face of Clodius' behaviour; it dictates that the present court should reassert justice and find the defendant innocent. Where Cicero had appealed to respect for the letter of the law in the *Pro Cluentio*, in this speech he presents the defendant's acquittal as a requirement for the maintenance of the principle of the rule of law as a whole.

Therefore Clodius is attacked not simply for his violence against Cicero's supporters, but for his entire political career which the advocate presents as opposed to the legal basis of the state. The pro-Clodian consuls of 56, Aulus Gabinius and Lucius Calpurnius Piso, had only the most tenuous links with the present case.[296] However, they are marked out by Cicero to be paradigms of illegality, and act as foils within the speech for his own exemplary conduct. Indeed, although the entire account of their consulships (§§17-71) is replete with accusations of illegal acts, their greatest, according to Cicero, was their willingness to sacrifice Cicero, the defender of the laws, in exchange for a deal with Clodius on their provinces for the next year in

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293 Cic., *Sest.* 91.

294 On the relationship between law and violence in Rome, see Lintott (1999a), 22-34; 52-66, where he argues for some close connections between the two.

295 Cic., *Sest.* 92.

296 Cicero admits this himself at §31.

contravention of the *Lex Sempronia*.[297] Still less relevant to the case, but nonetheless included, are Cicero's accusations about their subsequent administration of those provinces, in which he charges them both with peculation of various sorts in Syria and Macedonia.[298]

Cicero's greatest wrath is reserved for Clodius' legislative measures during his tribunate. Apart from those which were taken against himself, Cicero focuses upon four laws passed by Clodius on 4th January. These were a limitation of censorial powers, a decision to institute a free distribution of corn, an overturning of the ban on *collegia* which had been passed in 64 B.C., and finally a limitation to the scope of the *Leges Aelia et Fufia*, although the precise nature of the change has been disputed.[299] These second-century laws had regulated the powers of the various magistrates to obstruct assemblies, both legislative and electoral, by watching for omens and reporting unfavourable ones. The implications of the last three of Clodius' measures are clear: the grain law will have won popularity, the law on *collegia* enabled the easier recruitment of armed gangs, and the restriction (at the very least) of the process of *obnuntiatio* will have made the obstruction of his other legislation much more difficult. Cicero attacks these measures as a whole in §§55-56, where he feigns particular outrage at the new censorial legislation: *censoria notio et gravissimum iudicium sanctissimi magistratus de re publica tolleretur*. Here he affects to pass over the reform to the *Lex Aelia Fufia*, because he had dealt with that earlier:

> *isdemque consulibus sedentibus atque inspectantibus lata lex est, ne auspicia valerent, ne quis obnuntiaret, ne quis legi intercederet, ut omnibus fastis diebus legem ferri liceret, ut lex Aelia, lex Fufia ne valeret; qua una rogatione quis est qui non intellegat universam rem publicam esse deletam?*[300]

Cicero represents his own and Sestius' opponents as aiming at the overthrow of the

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297 Cic., *Sest.* 24.

298 Cic., *Sest.* 93-94. Compare also his claims that Vatinius also has transgressed an assortment of laws (*Caeciliam Didiam, Liciniam Iuniam contempsit*: §135).

299 On this see W. F. McDonald, 'Clodius and the *Lex Aelia Fufia*', *J.R.S.* 19 (1929), 164-79; S. Weinstock, 'Clodius and the *Lex Aelia Fufia*', *J.R.S.* 27 (1937), 215-22; J. P. V. D. Balsdon, 'Roman History, 58-56 B.C. Three Ciceronian problems', *J.R.S.* 47 (1957), 15-16; G. V. Sumner, '*Lex Aelia, Lex Fufia*', *A.J.P.* 84 (1963), 337-58; A. E. Astin, '*Leges Aelia et Fufia*', *Latomus* 23 (1964), 421-45; E. J. Weinrib, '*Obnuntiatio*: Two problems', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 87 (1970), 395-425; L. De Libero, *Obstruktion. Hermes Einzelschriften* 59 (Stuttgart, 1992), especially pp. 64-68.

300 Cic., *Sest.* 33. In this same passage, Cicero also refers to the other laws as well. The repetition serves to highlight the weight that Cicero wished to be attached to these measures.

legal foundations of the *res publica*, and associates Sestius' survival with his own as marking the continued existence of that *res publica*. Once more he represents the court's role as one which extends beyond the particular case. And making allowance for the background to this case he permits himself to range surprisingly freely in making his defence. It is possible to see it as another example of the traditional type of *patronus* advocacy, with Cicero's self-defence taking the central role, but more than that Cicero makes the speech into an opportunity to air broader questions about the role of law itself, which he maintains to be pertinent for the jurors' consideration.[301] According to this argument, not all speakers in the law-courts were in favour of the principle of law, and he maintained that the present prosecutors saw the case as an opportunity for pursuing their enmity by other means. This has important implications for the figure of the orator, since if Cicero's portrayal is accepted, it implies that it is not enough for the advocate simply to be taking part in the legal process: he must also demonstrate that he is a supporter of the laws in a broader sense.

However, this speech offers an even greater example of abandoning the precise issues at hand, namely the digression of §§96-143, to which I have already referred.[302] This section of the speech is introduced by Cicero as a response to the prosecutor who had challenged him about what he meant in referring to a *natio optimatium*.[303] He says that he is happy to reply to this question, claiming that it would be useful for everyone to hear, but stressing the benefit for the young in particular: *rem quaeris praeclaram iuventuti ad discendum nec mihi difficilem ad perdocendum*. He returns to this idea in the course of the digression which he admits is an unusual addition to his speech: *scio quid gravitas vestra, quid haec advocatio, quid ille conventus, quid dignitas P. Sesti, quid periculi magnitudo, quid aetas, quid honos meus*

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301 But he does not allow the speech to be completely dominated by a dry picture of the state dependent solely on its laws. His position also rests upon the fact that all classes of *people* within the community have supported him, and he frequently lists them (at §§36-38 for example).

302 For various arguments on the relevance of this digression, see W. K. Lacey, 'Cicero, *Pro Sestio* 96-143', *C,Q.* 12 (1962), 67-71. The digression certainly does not come completely out of the blue. It is important for Cicero's position (as I suggested in the last note) that he and Sestius are supported by the mass of the people, not simply by the letter of the laws: *ego... tanto studio senatus, consensu tam incredibili bonorum omnium, tam parato equestri ordine, tota denique Italia ad omnem contentionem expedita* (§36). On the return of his brother from Asia to Rome, Cicero says: *huic ad urbem venienti tota obviam civitas cum lacrimis gemituque processerat; loquebatur liberius senatus; concurrebant equites Romani* (§68). However, given the respective fortunes of Clodius and Sestius, Cicero accepts that it is reasonable to ask where the *natio optimatium* is to be found, and a response to the prosecutor's question allows him to expand at length on the silent majority of supporters whom he wishes to stir to action.

303 Cic., *Sest.* 96.

postulet. sed mihi sumpsi hoc loco doctrinam quandam iuventuti, qui essent optimates.[304]

Cicero makes a similar comment when he describes the speech which Hortensius has already made for the defence: *de quo quidem tribunatu ita dictum est a Q. Hortensio ut eius oratio non defensionem modo videretur criminum continere, sed etiam memoria dignam iuventuti rei publicae capessendae auctoritatem disciplinamque praescribere.*[305] Cicero seems to be intent on adding a new role to that which was traditional for the advocate, namely an educative function, whereby he might encourage his audience to take a certain course of action. This also seems to be the motivation behind the very opening of the speech where he expresses surprise if in the present circumstances there should be any citizens *qui auderent se et salutem suam in discrimen offerre pro statu civitatis et pro communi libertate.*[306] This situation has been brought about, according to Cicero, by the fact that those who serve the state well seem to derive little or no benefit, whilst those bent on a course of illegality derive great profit from their activities. He also wants this fact to be taken into consideration by the jurors, since if they fail to acquit Sestius they will be discouraging others from following his example - and indeed Cicero's - of service towards the state: this will represent the greatest blow for the laws, since there will be no new defenders for them if Cicero, the voice who speaks for them, and Sestius, who was prepared to fight for them, are to be swept away. The implications of Cicero's association of himself with Sestius in this way are again important for his representation of the advocate's role. He makes little distinction between his own and Sestius' respective methods of protecting the laws: violence may be less blameworthy than court oratory, if the latter is abused and the former serves the interests of the state. The advocate is therefore portrayed as a figure who has to defend what he is doing at every turn, and not necessarily as someone who is serving the best interests of the laws in general.

Education and encouragement also seem to be the prime purposes of Cicero's

304 Cic., *Sest.* 119.

305 Cic., *Sest.* 14.

306 Cic., *Sest.* 1.

digression.[307] In it he sets out an account of the two groups of men who dominated Roman public life, the *optimates* and the *populares*. He characterizes the latter group as men who always sought to win the approval of the masses, while the former aimed at the approval of *optimus quisque*.[308] But he seeks to redraw the traditional boundaries between the two groups, initially by insisting that these *optimi* represented a large group of men who came from the full spectrum of Roman society, but who followed, in essence, a path of justice.[309] More importantly he argues that the *optimates* were in reality more popular than the self-styled *populares*, winning greater success in elections, in passing laws, and receiving much more acclaim in the theatre and at games, which, he claims, represented true barometers of popular support.[310]

This leads to the conclusion of the digression, where Cicero again appeals to younger Romans: *vosque, adulescentes, et qui nobiles estis, ad maiorum vestrorum imitationem excitabo, et qui ingenio ac virtute nobilitatem potestis consequi, ad eam rationem in qua multi homines novi et honore et gloria floruerunt cohortabor.*[311] In referring to the *adulescentes nobiles*, Cicero is implicitly both praising Sestius for following their example in putting his youth and strength at the disposal of the defenders of the established order, and urging others to be ready to do the same.[312] In this section he argues that *populares* have never won such great renown as *optimates*, and even in their own lives they have generally met with fewer

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307 As a result of this purpose, and since its relevance to the central issues of the case is not immediately obvious, many scholars have argued that it is a later addition, which was included for the speech's publication; so, for example, Nisbet (1965), 66: 'No speech is more obviously a political tract: such irrelevance could not have been tolerated even in a Roman court.' I am not convinced by this argument, particularly since its love of long-winded and irrelevant digression is one of Aper's reasons for attacking republican oratory in Tacitus' *Dialogus*: *facile perferebat prior ille populus, ut imperitus et rudis, impeditissimarum orationum spatia, atque id ipsum laudabat si dicendo quis diem eximeret* (§19). Maternus does not take issue with the truth of this claim; he sees it as a virtue (§38). Tacitus may not be the most secure witness, since much of his knowledge may have come from written texts, which may themselves have been elaborated. However, as I shall argue in the appendix, the speeches were published in a form which purported to be - at the very least - a script which could have been delivered on the occasion in question.

308 Cic., *Sest.* 96: *qui ea quae faciebant quaeque dicebant multitudini iucunda volebant esse, populares, qui autem ita se gerebant ut sua consilia optimo cuique probarent, optimates habebantur.*

309 Cic., *Sest.* 97-98.

310 Cic., *Sest.* 106-131.

311 Cic., *Sest.* 136.

312 See Lintott (1999a), 60, who also cites references to the *adulescentes nobiles* in Livy and Dionysius of Halicarnassus at p. 59, n. 3. See also his article, 'The tradition of violence in the Annals of the Early Roman Republic', *Historia* 19 (1970), especially pp. 24-29.

honours.[313] The climax of the digression is a call to imitate the great men of the Roman past,[314] comparing these men to Hercules; like him they had won immortality through their acts: *minus existimemus eos qui hanc tantam rem publicam suis consiliis aut laboribus aut auxerint aut defenderint aut servarint esse immortalem gloriam consecutos.*[315] With the inclusion of this extensive - and explicit - digression Cicero enlarges the scope of his speech still further: he does not simply amplify the case from the specific instance to a general question of the rule of law, but he turns it from a defence of Sestius into an exhortation to others to follow his own and Sestius' example and join the defence of the laws. It is significant for his portrayal of the orator that such defence could justifiably involve both violence and oratory. The ends were more important than the means, with the result that the figure of the advocate becomes an ambivalent figure who, despite operating within a framework delineated by the laws, may be either fighting for their continued existence - like Cicero - or assailing them - like the prosecutors.

313 He even argues the case for foreign nations, contending that those Athenians who had stood against the wishes of the masses, men such as Themistocles, Miltiades and Aristides, had won greater renown in the *longue durée* (§141).

314 He lists ten names individually (all plural).

315 Cic., *Sest.* 143.

9. Conclusion

In this chapter, as I said at the beginning, there are no clear-cut conclusions about the way in which the Romans viewed the role of the advocate.[316] The speeches which I have considered show that the advocate could portray his role in a variety of different ways. An important inference which can be drawn from this fact is that there was no universal agreement over the part which he had to play in representing his client. He could advertize his ties to the client, identifying himself as a kindred spirit, and approach the role of the traditional *patronus*, or he could choose to emphasize his professional independence and obligations towards wider considerations than his client's cause. Occasionally, as in the *Pro Murena*, he could attempt to play both roles in the same case.

However, I have argued that the advocate's ability to play a variety of roles, and to emphasize different aspects of his own character in different cases, was dependent upon one common factor, that is his quasi-professionalism. His wide education in not only rhetoric, but also literature, philosophy and history, together with his regular presence in the courts offered the opportunity of playing this variety of roles and doing so convincingly. And as someone who was a visible presence in the forum, he could deploy a new authority based upon his regular contribution to the working of the courts. Furthermore, as an orator he also had a broader role to play in the world of Roman politics, whether speaking in the senate, addressing *contiones*, or eventually serving in the highest offices of state, a role which reaches its culmination in the *Pro Sestio* where Cicero portrays himself as the voice of the state. And as that case emphasizes, the authority gained in these other areas could also be put to use in the courts.

His own judicial activities could also gain lustre from the role which these courts played within the wider Roman state. Again Cicero could deploy a variety of portrayals, insisting on occasion that the jurors' prime duty was to the letter of the law, the principle of law in general, or to the *res publica* as a whole. The steps in the argument varied from case to case, but in all of his speeches Cicero identified a greater cause within which the particular case of his client should be viewed, and therefore be judged. The courts were represented as providing an important foundation for the *res publica*, and their contribution to the operation of justice within the state is often portrayed as the guarantee of continued civilization at Rome. In his speeches

316 There is the further limitation that only Cicero's speeches have survived from the period.

Cicero takes it upon himself to reveal these wider implications - even when this dictated extensive digressions from the specific case at issue - and in so doing he advertized his own broader duties to the principle of law and the community at large. Again I must emphasize that Cicero never allowed these digressions or broader duties to conflict with his prime role which was to secure the acquittal of his client, but they are nevertheless significant in that they set this primary duty within a broader context.

III. Cicero's *Philippics*

On the 1st April 43 B.C. Marcus Iunius Brutus wrote to Cicero after he had read copies of the two speeches which we now know as the *Fifth* and *Seventh Philippics*: *nescio animi an ingeni tui maior in his libellis laus contineatur; iam concedo ut vel Philippici vocentur, quod tu quadam epistula iocans scripsisti.*[1] This is the earliest surviving reference to the use of the Greek tag for Cicero's fourteen speeches against Antony, which I discuss in this chapter.

In the first section I argue that the first two speeches, which have often been treated separately, mark important developments in Cicero's self-representation as the leading political figure of the moment. He had to strive particularly hard to establish such a role for himself because, after the assassination of Caesar, he had been heavily criticized for his ineffectiveness, and indeed absence from Rome. In order to combat this difficulty, he used the *First Philippic* to contend that he had faithfully measured up to the duties and qualities of a leading Roman statesman. And, in addition to Cicero's self-representation, this speech and more particularly the second target Antony explicitly, who therefore acts a foiling figure, failing to meet any of the requirements of a statesman which Cicero outlines.

This dual aim dictated that Cicero should set out clearly what he thought those requirements were, a fact that makes these speeches an invaluable resource for considering one way in which a Roman statesman might construct his own political role. But what makes them especially important for my thesis is the explicit part played by rhetorical ability in the contrast which is drawn between Cicero himself and Antony.

Having examined the way in which Cicero sought to establish his political stature in the first two *Philippics*, I focus in the second section upon the way in which he exploits this stature to develop his own republican ideology throughout the remaining speeches. I argue that Cicero's role as an orator remains central and explicit: one of his most important techniques is to present himself as an interpreter of events for his audience. His use of historical *exempla* to explain certain points is significant, but even more central to his approach is his stress on the correct definition of important terms, such as *pax* and *popularis*. In this way he constructs himself as a logical thinker presenting his audience with a rational picture of the situation, rather than a speaker attempting to carry his listeners away on a tide of emotion.

If we return to Brutus' letter quoted above, we may note that he implies that Cicero's

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[1] Cicero, *Ad Brutum* 2. 3. 4.

suggestion to call the speeches *Philippics* was not made in complete seriousness (*iocans*). However, the use of this name very clearly hints that the Roman orator wanted Brutus to accept that his speeches rivalled those made by Demosthenes against Philip of Macedon. Moreover it is important to set this issue in the broader context of the disagreements between Brutus and Cicero over the best style of oratory: it had been only the previous year that Cicero had been critical of the speech delivered by Brutus on the Capitol the day after Caesar's murder, when he had failed to match Demosthenes' thunderbolts.[2] However, by going as far as to give a collection of his own speeches the name *Philippics*, Cicero seems to be making a broader link between his own situation and that of Demosthenes in fourth-century Athens.

Wooten has argued that Cicero realised that he was involved in a struggle for the survival of the republican system of government, in circumstances which were parallel to those which Demosthenes had faced in his own *Philippics*.[3] But it was not an entirely new idea for Cicero to be thinking about, since as early as 60 he had entertained a comparison of his own consular speeches with those of the Attic orator:

> *fuit enim mihi commodum, quod in eis orationibus quae Philippicae nominantur enituerat tuus ille civis Demosthenes, et quod se ab hoc refractariolo iudiciali dicendi genere abiunxerat ut σεμνότερός τις et πολιτικώτερος videretur, curare ut meae quoque essent orationes quae consulares nominarentur.*[4]

Although there is no suggestion that Cicero was intending to label his consular speeches *Philippics*, it is notable that he links Demosthenes' *Philippics* with a more elevated style, which marks them out as more statesmanlike (πολιτικώτερος) than his previous judicial efforts.

Perhaps the most obvious implication of Cicero's choice of title for the *Philippics* is that it associates Antony very clearly with Demosthenes' enemy, Philip.[5] In this way the title helps to reinforce a major theme of the speeches, namely that Antony was a *hostis*, that is a foreign enemy, of Rome, as Philip was of Athens. This idea is particularly important in the *Third Philippic*, where Cicero at first defines Antony as a non-citizen (*hunc igitur ego consulem,*

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2 Cicero, *Ad Atticum* 15. 1a. 2. See chapter 1, pp. 66-7.

3 C. W. Wooten, *Cicero's Philippics and Their Demosthenic Model* (Chapel Hill, 1983), 49-50.

4 *Ad Att.* 2. 1. 3.

5 So Kennedy, *The Art of Rhetoric in the Roman World* (Princeton, 1972), 270: 'the real point of the title is to compare the violent invective of Demosthenes against Philip to that against Antony'.

hunc civem Romanum, hunc liberum, hunc denique hominem putem...?),[6] before insisting that he is a *hostis*:

> *si autem militibus exquirendi sunt honores novi propter eorum divinum atque immortale meritum, ducibus autem ne referri quidem potest gratia, quis est qui eum hostem non existimet quem qui armis persequantur conservatores rei publicae iudicentur?*[7]

But the reference to Philip also has a second significance, since the Macedonian was not only a foreign enemy but a king. The contrast between Athenian democracy and Macedonian tyranny is an important theme of Demosthenes' speeches: καὶ ὅλως ἄπιστον, οἶμαι, ταῖς πολιτείαις ἡ τυραννίς.[8] Cicero also develops this idea with regard to Antony, whom he repeatedly describes as a debased successor to Caesar's own tyranny and *regnum*.[9] This theme is also linked with the idea that Antony is a foreigner at Rome: *qua enim in barbaria quisquam tam taeter, tam crudelis tyrannus quam in hac urbe armis barbarorum stipatus Antonius?*[10] He has surpassed even barbarian kings in the oppressiveness of his tyranny: the target of Cicero's *Philippics* has surpassed even Philip.

The collection, as we now have it, consists of thirteen speeches actually delivered in the senate and at *contiones* between 2nd September 44 and 21st April 43, and one that purported to have been delivered in the senate. But the first two have often been considered distinct from the rest of the collection. The *First Philippic* was delivered much earlier than the others, in September, while Antony was still in Rome, and can be seen as preceding Cicero's final break with him.[11] That break is often seen as coming with the *Second Philippic*, which is unique in the series for never having been delivered. It purports to be a response to the hostile attack

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6 Cicero, *Philippic* 3. 12.

7 *Philippic* 3. 14. This idea that Antony is an enemy rather than a citizen, and opposes everything that Rome stands for, is a major part of what Wooten calls the 'disjunctive mode' (Wooten (1983), 58-86).

8 Demosthenes, *Olynthiac* 1. 5. In this instance Demosthenes is stressing the impossibility of trust between democracies and tyrannies, but elsewhere he highlights the internal instability of tyrannies, if the tyrant is eager to pursue glory through the military hardships of his people, and is unwilling to allow good men to flourish (*Olynthiac* 2. 14-21).

9 So, for example, *Phil.* 2. 116-7; 13. 16-7. C. Wirszubski, *Libertas* (Cambridge, 1960), 61-5, highlights the supreme importance of *regnum* as a term of political attack.

10 *Phil.* 13. 18.

11 So Wooten (1983), 183 n. 15, quoted approvingly by B. P. Newbound, *Rhetoric and Reality in Cicero's Philippics: a study of Philippics 3-14* (D. Phil. Thesis, Oxford, 1986), 4.

against Cicero which Antony had made in the senate on the same day, namely the 19th of September.

Cicero in fact had not been present in the senate, claiming that his friends' fears for his safety restrained him.[12] Instead he decided to publish his response as a pamphlet, though maintaining the fiction that it was delivered in the senate to Antony's face. In fact he did not complete a draft of the speech until 25th October, when he sent it with a letter to Atticus.[13] In the letter he also asks Atticus to hold the speech back until there is a moment suitable for publication, which he thinks unlikely in the near future: *orationem tibi misi. eius custodiendae et proferendae arbitrium tuum. sed quando illum diem cum tu edendam putes?*[14] Indeed Cicero received a letter from Atticus on 5th November, suggesting an alteration to the speech which Cicero agrees to make.[15] It is unlikely that the 'speech' was made public for at least another month by which time Antony had left Rome for Cisalpine Gaul.[16]

For these reasons Newbound argued that it is only with the *Third Philippic* that Cicero makes the final, public breach with Antony, and therefore studied *Philippics* 3-14 separately from the first two speeches.[17] However, as I have argued above, I consider the collection as a whole, since the first two speeches were important for Cicero's development of the role which he was to play after Antony's departure, and it is to these two speeches that I now turn.

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12 *Philippic* 5. 20: *quo die, si per amicos mihi cupienti in senatum venire licuisset, caedis initium fecisset a me; sic enim statuerat.*

13 *Ad Att.* 15. 13.

14 *Ad Att.* 15. 13. 1.

15 *Ad Att.* 16. 11. 1.

16 So H. Frisch, *Cicero's Fight for the Republic* (Copenhagen, 1946), 143.

17 Newbound (1986), 3-6.

1. Cicero's self-portrayal in the *First* and *Second Philippics*

It is important to appreciate the political and personal circumstances which faced Cicero when he rose to deliver the *First Philippic*. As we have seen, his own conduct since Caesar's assassination posed a problem: it was hardly that of a leading player. Stockton succinctly summed up the evidence of the letters from this period:

> 'The picture Cicero presents in these months is thus one of vacillation, timidity, recrimination, and absence of any constructive thought - understandable enough, even excusable, but neither edifying nor notably public-spirited. His influence on affairs was negligible, and Brutus and Cassius looked to him for useful advice in vain.'[18]

More significantly Cicero eventually came to the decision to leave Italy for Athens, to return only on 1st January 43 after Antony had ceased to be consul.[19] Although Cicero claims that Atticus had approved of his decision,[20] it is clear that there was a considerable degree of hostility to his move, including from Atticus himself, who described Cicero's action as an abandonment of his country (*relinque patriam*) and asked that he produce a defence of his action: *velim σχόλιον aliquod elimes ad me, oportuisse te istuc facere.*[21] Cicero's response makes clear that others opposed his decision, since he agrees to write a piece, but will only address it to one of those who had been consistent in their opposition.[22]

The most notable of these seems to have been Marcus Brutus, who had initially said nothing out of respect,[23] but could not conceal his delight when Cicero turned back. In particular Brutus felt that Cicero had escaped severe reproach for giving up on and abandoning the state (*desperationis ac relictionis rei publicae*). Indeed Cicero had not been present in the senate on 1st August when opposition to Antony had been left to another consular, Lucius Piso, whom, as a result, Brutus was praising to the skies. This must have been particularly

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18 D. Stockton, *Cicero. A Political Biography* (Oxford, 1971), 287.

19 *Ad Att.* 16. 6; 16. 7.

20 *Ad Att.* 16. 7. 2: *quamvis non fueris suasor et impulsor profectionis meae, at probator certe fuisti, dum modo Kal. Ian. Romae essem.*

21 *Ad Att.* 16. 7. 3.

22 *Ego vero istum ἀπολογισμὸν συντάξομαι , sed ad eorum aliquem quibus invitis et dissuadentibus profectus sum.*

23 *Ad Att.* 16. 7. 5: *Brutus noster silet.*

galling to Cicero, who in speeches after his return for exile had tried to link his own existence with the continuing survival of the Roman state.[24]

Cicero had perhaps compounded these problems by his decision to stay away from the senate on 1st September, when Antony had summoned a meeting. When Cicero failed to appear, it seems that Antony launched a furious attack on him for his non-attendance, threatening to send men to pull Cicero's house down.[25]

However, a second major problem also faced Cicero. The senate was divided into two clear groups, the supporters of Caesar and those of his murderers. Indeed Antony may have called the senate on 1st September precisely to cause Cicero embarrassment on this issue.[26] It used to be thought that Antony was proposing additional honours for Caesar at this meeting, but recently Ferrary has argued that this was not exactly the case.[27] He argues that the proposal was the award of a *supplicatio* in honour of a pro-magistrate, in which the inclusion of an additional day for Caesar would have witnessed the maintenance of an earlier vote taken in honour of Caesar during 45.[28] As a result Ferrary argues that Cicero 'avait pu deviner que le vote de *supplicationes* poserait le problème de l'application ou non de la mesure de 45, et qu'il n'avait pas souhaité affronter directement Antoine à cette occasion.'[29] He could hardly support such a proposal in the light of his well-known support of Caesar's killers, nor could he oppose the motion since this would antagonize the Caesarians, that is not only his senatorial supporters but also his veterans.

These were the most significant difficulties that faced Cicero on 2nd September, and they dictated the material which he chose to treat in the *First Philippic*. At the very beginning of his speech he recognizes very clearly the need to defend his conduct: *antequam de re publica,*

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24 For example *Pro Sestio* 50: *nonne, si meam vitam deseruissem, rem publicam prodidissem? in qua quidem nunc me restituto vivit mecum simul exemplum fidei publicae. quod si immortale retinetur, quis non intellegit immortalem hanc civitatem futuram?* However, he could perhaps claim a certain consistency in his actions in as far as his departure from Italy in the face of Antony paralleled his earlier readiness to go into exile: on each occasion he maintained that he was saving himself for the future.

25 *Philippic* 1. 12-13. Attendance in the senate was theoretically compulsory, unless one was *absens rei publicae causa*, or made one of the standard excuses such as a plea of illness.

26 This has been suggested by H. Frisch (1946), 127.

27 J.-L. Ferrary, 'À propos de deux passages des *Philippiques*', in *Archiv für Religionsgeschichte* 1 (1999), 215-32.

28 Contrast, for example, D. R. Shackleton Bailey, *Cicero, Philippics* (Chapel Hill, 1986), p. 13, n. 23: 'Antony seems to have proposed that at all Thanksgivings (*supplicationes*) a day should be added in honour of Caesar.'

29 Ferrary (1999), 220.

patres conscripti, dicam ea quae dicenda hoc tempore arbitror, exponam vobis breviter consilium et profectionis et reversionis meae.[30] Indeed almost half of the speech is devoted to an explicit defence of his conduct (§§1-15),[31] and as part of this self-defence Cicero sets out very clearly his account of the qualities and aims that a Roman statesman should possess.[32]

Such an emphasis is to be found to some degree in all Roman public speeches. In the Republic there was very little structure to the way in which individuals operated within the political system. There was no modern party structure where a manifesto might represent the policies of the members within that party, and even the model of a political life dominated by factions has been seriously weakened.[33] At most a man's opinions might be advertized by the broadest labels, such as *populares* and *optimates*, whether used of oneself or of one's opponents: but such terms were ill-defined and open to contention. Alternatively a man might point to his past achievements as evidence of his beliefs: so Cicero repeatedly refers to his stand against the Catilinarian conspiracy in order to establish his patriotic credentials. Finally their past speeches, if remembered or even published in written form, might ensure that their audience listened to them with a certain set of expectations.

However, it is not excessive to claim that most[34] individual statesmen had to define what they stood for on almost every single occasion on which they spoke. Moreover, in each speech they will have had to convince the audience that they were making proposals to their general benefit, and not on behalf of some smaller group whom they were representing.[35] The

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30 *Philippic* 1. 1.

31 Cicero deals with the issue of his departure and return in sections 1-10, the question of his absence the previous day in sections 11-13 and he moves to the ostensible substance of the speech (§16ff.) only after returning once more to his absence from the senate on 1st August (§§14-15). Moreover much of the main body of the speech deals indirectly with these issues.

32 I use the English word 'statesman', although it may entail associations and duties which were not matched by identical ones at Rome. There was, however, no exactly parallel term, and Cicero tends to use alternatives such as *consularis*, *senator* and even *orator*. But in this section I am studying precisely those qualities which Cicero thought necessary in a Roman public figure, and for convenience I use terms such as 'statesman' and 'public figure' to refer to the model which he is setting out.

33 So R. Seager, '*Factio*: Some Observations,' *J.R.S.* 62 (1972), 53; P. A. Brunt, *The Fall of the Roman Republic* (Oxford, 1988), ch. 9, 'Factions.'

34 There would on occasion be exceptions, when an orator's viewpoint would be well enough known to his audience even before he spoke. For example Cicero's hostility to Clodius would have been a given during the 50s, and his attitude to Antony would have become clear through its regular repetition in *Philippics* 3-14.

35 In legal cases it is of course obvious that putting one's client's interests first was the speaker's duty, and there is a very clear statement of this at *Pro Cluentio* 51. However even when statesmen delivered speeches in the senate or at a *contio*, they might also be representing clients from a certain area of which they were patron, they might be speaking out of self-interest, financial or otherwise, or they might be promoting the interests of a certain class within Roman society.

importance of this had been realised by Aristotle when he advised that the speaker demonstrate his εὔνοια towards his audience.[36] And, as we have seen in the first chapter,[37] Cicero laid an even greater stress than Aristotle upon establishing the character and qualities of the speaker as a means of persuading his audience that he was worth listening to.

But this is particularly true of the *Philippics* where Cicero is striving to establish, both before the people and in the senate, his authority as the leading public figure of the day: he had to define what he stood for, and explain how his past conduct merited prominence. The wealth of such material in the *Philippics* is well illustrated by the extent to which they were exploited by Syme in the eleventh chapter of *The Roman Revolution*, 'Political Catchwords'.[38] Syme highlights a few qualities and aims which are accepted as desirable by all public figures: free and legitimate government, peace, loyalty, patriotism and clemency.[39] His is a classic treatment, but it is a synthesis of different sources which have been divorced from their own context: although the *Philippics* dominate, he also draws on historiographical sources and the letters and other speeches of Cicero.

In this section I shall focus holistically on the complete package which Cicero offers in the first two *Philippics*, and conversely on their negative manifestation in the person of Antony. This approach has some advantages: firstly, it enables the advertized ideals to be seen more clearly as a response to the particular circumstances in which the speeches were delivered. This is important since, as Syme's own treatment makes clear, these ideals can have no meaning or significance in isolation: one man's *libertas* is another's *servitium.* This is connected to a second point, namely that it is important to encompass the whole raft of ideals, for the meaning of each individual aspiration or quality is nuanced by the others with which it is linked. Thirdly, these qualities are constantly shifting and evolving, as each previous use contributes cumulatively to their new meaning: by considering two speeches delivered in one

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[36] Aristotle, *Rhetoric* 2. 1. 5-6. See above, p. 43. Although Cicero neglects this particular aspect of persuasion in his treatment of *ethos* in the *De oratore*, his focus there is upon judicial oratory, where this issue is obviously less relevant. However, the surviving fragment of C. Gracchus' speech, *De lege Aufeia* (*O.R.F.* 48. 44) provides a good, early Roman example of a speaker demonstrating goodwill towards his audience in a political speech.

[37] See pp. 43-8.

[38] R. Syme, *The Roman Revolution* (Oxford, 1939), 149-61.

[39] Syme (1939), 154-59.

year, this difficulty can be avoided.[40] Finally, I not only examine Cicero's political ideals in isolation, but also include the personal qualities of the political leadership which he thought necessary for the state's successful operation. For this practical side is just as important as the theoretical ideal: what did it mean to support *libertas*? What was expected of those who advocated it?

It is with these questions that I begin. We have already seen some of the failures for which Cicero had been criticized after the death of Caesar: timidity, hesitancy, giving up hope, a failure to speak out freely, and above all his departure from Rome.[41] Cicero addresses these issues in §§1-15 of the *First Philippic*, and it is at once clear that these failings are the exact opposite of what was expected. He justifies his conduct by stressing that it was Antony's behaviour which underwent a severe change on 1st June, when previously he had respected the senate and not exploited Caesar's *acta* to his own advantage.[42] Although Cicero's letters from the period do not bear witness to this sudden change - rather they suggest that he had plenty of earlier doubts about Antony - it is useful for his rhetorical purposes:[43] where Stockton alleged 'vacillation' on Cicero's part, the orator instead presents a picture in which he had been playing the role of the senator and consular so long as Antony had allowed the senate some political influence:

> *ego cum sperarem aliquando ad vestrum consilium auctoritatemque rem publicam esse revocatam, manendum mihi statuebam quasi in vigilia quadam consulari ac senatoria. nec vero usquam discedebam nec a re publica deiciebam oculos ex eo die quo in aedem Telluris convocati sumus.*[44]

This passage also states clearly the other qualities that are expected, namely that a consular and senator should stand firm watching over Rome (*nec a re publica deiciebam*

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40 C. Wirszubski's *Libertas* (1960) is an excellent example of a work which recognizes that an ill-defined term is used differently through time and according to changing contexts: 'Owing to the diversity of its elements and the partial vagueness of its meaning, *libertas* easily assumed new shapes, and while at times it inspired political movements, at others it was used for political ends, until at length it came to express political hopes rather than claims' (p. 171).

41 See above pp. 150-1.

42 *Philippic* 1. 6: *ecce enim Kalendis Iuniis, quibus ut adessemus edixerant, mutata omnia.*

43 Indeed on 17th May Cicero and the 'liberators' are already hesitating over whether they should attend the senate meeting at the start of June (*Ad Att.* 15. 1. 5). Denniston (*Commentary on Philippics I & II* (Oxford, 1926), 71) sums up the evidence of the letters well: 'A cursory reading of the letters of April and May shows that the dramatic transformation of Antony from saint to devil on 1st June 44 is invented for the occasion.'

44 *Philippic* 1. 1.

oculos), engaged in a duty which can be portrayed in military terms (*vigilia*). This is the language that Cicero uses repeatedly of senatorial duty throughout the *Philippics*,[45] and Newbound has argued that it fits well with the senatorial tradition of standing up to both internal and external enemies.[46] By using this martial vocabulary throughout the crisis Cicero can attempt to bridge the chasm between the senate in Rome and the more overtly military world of the veterans and their leaders.[47] But he uses it here in order to emphasize his own personal qualities in the face of the state's danger: he was both brave and stayed in Rome.

In fact, despite his protestations, his letters reveal that he was continuously absent from Rome from about 7th April to 31st August.[48] But although he played little part in affairs after Caesar's assassination, he is able to claim that he had laid the foundations of peace by his proposal of an amnesty on all sides on 17th March. So he can aver that, while it was possible, he did speak up publicly, and indeed Dio purports to give the speech delivered by Cicero on this occasion.[49] But this occasion is important for Cicero's self-representation in another way, since he can depict himself as the supreme advocate of peace, rather than the instigator of the rift with Antony: *omnem memoriam discordiarum oblivione sempiterna delendam censui*.[50]

It is worth emphasizing the role that Antony plays as a foil here. In Cicero's presentation it is the consul whose behaviour is fickle and inconsistent.[51] After the assassination Antony squarely supports Cicero's advocacy of peace, even offering his son to the 'liberators' as a guarantee.[52] In the ensuing period Antony continues to maintain the concord, by recognizing the authority of leading statesmen and the senate as a whole, and by

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45 Compare *Philippic* 3. 36; 7. 19; 8. 30.

46 Newbound (1986), 34-6.

47 On this see Newbound (1986), 41-2.

48 Denniston (1926), 65.

49 Dio 44. 23-33.

50 He stresses the emphatic nature of the amnesty by explicitly mentioning the *exemplum* of the Athenian amnesty of 403 between democrats and oligarchs which had endured so successfully during the fourth century.

51 Antony's behaviour is perhaps all the worse because he is *consul*. Instead of behaving in a way that befits that office he is guilty of a levity more becoming in a tribune. One may compare Plutarch's comments on Caesar's conduct as consul in 59 B.C.: καταστὰς εἰς τὴν ἀρχὴν εὐθὺς εἰσέφερε νόμους οὐχ ὑπάτῳ προσήκοντας, ἀλλὰ δημάρχῳ τινὶ θρασυτάτῳ, πρὸς ἡδονὴν τῶν πολλῶν κληρουχίας τινὰς χώρας καὶ διανομὰς εἰσηγούμενος (Plut., *Caes.* 14. 1). Also see Plut., *Cato Minor* 32. 1; *Pompey* 47. 3 with H. Strasburger, *Caesar im Urteil seiner Zeitgenossen* (Darmstadt, 1968), 21. A Ciceronian statement of something similar comes at *Mur.* 82, where he warns Cato, the tribune, that he would be much weakened if the consul, Murena, were to be brought down: *sed, cum consulari auctoritate et auxilio spoliatam vim tribuniciam viderint, tum se facilius inermem et debilitatum te oppressuros arbitrantur.*

52 *Phil.* 1. 2.

adhering to the laws.[53] The culmination of good government comes with Antony's abolition of the dictatorship. Cicero represents this action as bringing light to the *res publica*, since by abolishing the threat of *regnum* Antony gave evidence that he wanted the state to be free: *magnumque pignus ab eo rei publicae datum, se liberam civitatem esse velle.*[54] This 'good' Antony is seen advocating Syme's two foremost political slogans, 'free government' and 'peace'.

But Antony was not to remain faithful to these ideals, and Cicero marks the transition with an incredulous comparison (*mihi mirum videatur tam valde reliquum tempus ab illo uno die dissensisse*).[55] 1st June marked this transformation in Antony's behaviour: *nihil per senatum, multa et magna per populum et absente populo et invito.* This sums up Antony's changed attitude towards the niceties of constitutional process, and it does so in a striking manner. For Cicero emphasizes that it was not only the senate that suffered at the hands of Antony: certainly the senate was bypassed but, whilst there is the veneer of respectability provided by popular legislation, Cicero is keen to stress that the people were actually not present to vote. This is important because it demonstrates that Cicero is not only interested in distancing Antony from his senatorial audience, but is eager to insinuate that Antony is opposed to the interests of the broader Roman *populus*. It was a matter of dispute whether the people or the senate was the key element in the republican constitution, but Cicero wishes to avoid any such factionalism: he denies Antony's cause any legitimacy by attacking the equity of his conduct towards even his ostensible supporters.[56]

The impression that Antony is estranged from all other members of society is further strengthened. The Caesarian consuls designate, Aulus Hirtius and Gaius Pansa, do not dare to go to the senate,[57] while the *liberatores* are absent from Rome. This latter group offers Cicero another opportunity to stress Antony's inconsistency: for he notes that in their public speeches both Antony and his fellow consul Dolabella praised the 'liberators' openly, while doing

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53 *Phil* 1. 2-3. I emphasize that these statements refer to Cicero's version of events in the speech rather than to any wider historical reality.

54 *Phil.* 1. 4.

55 *Phil.* 1. 5.

56 There is perhaps an implicit contrast with Caesar himself, who had at least been faithful to the interests of his own supporters. This comparison becomes explicit at the end of the *Second Philippic*, especially at §§115-117.

57 This is particularly striking since, after Sulla, it was the consuls designate that were called upon first to express their opinions.

nothing on their behalf.[58] This inconsistency becomes a major theme of the whole set of speeches: Antony's behaviour is self-contradictory and symptomatic of a madman in contrast to Cicero who always insists upon the logic of his position.

This logic, as Cicero presents it, now dictated that he should leave, taking advantage of the *ius legationis*, which had been granted to him by Dolabella. Although he states as his motive that he could not bring himself to see in person the overturning of the republican system,[59] the implication of his whole argument is that there was no longer any role for a senator and consular to play in a Rome which Antony had turned on its head. This is reinforced by his statement that he planned to return by 1st January, when he expected the first meeting of the senate under the new consuls.

This theme of consistency remains central when Cicero is setting out the reasons for his return. For his very presence in the senate on 2nd September apparently contradicted the motives which he had offered for his departure: Antony was still consul and, in Cicero's eyes, was continuing to pursue an anti-senatorial agenda. But he points out that he was induced to turn back in the hope that Antony had once again changed his conduct for the better. The men of Rhegium had given him optimistic news: *Antonium, repudiatis malis suasoribus, remissis provinciis Galliis, ad auctoritatem senatus esse rediturum.*[60] This news is supported by a speech of Antony of which the Rhegians have a copy: *a quibus primum accipio M. Antoni contionem, quae mihi ita placuit, ut ea lecta de reversione primum coeperim cogitare.* We know nothing else of this speech and its contents, and incredibly there is no mention of it in a contemporary letter which Cicero sent to Atticus, describing this meeting.[61] Cicero can hardly have invented the speech altogether, since he claims to have read a copy, but whether he read it on that occasion and whether it was such as to explain his decision is questionable. But by citing it as the prime motivation for his return, he can again shift the charge of inconsistency from himself to Antony. With the hope that the senate might once more be respected by the fickle Antony, it could be only right that Cicero, as senior consular and vigilant guardian of the republic, should return at once to Rome.

This account also suggests that it was entirely Cicero's own decision to turn back, and this is another major facet of his self-presentation, that as a consular he should be seen acting

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58 *Phil.* 1. 6: *quos tamen ipsi consules in contionibus et in omni sermone laudabant.*

59 *Phil.* 1. 6: *quae cum audire mallem quam videre...*

60 *Phil.* 1. 8.

61 *Ad Att,* 16. 7.

independently of any factional pressures, owing allegiance only to the state as a whole. The stress that Cicero lays on this independence is at once evident if we compare the account of the *First Philippic* with that of contemporary letters. The letter to Atticus mentioned above reveals some important silences in the *First Philippic*, since it makes clear that the prime movers behind his change of mind were the 'liberators': one of his informants was a friend of Brutus, who had just left him at Naples. Moreover they brought news of Brutus and Cassius' manifesto (*edictum*),[62] and they gave Cicero the letters of these two men calling on consulars and praetorians to attend the meeting of the senate on 1st August. In the speech, however, there is no indication that Brutus and Cassius were the inspiration behind Cicero's *volte-face*: he eschews all reference to them save a mention of their manifesto. The letter also reveals that other men were criticizing his decision.[63]

In the senate on 2nd September he makes no reference to this pressure from the 'liberators', for acknowledging it would undermine the independence which he is seeking to advertize. As I noted above, the preeminence of Caesar and his subsequent murder had polarized the senate. Most men must have been known as either pro-Caesar or against.[64] Cicero's close ties to the 'liberators' were widely known, ties which Antony was to emphasize again in his speech against Cicero on 19th September: *'Caesare interfecto,' inquit, 'statim cruentum alte extollens Brutus pugionem Ciceronem nominatim exclamavit atque ei recuperatam libertatem est gratulatus.'*[65]

But Cicero wished to establish his own prominence, and the political situation, especially with the advent of Octavian, dictated that he should not alienate the Caesarians. Therefore he plays down his ties with the 'liberators', and although they are mentioned and praised particularly in the *Second Philippic* there is remarkably little reference to them in these

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62 In which they asked Antony to release them from their corn-commission (see Denniston (1926), 76).

63 *Addebant etiam me desiderari, subaccusari* (§1). A further factor in his change of mind is that he was already unhappy about his decision to leave (*quae cum audissem, sine ulla dubitatione abieci consilium profectionis, quo me hercule ne antea quidem delectabar*), unhappiness which is already reflected in a letter of 17th July (*Ad Att.* 16. 3. 4). Again this is hardly a factor which Cicero can emphasize in the senate, since, as we have seen, he laid great stress on the consistency of his attitude. Similarly the pace of Cicero's departure is reported very differently in the speech (§7) and the letters (*Ad Att.* 16. 6; 16. 7). Where the latter give the impression of a leisurely departure taken at an easy pace, the speech tells of a Cicero whose friends at Syracuse could not delay him more than one night: *quae tamen urbs mihi coniunctissima plus una me nocte cupiens retinere non potuit.*

64 Such polarization can be seen very clearly, for example, in the letter of Matius to Cicero (*Ad Fam.* 11. 28). But this picture may now have begun to gain further complexities owing to the development of a new division between the supporters of Antony and those of Octavian.

65 *Phil.* 2. 28.

speeches. Even more striking is the fact that he makes no reference to Octavian at all. Cicero faces Antony on his own.

Moreover, he stresses that he represents all elements within the state. As we have seen, he emphasizes that Antony has opposed both senatorial and popular interests, and he strives hard to avoid antagonizing the Caesarians as a whole. Even when he criticizes the veterans' eagerness for new booty, he is not prepared to dismiss them out of hand, asserting that the senate had always supported their interests.[66] Indeed the main thrust of the *First Philippic*'s argument is that Antony is overturning Caesar's *acta*, which in Cicero's opinion should be maintained.[67]

Cicero also avoids the problem of alienating factions by insisting that he was to speak for the state as a whole, rather than for or against the interests of any groups or individuals. The ultimate representation of the Roman state was its laws: these were the expression of the Roman people's will,[68] and guaranteed freedom.[69] Therefore if Antony is sworn to uphold Caesar's *acta*, the one type which should be inviolate is his laws: *(Antonius) doceret me vel potius vos, patres conscripti, quem ad modum ipse Caesaris acta defenderet... equidem existimo nihil tam esse in actis Caesaris quam leges Caesaris.*[70] Antony's new laws, passed without a real mandate, overturn the salutary nature of the previous laws. Most striking is Cicero's attack on the measure which now allows appeal against conviction for *vis* or *maiestas*: *non igitur provocatio ista lege datur, sed duae maxime salutares leges quaestionesque tolluntur.*

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66 *Veterani... quibus hic ordo diligentissime caverat* (§6). There may also perhaps be an insinuation that these veterans are not true veterans, since Cicero refers to them as *veterani qui appellabantur.* Denniston (1926), 73 favours the translation 'the veterans whose assistance was being invoked', but J. R. King, *Philippic Orations I, II, III, V, VII*2 (revised by A. C. Clark) (Oxford, 1908), p. 4 (quoted by Denniston ad loc.) preferred 'those who claimed the name of veterans'. Denniston argues that Cicero would not have dared to be so critical of the veterans, but surely this meaning would mitigate the criticism of the veterans as a whole, since it would only deny the name of veterans to those who joined Antony. Note also the way in which he tries to exculpate the veterans from their association in the civil war in the *Second Philippic*: *illi secuti sunt, tu (Antonius) quaesisti ducem* (§59).

67 *Phil.* 1. 16-26.

68 The most recent work to restate the importance of the right of the popular assemblies to legislate is F. G. B. Millar, *The Crowd in Rome in the Late Republic* (1998): 'There has not been sufficient emphasis on just how fundamental a role was played in this period by decisions taken in the form of laws (*leges*), voted on by the people in the Forum' (p. 7).

69 So Cicero can claim in the *Pro Cluentio*: *legum denique idcirco omnes servi sumus ut liberi esse possimus* (§146). See the previous chapter, pp. 75, 116-7. Wirszubski (1947) also emphasizes the link between Roman *libertas* and the *leges* (pp. 7-9).

70 *Phil.* 1. 16-17. I leave my discussion of the positive dimension of Cicero's arguments here until the next section.

quid est aliud hortari adulescentis ut turbulenti, ut seditiosi, ut perniciosi cives velint esse?[71] Once laws are overturned, the whole fabric of the Roman state is destroyed.

Upholding this fabric is presented as the ultimate duty of the statesman:

> *ego, si quid in vitam eius aut in mores cum contumelia dixero, quo minus mihi inimicissimus sit non recusabo; sin consuetudinem meam quam in re publica semper habui tenuero, id est si libere quae sentiam de re publica dixero, primum deprecor ne irascatur; deinde, si hoc non impetro, peto ut sic irascatur ut civi.*[72]

This image is the culmination of Cicero's representation of the ideal statesman. He must be present at Rome, he must be brave and he must guard the state, but the vital element in that bravery is the readiness to speak out on the major matters of state whatever the personal risk.[73] And it is because it is his duty that he exhorts Antony not to be angry at his criticisms,[74] insisting that he is not making a personal attack, but is merely saying what he thinks best for Rome. The force of the *ut civi* is significant: because Cicero is behaving as a citizen of his rank must, Antony should - if he is angry - be angry with him as a Roman, and not treat him as a *hostis*, a foreign enemy.

Furthermore, Cicero provides a model of this behaviour in the person of his fellow consular, Lucius Piso. On 1st August, while Cicero was absent, Piso had risen in the senate to criticize Antony. I have already noted that Brutus praised Piso to Cicero when they met at Velia,[75] but again the response to Piso's achievement is very different in the speech and in the letter sent to Atticus (16. 7). In the latter he stresses that Piso stood alone in the senate and that on the next day even he did not return.[76] Nor does he suggest that he has any intention of offering Piso any support himself: *nec ego nunc, ut Brutus censebat, istuc ad rem publicam capessendam venio.*

In the speech while Cicero again stresses that Piso had been isolated in the senate, he

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71 *Phil.* 1. 22.

72 *Phil.* 1. 27. This argument also reasserts his role as an advocate of peace and reconciliation, which he had claimed after his proposal of an amnesty on 19th September.

73 Syme (1939) notes that this right of free speech was the most regretted aspect of the loss of *libertas* under the principate (p. 152).

74 Antony however is not present in the senate in person.

75 See above, pp. 150-1.

76 *Ad Att.* 16. 7. 7.

nevertheless claims that his own intention was to offer support: *hunc igitur ut sequerer properavi quem praesentes non sunt secuti.*[77] He is concerned to align himself with Piso's action as closely as possible, and assume once more the role of Roman statesman. And, although he expresses no real hope of achieving anything substantial, he marks the importance of his decision to speak: *huius tamen diei vocem testem rei publicae relinquerem meae perpetuae erga se voluntatis.* This is the culmination of the opening of the speech, and suggests that we should not underestimate the significance of the *First Philippic* in reestablishing Cicero's senatorial authority. By speaking out in the senate against Antony and 'going on record' as it were, Cicero was establishing an independent position, in which he could establish a senatorial and republican ideology that might challenge Antony's position precisely because it attempted to found a consensus which embraced both the Caesarians and the 'liberators'.[78]

But speaking out on any matter is not enough, and this inspires Cicero's criticism of Antony's behaviour on the previous day. That debate was on a relatively trivial matter, the voting of personal honours, not an issue of national importance, such as war with Hannibal or peace with Pyrrhus, and Antony's abusive and outspoken behaviour was unwarranted. Cicero recognizes a counterpoint to the right of speaking out, namely the right to say nothing: as a leading consular he could not be forced to contribute to any debate.

But Antony's call for Cicero's house to be torn down also offers him the opportunity to highlight the consul's rashness, and to remind the senate of the state's debt to himself: *cuius enim malefici tanta ista poena est ut dicere in hoc ordine auderet se publicis operis disturbaturum publice ex senatus sententia aedificatam domum?*[79] Moreover he notes Antony's folly in demanding his presence, by pointing out that he would only have opposed the motion which Antony was proposing, a motion which he argues was contrary to Roman religious custom in granting divine honours to a dead man. This section is highly illustrative of the way in which many categories of 'statesmanlike' behaviour could be combined in one issue: Cicero provides a positive model of someone who has been rewarded for previous services, while Antony is a negative figure, who is not only rash and personally abusive, but unaware of

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77 *Phil.* 1. 10. It is possible that Cicero had planned to take no part in politics on his return, and had come to the realisation that inactivity was not possible only as a result of Antony's speech on 1st September, for he suggests that his life was in some danger anyway (*multa autem impendere videntur praeter naturam etiam praeterque fatum*).

78 This attempt to establish a consensus is well analysed by Newbound (1986). See particularly pp. 11-14.

79 *Phil.* 1. 12.

Roman religious custom and self-defeating in the arguments which he chooses to adopt. In this way Cicero builds up a complex picture of the ideal leader, who has to possess the complete spectrum of attributes.

This passage also underlines the importance of Antony's role as a foil. Modern scholars have praised the balanced tone of the *First Philippic* in comparison with the rest of the collection.[80] But there are many pointed attacks which hint at the later invective: against Antony's supporters (§8: *malis suasoribus*), his intemperance (§12), his theft of money (§17: *pecunia utinam ad Opis maneret!*), his illegally passed laws when armed men ringed the *forum* (§25), his anger and fondness for arms (§27: *iratum et armatum*), his threatening of death against Cicero (§28), his reputed lust for money (§§29, 33), his inconsistency about the auguries (§31), his wife, Fulvia (§33) and, most openly, his naked desire for individual power (§33-5). These criticisms remain undeveloped or even discounted, save for the last, but they do help to construct a ruinous figure against which to set the exemplary behaviour of Cicero.

These attacks may have prompted Antony's bitter response on 19th September, but the most threatening aspect of Cicero's speech must have been his insistence that he was to maintain a leading role as an outspoken opponent of Antony. I have argued that Cicero is keen not to associate himself too closely with the 'liberators', but he does say that it would have been more appropriate to honour the regicide Brutus in the way that Antony proposed to honour Caesar, although he would still have opposed the motion.[81] This might have risked the alienation of Caesar's supporters, but must have seemed a risk worth taking in order to establish his bravery in speaking out against the consul. For he restates his intention to maintain his right to speak freely on all matters of importance: *de reliquis rei publicae malis licetne dicere? mihi vero licet et semper licebit dignitatem tueri, mortem contemnere.*[82]

Again he associates himself with Piso, wishing that he had himself been present that day, and he chastises the consulars who were present for doing nothing when the opportunity existed. It was the duty of those who had previously been elected consuls by the Roman people to take the lead in the senate: *idcircone nos populus Romanus consules fecit ut in altissimo gradu dignitatis locati rem publicam pro nihilo haberemus?* It was Piso alone who had

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80 So Stockton (1971), 292: 'A restrained and thoughtful speech untarnished by cheap abuse and scabrous taunts'; Kennedy (1972), 269: 'Though it criticised Antony, personal invective was avoided and the tone was moderate throughout.'

81 *Phil.* 1. 13.

82 *Phil.* 1. 14.

recognized that it was his responsibility to speak up: *Pisoni, qui non quid efficere posset in re publica cogitavit, sed quid facere ipse deberet.*[83] But Cicero now promises himself to maintain this role as long as he can, and it is with this pledge that he ends his speech: *quae potestas si mihi saepius sine meo vestroque periculo fiet, utar: si minus, quantum potero, non tam mihi me quam rei publicae reservabo.*[84] As the leading consular it was his duty to stand and speak, doing everything in his power to defend the lawful republic.

The evidence for Antony's reaction to this speech is to be found in the *Second Philippic*. For Cicero includes several references to, and even quotes from, the speech which Antony made against him on 19th September in the direct reply which he makes in §§3-43.[85] One feature of the speech seems to have been an attack on Cicero's inconsistency.[86] First of all Antony seems to have objected that Cicero should not have criticized him as a friend;[87] that he himself had used armed force against Catiline, and so could not berate Antony for resorting to the same means;[88] that Cicero, contrary to his self-portrayal, was a source of division in the state rather than of unity and concord;[89] finally that Cicero was prone to wild mood swings as in Pompey's camp during the civil war against Caesar.[90] But perhaps most significant is Antony's attempt to alienate Cicero from the Caesarians by alleging his involvement in the conspiracy.[91]

Cicero's response to these charges, as we have seen, was never delivered, but when he published the *Second Philippic* he abandoned all restraint and launched a vigorous invective

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83 *Phil.* 1. 15.

84 *Phil.* 1. 39.

85 Of course we cannot be certain that Cicero deals with all Antony's attacks, or even that he does not manipulate them in his treatment of them. However the best argument in support of their veracity is that they are obvious points for Antony to make, and also effective.

86 This is striking evidence that Antony does not seem to have questioned the relevance of Cicero's ideal categories, rather to have denied that Cicero lived up to them.

87 *Phil.* 2. 3-7. Note especially: *cui priusquam de ceteris rebus respondeo, de amicitia quam a me violatam esse criminatus est* (§3).

88 *Phil.* 2. 16-17: *at etiam ausus es... clivum Capitolinum dicere me consule plenum servorum armatorum fuisse.* Worst of all Antony insinuates that Cicero's armed support of *equites* and nobles was in fact a gang of armed slaves, an accusation which was perhaps based on the fact that some of the men had brought their slaves with them. He also attempted to implicate Cicero in Milo's murder of Clodius (*Phil.* 2. 21-22).

89 So in his attempts to keep Caesar and Pompey apart (*Phil.* 2. 23).

90 *Phil.* 2. 37-9, where his behaviour is said to have ranged between gloom and flippancy.

91 *Phil.* 2. 25-7. One might again compare Cicero's attempt to distance Antony from the Caesarians in the *First Philippic*, not only in his main critique of the consul's failure to maintain Caesar's *acta*, but also in his association with the other consul Dolabella's action in suppressing the unofficial Caesar cult in the forum: *alia porro propria Dolabellae quae, nisi collega afuisset, credo eis futura fuisse communia* (§5).

against Antony.[92] The first point to note is that the two figures who are the sole focus of the speech are Cicero and Antony; everyone else only plays a tangential role. He makes this clear early in the speech: *mihi, patres conscripti, et pro me aliquid et in M. Antonium multa dicenda sint.*[93] One effect of this is to polarize the conflict, with Antony once more acting as a negative foil throughout the speech, but equally important is the way in which this approach again helps to promote Cicero's own standing: it is he, rather than any other group, who is to lead the fight against Antony. It is for this reason that there is little mention of the 'liberators', of Octavian or of any other Caesarians. He even exploits Antony's attack against him to reinforce the point that he, Cicero, is the main representative of the republic: *non existimavit sui similibus probari posse se esse hostem patriae, nisi mihi esset inimicus.*[94]

Cicero again focuses his attack in two main areas: first the general baseness of Antony's character, including his irrationality, and secondly his failure to stand by Caesar in life and after his death, an emphasis which once more demonstrates Cicero's desire to bestride the pro- and anti-Caesarian divide.[95] So Antony has repeatedly honoured the 'liberators' (§31); he has himself plotted the death of Caesar previously, from which he would have benefited greatly (§34-36); he had failed to follow Caesar to Africa (§71); Caesar had tried to extract allegedly stolen money from him (§§72-4); he had refused to recognize the election of Caesar's choice, Dolabella, as suffect consul for 43 (§80); against Caesar's wishes he had attempted to crown him as king at the Lupercalia (§85-7); after Caesar's death he had forged the *Acta Caesaris* wholesale (§§92-100); he had even failed to celebrate Caesar's memory on this very day, when he had originally proposed it. But beyond all these individual failures, the climax of this argument is that in no way does he deserve to bear comparison with his old master:

> *fuit in illo (Caesare) ingenium, ratio, memoria, litterae, cura, cogitatio, diligentia; res bello gesserat, quamvis rei publicae calamitosas, at tamen magnas... cum illo ego te dominandi cupiditate conferre possum, ceteris vero rebus nullo modo comparandus es.*[96]

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92 So for example Kennedy (1972), 271: 'The speech owes its fame to the malice with which the attack is worked out.' If such an invective had actually been delivered against a presiding consul, it would perhaps been seen as a breach of *mos*.

93 *Phil.* 2. 10.

94 *Phil.* 2. 2.

95 This stress within the speech militates against Kennedy's view of the speech (p. 271 again): 'It hardened opposition between the senatorial and Caesarian parties to the point of making compromise very difficult.'

96 *Phil.* 2. 116-17.

Cicero has made clear throughout the speech the various aspects of Antony's corrupt character and conduct,[97] but the point that he repeatedly stresses is that the consul is utterly irrational. Craig has noted that Cicero uses the dilemma form of argumentation unusually often in the *Second Philippic*.[98] As Craig notes, an argument from dilemma can often be used to demonstrate the illogicality of one's opponent.[99]

The example given by the *Auctor ad Herennium* offers a good illustration of the way in which a dilemma can work: *iniuria abs te adficior indigna, pater; nam si inprobum esse Cresphontem existimas, cur me huic locabas nuptiis? sin est probus, cur talem invitam invitum cogis linquere?*[100] Here the daughter argues that her father must either think highly or think badly of her husband Cresphontes; therefore he has perforce done wrong on one occasion, either by letting him marry her, or by forcing her to divorce him; therefore he has been inconsistent.[101]

As Craig shows, Cicero does not introduce this argument on every occasion to underline Antony' inconsistency, but it is so used on five occasions (§§ 75, 84, 100, 110 (bis)). I quote one example to illustrate the way in which Cicero exploits this device. He is describing the aftermath of Caesar's departure for Spain: *(Antonius) profectus est aliquando tandem in Hispaniam; sed tuto, ut ait, pervenire non potuit. quonam modo igitur Dolabella pervenit? aut non suscipienda fuit ista causa, Antoni, aut, cum suscepisses, defendenda usque ad extremum.*[102] Like the father in the *Ad Herennium* passage, Antony's behaviour has been self-contradictory: either he should have avoided the Caesarian cause from the start, or he should have been faithful to it. But the use of the device here also serves to depict Antony's loyalty to Caesar as ambiguous, and this is also the case in three other instances: his

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97 Most of these have already been hinted at in the earlier speech: he always resorts to armed force (§§19, 108-9, 112); he has purloined others' property, including inheritances (§§40-41, 64-70, 103); he has indulged in drunkenness and debauchery (§§45, 65-9, 104-5); he has been linked with dubious allies (§§48, 56); he has even been sick in front of the Roman people (§63).

98 C. P. Craig, *Form as Argument in Cicero's Speeches* (Atlanta, 1993), 147-68: he notes its use in §§16, 32, 54, 56, 75, 84, 100, 110 (bis).

99 Craig (1993), 155.

100 *Ad Herennium* 2. 38.

101 Of course the father can say that he had thought Cresphontes honourable, but had been mistaken (as our text suggests for a rebuttal); however this entails the acceptance of error. Gaius Gracchus had used this form of argument in his speech against P. Popilius, concluding: *aut olim cupide adpetisse aut nunc temere repudiasse dicamini* (Gellius 11. 13. 1-3).

102 *Phil.* 2. 75.

manipulation of Caesar's *acta*, the issue of his flaminate of Caesar and the question of the extra day for festivals in Caesar's honour.[103]

There are two further occasions when Cicero uses this device with a slightly different emphasis, to show that Antony must either be wicked or a fool (§§16, 54). The first example comes when Cicero is responding to Antony's charge that he had used armed force to pressure the senate into passing certain decrees. Antony is either a fool if he does not know the facts of that occasion, or impudent, if he dares to utter lies before the selfsame senate: *o miser, sive illa tibi nota non sunt - nihil enim boni nosti - sive sunt, qui apud talis viros tam impudenter loquare!* Similar is the second example, where Antony is a wretch if he realises that he was the cause of the civil war, but even more wretched if he does not realise this.[104] These arguments serve to depict Antony either as a scoundrel, or as a man lacking awareness both of his own past, and more generally of Roman history and his place within it.

But this idea is not confined to Cicero's use of the dilemma form of argumentation. A major theme of the whole speech is Antony's failure to meet the standards of knowledge expected of a Roman statesman: at root he is a fool. His attack on Cicero's consulship is an example: *iam illud cuius est non dico audaciae - cupit enim se audacem - sed, quod minime volt, stultitiae, qua vincit omnis, clivi Capitolini mentionem facere.*[105] It is worth listing some of the further instances mentioned by Cicero in order to show the breadth of his criticisms.

Antony has failed to match the norms of civilized society in quoting a private letter sent to him by Cicero.[106] He has little knowledge of any literature,[107] doesn't know his dates when he makes Cicero the cause of the civil war (§23), and is unable to make up his mind whether the killers of Caesar are heroes or criminals.[108] He has also shown great stupidity in his readiness to seize Pompey's possessions, failing to realise that this would encourage loathing among the people (§§65-68). He is made to incriminate himself as an anti-republican in his

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103 *Phil.* 2. 100, 110.

104 *Phil.* 2. 54: *o miserum te, si haec intellegis, miseriorem, si non intellegis hoc litteris mandari, hoc memoriae prodi...* One of Caesar's pretexts for his march on Rome had been that the powers of the tribunes (one of whom was Antony) had been restricted by the senate (cf. Caesar, *Civil Wars* 1. 5).

105 *Phil.* 2. 19.

106 *Phil.* 2. 7: *homo et humanitatis expers et vitae communis ignarus.*

107 *Phil.* 2. 20: *tantum dicam breviter, te neque illos (versus) neque ullas omnino litteras nosse.* He also contrasts Antony strongly with Varro in their respective behaviour in Varro's old house (§105).

108 *Phil.* 2. 28-30. In this section he uses the word *stupor* and its cognates three times to describe Antony, as often elsewhere in this speech. It perhaps points to Cicero's changing priorities that in later *Philippics* he attacks Antony's *furor* rather than his *stupor* (but *furor* is mentioned with *stupor* at *Phil.* 2. 65).

attempts to defend his record before Caesar (§72), he has behaved like a barbarian in Gaul, eschewing the dress of a dignified Roman (§76), and he has shown that he is out of his wits by forging an anachronistic decree of Caesar (§97). Moreover, although he is an augur, he has shown that he is completely unacquainted with Roman religious practice.[109]

This material is intended to demonstrate Antony's general folly and ignorance of Roman custom, but there is an even sharper focus to Cicero's attack, namely on Antony's performance as an orator. Cicero responds to the latter's speech as if it were a rhetorical challenge: *an decertare mecum voluit contentione dicendi? hoc quidem est beneficium. quid enim plenius, quid uberius quam mihi et pro me et contra Antonium dicere?*[110] He claims to have plenty of material to work with, but he is also glad that Antony has offered such a challenge because it means that Cicero can face him on his own terms, and can demonstrate his own rhetorical superiority.

A recurring theme of the speech is that Antony has had to go for intensive, and expensive, training in order to deliver his speech in the senate, although it has not repaid the effort. The first allusion to this training comes in §8: *iam invideo magistro tuo, qui te tanta mercede quantam iam proferam nihil sapere doceat.* Later in the speech Cicero reveals the identity of this man, the Sicilian rhetorician Sextus Clodius, and the amount that he received, two thousand *iugera* of Leontine land. Antony has been practising declamation with him in order to sharpen his wits.[111] This desperate need for top-up training demonstrates Antony's inexperience in constitutional politics, an inexperience which is highlighted by a comparison with his grandfather M. Antonius, who had played a starring role in Cicero's own *De oratore*.[112]

But despite this practice, Antony often produces only weak or self-defeating arguments: *tam autem eras excors ut tota in oratione tua tecum ipse pugnares, non modo non cohaerentia inter se diceres, sed maxime diiuncta atque contraria, ut non tanta mecum quanta tibi tecum esset contentio.*[113] On this occasion, Cicero is criticizing him for committing the basic

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109 *Phil.* 2. 81: *nos enim nuntiationem solum habemus, consules et reliqui magistratus etiam spectionem. esto: hoc imperite; nec enim est ab homine numquam sobrio postulanda prudentia.* Denniston (1926), 184-6 discusses this issue. Cicero returns to it in §88, and again in §102 where Antony's ignorance of augural law with regard to colonies is attacked.

110 *Phil.* 2. 2.

111 *Phil.* 2. 42-3. Cicero also makes acerbic references to this transaction at §§84, 101.

112 *Phil.* 2. 42, 111.

113 *Phil.* 2. 18.

rhetorical error of abusing his audience: he had attacked Cicero for putting to death P. Lentulus in 63 B.C., but Cicero insists that it was the senate which took that decision, and his scorn is disdainful: *homo disertus non intellegit eum quem contra dicit laudari a se; eos apud quos dicit vituperari.* Again with the claim that Cicero's friendship to Antony was revealed by the private letter which he read out, Cicero is at pains to stress the weakness of Antony's argumentation: *quid enim est minus non dico oratoris, sed hominis quam id obicere adversario quod ille si verbo negarit longius progredi non possit qui obiecerit?* [114] Cicero only introduces this point in order to attack Antony's oratory, for he at once states that in fact he has no intention of denying the authenticity of the letter.

There are further assaults on Antony's oratory as the speech progresses: his attempts at humour are unsuccessful (§20), he has included Cicero, to the latter's advantage, among the conspirators,[115] and he criticized Cicero's behaviour in Pompey's camp for being too gloomy and too jolly, reasons which contradict each other.[116] However his most bitter attack is reserved for Antony's earlier performance at the *Lupercalia*, where Cicero represents him as begging for slavery at the hands of Caesar, almost naked as a result of his participation in the festival: *o praeclaram illam eloquentiam tuam, cum es nudus contionatus.*[117]

Such a man cannot make any claim to the role of Roman statesman when set beside Cicero. For in contrast Cicero's speech purports to be a carefully argued and bravely spoken defence of republican liberty.[118] In pointing out the defects of Antony's arguments, Cicero is demonstrating his own superiority. Again, as Craig says, the use of the dilemma form is important: 'First, Cicero makes skill in speaking a substantial theme... this fact can promote the presentational use of such an easily recognizable and ostentatious device of the trained

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114 *Phil.* 2. 9.

115 *Phil.* 2. 32-33: *in huius me tu consilii societatem tamquam in equum Troianum cum principibus includis? non recuso; ago etiam gratias, quoquo animo facis.*

116 *Phil.* 2. 40: *quod autem idem maestitiam meam reprehendit, idem iocum, magno argumento est me in utroque fuisse moderatum.*

117 *Phil.* 2. 86. He returns to this occasion when he compares Antony with his grandfather, M. Antonius, in §111.

118 The only difficulty with this picture is that Cicero was not actually brave enough to be present in the senate on 19th September, let alone to answer Antony (so Craig (1993), 149). However this might only serve to reinforce Cicero's portrayal of an Antony who brooks no criticism, and the very fact that the 'speech' was published offers evidence enough of Cicero's fortitude. Juvenal was clear that the appearance of the work sealed Cicero's fate (*Satire* 10. 122-26): *'o fortunatam natam me consule Romam:'| Antoni gladios potuit contemnere si sic| omnia dixisset. ridenda poemata malo| quam te, conspicuae divina Philippica famae,| volveris a prima quae proxima.*

speaker.'[119] Similarly Cicero can advertize his acquaintance with the well known forensic argument of Cassius '*cui bono*', when he pretends to put Antony on trial for the death of Caesar: it is the former who has benefited most, particularly financially, from the latter's death.[120]

But it is not only rhetorical experience which Cicero is trying to advertize, but also the logic of his position, and the dilemma is a form of argumentation which tries to create an air of inevitable logic: Antony, for example, cannot but be inconsistent if he is critical of the murder of Caesar whilst at the same time lauding his killers. Cicero can add further authority to his arguments by pointing to the accuracy of his previous predictions about Antony's behaviour, namely that he would revert to character once he had abandoned his fear after Caesar's assassination. Then he was not heard, now he demands his audience's attention: *o mea frustra semper verissima auguria rerum futurarum!*[121]

In spite of this Cicero concludes his speech with a call for Antony to revert to support of the republic: *respice, quaeso, aliquando rem publicam... mecum, ut voles: redi cum re publica in gratiam.*[122] Newbound has taken this exhortation at face value, arguing that the *Second Philippic* does not mark a final break with Antony,[123] but it is perhaps better to see this as a rhetorical ploy: throughout the speech Cicero has made savage personal attacks on Antony and has portrayed him as a man who is utterly at odds with the republic.[124] Rather this appeal enables Cicero to draw the speech to its conclusion on a more positive note, which avoids personal bitterness. Secondly it serves to juxtapose Antony and Cicero, and introduces the climax of the speech where Cicero reaffirms his advocacy on behalf of the whole state: *sed de te tu videris; ego de me ipse profitebor. defendi rem publicam adulescens, non deseram senex: contempsi Catilinae gladios, non pertimescam tuos.*[125] Cicero affirms his readiness to die for

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119 Craig (1993), 167-8.

120 This argument may perhaps be a cliché in such contexts - compare its use at *Pro Milone* 32. However, this would not reduce the impact of its use here by Cicero, since the employment of such a common topos of the courts could only serve to advertize his own familiarity with that world.

121 *Phil.* 2. 89.

122 *Phil.* 2. 118.

123 Newbound (1986), 4-5.

124 And very shortly afterwards he alludes to Antony's predilection for violence (*gladios*). As we have seen, Cicero uses military language of his own duty, employing words such as *vigilia* perhaps because he is unwilling to concede superiority to Antony in any sphere. However it is also important that he uses defensive imagery of his own role, while concentrating on the aggressive nature of Antony's martial bent.

125 *Phil.* 2. 118.

the state, and he again underlines his credentials as the suppressor of the Catiline conspiracy. He concludes with two prayers, that when he dies the Roman people should be free, and that each man may reap the rewards of his service on behalf of the state.

Nisbet notes that the peroration of the speech contains four references to the *res publica*,[126] but there are also two references to the *populus Romanus*, one to the *civitas* and two to freedom.[127] Cicero sets out very explicitly the ideals for which he is fighting, and of which he claims to be the supreme defender. This conclusion forms the climax of Cicero's efforts to establish himself as the prime opponent of Antony, since this must be the purpose of the *Second Philippic* as Cicero wrote it. For the silences about the 'liberators' and Octavian are significant in that they help to establish the conflict as one between himself and Antony. Moreover, although this speech was never delivered, it helps to develop the conflict as an intellectual and rhetorical one, areas in which his expertise dictated that he would have a role to play. In particular the importance which he attributes to the act of rhetorical performance and being seen to 'speak out' helps to establish his authority come 20th December, when he stands and delivers the *Third Philippic*.[128] In the next section, I examine the way in which Cicero attempts to exploit this position to advocate his own republican ideology, and consider the way in which he develops his role as an orator during the course of the conflict.

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126 R. G. M. Nisbet, 'The Speeches', in T. A. Dorey (ed.), *Cicero* (London, 1965), 77.

127 *Phil.* 2. 118-19.

128 *Phil.* 3. 33: *hunc ego diem exspectans M. Antoni scelerata arma vitavi, tum cum ille in me absentem invehens non intellegebat ad quod tempus me et meas viris reservarem.* This reprises the idea that Cicero has always saved himself in order to protect the state at a later date, as he insisted was the prime motivation of his decision to go into exile. See above, pp. 154-7.

2. The role of the orator in *Philippics* 3-14

Wooten's study of Cicero's *Philippics* attempted to describe the style of the speeches, a style to which he gave the name the 'rhetoric of crisis'.[129] As important qualities he notes its clarity, vividness and directness, but above all he emphasizes what he calls the 'disjunctive mode': 'To him the contest is black and white, the struggle of good against evil.'[130] Newbound's thesis (on *Philippics* 3-14) picks up and enlarges upon this last aspect of the speeches' style to consider how Cicero attempts to develop a consensus of forces against Antony.[131] Both these works concentrate upon the way in which the speeches relate to, and are the product of, the conflict, and therefore spend less time upon the positive ideology of the corpus.[132] My focus is upon the figure of the orator and the way in which the speeches reflect both explicitly and implicitly the role which Cicero, as an orator, played, or wanted to play, within the state. However the orator did not operate in isolation within the Roman Republic: therefore it is important to consider how he represents the political system within which he had to function.

I begin with a passage where Cicero is explicit about his duty to the state:[133] *omnes id quidem facere debebamus, eaque erat non modo apud maiores nostros sed etiam nuper summa laus consularium, vigilare, adesse animo, semper aliquid pro re publica aut cogitare aut facere aut dicere.*[134] This is very similar to the role which we have seen Cicero advertizing in the first two *Philippics*: he should maintain a military-style guard and should think, act or speak as the situation requires,[135] all on behalf of the state. This portrayal does have importance,

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129 Wooten (1983).

130 Wooten (1983), 58.

131 Newbound (1986). See pp. 8-14 in particular. His thesis is also concerned to assess how successful Cicero's attempt was, and how many elements of the coalition, particularly in Italy at large, really did stand united against Antony, but this is an aspect of the speeches with which I am less concerned.

132 Newbound does however suggest that Cicero is trying to develop the idea of Rome as a 'model city-state' (pp. 288-300), but he is not very specific about the form that such a city-state might take.

133 In this section I do not treat each of the speeches separately and in sequence. Whilst the context of the individual speeches is important, I prefer to consider the collection thematically in order to highlight the similarities between the speeches. Since they were delivered over such a short period of time (12 speeches between 20th December 44 and 21st April 43), their cumulative effect must have been more significant than was normally the case for a Roman statesman's orations (on which see above pp. 152-3).

134 *Philippic* 8. 30. It is significant that Cicero should lay especial stress on the role of the consulars, who spoke early in senatorial debates and carried particular *auctoritas*.

135 It is worth noting the order in which Cicero sets out these functions.

particularly for Cicero as we have seen, because it does emphasize the importance of being there and standing up. However, it does not get us very far, and we should question what precisely Cicero means by the innocuous, and universally acceptable phrase, *pro re publica*. In the *Philippics*, as both Wooten and Newbound have argued, Cicero is keen to establish a broad coalition against Antony, and therefore cannot afford to alienate any group within the state, be it the senate, the people, the Caesarians or the supporters of the 'Liberators'. By *res publica*, therefore, does Cicero mean all Roman citizens? If that was the case he could have used *populus Romanus*, and there are citizens whom he wishes to exclude, namely Antony and his supporters.[136]

There is, however, some further flexibility here, because Cicero is always arguing that Antony should in any case be considered a *hostis*, that is a *foreign* enemy: *cum omnis dico, eos excipio quos nemo civitate dignos putat.*[137] Indeed Cicero is extremely critical even when the language of internal disagreement is applied to the present conflict. For example he attacks Antony's use of the word *partes*:

> *partes, furiose, dicuntur in foro, in curia. bellum contra patriam nefarium suscepisti; oppugnas Mutinam, circumsedes consulem designatum; bellum contra te duo consules gerunt cumque iis pro praetore Caesar; cuncta contra te Italia armata est.*[138]

As an enemy of Roman institutions and the *imperia* of the Roman magistrates, Antony has no right to use the language of Roman politics. This also suggests a further meaning of *res publica*, perhaps the most common one, namely the political institutions of the Roman state: the people, the senate and its magistrates. It is therefore significant that Cicero here refers to the *forum* and *curia*, since these were the two central areas of Roman political life.[139]

But Cicero could define what he stood for even more broadly than in terms of political institutions. While Antony offered loot to his soldiers, Cicero could make a counter-offer: *nos*

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136 Therefore it would seem better to render the phrase *pro re publica* more vaguely as 'in the public interest', but this requires further clarification which I seek to establish in the following paragraphs. The phrase can perhaps be compared with the legal definition of certain acts as *contra rem publicam* which Lintott discusses at *Violence in Republican Rome*^{2} (Oxford, 1999) [= Lintott (1999b)], 116ff.

137 *Phil.* 8. 8.

138 *Phil.* 13. 39.

139 For an account which emphasizes the forum (and the *curia* adjoined the *forum*) as the centre of Roman politics, see now Millar (1998).

libertatem nostris militibus, leges, iura, iudicia, imperium orbis terrae, dignitatem, pacem, otium pollicemur.[140] Here the stress is upon legality at home, foreign empire and internal peace. Peace and the rule of law are again linked, just as they were in the first two *Philippics*, and Cicero frequently reiterates that Antony's conduct has directly transgressed both human and divine laws.[141] This is an important reminder that Rome's religious customs were also considered an important aspect of the *patria*. By fighting Rome, Antony and his supporters were also fighting the gods: *unus furiosus gladiator cum taeterrimorum latronum manu contra patriam, contra deos penatis, contra aras et focos, contra quattuor consules gerit bellum.*[142]

This suggests that in speaking on behalf of the *res publica* Cicero envisaged himself speaking on behalf not only of Roman citizens, but also of Roman political, legal and religious institutions. But this might still seem rather unexceptionable, since these are all ideals which Antony himself happily shared. We may note simply the fact that he pushed through a large raft of legislation during his consulship, and while Cicero challenges the propriety of the process it is impossible to deny that Antony was at least respecting the right of the Roman *populus* to act as the legislature of the state.[143] Antony did not act as a foreign enemy in marching on Mutina, as Cicero would have it, but as a consul who had ensured that a law was passed on provincial commands in order to establish the legal exchange of his province of Macedonia for that of Gaul.[144]

But Cicero in the *Philippics* repeatedly attacked the procedure which Antony followed in getting this and other laws passed, and it is in the *Fifth Philippic* that he is particularly severe in his criticism.[145] He focuses upon three particular areas: Antony's disregard of unfavourable auspices, his failure to respect the Caecilian and Junian laws which dictated that all proposed laws should be published for a period including three market-days[146] and, above all, his

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140 *Phil.* 8. 10.

141 As an extensive example, see *Phil.* 5. 7-10.

142 *Phil.* 13. 16. Compare also *Phil.* 8. 8.

143 An example of this is provided by Antony's complaint, quoted by Cicero at *Phil.* 13. 31: '*veteranorum colonias, deductas lege senatus consulto sustulistis.*' Although this annulment seems to have been carried out by virtue of a provision of the *lex Caecilia Didia*, Antony appeals to the general principle that a *lex* should trump a *senatus consultum.*

144 On this law, see Appendix I of Denniston (1926), 173-4.

145 *Phil.* 5. 7-10.

146 This precise interpretation of *trinundinum* has been argued for by A. W. Lintott in '*Trinundinum*', *C.Q.* 15 (1965), 281-85. But A. K. Michels, *The Calendar of the Roman Republic* (Princeton,1967), 88 and 191ff. has proposed a fixed 25 day period.

alleged control over access to the forum with armed men. The second and third of these are particularly important, because they fundamentally undermined the extent to which legislation was a fair reflection of the people's will. If the proposed legislation was not made public at a sufficiently early stage only a very small group of people from the environs of the forum would be aware of the impending vote and its significance.[147] Even more threatening to the fair working of the system is physical control of the space of the forum and access to the voting.[148] The climax of Cicero's presentation reveals Rome as a captured city: *sic vero erant disposita praesidia ut quo modo hostium aditus urbe prohibentur castellis et operibus, ita ab ingressione fori populum tribunosque plebis propulsari videres.*[149] The supposedly sovereign people are reduced to the level of aliens from their own political process.

Cicero also emphasizes that Antony had impinged upon senatorial independence as well, by placing armed men in meetings: *cum inter subsellia nostra versentur armati, cum in hac cella Concordiae, di immortales! in qua me consule salutares sententiae dictae sunt, quibus ad hanc diem viximus, cum gladiis homines conlocati stent.*[150] Similarly he had issued edicts actually debarring certain men from even attending the senate.[151] Cicero plays upon this theme in the *Third Philippic* in particular, when he repeatedly claims that this day[152] marked the new beginning of freedom: *hodierno die primum, patres conscripti, longo intervallo in possessionem libertatis pedem ponimus.*[153]

In Cicero's representation it is the resumption of free speech that marked the beginning of that freedom. Both in the senate and with the people in the forum the different points of view were voiced before the matter at issue was put to the vote. In the case of public legislation the debate did not strictly take place at the same meeting - although it could happen on the same day -[154] but occurred in one or more *contiones* which preceded the actual vote in the *forum* or other

147 Rutilius, consul of 105, as quoted in Macrobius, explains the importance of this measure in achieving a larger group to vote on legislation (Mac., *Sat.* 1. 16. 34).

148 Millar (1998) emphasizes the ongoing importance of physically controlling this space throughout the years 80-50 B.C. See for example pp. 113-4. On the different techniques of violence used, see Lintott (1999a), 67-73.

149 *Phil.* 5. 9.

150 *Phil.* 2. 19.

151 *Phil.* 3. 23.

152 It was the 20th December when the new tribunes had just entered office.

153 *Phil.* 3. 28; compare also 3. 6 and 33.

154 After the debate the vote would be preceded by the command *discedite* (Livy 2. 56. 12). See A. W. Lintott, *The Constitution of the Roman Republic* (Oxford, 1999) [= Lintott (1999b)], 46.

place of assembly.[155] However these *contiones*, in combination with the publication of the proposed legislation, did mean that discussion of the issue in question was available to the people who might vote on it. Although the people could only pass laws in conjunction with a presiding magistrate, and could not propose amendments or alternative measures, they did however have the opportunity to hear the arguments and they had the final say.[156] But we should also remember that public *contiones* were also held on occasions when no law was actually being proposed, again emphasizing how seriously public opinion was taken. So Cicero delivered *Philippics* 4 and 6, in response to an invitation from a magistrate,[157] from a desire to keep the public in the forum abreast of developments in the senate.[158]

Therefore in both senate and forum the role of oratory was fundamental for Cicero. Now that freedom had returned, Cicero's time had once more come: *hanc vero nactus facultatem, nullum tempus, patres conscripti, dimittam neque diurnum neque nocturnum quin de libertate populi Romani et dignitate vestra quod cogitandum sit cogitem...*[159] The very fact that Cicero could now stand up and speak was a sign that the people's *libertas* and the senate's *dignitas* were restored, but it remains to consider Cicero's portrayal of the relationship between himself as an orator and the organs of state. Antony, according to Cicero, had controlled opinion by force, but if Cicero claimed to stand for the sovereignty of the people and the authority of the senate what implication did that have for his own role in addressing them?

It is clear that he did not envisage his relationship with either his popular or senatorial audience as one of equality. We have already noted his references to consulars showing leadership in the senate in *Philippics* 1 and 2, and this remains a constant theme of the other

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155 The area for voting appears to have been moved from the *comitium* to the *forum* in the course of the second century B.C. A consensus has developed that this move was carried out by C. Licinius Crassus in 145 B.C.: see L. R. Taylor, *Roman Voting Assemblies* (Michigan, 1966), 23-25; F. Coarelli, *Il Foro Romano* vol. 2 (Rome, 1985), 163-64; Lintott (1999b), 46.

156 This is a point which has been forcefully made by Millar (1998), 4.

157 The tribunes had called the meeting of the senate on 20th December (Cic., *Ad fam.* 11. 6. 2; *Phil.* 3. 37) and one of them, perhaps M. Servilius (*Phil.* 4. 16), probably invited Cicero to speak at the subsequent *contio*. Another of that year's tribunes, P. Apuleius (T. R. S. Broughton, *The Magistrates of the Roman Republic* vol. 2 (New York, 1952), p. 340), invited Cicero to deliver the *Sixth Philippic*: *quam ob rem, quod quaesivit ex me P. Apuleius, homo et multis officiis mihi et summa familiaritate coniunctus et vobis amicissimus, ita respondebo ut ea quibus non interfuistis nosse possitis* (*Phil.* 6. 1). Cicero emphasizes not only his desire to keep the people informed, but also his frienship with the man who had invited him to speak. He refers to another *contio* called by P. Apuleius for his own benefit at *Phil.* 14. 16.

158 That Cicero's personal interest in keeping the public informed of events was not limited to the present crisis is made clear by the *Second* and *Third Catilinarians* which he delivered in the forum with a similar purpose at the end of 63.

159 *Phil.* 3. 33.

speeches: *equidem non deero: monebo, praedicam, denuntiabo, testabor semper deos hominesque quid sentiam, nec solum fidem meam, quod fortasse videatur satis esse, sed in principe civi non est satis: curam, consilium vigilantiamque praestabo.*[160] However the senate as a whole also has a duty of leadership towards the people. This duty is frequently expressed, but nowhere more clearly than in a passage preceding that quoted above: *est autem vestri consili, patres conscripti, in posterum quam longissime providere. idcirco in hac custodia et tamquam specula conlocati sumus uti vacuum metu populum Romanum nostra vigilia et prospicientia redderemus.*[161]

Newbound has used this type of passage to argue that the senate is envisaged as acting as the *consilium* or *animus* of the body which is the Roman state as a whole.[162] But it is important to realise that Cicero does not envisage all senators as equal. While he uses similar military imagery of both his own and the senate's duties (*consilium, vigilantia*), there is an important difference, since it is his task, as a *princeps civis*, to speak up,[163] while the senate's *consilium* consists of reaction to the proposals put forward. His relationship with the popular audience is similar although described in even more striking terms: *faciam igitur ut imperatores instructa acie solent, quamquam paratissimos milites ad proeliandum videant, ut eos tamen adhortentur, sic ego vos ardentis et erectos ad libertatem recuperandam cohortabor.*[164] Cicero, the orator before the people, is the equivalent of the general before his troops. And while he is keen to draw upon the military image here, as elsewhere, in order to emphasize the nature of the conflict against Antony, the power relationship expressed by this comparison is significant.

I shall return later to add further nuances to this relationship between Cicero and his audiences, but I now turn to the substance of the speeches. To what extent do the type of arguments that he uses, and the way that he uses them, reflect the explicit statements of his own role? I start with one specific sort of argument, namely his use of *exempla* drawn from the past to justify his own proposals or actions.

A good instance is offered by *Philippic* 8. 30-1, where we began this section. In the

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160 *Phil.* 7. 20; but see also 5. 19; 7. 5; 8. 30; 12. 24.

161 *Phil.* 7. 19.

162 Newbound (1986), 28-30. But he rightly goes on to emphasize that the senate also has a role in displaying *virtus*, a more physical quality which might be expected to lie in the sphere of the ordinary citizens (pp. 34-7).

163 He states this extremely forcefully with the use of four parallel verbs: *monebo, praedicam, denuntiabo* and *testabor.*

164 *Phil.* 4. 11.

passage quoted above,[165] Roman ancestors as a group (*maiores nostri*) are said to have praised men who laboured to serve the *res publica*. But Cicero goes on to single out one exemplary figure: *ego, patres conscripti, Q. Scaevolam augurem memoria teneo bello Marsico, cum esset summa senectute et perdita valetudine, cotidie simul atque luceret facere omnibus conveniendi potestatem sui: nec eum quisquam illo bello vidit in lecto, senexque debilis primus veniebat in curiam.*[166] Cicero's point is that if during the Social war the respected Scaevola had made a point of rising at dawn, meeting anyone who wanted to see him and being first into the senate-house, despite his age and his failing health, no-one should now begrudge Cicero's own steadfastness, but should rather emulate it.

We should consider precisely how this *exemplum* works with Cicero's senatorial audience. It is of course important that they should know who Scaevola was and that he remained a respected figure of the past, but Cicero does not expect them to know any more about his conduct during the Social war and describes it in full. Indeed the way in which he introduces the story emphasizes that it represents his own personal knowledge (*memoria teneo*). Therefore in citing the example of Scaevola, Cicero not only reinforces his central point about public service but incidentally advertizes his own perhaps superior knowledge of Roman history and so his own faithful adherence to tradition.

Not all Cicero's uses of *exempla* operate in this way. There is however one constant, in that they must strike some chord with the audience's own opinions and preconceptions. So it would be no good for Cicero to adduce the behaviour of some barely known foreign king, since this would carry no weight with his ignorant listeners. Nor could he cite someone as a good example, when his audience all thought him a scoundrel: Tarquin the Proud would make a laughable model for imitation.

However Tarquin does appear as an example to avoid in one of Cicero's two favourite historical examples of the earlier *Philippics*, namely Lucius Brutus' liberation of Rome from the kingship. This was obviously a better known event of Roman history than Scaevola's behaviour during the Social War, and Cicero could therefore draw on it more extensively and, at times, allusively. The occasion for the comparison's introduction in the *Third Philippic* is Decimus Brutus' edict announcing that he intended to maintain the province of Gaul under the control of the senate and Roman people: *o civem natum rei publicae, memorem sui nominis*

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165 See p. 171.

166 Quintus Mucius Scaevola, the 'Augur', was consul in 117 B.C.

imitatoremque maiorum! neque enim Tarquinio expulso maioribus nostris tam fuit optata libertas quam est depulso Antonio retinenda nobis.[167]

This forms the start of an extended comparison, where Antony is likened to Tarquin and Decimus to Lucius Brutus. Here the audience, aware of the basic story, could have been left with only a brief reference to colour their perception of Antony, but Cicero is not content with this. Instead he insists that Antony has even surpassed the abhorrent Tarquin: the latter had not introduced armed men to his council, he observed the auspices, he did not sell off advantages, he didn't punish citizens and he was fighting a war for Rome, when expelled, unlike Antony who is conducting one against the city. So Decimus' service to the state will surpass even that of his ancient namesake.[168] All of these details cannot have been the shared knowledge of the senatorial listeners, but as the man who has stood up and is speaking, it is Cicero's duty to reveal the niceties of his comparison, and in the process demonstrate once more his detailed acquaintance with the Roman past: everyone knows something about Tarquin's expulsion, but he knows that much more. Vis-à-vis Antony's armed guard, Cicero returns to the comparison with the kings in the *Fifth Philippic*, but here he adds the figures of Cinna, Sulla and Caesar, men who 'possessed more power than the whole state'[169] but still abstained from parading armed force openly. So Cicero sets Antony's behaviour in an even more precise historical context.

But in this speech Cicero focuses more extensively upon his other favourite comparison of the *Philippics*, Hannibal's invasion of Italy. Hannibal and the Carthaginians are recurrent figures in these speeches, and Cicero employs them in a similar way to Tarquin - Antony not only becomes the equivalent of but even outdoes Rome's greatest external enemy: *totum iter Antoniorum quid habuit nisi depopulationes, vastationes, caedis, rapinas? quas non faciebat Hannibal.*[170] Cicero's predilection for these two episodes of Roman history is in part due to the fact that they are so well-known, and would have struck an immediate chord with the audience, but in particular Tarquin and Hannibal stood for two things, regal oppression and external war. These are also the two themes which, as we have seen, the very title, *Philippics*,

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167 *Phil.* 3. 8.
168 *Phil.* 3. 9-11.
169 *Phil.* 5. 17.
170 *Phil.* 5. 25.

suggests with its reference to Philip of Macedon.[171]

In his own monograph on the ideal orator, Cicero had already stressed the importance of such material:

> *(orator) cognoscat etiam rerum gestarum et memoriae veteris ordinem, maxime scilicet nostrae civitatis, sed etiam imperiosorum populorum et regum illustrium... nescire autem quid ante quam natus sis acciderit, id est semper esse puerum. quid enim est aetas hominis, nisi ea memoria rerum veterum cum superiorum aetate contexitur? commemoratio autem antiquitatis exemplorumque prolatio summa cum delectatione et auctoritatem orationi adfert et fidem.*[172]

This is a vital passage in helping us to assess the Roman liking for historical *exempla* in their oratory. It was necessary to set the present situation in the context of the Roman past, and in using such a device the orator could expect not only to delight his audience but also to add to the authority of his own message.[173]

References to Tarquin and Hannibal were therefore very useful to Cicero but relatively straightforward: in other cases his use of *exempla* was more contentious. Since there was no single accepted version of Rome's history, and since that history, even when it was agreed, offered many alternative ideal 'models', the argument from *exempla* was by its very nature tendentious: opposing orators would each seek to establish precedents to support their point, and each could draw freely on a store of conflicting accounts. Therefore it was not simply a matter of knowing one's own history, it was also a case of demonstrating why your story was a more relevant one than the next orator's.

An excellent example of such a controversy can be found in the *Fifth Philippic* again. After proposing that Octavian, still only nineteen years of age, be granted the right of addressing the senate as an ex-praetor and be allowed to stand for the senior magistracies before the legal age, Cicero attempts to defend these measures against the charge that they were unprecedented.[174] He contends that it is not enough to know that such laws existed, but that one must also consider why they had been introduced: *legibus enim annalibus cum grandiorem*

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171 The title obviously had no relevance to the actual audience before whom the speech was delivered, since they did not know of any 'title'; but readers such as M. Brutus may have been able to make the connection (Cic., *Ad Brut.* 2. 3. 4).

172 *Orator* 120.

173 On the popularity and frequency of such arguments, see now Millar (1998), 88-92.

174 *Phil.* 5. 46-8.

aetatem ad consulatum constituebant, adulescentiae temeritatem verebantur.[175] Since Octavian had already (according to Cicero) displayed a great maturity, there was no need for the law to be applied to him: the implication is that the Romans who had been responsible for the law's passing would not have wanted it. Indeed the mention of the passage of the law offers a further argument, namely that such an age restriction had originally never existed.[176] The law had been introduced only to curb electoral rivalry, and it even had unfortunate side-effects, in that Rome had been deprived of some fine leaders who had died too young to attain high office. But in addition to this appeal to even greater antiquity, Cicero is able to enlist on his side some resonant names, men who had enjoyed an early consulship, Rulli, Decii, Corvini, the elder Africanus and Titus Flamininus. To cap his argument Cicero goes further afield to Alexander the Great, who had lived and died ten years before reaching consular age: *ex quo iudicari potest virtutis esse quam aetatis cursum celeriorem.*[177]

The cynic can argue that this is all highly tendentious, especially coming from a man who was basing his platform against Antony on a claim to legality. It is hard to disagree, but it is worth considering the passage in the light of the section of the *Orator* quoted above. First of all it is clear that Cicero is either replying to, or anticipating, the counter-argument that such a proposal is inconsistent with established Roman tradition: the length of the digression and the initial rhetorical question are enough to establish this.[178] Moreover, Cicero's detour into Roman legal history demonstrates that he could not afford simply to ignore such an argument, but had to meet the authority of tradition with his own version of that tradition. However, Cicero is able to turn the problem to his own advantage, since he can portray himself as someone who has thought long and hard about the progress of Roman history. To return to the image of the *Orator* passage, he can demonstrate a greater maturity than his opponents, for they can only adduce the present law, albeit passed long ago, while he has at least tried to set the whole issue in its historical context, even beyond the boundaries of the Roman world.

This is not an isolated instance of such a dispute. Cicero claims to be delivering the *Ninth Philippic* as a response to the speech of Publius Servilius opposing one of Pansa's proposed honours for the ambassador Servius Sulpicius Rufus, who had died on his embassy

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175 *Phil.* 5. 47.

176 The first *lex annalis* was moved by the tribune Villius in 180 B.C. and it remained largely unaltered.

177 *Phil.* 5. 48.

178 *Quid est enim, patres conscripti, cur eum non quam primum amplissimos honores capere cupiamus?* (*Phil.* 5. 47).

to Antony. The consul of 48 objected to the idea that Sulpicius should be granted a statue in the forum, and he did so on the grounds that such a measure was a departure from custom. Servilius' point was that, since Sulpicius had not died by the sword, he did not merit a statue.[179] Cicero's response is to insist that it is not enough to quote ancestral practice, but that it is necessary to consider the original intentions of those who passed the laws: *ego autem, patres conscripti, sic interpretor sensisse maiores nostros ut causam mortis censuerint, non genus esse quaerendum.* Cicero asserts that they made the award in order to encourage other men to undertake dangerous embassies, not simply because they had died violently. His conclusion is particularly explicit on the correct use of such *exempla*: *non igitur exempla maiorum quaerenda, sed consilium est eorum a quo ipsa exempla nata sunt explicandum.*[180]

Therefore it is not enough for the orator to know the basic historical outline of events. He must conduct a historical analysis of those events, even to the length of empathizing with his Roman ancestors: he must be able to act as an interpreter of the past to his audience, and he must treat the present and the past in a continuous sweep, as he argued in the *Orator*: *quid enim est aetas hominis, nisi ea memoria rerum veterum cum superiorum aetate contexitur?* Of course Cicero could produce *exempla* as well as the next man, and he precedes to recount two examples of embassies which had ended in bloody deaths, one of which, that of Cn. Octavius, particularly seems to reinforce his point: he had died violently, but not on the official business of the embassy.[181] Again Cicero is able to inform the senators about an event of which they perhaps have only a sketchy knowledge,[182] but the broader point is more important for his self-presentation, that he is able to explain to them the actual motivation behind the ancient practice.

As a final illustration of the contentious use of *exempla*, we might consider his argument in the *Eleventh Philippic* against the appointment of a private senator to a special command in the East for the war against Dolabella.[183] In opposing this Cicero was on difficult

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179 *Phil.* 9. 3: *P. Servilio... qui hunc honorem statuae nemini tribuendum censuit nisi ei qui ferro esset in legatione interfectus.*

180 This type of argument resembles those in civil law cases where the orator argues against the actual text of a law (*scriptum*) by appealing to the *ratio* or *sententia* that lay behind it: see *Ad Her.* 1. 19; *De inv.* 1. 17.

181 *Phil.* 9. 4-5: In 163 Octavius led the embassy to the East after the death of Antiochus IV Epiphanes, but was murdered in the gymnasium at Laodicea by a certain Leptines.

182 But the story may at least have been familiar to them in outline since Cicero refers to Octavius' honorary statue which is displayed prominently on the *rostra*.

183 Lucius Caesar had proposed that Publius Servilius be given the command.

ground, because he had already supported Octavian's own appointment to just such a command, and later in this very speech he was to argue that Cassius should hold an extraordinary command in the East instead. But nevertheless he launches into an impressive collection of historical anecdotes in an attempt to demonstrate that the Roman senate and people had been eager to avoid the award of such commands during previous crises. In particular he highlights the occasion in the war against Antiochus III the Great, when the provincial allocation of the lot was almost overturned, and that of the war against Aristonicus when, despite the appeal of the experienced Scipio Aemilianus, the Roman people voted for the appointment of the consul P. Licinius Crassus rather than a private citizen.[184] Again Cicero goes into great detail, at the same time demonstrating his familiarity with Roman history, and showing that there was a great reluctance to give special commands even when the situation seemed to demand it.

Unfortunately Cicero has to concede that Pompey had been appointed to such commands, but he excuses the lapse on the ground of tribunician agitation.[185] These tribunes were Aulus Gabinius and Gaius Manilius: in 67 the former had proposed the law giving Pompey the command against the pirates, the following year the latter's legislation won the Mithridatic command for Pompey, and Cicero himself had actually spoken out at a *contio* in support of this second law.[186] If we turn to that speech it is not surprising to find that the opponents of Manilius' law had used similar arguments to those deployed by Cicero in 43. Quintus Lutatius Catulus in particular had objected to the measure as an infringement of tradition. Cicero pretends to quote him: '*ne quid novi fiat contra exempla atque instituta maiorum.*'[187]

Although Cicero focused his reply upon Pompey's own already exceptional career, he did not refrain from producing past examples of such commands, albeit as a paraleipsis. There he can adduce Scipio Aemilianus' commands against both Carthage in 147-6 and Numantia in

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184 *Phil.* 11. 17-18. He also notes the avoidance of special commands in all three Punic wars, those against Pyrrhus and Philip V, and the Achaean war.

185 *Phil.* 11. 18: *de Cn. Pompei imperiis, summi viri atque omnium principis, tribuni plebis turbulenti tulerunt.*

186 The fact that Cicero can pass over this support in silence is striking testimony to the short memories of his senatorial audience. It would not have been impossible for him to plead error if he had chosen to raise the issue, just as he was to admit to his mistake in agreeing to serve on a second embassy to Antony in the *Twelfth Philippic* (§§1-7). In combination, these two instances provide further evidence that it was usually necessary for a speaker to enunciate his own record and preferred policy each time that he spoke, and that he could pass over them in silence, in the hope that the greater part of his audience would have forgotten (see above pp. 152-3).

187 Cicero, *De Imperio Cn. Pompei* 60.

134-3. Although he was consul on both occasions, each election contravened the law, since he was under-age for the first, and the second transgressed the law of 151 forbidding second consulships. Marius' own career is likewise put forward. Cicero emphasizes that reference to ancestral custom should be flexible, just as those ancestors were themselves flexible: *maiores nostros semper in pace consuetudini, in bello utilitati paruisse, semper ad novos casus temporum novorum consiliorum rationes accommodasse*.[188] Here the argument from tradition is turned on its head: innovation is traditional.[189]

If we return to the *Eleventh Philippic* we may note that here Cicero is able to use exactly the same example to argue for the opposite position. Scipio was selected for the third Punic war because he was a good general, but at least he was a consul: no word here about the illegality of that consulship.[190] This flexibility may encourage the sceptic to argue that the use of *exempla* in Roman oratory tended to produce stalemate, but it is important to note that the speaker could ill afford to ignore altogether this type of argument. Its effective use not only illustrated the speaker's awareness of his Roman heritage, but it also enabled him to play a didactic role, in which he could explain the progress of Roman history to his audience.

As a final point on rhetorical *exempla* we should note that their use is not restricted to the senatorial speeches, and Cicero is as willing to develop this learned, historically-aware role in the forum as well. At the start of the *Fourth Philippic* Cicero praises the prodigious achievements of the still teenage Octavian, and notes that they are unparalleled: *multa memini, multa audivi, multa legi, Quirites: nihil ex omnium saeculorum memoria tale cognovi.*[191] There is no concern here about alienating his audience, and Cicero parades his scholarly dedication, even advertizing his reading of historical accounts. Therefore it is no surprise to find in the two speeches delivered in the forum references to the foreign enemies of Rome's past and in particular to Hannibal.[192]

But we should remember that Rome's history surrounded Cicero and his audience as he

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188 *De Imp.* 60.

189 For a later use of this same device, see Tacitus' version of Claudius' speech in the senate on the possibility of Gauls joining the senate, which culminates with the observation that the innovation will itself one day become part of the tradition: *inveterascet hoc quoque, et quod hodie exemplis tuemur, inter exempla erit* (*Annals* 11. 24). And the tradition of Roman innovation was highlighted at length in Claudius' own speech (*I.L.S.* 212, especially ll. 1-7).

190 *Phil.* 11. 17.

191 *Phil.* 4. 3.

192 *Phil.* 4. 13-14; 6. 4, 6. Note also the allusive reference to Hannibal's conqueror, Africanus (6. 10).

spoke in the forum, and Cicero is able to exploit this. He can point out the statue of Lucius Antonius and the inscription on it: *quinque et triginta tribus patrono*[193] Not only does he rubbish this claim, but he attacks Lucius's impudence in putting up such a statue among more deserving figures. Only true benefactors of the Roman people merit such an honour, men like Quintus Marcius Tremulus whose statue in front of the temple of Castor commemorated his ancient victory over the Hernici, and reminded men in the forum of his achievement each time that they saw it. As an orator, it was Cicero's task to work from this background and elicit for his listeners the 'correct' interpretation of the monuments which they could see.

This didactic element is equally important in other types of argument, and is a major factor of Cicero's self-representation. Both the orator and his audience knew the circumstances of the situation with which they were faced, but it was the orator's task to take a step further, explaining and clarifying the precise realities of that situation. What Wooten has labelled the 'disjunctive mode' is a key aspect of this:

> 'One of the most striking characteristics, therefore of the rhetoric of crisis is the clarity and simplicity with which the orator views the situation that he faces... He presents the situation as a clear choice between mutually exclusive and fundamentally opposed systems by means of what may be called the disjunctive mode.'[194]

It is appropriate that Wooten studies this style with regard to *Philippics* 3-6: in these speeches Cicero is insistent on the correct way of viewing the conflict, since he is eager to establish the 'reality' of the situation at an early stage. There is no need to restate Wooten's discussion, but it is worth considering a typical passage to indicate the style of argument which Cicero adopts. In the *Third Philippic* he insists that Antony is not a consul, but an enemy:

> *nam si ille consul, fustuarium meruerunt legiones quae consulem reliquerunt, sceleratus Caesar, Brutus nefarius, qui contra consulem privato consilio exercitus comparaverunt. si autem militibus exquirendi sunt honores novi propter eorum divinum atque immortale meritum, ducibus autem ne referri quidem potest gratia, quis est qui eum hostem non existimet quem qui armis persequantur conservatores rei publicae iudicentur?*[195]

193 *Phil.* 6. 12.

194 Wooten (1983), 58.

195 *Phil.* 3. 14.

In this argument Cicero stresses the binary logic of the situation. Both Decimus Brutus and Octavian have raised private armies against the consul. As a result of this action they are either criminals of heroes, since there can be no middle ground. Because honours and thanks are being heaped on these two men, the logic of the situation itself demands that Antony be deemed a public enemy. This polarity is the major theme of these speeches, but it is worth emphasizing his method, in which he starts with the established facts and attempts to elicit from them inescapable conclusions with which his hearers must agree.

But the orator's didactic role can take a variety of different forms. There can be times when the audience has a difficulty even in recognizing the full force of the facts of a particular incident, especially if they have not witnessed it personally: the orator must help his hearers to visualize it. So in the *Eleventh Philippic*, although the senators are aware of the bald fact that Dolabella has killed Trebonius, Cicero insists that they must appreciate the full violence of his crime and he gives a graphic account: *ponite igitur ante oculos, patres conscripti, miseram illam quidem et flebilem speciem, sed ad incitandos nostros animos necessariam: nocturnum impetum in urbem Asiae clarissimam...*[196] This task is also necessary if Cicero is asking his audience to consider a hypothetical future situation. So in the *Thirteenth Philippic* he calls upon the senators to imagine the sight of the Antonii after they have returned to Rome, using the same injunction (*ponite ante oculos*).[197]

But even when the full force of the facts is established, Cicero is not afraid to play an educator's role in helping the audience to draw the correct conclusions, a role which is particularly explicit in the *Seventh Philippic*.The major thrust of this speech is his opposition to any peace with Antony: *cur igitur pacem nolo? quia turpis est, quia periculosa, quia esse non potest. quae tria dum explico, peto a vobis, patres conscripti, ut eadem benignitate qua soletis mea verba audiatis.*[198] Cicero, very politely, tells his senatorial audience to listen, while he will explain very clearly each of his three headings. The orator makes no attempt to disguise the structure of the speech, but rather he parades its tripartite nature, advertizing the inescapable logic of his position. In this way he resumes the theme of the *Second Philippic* where he compares his own rhetorical logic with the fumbling self-contradictions of Antony.

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196 *Phil.* 11. 7.

197 *Phil.* 13. 4.

198 *Phil.* 7. 9.

I have quoted above Cicero's exposition in the *Seventh Philippic* of the senate's duty towards the Roman state, and one of the most important aspects of that duty is foresight (*prospicientia*).[199] And in a significant way the whole speech exemplifies this, for Cicero is arguing that, whatever the outcome of the embassy which has been sent to discuss terms with Antony, it is simply not imaginable that, given the present situation and Antony's past conduct, peace can ever be established between Antony and the legal institutions of the *res publica*.[200]

But in predicting what is likely to happen in the future Cicero has to do more than draw the obvious conclusions from the present 'reality'. At times he also has to battle against the misleading terminology that others were applying to that 'reality'. Cicero insists that he has always been the greatest supporter of peace, although he refuses to countenance a settlement of any form with Antony.[201] Real peace is not on offer: *nec ego pacem nolo, sed pacis nomine bellum involutum reformido*.[202] Words are the stock-in-trade of the orator, but he must ensure that words are only applied to circumstances appropriate to their own meanings, and he is here performing a similar interpretative role to that which he plays when describing events from Rome's past.

This insistence on the correct use of language is a major theme of the *Eighth Philippic*, where he reprises the argument that Rome is faced with a war rather than anything else. Cicero rebukes the consul, Pansa, for failing to ensure that war was declared the previous day, when the supposedly milder *tumultus* was decreed in its place: *nam cum senatus ea virtus fuisset quae solet, et cum re viderent omnes bellum quidamque id verbum removendum arbitrarentur, tua voluntas in discessione fuit ad lenitatem propensior*.[203] The striking feature of this sentence is the explicit opposition between *res* and *verbum*: unless the words are an accurate reflection of events, rational argument is not possible. As an orator leading the senate's discussion it is Cicero's duty to rid the debate of such obscurity.

Cicero divides his argument against the use of the word *tumultus* into two parts. Initially he challenges the linguistic competence of those who preferred *bellum*: *tumultum appellare malebant, ignari non modo rerum sed etiam verborum: potest enim esse bellum ut*

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199 *Phil.* 7. 19 (see above p. 176).

200 Note again his demand that the senate show foresight in order to forestall the possibility of full-blown civil war: *omnia videbitis, patres conscripti, nisi prospicitis, plena odiorum, plena discordiarum, ex quibus oriuntur bella civilia* (*Phil.* 7. 25).

201 *Phil.* 7. 7-8.

202 *Phil.* 7. 19.

203 *Phil.* 8. 1.

tumultus non sit, tumultus autem esse sine bello non potest.[204] But he is not content to leave the niceties of language at this point. Rather he gives an etymology of the word, linking it with *timor*, and describes the ancestral practice of declaring a tumult only when the threat of war was close to Rome. He caps his proof that *tumultus* is more serious than straight *bellum* by noting that exemptions to the levy are granted for the latter, but not the former. This digression operates in two ways: on the explicit level, it serves to reinforce the polarity of the conflict: *etenim cum inter bellum et pacem medium nihil sit, necesse est tumultum, si belli non sit, pacis esse: quo quid absurdius dici aut existimari potest?*[205] There can be no evasion: the *res publica* is at war.

But implicitly, whether or not we, or his audience, agreed with every step of his argument, it helps to portray the orator as a man who is familiar with his own native language and customs, and in particular one who has devoted more thought to them than his opponents have. Moreover he realises the ambiguous relationship between words and things. He moves on to the second part of his argument in which he will discuss *res*, recognizing that ultimately this is what counts rather than subtle linguistics: *sed nimis multa de verbo: rem potius videamus*. But even at this point he is not prepared to dismiss the importance of words, since just the use of a single word, in this case *bellum*, can have a significant effect upon the course of events: *(rem) quam quidem intellego verbo fieri interdum deteriorem solere.* This is a very important concessive clause, since it implicitly reveals the extent of the power which Cicero ascribed to speech. It also, perhaps unwittingly, betrays the fact that Cicero knew what he was doing, by insisting that *bellum* was the correct term, in that the repeated use of the word was self-fulfilling.[206]

It is this potential power that dictates that the second half of his argument is more important, since he is eager to demonstrate that it is not the cleverness of his rhetoric, or anyone else's, which is driving events, but that his words are merely an attempt to reveal the present situation as it really is, namely a *bellum.* Therefore Cicero proceeds to list once more all the circumstances which make it ridiculous to deny that a war is going on: *D. Brutus oppugnatur: non est bellum? Mutina obsidetur: ne hoc quidem bellum est? Gallia vastatur: quae*

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204 *Phil.* 8. 2.

205 *Phil.* 8. 4.

206 Cicero also recognized, and feared, that the soft-talking of his opponents could have the opposite effect, namely of weakening resolve and making peace more likely. See, for example, *Phil.* 12. 7-8.

pax potest esse certior?[207] Cicero's sarcasm plays upon actual events to underline the sophistries of his opponents.

In particular Cicero rounds upon Antony's prime supporter in the senate, Quintus Fufius Calenus, who has applied the wrong word to his proposals, calling peace what he should call servitude.[208] To fight is not to oppose peace but to stand against tyranny. Similarly the term *civis* needs careful definition: *atque ais eum te esse qui semper pacem optaris, semper omnis civis volueris salvos.*[209] *honesta oratio, sed ita si bonos et utilis et e re publica civis: sin eos qui natura cives sunt, voluntate hostes, salvos velis, quid tandem intersit inter te et illos?*[210] This is another important aspect of the orator's task: he must be prepared to make pronouncements not because they sound good (*honesta oratio*), but because they express the truth, even at the cost of appearing unpopular.[211] Calenus has failed to take account of the fact that some citizens by their actions have removed themselves from the state's protection: they have chosen (*voluntate*) to become *hostes*, and therefore do not deserve concern for their lives.

It is not surprising that Cicero is able to deploy several exemplary episodes of Roman history to support his position.[212] Even Calenus' father is enlisted, since he used to describe Publius Nasica as the leading citizen of the state for having been the prime mover behind Tiberius Gracchus' death. This collection of *exempla* culminates with a striking image of the state as a body: bad citizens, just like a sick member, must be amputated to benefit the health of the whole.[213] This comparison reinforces the leading role of the senate, but particularly that of the orator. He plays the role of the doctor, guiding his hearers in making the correct diagnosis on the state of the *res publica.* This whole speech can be read (and could originally be heard) as

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207 *Phil.* 8. 5.

208 *Phil.* 8. 12: *sed quaeso, Calene, quid tu? servitutem pacem vocas?*

209 The power of this argument that citizens' lives should be saved is well illustrated by the *corona civica* awarded to Augustus in 27 *ob civis servatos*, and duly celebrated on his coins (see Dio 53. 16. 4 with P. A. Brunt and J. M. Moore (edd.), *Res gestae divi Augusti* (Oxford, 1967), 78). One can also compare the rhetoric of Lepidus' letter to the *S.P.Q.R.* of May 43, in which he justifies his soldiers' mutiny by their desire to save Roman lives (*Ad Fam.* 10. 35).

210 *Phil.* 8. 13.

211 On this, note Cicero's apprehension at expressing his opposition to any peace with Antony at *Phil.* 7. 7-8. Of course he is perhaps exaggerating that concern, but he does make it clear that it is an unpopular line to be taking.

212 *Phil.* 8. 13-16.

213 *Phil.* 8. 15: *in corpore si quid eius modi est quod reliquo corpori noceat, id uri secarique patimur ut membrum aliquod potius quam totum corpus intereat. sic in rei publicae corpore, ut totum salvum sit, quicquid est pestiferum amputetur.*

a diagnosis writ large: Cicero reveals the symptoms for his audience to see (*res*), gives his prognosis (*prospicientia*) and suggests the action which needs to be taken. We can even extend this model to encompass the use of *exempla*, which can be seen as previous case-histories, in the light of which the present situation should be interpreted.[214]

But Cicero is also conscious of the fact that the present which he now faces will itself in the future become part of the fabric of history. If we return again to *Phil.* 8. 30-1 and the *exemplum* of Quintus Scaevola, we can see that the augur is cited by Cicero as a model of behaviour which should be copied: *huius industriam maxime equidem vellem ut imitarentur ei quos oportebat; secundo autem loco ne alterius labori inviderent.* But Scaevola is introduced precisely because Cicero feels that he is suffering from envy himself: *nam illud quidem non adducor ut credam, esse quosdam qui invideant alicuius* (ie. Cicero's) *constantiae, qui labori, qui perpetuam in re publica adiuvanda voluntatem et senatui et populo Romano probari moleste ferant.* The clear implication is that Cicero feels that he is himself worthy of imitation,

Cicero also refers to his own past achievements in the list of historical *exempla.* In this same speech, he notes his consistent opposition to Catiline and Clodius as providing a model attitude to adopt towards Antony.[215] These references and others[216] can in part be explained as a claim to authority on Cicero's part: he has diagnosed the situation correctly in the past, therefore he ought to be believed on this occasion as well. But they also demonstrate an awareness of the example which is at this moment being set for posterity.

It is the *Fourteenth Philippic* which is particularly concerned with this idea, but Servius Sulpicius, the dead ambassador, plays a similar role in the *Ninth Philippic.* Newbound has shown how he is portrayed as a model senator by Cicero, one who despite his physical weakness played an active role:

> 'To depict the journey and death of Servius, who was not a *miles*, as a triumph over various physical obstacles played on the senate's consciousness of its own position while also confirming Cicero's ideology... Servius' triumph

214 The use of medical imagery had Greek antecedents. Compare Nicias, at Thucydides 6. 14, likening the role of the *prytanis* to that of a doctor. Note also the Greek historian's use of medical language in his description of the *stasis* at Corcyra: see S. Hornblower, *A Commentary on Thucydides* vol. 1 (Oxford, 1991) on 3. 82. 1-2 (pp. 480-481).

215 *Phil.* 8. 15-16.

216 The Catilinarian conspiracy in particular makes frequent appearances in the whole collection, both as the crowning moment of Cicero's career thus far, on which he bases his present authority, and as a parallel to the present crisis in which the very fabric of the *res publica* was threatened.

over *vis morbi*, and *labor* is another manifestation of the *virtus* which the senate itself should demonstrate in the actual fight for *libertas*.'[217]

But perhaps even more importantly Servius is made into a significant role-model for future generations.[218] I have already discussed Cicero's treatment of ancestral practice in this speech,[219] but his conclusion was that ambassadors who died had been honoured *ut in bellis periculosis obirent homines legationis munus audacius*.[220] Therefore Sulpicius likewise deserves to become an encouragement for posterity, since *maluit in maximo rei publicae discrimine emori quam minus quam potuisset videri rei publicae profuisse*.[221] Cicero does allow that Sulpicius had been a good man in life as well as death, but insists that the statue will not represent these earlier achievements, since that is not needed. Rather it will stand purely as a token of the senate's gratitude for his honourable death.[222] This emphasis is important for Cicero since it means that the statue will bear broader connotations: *erit enim statua ipsa testis bellum tam grave fuisse ut legati interitus honoris memoriam consecutus sit*.[223] This enables Antony's wickedness to be commemorated too: *his enim honoribus habitis Ser. Sulpicio repudiatae reiectaeque legationis ab Antonio manebit testificatio sempiterna*.[224]

This statue will join the other monuments of the forum, and the memory of the event will be maintained by the inscription on the statue-base recording the cause of his death.[225] His life will be celebrated forever in posterity: *vita enim mortuorum in memoria est posita vivorum*.[226] But at one point in the speech Cicero admits that statues do not last forever: *statuae intereunt tempestate, vetustate*.[227] Indeed the statue does not survive, if it ever was put up, but Cicero's speech does survive, and in a significant way the published speech is as

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217 Newbound (1986), 39-40.

218 Newbound simply notes this second audience on p. 38, but he does not expand on this aspect of the speech.

219 See above pp. 180-1.

220 *Phil.* 9. 3.

221 *Phil.* 9. 6.

222 *Phil.* 9. 11.

223 *Phil.* 9. 7.

224 *Phil.* 9. 15.

225 *Phil.* 9. 16.

226 *Phil.* 9. 10.

227 *Phil.* 9. 14. On Greek antecedents for this idea, see J. Mossman, 'Plutarch's use of statues', in *Georgica. Greek studies in honour of George Cawkwell*, M. A. Flower and M. Toher (edd.), *B.I.C.S. Suppl.* 58 (London, 1991), 98-119, and especially the discussion of Simonides 581 *P.M.G.* (p. 100).

important as the statue, for it will provide the complete historical background to the physical statue. For it is the speech which explains how this new statue is a manifestation of the habit of erecting memorials to ambassadors who have died. If we return to Cicero's argument in the *Orator*, the speech helps to give the statue meaning because it weaves it into its historical context and the sequence of earlier statues.[228] The interpretation of the past is important not only for the present, but for future generations as well. Therefore, in helping to establish future *exempla*, Cicero represents the statesman as having a responsibility for the future of Rome.

If we now turn to the *Fourteenth Philippic*, we find that in it Cicero proposes honours for the dead which closely resemble those offered in Athens.[229] Newbound argued that this parallelism came from Cicero's desire to promote a city-state ideology: those who died might even receive common burial (unusual at Rome), their relatives be consoled by a public speech, and the valour of the fallen be commemorated in a single memorial, the *ara virtutis*. Indeed Cicero's own speech picks up on some of the major elements of the Athenian funeral speech in its closing sections.[230] But Cicero's greatest emphasis is upon the fact that their achievement should be remembered:

> *erit igitur exstructa moles opere magnifico incisaeque litterae, divinae virtutis testes sempiternae, numquamque de vobis eorum, qui aut videbunt vestrum monumentum aut audient gratissimus sermo conticescet. ita pro mortali condicione vitae immortalitatem estis consecuti.*[231]

Whilst, as Newbound suggests, this does help to foster the idea of a united and grateful city-state, the monument will also, like Sulpicius' statue, serve to preserve the memory of Antony as a *hostis*. An important theme of the earlier part of the speech is that it is now finally time to declare the ex-consul a public enemy.[232] And in his proposal at the end of the speech, he justifies the erection of the memorial, *ut testetur ad memoriam posteritatis sempiternam scelus crudelissimorum hostium militumque divinam virtutem.*[233]

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228 *Orator* 120: *quid enim est aetas hominis, nisi ea memoria rerum veterum cum superiorum aetate contexitur?* On this passage see above, p. 179.

229 *Phil.* 14. 34-5.

230 *Phil.* 14. 29-36. On these parallels, see Newbound (1986), 295-97.

231 *Phil.* 14. 33.

232 *Phil.* 14. 6-10.

233 *Phil.* 14. 38.

Again it is Cicero's speech which gives the context for the interpretation of the monument. He provides an account of the battle, and explains why the fallen soldiers have deserved such an honour. Again the achievement needs to be seen in its historical context: *multi saepe exercitus Punicis, Gallicis, Italicis bellis clari et magni fuerunt, nec tamen ullis tale genus honoris tributum est. atque utinam maiora possemus, quando quidem a vobis maxima accepimus! vos ab urbe furentem Antonium avertistis, vos redire molientem reppulistis!*[234] This army has surpassed even those who fought against Rome's greatest foreign enemies, since they have repulsed the maddened Antony, and therefore they receive the *ara virtutis* as an eternal mark of the state's debt.

But this speech does not commemorate only those who participated in the battles in the north of Italy: Cicero is also eager to mark his own role as one to be emulated by others.[235] He claims that these remarks about himself are not motivated by a desire to defend himself, but so that his conduct can serve as a model for others: *uti excellentium civium virtutem imitatione dignam, non invidia putarent. magnus est in re publica campus, ut sapienter dicere M. Crassus solebat, multis apertus cursus ad laudem.*[236] Therefore it is perhaps to the self-representation which Cicero constructs in this speech that we should turn for a final consideration of the role that he claims as the orator's.

The immediately striking element of Cicero's portrayal here is the emphasis which he lays upon the popular support which he has in the forum: *is enim demum est mea quidem sententia iustus triumphus ac verus, cum bene de re publica meritis testimonium a consensu civitatis datur.*[237] So far I have emphasized the way in which Cicero presents the orator as a leader, as a general leading his troops, as an educated man who can interpret history and use language correctly, as a doctor who can diagnose the state's problems and even as someone farsighted enough to recognize that the actors of the present will have a role to play as models for posterity - in all these guises the orator sets himself apart from his audience, rather than considering himself to be one of their number.

This aspect of the orator's role remained important in the last speech of the collection, since it was precisely Cicero's leadership and constancy that endeared him to the people: *memoria tenent* (referring to the *populus Romanus*) *me ante diem XIII Kalendas Ianuarias*

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234 *Phil.* 14. 33.

235 *Phil.* 14. 12-21.

236 *Phil.* 14. 17.

237 *Phil.* 14. 13.

principem revocandae libertatis fuisse; me ex Kalendis Ianuariis ad hanc horam invigilasse rei publicae... and so on.[238] But the fact that Cicero can claim such an awareness on the part of the people does indicate the existence of a large group of politically-minded non-senators, who did show a real interest in senatorial business. When a senator spoke it is important that he should be seen to be representing the concerns of this group: *sic de uno quoque nostrum et maxime qui hoc loco sententias dicimus sciscitantur omnes, avent audire quid quisque senserit: ita de quoque ut quemque meritum arbitrantur existimant.*[239]

Although the senate did meet inside, the doors were usually left open and word of the debate would get out.[240] Furthermore the *curia* itself and some of the temples which were used for meetings were situated near the crowded *forum*.[241] Although this concern is particularly marked in the final speech, it is a feature of the whole collection. I pass over the *Fourth* and *Sixth Philippics* at the moment, but note as an example Cicero's concerns at participating in a second embassy to Antony: *in hac ego legatione sim aut ad id consilium admiscear in quo ne si dissensero quidem a ceteris sciturus populus Romanus sit? ita fiet ut si quid remissum aut concessum sit, meo semper periculo peccet Antonius, cum ei peccandi potestas a me concessa videatur.*[242] Here Cicero is concerned that the people will only be aware of the general outcome of the debate, namely the embassy to Antony, rather than any of the reservations expressed by individual senators, but the point is still emphatic: the people will remember that the embassy was voted, and if anything goes wrong they will know who is to blame.

It might be argued that this was simply a useful debating point that Cicero could use to put pressure on his opponents. But the very fact that this argument had force implies that there was, at some level, a genuine interest in what went on in the *curia*.

When we turn to the *forum* itself that interest, and indeed participation, becomes much more striking. In the *Fourteenth Philippic* Cicero suggests that there had been a plot against him, with his enemies spreading rumours that he intended to take up the dictatorship. In

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238 *Phil.* 14. 20-21.

239 *Phil.* 14. 19.

240 As an example notice the way that *Philippics* 4 and 6 take the form of reports to the people on the progress of recently completed senatorial debates, like *In Cat.* 3 in 63 B.C. Note in particular the implication of *Phil.* 6. 1 where Cicero seems to refer to a more unofficial diffusion of the content of the senatorial debates.

241 Millar (1998) notes the importance of this proximity: 'It was perhaps equally significant that the location of the Curia exposed the meetings of the Senate to the pressures of the crowd outside, whose shouts could be heard inside, and through whom senators had to make their way to and from meetings.' (p. 39).

242 *Phil.* 12. 16.

response a supportive tribune organised a *contio* where Cicero's popularity was vocally affirmed by the crowd: *una voce cuncta contio declaravit nihil esse a me umquam de re publica nisi optime cogitatum.*[243] His standing was consolidated when victory was reported from the north, and crowds had escorted him in a quasi-ovation from his house to the Capitol.[244]

Therefore the performance of the orator in the *forum* was not a one-way process, and the audience played an important role by making clear their response to the speech.[245] If we turn to the text of the *Fourth Philippic* as it was written down, we find that it is studded with notices of the audience's approval. One example will suffice: *nam est hostis a senatu nondum verbo appellatus, sed re iam iudicatus Antonius. nunc vero multo sum erectior quod vos quoque illum hostem esse tanto consensu tantoque clamore approbavistis*.[246] In an obvious way this expression of consent helps Cicero to claim that there is a consensus for his position. This counts not only in the close environs of the *forum*, but also more widely: the published version of the speech attempts to depict the complete occasion with its frequent notices of audience approval.[247]

Of course an orator would not want to advertize a hostile reception to one of his speeches, but he may have lived in fear of such a reaction. And, importantly, even the support of the crowd could impinge upon his future conduct.[248] In the *Sixth Philippic* Cicero refers to the reception of his earlier speech and his acclamation as saviour of the state for a second time, and with this memory he had entered the senate on 1st January: *hoc vestro iudicio tanto tamque praeclaro excitatus ita Kalendis Ianuariis veni in senatum ut meminissem quam personam impositam a vobis sustinerem.*[249] Of course Cicero was very happy to insist that Antony be named a *hostis*, but it is nevertheless significant for his portrayal of the orator's role that he can assert that his popular audience could impose a particular *persona* upon his senatorial performance.

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243 *Phil.* 14. 16.

244 *Phil.* 14. 12.

245 G. S. Aldrete, *Gestures and Acclamations in Ancient Rome* (Baltimore, 1999) in the second part of his book (pp. 101-64) emphasizes the importance of *acclamatio* by the orator's audience.

246 *Phil.* 4. 1-2. Compare also §§5, 7, 8.

247 It does not really matter whether the words are actually those spoken on 20th December or even whether the impression of such consensus and approval is accurate, but it is the overall picture which the written speech conveys that is ideologically important: this is what Cicero presents as plausible and what ought to happen.

248 So Aldrete (1999), although he focuses largely on the later influence wielded by the crowd upon the emperor.

249 *Phil.* 6. 2.

But in Cicero's case he was bound to the inhabitants of the *forum* by even stronger ties. We have already seen how in the *Seventh Philippic*, he was a staunch supporter of peace even though he was proposing all-out war against Antony. His affection for peace stems from the recognition that a career such as his could only flourish under such conditions.[250] Indeed he asserts that the whole of his active life has been played out in the neighbourhood of the *forum*: *omne enim curriculum industriae nostrae in foro, in curia, in amicorum periculis propulsandis elaboratum est.*[251]

This speech was delivered in the senate, and this perhaps explains Cicero's concentration here upon the help which he has given his friends. But in the *Sixth Philippic*, itself delivered in the *forum*, Cicero emphasizes his ties of gratitude for the public honours which he, as a *novus homo*, had received: *quid enim non debeo vobis, Quirites, quem vos a se ortum hominibus nobilissimis omnibus honoribus praetulistis? an ingratus sum? quis minus? qui partis honoribus eosdem in foro gessi labores quos petendis.*[252] The orator depended for his status upon his activities in the *forum*, and despite the fact that he usually played a dominant, almost didactic, role in political speeches, he can take pride in the fact that his forensic activity continued even after he had held the highest offices of the state, and he expects the *forum* audience to be grateful for this service.[253]

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250 *Phil.* 7. 8: *ego igitur pacis, ut ita dicam, alumnus, qui quantuscumque sum (nihil enim mihi adrogo), sine pace civili certe non fuissem...*

251 *Phil.* 7. 7.

252 *Phil.* 6. 17.

253 Compare the sentiments expressed by Cicero at *De re publica* 1. 50, where he maintains that the title of *optimates* was worthwhile only if attained with popular consent: *nam optimatis quidem quis ferat, qui non populi concessu sed suis comitiis hoc sibi nomen adrogaverunt?* The pungency of Cicero's sarcasm in insisting that *optimates* be judged by a traditionally *popularis* criterion (*populi concessu*) is increased by his ironic use of *comitiis*.

3. Conclusion

In this chapter I have focused upon the senatorial and public speeches delivered by Cicero against Antony in 44-43. It is important to recognize that these *Philippics* are the product of the unique circumstances which attended their delivery. When Antony turned to armed force in his struggle against Decimus Brutus and Octavian, he offered an opportunity for Cicero, the senior consular of the age, to emphasize his own qualities as a man who had always done his utmost to defend the constitutional niceties of the republican political system. He portrays himself as the ideal Roman public figure, while Antony is accused of being tyrannical and the equivalent of a foreign enemy. However the elements which make up this binary opposition could not exist in a vacuum, if they were to have any persuasive force for Cicero.

Therefore, while it is understandable that Cicero should emphasize a readiness and an ability to speak as a central attribute of the Roman senator and consular, since he could use this approach to embarrass Antony, his argument would be devoid of any purpose if it depended upon sentiments which his audience did not share in the least degree.[254] In Cicero's portrayal the statesman had a clear role as a leader within the state: his duty was to act as a guardian for all the citizens. And this duty involved standing up and making one's own opinions public, whether in the senate or forum. It could be expected of senators, and consulars in particular, that they should state clearly what they thought to be the best policy for the state. But this emphasis on the process of making one's views public necessarily demanded a certain level of ability in communicating one's message. This enables Cicero to attack repeatedly Antony's supposed inability to speak: the very fact that he could not do so successfully was itself an indication of his anti-republican sentiment.

This analysis suggests that Cicero viewed oratorical ability primarily as an attribute which the senatorial élite needed in order to play their roles as leaders within the state. Therefore in the speeches Cicero often has recourse to a didactic method whether in setting out his interpretation of the Roman past, in describing the precise realities of the present situation, or in logically elucidating the only reasonable response to that situation. He tells his audience how it is, and pays little heed to any notion that he is only one of them, another Roman citizen.

However, as I have argued at the end of this chapter, this is not to say that he

254 This does not of course imply that all his audience will have shared his portrayal; rather that there must have been significant points of contact between his own arguments and his audience's opinions.

discounted or considered unimportant the audience's response. The relationship with his audience was a symbiotic one: he could present his subsequent conduct as influenced by their reaction to his words and he depended upon their approval to enhance his own standing, and indeed to obtain the magistracies which he sought. Although he might play the role of their superior, he also portrayed the statesman's role as one in which his listening to the audience and their reception of his speech were also important: this was an aspect of that role which saw the statesman as the loyal servant of the people - as represented by his audience - just as he might at other times be their leader.

IV. Cato the Censor and Gaius Gracchus

Of the orators who preceded Cicero no speeches have survived entire, and in most cases very few fragments. My decision in this chapter to examine the fragments of Cato the Censor and Gaius Gracchus was therefore largely dictated by the accident of survival: more ancient *testimonia* and actual fragments happen to survive from these orators than any others. Even so, I have put this chapter after those which deal with Cicero since any interpretation of the evidence - a great deal of which is provided directly or indirectly by Cicero himself - tends by its very nature to evolve from a framework provided by the later orator. By turning to the earlier figures only after considering Cicero, I intend to be explicit about this process.[1] However, Cato and Gaius Gracchus do also represent important figures in the history and development of Roman oratory,[2] and both were prepared to introduce innovations to its theory and practice, in part perhaps because their political careers were based on putting some distance between themselves and their contemporaries.

In the first chapter I noted Cato's role as a pioneer at Rome in the preservation and publication of his own speeches, and his subsequent renown as the first Roman to have written something on the subject of rhetoric.[3] In similar fashion, Gaius Gracchus was later noted for the innovative thoroughness of his Greek training which he had shared with his brother Tiberius.[4] Likewise there is an anecdote describing how Gaius' slave Licinius stood behind him and played on a pitch pipe when the orator got excessively carried away so that he might regain his self-control.[5] This story indicates that the tribune was openly concerned with issues of delivery, and was prepared to adopt innovative techniques.

But to a large extent we are dependent upon the judgments offered by later *testimonia* if we are to evaluate their importance for Roman oratory. Both Cato and Gaius Gracchus feature in Cicero's list of great Roman orators which comes at the end of the *Brutus*, but there are

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1 Furthermore, since much of our evidence about Cato and Gracchus derives from Cicero and his age, a consideration of this material can also throw light upon that later period.

2 This fact is perhaps reinforced by the fact that more fragments of their oratory have survived. For their own prominence will have contributed to the survival of their speeches, and the subsequent preservation of fragments by authors such as Aulus Gellius, although their survival may say even more about the tastes of those who preserved them.

3 See pp. 7-9.

4 Cicero, *Brutus* 104.

5 Plutarch, *Tiberius Gracchus* 2.5; Cicero, *De Oratore* 3. 225.

numerous other *testimonia* which have been collected by Malcovati.[6] However it is not my intention in this chapter to reevaluate this evidence, nor to concentrate primarily on what information about the orators' respective styles can be gleaned from the surviving fragments, since there is already a mass of scholarly literature on these subjects.[7]

Rather I concentrate upon the issue which I have considered with regard to Cicero in the last two chapters, namely the ways in which Cato and Gracchus represented their roles as orators.[8] The nature of the surviving evidence imposes clear limitations. The paucity of the fragments of even these two orators does not allow the modern historian to trace any meaningful idea of development during the career of either figure, and scarcely allows us to go beyond the ancient *testimonia* in distinguishing between them.[9]

Therefore, it is impossible to expect such a complete picture to appear as that which could be built up for Cicero himself. In particular the fact that we possess numerous speeches of Cicero allows us to see that he presents his role in very different, even contradictory ways according to the particular circumstances of any speech. The mass of evidence also permits us to draw up fairly securely some boundaries defining what Cicero could and could not argue. The scanty material which survives from Cato and Gracchus simply does not allow this, but the fragments do offer a series of snapshots in which they sometimes portray the orator's role. In this way the fragments allow us to ask questions such as how both figures represent the relationship with their various audiences, on whose behalf they portray themselves as speaking, and to what extent they are explicit about the orator's training in the art of persuasion. However, owing to the limitations of the surviving evidence, I shall at times have

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6 H. Malcovati, *Oratorum Romanorum Fragmenta Liberae Rei Publicae* [henceforth = *O.R.F.*] (Turin, 1953), 15-18 (Cato); 175-77 (Gaius Gracchus).

7 On Cato, G. Kennedy, *The Art of Rhetoric in the Roman World* (Princeton, 1972), 38-60; A. D. Leeman, *Orationis Ratio* (Amsterdam, 1963), 21-23; 43-49; A. E. Astin, *Cato the Censor* (Oxford, 1978), 131-56; M. T. Sblendorio, 'Note sullo stile dell' oratoria catoniana', *Annali Fac. Lettere-Filosofia Magistero Cagliari* 34 (1971), 5-32; M. T. Sblendorio Cugusi, 'Sulla struttura dell' orazione catoniana *dierum dictarum de consulatu suo*', *Atti Acc. Scienze Torino* 114 (1980), 1-12; M. T. Sblendorio Cugusi, *M. Porci Catonis Orationum Reliquiae* (Turin, 1982), especially pp. 32-33; 36-40; R. Till, *Die Sprache Catos*, *Philologus* suppl. 28. 2 (1935). On Gaius Gracchus, Kennedy (1972), 74-79; Leeman (1963), 54-58; D. Stockton, *The Gracchi* (Oxford, 1979), 216-225.

8 However, this issue will itself demand that I concern myself, to a certain degree, with what kind of orators Cato and Gaius were and what types of arguments they used in their speeches, since these questions have an implicit bearing upon the way in which they presented their roles as orators.

9 Compare P. A. Brunt, 'On Historical Fragments and Epitomes', *C. Q.* n.s. 30 (1980) [= Brunt (1980a)], 477-494, who notes the dangers of overconfidence in such sources for lost works, and concludes that ''fragments' and even epitomes reflect the interests of the authors who cite or summarize lost works as much as or more than the characteristics of the works concerned' (p. 494).

to adopt a more indirect approach focusing upon the types of argumentation used by these two orators, and inferring from these the way in which they envisaged the orator's role. I treat Cato first.

1. Cato the Censor[10]

Cicero claims to know of more than one hundred and fifty speeches by Cato, and to have read them.[11] In her collection Malcovati ascribes Cato's fragments to seventy-nine separate speeches. Although many of these are known only by their title and a handful of words this is a striking figure, when we consider that after Cato Hortensius is credited with the next greatest number - twenty-five speeches. In part these statistics can be explained by Cato's subsequent importance as the epitome of old Roman values, but his decision to preserve and publish at least some of his own speeches must have been a contributory factor.[12]

It is possible that he took the original decision to publish some of his speeches as a result of political considerations. Kennedy has suggested that the inclusion of the *Pro Rhodiensibus* in the fifth book of the *Origines* stemmed from a desire to rival Astymedes, one of the Rhodian ambassadors.[13] Upon his return home, this man had published the speech which he had delivered in the senate.[14] By the inclusion of his own speech Cato could advertize his own greater role in achieving the Rhodian objectives, and perhaps could incidentally signal the greater effectiveness of a Roman than a Greek orator. The addition of a second speech - and perhaps more - could have stemmed from the success of the first experiment.[15] Whatever the initial motivation for the inclusion, the readers of the *Origines* will have been struck by Cato's own representation of the importance of his role as an orator: a significant part of his self-portrayal as a leading Roman was that he stood up and delivered speeches of consequence in public. Indeed, many of the ancient *testimonia* collected by Malcovati mention Cato's rhetorical ability as an important part of an overall assessment of the man.[16] As a typical example, Pliny mentions his oratory in parallel with his military ability and his service as a senator: *Cato primus Porciae gentis tres summas in homine res praestitisse*

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10 The surviving fragments of Cato have been collected by Sblendorio Cugusi (1982) and at *O.R.F.* no. 8. References in this chapter are made to the latter.

11 Cicero, *Brutus* 65: *refertae sunt orationes amplius centum quinquaginta, quas quidem adhuc invenerim et legerim, et verbis et rebus inlustribus.*

12 At least two of his speeches were included in his *Origines*, that for the Rhodians and that against Galba (Gellius 6. 3. 7; 13. 25. 15).

13 Kennedy (1972), 59.

14 Polybius 30. 4. 6-17.

15 It is of course possible that, although now unknown to us, Cato had included other earlier speeches.

16 Malcovati, *O.R.F.* pp. 15-18.

existimatur, ut esset optimus orator, optimus imperator, optimus senator.[17]

Moreover the two speeches which we know to have been included in the *Origines* were made on very different occasions. The *Pro Rhodiensibus* was delivered in the senate on a matter of foreign 'policy', while the *Contra Servium Galbam pro direptis Lusitanis* was spoken before the people in a judicial process.[18] The surviving speeches as a whole reflect a similar breadth in the diversity of occasions on which they were delivered. Sblendorio Cugusi, out of the total of 82 surviving orations which she distinguishes, identifies 41 as deliberative, both senatorial and *suasiones* or *dissuasiones* before the people concerned with proposed laws, and 36 as judicial, of which 16 were delivered in public cases, 11 in private.[19]

Cato's involvement in legal actions was notable throughout his career. Plutarch preserves for us a tradition that he first came to notice as an advocate in the towns and villages around his native Tusculum: τὸν δὲ λόγον... ἐξηρτύετο καὶ παρεσκεύαζεν, ἐν ταῖς περιοικίσι κώμαις καὶ τοῖς πολιχνίοις ἑκάστοτε συνδικῶν τοῖς δεομένοις καὶ πρῶτον ἀγωνιστὴς εἶναι δοκῶν πρόθυμος, εἶτα καὶ ῥήτωρ ἱκανός .[20] These appearances followed by later service as an advocate at Rome may have helped the *novus homo* to establish support in Rome, but his performances in the Roman courts were not limited to speaking on behalf of clients. His personal involvement in legal actions seems to have rivalled even that of the democratic leaders of Classical Athens, and Pliny records that he was said to have been brought to trial forty-four times on various charges although he was always acquitted.[21] His judicial activity seems to have been particularly great around the time of his censorship, both in the course of the election campaign and during office: Malcovati has assigned 21 speeches as *orationes censoriae*, although several of these are not securely attested.[22] Moreover, Plutarch's account of Cato's election campaign suggests that speeches were a major factor in his winning of office:

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17 Pliny, *Nat. hist.* 7. 100.

18 It was not delivered in court, but in support of a tribunician motion proposing the setting up of a special court to try Galba (Astin (1978), 112). However, the circumstances of the occasion may have led Cato to deliver a speech which amounted to a prosecution, as Cicero seems to suggest: *M. Cato legem suadens in Galbam multa dixit* (*Brutus* 89).

19 Sblendorio Cugusi (1982), 21.

20 Plutarch, *Cato the Elder* 1.5.

21 Pliny, *Nat. Hist.* 7. 100.

22 *O.R.F.* pp. 32-49.

> τοὐναντίον δ' ὁ Κάτων οὐδεμίαν ἐνδιδοὺς ἐπιείκειαν, ἀλλ' ἄντικρυς ἀπειλῶν τε τοῖς πονηροῖς ἀπὸ τοῦ βήματος καὶ κεκραγὼς μεγάλου καθαρμοῦ χρήζειν τὴν πόλιν, ἠξίου τοὺς πολλοὺς εἰ σωφρονοῦσι μὴ τὸν ἥδιστον, ἀλλὰ τον σφοδρότατον αἱρεῖσθαι τῶν ἰατρῶν.[23]

These may not have been explicitly delivered as election speeches, but Plutarch makes clear that this is what they amounted to. Furthermore, the readiness to bring others and himself be brought to trial may also have been part of the public image of a man with a *popularis* bent who sought to put an end to the corruption and excesses of the nobles by legal means, a man who passed the *lex Porcia* against flogging, who supported a sumptuary law and who opposed the repeal of the *lex Oppia.*

Cato's public career was therefore punctuated, or even dominated, by rhetorical performances. It is a vivid illustration of Millar's reappraisal of the Roman republic from 200-151 B.C.:

> 'They (those who sought and held office) also fought out their most bitter rivalries before juries constituted by the citizen assemblies. Their ability to legislate depended on the tribal assembly; and the necessary persuasion was applied, often in open conflict and debate, by the means of speeches, which were made not only, or even primarily, in the 'sacred Senate', but in the open space of the Forum, before the ever-available crowd consisting of whoever was already there, or whoever turned up.'[24]

If Cato's career reinforces this picture it remains to ask how he portrayed his role as an orator to those whom he was addressing. Can we discern whether he was explicit about the natural talent, training and hard work that contributed to his rhetorical skill, and distanced him from the audiences which he addressed?

A particularly revealing fragment in this regard has been preserved by Fronto. It comes from the speech *De sumptu suo*, in which he seems to have restated his claims to a parsimonious existence against the accusations of hypocrisy levelled by his enemies: the

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23 Plutarch, *Cato* 16. 6.

24 F. G. B. Millar, 'The political character of the classical Roman republic, 200-151 B.C.', *J.R.S.* 74 (1984), 1-19.

precise occasion of its delivery is uncertain but it may have been before the censors of 164.[25] Fronto introduces the fragment as the outstanding example of παράλειψις which he has seen, and although the fragment is long I give it in full:

> *iussi caudicem proferri, ubi mea oratio scripta erat de ea re, quod sponsionem feceram cum M. Cornelio. tabulae prolatae: maiorum benefacta perlecta: deinde quae ego pro re publica fecissem leguntur. ubi id utrumque perlectum est, deinde scriptum erat in oratione: 'numquam ego pecuniam neque meam neque sociorum per ambitionem dilargitus sum.' attat, noli, noli scribere, inquam, istud: nolunt audire. deinde recitavit: 'numquam <ego> praefectos per sociorum vestrorum oppida imposivi, qui eorum bona liberos diriperent.' istud quoque dele; nolunt audire: recita porro. 'numquam ego praedam neque quod de hostibus captum esset neque manubias inter pauculos amicos meos divisi, ut illis eriperem qui cepissent.' istuc quoque dele: nihil eo minus volunt dici; non opus est, recitato. 'numquam ego evectionem datavi, quo amici mei per symbolos pecunias magnas caperent.' perge istuc quoque uti cum maxime delere. 'numquam ego argentum pro vino congiario inter apparitores atque amicos meos disdidi, neque eos malo publico divites feci.' enimvero usque istuc ad lignum dele. vide sis quo loco res publica siet, uti quod rei publicae bene fecissem, unde gratiam capiebam, nunc idem illud memorare non audeo, ne invidiae siet. ita inductum est male facere inpoene, bene facere non inpoene licere.*[26]

Fronto singles out his passage as exceptional in all the Greek and Roman oratory which he has read: *quoniam mentio παραλείψεως habita est, non omittam quin te impertiam quod de figura ista studiosius animadverterim, neque Graecorum oratorum neque Romanorum, quos ego legerim, elegantius hac figura usum quemquam quam M. Porcium...*[27] In commenting upon this passage modern scholars have often picked up on Fronto's surprised statement to note Cato's skilful use of a rhetorical figure, noteworthy in such an early figure.[28] It is indeed significant that he employs such an obvious rhetorical device, whether he used it naturally or as

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25 So Malcovati (*O.R.F.* p. 70),who links it with a fragment preserved by Gellius (13. 24. 1) from a time when Cato seems to have been seventy years of age.

26 *O.R.F.* 8. 173 (=Fronto, *Ad Antonium Imp.* 1. 2. 9).

27 Compare also his comment after quoting the passage: *haec forma παραλείψεως nova nec ab ullo alio, quod ego sciam, usurpata est. iubet enim legi tabulas et, quod lectum sit, iubet praeteriri* (Fronto, *Ad. Ant. Imp.* 1. 2. 10).

28 But A. S. Gratwick (*The Cambridge History of Classical Literature vol. II, part I: The Early Republic* (Cambridge, 1982), 154) notes this as an example of Cato defying easy stereotyping: 'This is typical of Cato. His rhetoric could not be neatly pigeon-holed according to the rules of the manuals and *exempla*... which made teleological criticism easy.'

the result of oratorical training, but even more important is what the fragment tells us about the process of composition.

It has often been used as evidence in discussions concerning the circumstances in which the texts of Cato's orations came to be published or saved for posterity, since it demonstrates that he preserved in some form his earlier speeches and that he had easy access to them.[29] The fragment implies that the original wording was preserved in these records, since the slave reads out the actual words. However it is not clear whether the entire text of the speech was preserved, or a *commentarius* with some passages of the speech written down verbatim and the rest preserved in outline form.[30] Whatever the precise extent to which the actual words of the original speech were written down, the fragment demonstrates the care and interest which Cato took in the preservation of his own speeches.

More significant still is the context in which we are told this information, that is a publicly delivered speech: he makes no attempt to conceal the process involved in composing it. This included the assistance of a well-educated man, presumably a slave or freedman, who could help him in researching his own archives, and producing a written version of the speech to be delivered.[31] This last point is important: Cato's contemporary audiences will have known if he was actually reading from a written text, but it would have been possible for him to memorize sections, or base his actual delivery upon an abbreviated outline.[32] This portrayal of himself at work in his study is significant because it is precisely this, work in his study.

By being so explicit about the process of composition Cato distances his performance from other less organized forms of discourse such as ordinary conversation: his speech has been worked on and prepared in advance. This representation of his activities also serves to distance himself from his audience: he is not merely one of them who is simply expressing his own opinions off the cuff, but he is delivering a carefully crafted performance. Moreover the παράλειψις itself is revealing about this process: for Cato portrays himself as rejecting some perfectly acceptable arguments for his own defence, because he does not consider that they will be to the taste of his audience. Again Cato highlights how carefully his speech has been

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29 See Kennedy (1972), 58 and Astin (1978), 135-37.

30 Kennedy (1972),58 argues for a *commentarius* form citing Quintilian 10. 7. 30, while Astin (1978) 136 thinks that the fragment presupposes 'the continuous text, fully written out.'

31 This last point is implied by phrases such as *noli scribere* and the repeated use of the word *delere*.

32 As Astin (1978), 136 notes, we cannot conclude from this one fragment that Cato always produced written versions of all his speeches, although the effectiveness of the picture depends to some extent upon his audience accepting this as his normal procedure.

constructed, explicitly alluding to the way in which he has marshalled the most effective arguments.[33]

If we turn to consider the nature of the arguments which Cato uses - or more strictly rejects - they are also revealing. These are entirely concerned with his own honest conduct, particularly in his services towards the state. Originally these services had been adduced in the speech which he had delivered with regard to the *sponsio* he had made with M. Cornelius,[34] but nothing more is known about the circumstances of this speech, and little can therefore be said about Cato's choice of arguments. However we know a little more about the context of the *de sumptu suo*. The title itself makes clear that arguments concerned with Cato's own achievements and character will have had no little relevance to the point at issue, and we might expect to find him taking a similar approach to that of Ciceronian *ethos*.

But it perhaps needs to be stressed that the rejected arguments of the παράλειψις are not *directly* relevant to the issue at stake, which was his own expenditure. Therefore those fragments which Malcovati links with this speech were - if correctly attributed[35] - more directly relevant than the Fronto fragment.[36] In fragment 174 Cato maintains that he has not wasted money on buildings, vases, clothes, slaves or indeed anything that was not necessary: *si quid est quod utar, utor; si non est, egeo*. Plutarch records Cato making similar claims for his thriftiness in buying food, drink and furnishings, although once again he does not record the precise context.[37] Such arguments would naturally be suited to a speech called *De sumptu suo*, but those included in the παράλειψις help to develop his self-representation as a man of good

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33 Of course by its very nature παράλειψις allows him to include these arguments while at the same time distancing himself from them, but that does not detract from the general picture which is one that shows him rejecting some arguments and using others. This is particularly true in the present example, which goes much further than the usual form: 'I could say this... but I will not.'

34 This is an example of the process of *sponsione provocare* which was essentially a way of defending one's own reputation or attacking another's, a useful procedure in a society which had as yet no law of libel. It involved the issuing of a challenge, which the other party could either turn down - thereby admitting he was in the wrong - or accept. In the latter instance the matter went before a single *iudex*, although he could call in assessors and the effect of the speeches upon the *corona* of bystanders may have been of equal importance for the participants. We know that Cato was involved in this process on at least one other occasion, when he challenged L. Flamininus who spurned the opportunity to defend himself (Livy 39. 43. 5). On the procedure, see J. A. Crook, '*Sponsione Provocare*: its place in Roman Litigation', *J.R.S.* 66 (1976),132-38; A. W. Lintott, 'The Procedure under the Leges Calpurnia and Iunia De Repetundis and the actio per sponsionem', *Z.P.E.* 22 (1976), 210-214.

35 This is a big 'if', since it is precisely because they seem to be appropriate to the context that they have been attributed to this speech, but this is not critical for my argument, since I am most concerned to show that the fragment which is secure is not as relevant to the issue as it might be.

36 *O.R.F.* 8. 174-75.

37 Plutarch, *Cato* 4. 4-6 (=*O.R.F.* 8. 175).

character, a man who did not exploit his positions of privilege in order to generate profits for himself or his friends, but was a loyal servant of the *res publica*.[38]

Indeed self-praise seems to have been a notable feature of many of Cato's speeches, and Plutarch says of him: καίτοι πλεῖστα πάντων ἑαυτὸν ἐγκεκωμίακεν, ὅς γε καὶ τοὺς ἁμαρτάνοντάς τι περὶ τὸν βίον, εἶτ ' ἐλεγχομένους λέγειν φησὶν, ὡς οὐκ ἄξιον ἐγκαλεῖν αὐτοῖς· οὐ γὰρ Κάτωνές εἰσι.[39] Astin also notes this moral earnestness as being prevalent in the surviving fragments of his speeches, and suggests that an explanation is to be found in his background:

> 'If further explanation is sought for this conscientiousness, it may be conjectured that it lies in a combination of literal-mindedness and reactions understandable in a *novus homo*, making him a particularly enthusiastic champion of the traditional ideals and responsibilities of the class into which he had won his way.'[40]

Moreover, Cato is himself explicit that much of what he had achieved in his political career could be ascribed to his moral reputation: *nam periniurium siet, cum mihi ob eos mores, quos prius habui, honos detur, ubi datus est, tum uti eos mutem atque alii modi sim.*[41] And it was in speeches such as this - the *De vestitu et vehiculis* - that he had to advertize that he was sticking to the moral values which he advocated.

Such arguments from *ethos* are also directed against his various opponents. A notorious example is provided by the censorial speech which he delivered against the unfortunate Lucius Veturius.[42] As censor, Cato removed his horse from him, apparently because he had committed some error in religious ritual.[43] However he also attacked Veturius for his obesity, which made it inappropriate for him to be provided with a public horse:

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38 This appears to have been a consistently important theme in Cato's speeches, and Astin (p. 87, n. 42) has collected seventeen fragments in which this theme plays some part.

39 Plut., *Cato* 19. 7.

40 Astin (1978), 87.

41 *O.R.F.* 8. 93.

42 *O.R.F.* 8. 72-82.

43 Festus p. 466, 22 and Gellius 6. 22. 3 refer to the speech as *De sacrificio commisso* and of the eleven surviving fragments, 72-77 refer to religious matters.

> *nimis pingui homini et corpulento censores equum adimere solitos scilicet minus idoneum ratos esse cum tanti corporis pondere ad faciendum equitis munus. non enim poena id fuit, ut quidam existimant, sed munus sine ignominia remittebatur. tamen Cato in oratione, quam de sacrificio commisso scripsit, obicit hanc rem criminosius, uti magis videri possit cum ignominia fuisse.*[44]

Again this attack was relevant to the issue, namely Veturius losing his horse, but was not the central point which concerned a sacrifice. According to Gellius, Cato seems to have used Veturius' size as a reproach of his character in general: *quod si ita accipias, id profecto existimandum est, non omnino inculpatum neque indesidem visum esse, cuius corpus in tam inmodicum modum luxuriasset exuberassetque.*[45]

This idea is reinforced by another fragment, from Plutarch, which Malcovati attributes to this speech: ποῦ δ' ἂν τῇ πόλει σῶμα τοιοῦτο γένοιτο χρήσιμον, οὗ τὸ μεταξὺ λαιμοῦ καὶ βουβώνων ἅπαν ὑπὸ τῆς γαστρὸς κατέχεται;[46] In this fragment the link between obesity and the inability to help the state is made explicit, and while we cannot be certain that it comes from this speech it is not unlikely that Cato might have used a similar approach in this speech to discredit Veturius. It is also probable that Cato exploited humour to mock his opponent as the famous fragment of Servius is often linked with this speech: *sedere non potest in equo trepidante.*[47]

But of the surviving speeches, those which are ascribed to a speech entitled *Si se M. Caelius tribunus plebis appellasset* are especially notable for Cato's attacks upon the character of his opponent.[48] Four of these fragments are directed at enumerating the different types of behaviour that Caelius gets up to: Cato calls him a composer of Fescennine lampoons, a dancer and jester, a singer, a performer of Greek verses and a man who is happy to put on funny voices.[49] This list may not be complete for one of the fragments seems to form the climax to a

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[44] Gellius 6. 22. 1-3 (=*O.R.F.* 8. 78).

[45] Gellius 6. 22. 4.

[46] Plut., *Cato* 9. 6 (=*O.R.F.* 8. 79).

[47] *O.R.F.* 8. 80.

[48] *O.R.F.* 8. 111-120. The circumstances of this speech have been much disputed, although the consensus now is that it may have been the result of the contract disputes during the course of Cato's censorship, when there was a move to impose a fine on him. It is likely that the proceedings never reached court, and this speech may have been delivered (or simply circulated as a text) after Caelius had dropped the matter.

[49] *O.R.F.* 8. 113-115. Macrobius 3. 14. 9 makes clear that these insults are directed against Caelius himself: *M. Cato senatorem non ignobilem Caelium spatiatorem et fescenninum vocat.*

lengthy attack: *quid ego cum illo dissertem amplius, quem ego denique credo in pompa vectitatum iri ludis pro citeria, atque cum spectatoribus sermocinaturum?*[50] These fragments seem to make up a concerted personal assault on Caelius' character which cannot have been central to the legal issue in hand: the logic must have been that an individual of this sort was so worthless that no-one should listen to him.

Indeed two further fragments are directed more precisely at Caelius as an orator. The longer refers to his excessive fondness for speaking:

> *numquam tacet, quem morbus tenet loquendi tamquam veternosum bibendi atque dormiendi. quod si non conveniatis, cum convocari iubet, ita cupidus orationis conducat, qui auscultet. itaque auditis, non auscultatis, tamquam pharmacopolam. nam eius verba audiuntur; verum se nemo committit, si aeger est.*[51]

In suggesting that Caelius is so desirous of addressing an audience that he is prepared to hire one, Cato seeks to undermine his credibility, but it is also relevant to his conception of the orator's role. For he points out that, while you can assemble an audience through bribery, you cannot force them to listen to what you are saying (*auditis, non auscultatis*). He envisages the delivery of the speech as a two-way process: the orator speaks, but it is meaningless unless the audience take in his words. Behind this criticism also lies the implication that men should not simply speak for the sake of it, but because they have something serious to say.[52]

A final feature to be noted is Cato's comparison of the wordy orator with the quack. The point is that for all their immediate popularity no one in genuine need goes to either of them. However, if one extends this simile, the implication is that the good orator should play the role of the doctor to the state, the figure that the citizens turn to in their time of need.[53] The second of these fragments is an even more direct attack upon Caelius' motivations in speaking: *frusto panis conduci potest, vel uti taceat vel uti loquatur.*[54] Although the immediate implication

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50 *O.R.F.* 8. 116.

51 *O.R.F.* 8. 111.

52 Perhaps it is worth comparing here one of Cato's rhetorical injunctions: *rem tene, verba sequentur* (Julius Victor 374 Halm). The central point of this injunction seems to be that the substance of a speech must take precedence over the way in which it is said.

53 Compare Cicero's own use of the same imagery (pp. 188-9).

54 *O.R.F.* 8. 112.

of this fragment is that Caelius' services came cheap,[55] a significant undertone seems to be that his oratory was up for sale for anyone who wished to purchase it. Given Cato's strictures on his own proper conduct which have survived in the other fragments, and the suggestion that an orator should serve as a physician for the state, it can be assumed that Cato was highly critical of an orator, who should have been representing the best interests of the *plebs* as tribune but was in fact lining his own pockets, however little he got out of it.[56]

In summary, it is apparent from our meagre evidence that Cato was happy to resort to arguments similar to those later Ciceronian ones based on *ethos*. He could advertize his own achievements and morality in order to reinforce his case, and could undermine that of his opponents. In the case of Veturius, although the matter does not seem to have reached court, Cato could even assail the man's credentials as an orator: he should not be heeded since he was a speaker who sometimes hired out his services and sometimes hired audiences. The fragments do not allow us to evaluate the extent to which he used such character-based arguments when speaking as an advocate on behalf of other clients, but there is one piece of evidence which is suggestive.

This comes from another speech about which we know nothing certain except that Cato delivered it as an advocate on behalf of Lucius Turius against Gnaeus Gellius.[57] Aulus Gellius quotes Cato's own words:

> *atque ego a maioribus memoria sic accepi: si quis quid alter ab altero peterent, si ambo pares essent, sive boni sive mali essent, quod duo res gessissent, uti testes non interessent, illi, unde petitur, ei potius credendum esse. nunc si sponsionem fecissent Gellius cum Turio, ni vir melior esset Gellius quam Turius, nemo, opinor, tam insanus esset, qui iudicaret meliorem esse Gellium quam Turium; si non melior Gellius est Turio, potius oportet credi, unde petitur.*'[58]

This particular use of the argument from character is somewhat unusual in that Cato does not attempt to argue that his own client's character is markedly better than that of his opponent,

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55 Gellius makes this point in his introduction to the fragment: *idem Cato in eadem oratione eidem M. Caelio tribuno plebi vilitatem obprobans non loquendi tantum, verum etiam tacendi.*

56 Compare also the famous fragment of Gaius Gracchus from the *Dissuasio legis Aufeiae* (*O.R.F.* 48. 44), on which see below pp. 233-4.

57 *Pro L. Turio contra Cn. Gellium* preserved at Gellius. 14. 2. 21-26.

58 Gell., 14. 2. 26 (=*O.R.F.* 8. 206). On *sponsione provocare* which Cato discusses here, see above p. 206.

only that it is not worse. However, the fragment is significant because of the general importance that it ascribes to an assessment of character. According to the convention which Cato cites, in the case of a claim, the judgment should go in favour of the man against whom the claim is made if the two individuals possess characters of equal merit and there are no witnesses to the issue, a formulation in which the characters of those involved are of equal weight to the facts of the case, represented by the witnesses.

There is need for caution for a variety of reasons. Firstly, the weight which Cato gives to character here may only be the result of the context. His point is that in this case the decision should go in favour of Turius because the claim is being made against him and there is nothing to choose between the two men in terms of witnesses or of their characters: it is irrelevant to his point that any precedence should be given to either witnesses or characters since neither apply. Moreover Favorinus' own summary of Cato's case, which Gellius recounts, does imply that the question of the respective characters of those involved was only secondary to the facts of the case if the latter were recoverable:[59]

> *(Cato) ita esse a maioribus traditum observatumque ait, ut si quod inter duos actum est neque tabulis neque testibus planum fieri possit, tum apud iudicem qui de ea re cognosceret, uter ex his vir melior esset quaereretur et, si pares essent seu boni pariter seu mali, tum illi unde petitur crederetur ac secundum eum iudicaretur.*[60]

But even if the importance of characters was secondary to that of evidence, the passage provides significant testimony for the weight which Cato might have attached to character in these and similar cases.

However, it would be wrong to assume that Cato adopted such an approach in every case. It is possible that at other times he may have urged magistrates or jurors to ignore the individual characters of those involved and focus only upon the facts of the case. An example of this is perhaps to be noted in the speech *Pro Rhodiensibus*. Although this was a deliberative speech delivered in the senate, it is suggestive of an approach which Cato might have adopted in a judicial context: *Rhodiensis superbos esse aiunt id obiectantes quod mihi et liberis meis*

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59 However, it should be noted that Favorinus' summary may be based on no further knowledge of Cato's speech, and may simply be an inference from the actual fragment which Gellius preserves.

60 Gellius 14. 2. 21.

minime dici velim. sint sane superbi. quid id ad nos attinet?[61]

We should certainly be wary of assuming that all of Cato's speeches were dominated by ethical arguments. After noting Cato's fondness for self-praise, Kennedy draws a general comparison between Greek and Roman orators: 'a Greek orator tends to argue his audience into believing something, a Roman by his authority convinces the audience that something should be believed because he says so, though of course the observation should not be pushed too far since there is some self-esteem in Demosthenes and Isocrates.'[62] This is an important observation, but it is equally dangerous to push it too far in the Catonian context because we are at the mercy of the surviving fragments.

There are two major reasons for caution in this context. First, many of Cato's speeches were involved with issues where characters were immediately central, especially his own. In particular there are the censorial speeches where he justified his decisions to expel certain individuals from the senate or the equestrian order. These in turn led to counter prosecutions where Cato was forced to defend his own conduct against accusations of hypocrisy.[63] The very fact that Cato so often championed issues of morality will have made it likely that he often had recourse to such arguments, but this does not mean that in all or even the majority of his speeches he used them. Furthermore, because no complete speeches of Cato are extant we cannot evaluate the way in which he combined these arguments with a more reasoned approach, as we can with Cicero's surviving speeches.

This leads to the second consideration, which is that the extant fragments may be excessively biased towards those containing ethical arguments. For posterity Cato was renowned for his censorship and his strong moral views. As a result those speeches which provided evidence for this aspect of Cato's character were more likely to survive, and be excerpted and summarized by later authors such as Plutarch and Gellius. As a corrective we have the *Pro Rhodiensibus*, one of the two speeches which we know to have been incorporated into his *Origines*. With the important proviso that we do not have the complete text of even this speech, it does seem to have contained a rich mixture of rational and ethical argumentation and

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61 *O.R.F.* 8. 169.

62 Kennedy (1972), 42.

63 The *De sumptu suo* is an example of this, on which see above pp. 203-7.

even appeals to the emotions.[64]

I return to consider this speech at the end of this section, but before that I examine the evidence for Cato's use of other types of argument. One approach which was to remain popular was the use of tradition. In *O.R.F.* 8. 206, as I discussed above, Cato argued that character was a traditional method of deciding a case. He introduced this fragment with the words *atque ego a maioribus memoria sic accepi*. This is a very straightforward use of the device, but it is clear that Cato hoped to add ancestral authority to the argument which he was employing. A similar technique is used in a fragment from the speech *In Lentulum apud censores*. In this he sets out the rank and order of obligations owed by Romans to their various connections and acquaintances: *quod maiores sanctius habuere defendi pupillos quam clientem non fallere*.[65] We know nothing of the context, but it is likely that he included this excursus either to justify his own actions or criticize those of Lentulus, reinforcing his point by recruiting the *maiores* in his support.

In these examples it would be going too far to argue, as was possible with Cicero's use of historical *exempla*,[66] that Cato is attempting to advertize his superior knowledge of Roman history. However, we do possess one quasi-fragment in which Cato digresses at length in a historical excursus about Praetextatus from the speech *Ad milites contra Galbam*.[67] Again the context of this fragment is greatly debated: most editors have connected it with the speech which Cato delivered against Galba in 149, but Malcovati has followed Cichorius in ascribing it to a different speech of 167 in which Cato defended Aemilius Paulus' right to a Macedonian triumph against the opposition of Galba.[68] In either case the specific context for the fragment is uncertain, although it must have been intended to be exemplary in some sense.[69]

According to Gellius, Cato recounted the famous story in outline: the young Papirius - if that was his real name - accompanied his father to the senate like other boys of his age. When

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64 As a result Kennedy (1972), 48 identifies the speech as exceptional: 'There is rather little of his usual moral indignation and character projection in the speech. Livy notes its mild tone (45. 25. 2). Cato is, if anything, sophistic.' I would prefer to argue that Cato's approach in this speech is at variance with the other extant fragments, which are not necessarily representative of his speeches in their complete form.

65 *O.R.F.* 8. 200.

66 See above, pp. 176-83.

67 Gellius 1. 23 (=*O.R.F.* 8. 172).

68 *O.R.F.* pp. 67-68.

69 However Malcovati, again following Cichorius, has argued that Gellius has mistaken the *nomen* of Praetextatus by calling him Papirius instead of Sulpicius: in this case it is possible that Cato was contrasting the behaviour of the two Sulpicii, Galba and Praetextatus (*O.R.F.* pp. 68-69).

a debate was postponed until the following day, and it was forbidden to mention its subject to anyone outside the senate, Papirius came under pressure from his mother to reveal it. Eventually he came up with the lie that they were discussing which sort of bigamy to introduce: two wives for one husband, or two husbands for one wife. This led to a large protest by the women of Rome outside the senate house the following morning, and Papirius stepped forward to explain how this had come about. The result was that the senate debarred all boys from its meetings with the exception of Papirius himself who was praised for his *fides* and *ingenium*, and was subsequently honoured with the name Praetextatus for the good sense which he had shown while still a youth.

Unfortunately Gellius does not quote Cato's own words, which makes it even more difficult to evaluate the significance of the digression.[70] It is therefore unclear whether he is using the story to exemplify youthful prudence, an ability to keep a secret or even the justified use of a falsehood. However it does seem to have been a sizable excursus, which may have been intended to delight the audience, and may also have served as an advertizement of his knowledge of the Roman past. Two consecutive sentences of Gellius' summary might be particularly significant for this interpretation: *mos antea senatoribus Romae fuit in curiam cum praetextatis filiis introire. tum, cum in senatu res maior quaepiam consultata eaque in diem posterum prolata est, placuit ut eam rem, super qua tractavissent, ne quis enuntiaret, priusquam decreta esset.*[71] In each sentence there is an interest in explaining a custom of the past (*antea* and *tum*), which might be a mark of Cato parading his own historical knowledge.

Of course this might be a result of Gellius' own wording, but it is unlikely that Cato can have failed to mention these two ancient customs since both are necessary to the logic of the story. The practice of sons accompanying their fathers to the senate seems to be especially integral to Gellius' summary, since one of the results of the story is that this custom was abandoned subsequently: *consultum facit, ut posthac pueri cum patribus in curiam ne introeant, praeter ille unus Papirius.*[72] It is difficult to imagine that describing this change was the central motivation for Cato's digression, but it seems that he did note it in passing, which supports the view that as an orator he did not hesitate to reveal his historical bent.

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70 Gellius 1. 23. 2-3: *ea Catonis verba huic prorsus commentario indidissem, si libri copia fuisset id temporis, cum haec dictavi. quod si non virtutes dignitatesque verborum, sed rem ipsam scire quaeris, res ferme ad hunc modum est.*

71 Gellius 1. 23. 4-5.

72 Gellius 1. 23.13.

In discussing the *Philippics* I noted Cicero's appreciation of the flip-side to this argument, namely that the present would in future become a source of *exempla* for future generations.[73] Two fragments of Cato reveal a similar awareness that his own deeds and those of others will be remembered by posterity. Both come from the speech in which he defended his conduct during his consulship, the *Dierum dictarum de consulatu suo*.[74] In the first he refers to his achievements in Spain in 195, perhaps alluding to his capture of about four-hundred cities there:[75] *ego mihi haec monimenta sempiterno posui quae cepi*.[76] As he makes clear, it is his achievement in capturing these places that will be remembered, but the speech will help to reinforce that memory in his audience.[77] He is more explicit in the second fragment, although the precise context is less obvious: *censores qui posthac fiunt, formidulosius atque segnius atque timidius pro re publica nitentur*.[78] Astin notes that this remark may have been directly connected with the imminent censorial elections,[79] but it is notable that his comment takes the form of a prediction for the future: as an orator he reveals to his audience the whole continuum of time, where examples from the past can affect the present situation, and the present can in its turn affect the future.

For Romans these arguments from tradition seem to have been extremely powerful, and carried an emotional effect with the audience. In other areas there is perhaps a perception that Cato avoided attempts at *pathos*. This seems to stem largely from the notorious events surrounding Servius Sulpicius Galba in 149. When Galba was accused of illegally massacring the Lusitanians who had surrendered to him, after promising that he would not, Cato supported the measure of the tribune Lucius Libo which was directed against him.[80] Galba reacted by appealing to the pity of the Roman people:

> *tum igitur <nihil> recusans Galba pro sese et populi Romani fidem implorans cum suos pueros tum C. Galli etiam filium flens commendabat, cuius orbitas et fletus mire miserabilis fuit propter recentem memoriam clarissimi*

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73 See above, pp. 189-91.

74 *O.R.F.* 8. 21-55.

75 Compare Plutarch, *Cato* 10. 3: αὐτὸς δέ φησιν ὁ Κάτων πλείονας εἰληφέναι πόλεις ὧν διήγαγεν ἡμερῶν ἐν Ἰβηρίᾳ· καὶ τοῦτο κόμπος οὐκ ἔστιν, εἴπερ ὡς ἀληθῶς τετρακόσιαι τὸ πλῆθος ἦσαν.

76 *O.R.F.* 8. 48.

77 Similarly he was later to commemorate these campaigns in his *Origines*.

78 *O.R.F.* 8. 50.

79 Astin (1978), 65.

80 Cicero, *Brutus* 89.

patris; isque se tum eripuit flamma, propter pueros misericordia populi commota, sicut idem scriptum reliquit Cato.[81]

It is clear that Cato not only included his own speech in the seventh book of the *Origines*,[82] but an account of the way in which Galba succeeded in winning over the people. And Fronto reveals that Cato was not filled with admiration for Galba's resourcefulness:

Cato quid dicat de Galba absoluto, tu melius scis: ego memini propter fratris filios eum absolutum. τὸ δὲ ἀκριβές ipse inspice. Cato igitur dissuadet neve suos neve alienos quis liberos ad misericordiam conciliandam producat neve uxores neve adfines neve ullas omnino feminas.[83]

This scorn for Galba's methods was probably included in the narrative of the *Origines*, but we should be wary of accepting the angry sentiments of the elderly Cato as the unchanging opinion of his entire rhetorical career: it would be natural for the defeated orator to object to the tactics of his opponent, and the criticism of another's use of *pathos* is very different from avoiding its use oneself.

Although the fragments provide us with no directly parallel examples of Cato employing such obvious techniques, they certainly indicate that he did not altogether avoid attempting to play on the audience's emotions.[84] At this point my study has had to focus rather more on the question of what kind of orator Cato was, than how he portrayed his role as an orator. However, owing to the dearth of direct evidence, the techniques of argumentation which the surviving fragments exemplify offer the richest source for considering the type of material which Cato thought appropriate for the orator to use, and hence, indirectly, for investigating his interpretation of his own role when he stood up to speak.

I have already discussed his mockingly humorous attacks upon the unfortunate tribune, Caelius, but there are other examples of emotional persuasion. Astin notes this aspect of Catonian rhetoric with regard to a fragment from his *Suasio legis Voconiae*. This law was proposed in 169, and its two major clauses were concerned with the disposal of property in wills, of which the first was that no-one whose property was valued at more than 100, 000

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81 Cicero, *Brutus* 90.

82 Gellius 13. 25. 15.

83 Fronto, *Ad M. Caes.* 3. 20 (=*O.R.F.* 8. 199).

84 One of the most famous of all is perhaps his dramatic production of a fresh African fig in the senate as an illustration of the proximity of Carthage to Rome (Plutarch, *Cato* 27. 1; Pliny, *N.H.* 15. 74-75).

asses could name a woman as heir. As Astin suggests, the law seems to have been directed against the trend which found more women possessing a substantial amount of property in their own right.[85]

Astin discusses a range of motivations which may have encouraged Cato and others to support this motion, ranging from those based on economics to those driven by prejudice against the idea that women should become powerful. To decide between these is clearly impossible, but one fragment does at least allow us to perceive the sort of arguments which Cato was prepared to use in persuading the Roman people to vote for the law: *principio vobis mulier magnam dotem adtulit; tum magnam pecuniam recepit, quam in viri potestatem non conmittit, eam pecuniam viro mutuam dat; postea, ubi irata facta est, servum recepticium sectari atque flagitare virum iubet.*[86] As Astin says, 'the appeal is to the emotions, not to reason,'[87] and the male audience are intended to sympathize with the imaginary husband victimized by his wife. The emotional basis of this form of persuasion is reinforced if we consider that in supporting the law in a *contio*, and probably speaking in the forum, Cato will have been addressing an audience, the majority of whom were unlikely to be affected by the provisions of a law which was directed at the richer members of the community. Therefore Cato did not hesitate to work upon the fears of his male audience in order to win their support for a measure for which it may have been harder to win their support by - for example - economic arguments. That does not mean that Cato ignored such arguments, since the rest of the speech is almost entirely lost: however, we can say that he did not avoid the use of emotional persuasion as a matter of principle.

Another fragment - although it is really a *testimonium* - provides evidence that Cato was not averse to stirring up the emotions of his audience with a carefully constructed *narratio.* Fortunatus, in describing the effects which can be achieved by employing a *concisa narratio* refers to Cato's method in his *De re Floriana*: *immo et cum singulae res gestae maximam invidiam continent, adversariorum possumus narrationem concidere, ut propositis singulis rebus statim exaggeratione utamur. cur ita? ut indignationem iudicum non semel, sed saepius in rebus singulis excitemus, sicut fecit M. Cato de re Floriana.*[88] By abridging the rest of his narrative, Cato focused upon particular events, a method by which he could accumulate

85 Astin (1978), 114-15.
86 *O.R.F.* 8. 158.
87 Astin (1978), 117.
88 *O.R.F.* 8. 214.

incidents which might arouse the indignation of his audience.

Of the other fragments which we possess, one offers a passage of *narratio* in which Cato seems to be attempting to achieve a similar effect. It comes from the speech *In Q. Minucium Thermum de falsis pugnis*, perhaps one of two which Cato delivered in the senate in 190 against Thermus in a successful attempt to deny him a triumph for his achievements in Liguria.

> *dixit a decemviris parum bene sibi cibaria curata esse. iussit vestimenta detrahi atque flagro caedi. decemviros Bruttiani verberavere, videre multi mortales. quis hanc contumeliam, quis hoc imperium, quis hanc servitutem ferre potest? nemo hoc rex ausus est facere: eane fieri bonis, bono genere gnatis, boni consultis? ubi societas? ubi fides maiorum? insignitas iniurias, plagas, verbera, vibices, eos dolores atque carnificinas per dedecus atque maximam contumeliam, inspectantibus popularibus suis atque multis mortalibus, te facere ausum esse? set quantum luctum, quantum gemitum, quid lacrimarum, quantum fletum factum audivi! servi iniurias nimis aegre ferunt: quid illos, bono genere gnatos, magna virtute praeditos, opinamini animi habuisse atque habituros, dum vivent?*[89]

We cannot discern whether this extract came from precisely the sort of *narratio concisa* described by Fortunatus, since the context is not preserved, but it is not impossible. The title of the speech suggests that its main focus was perhaps directed at alleging that Thermus' victories were not as substantial as he had reported them to be. Our fragment does not have a direct bearing upon this, and could have come from a broken-up *narratio* which concentrated on a variety of incidents which were to Thermus' discredit.

The fragment is certainly not an example of a plain *narratio*: rather Cato takes every opportunity in it to arouse the audience's indignation, and the context in which Gellius cites this passage is illuminating in this respect. It comes at the end of a chapter in which the antiquarian argues against those who believe that Gaius Gracchus was *severior, acrior ampliorque* than Cicero.[90] In response he compares passages from each to the detriment of the former, and he expresses his criticism of Gracchus clearly: *Gracchus autem non querentis neque implorantis, sed nuntiantis vicem.*[91] That is, Gracchus was content simply to narrate events without bringing out their full potential for emotional effect.

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89 Gellius 10. 3. 17 (= *O.R.F.* 8. 58).

90 Gellius 10. 3. 1.

91 Gellius 10. 3. 11.

In contrast, Gellius champions Cato as an example of an early orator who could match Cicero's powerful eloquence, albeit in a less polished way, noting in particular his *vis* and his *copia*.[92] If we turn to the fragment itself, the pure narrative forms only a very short section (*dixit... mortales*), although even here the piquancy of the situation is brought out in the simple clause *decemviros Bruttiani verberavere*, with the fact that slaves beat local magistrates baldly stated. The emotional intensity is raised by a series of rhetorical questions which draw upon a vocabulary which will have had a powerful effect upon the Roman audience (*contumelia*, *imperium*, *servitutem* and *rex*). A tricolon follows emphasizing the merits of the victims with the word *bonus* repeated in each phrase (*bonis, bono genere gnatis, boni consultis*). Further questions are added which include a reference to the *maiores*, before Cato underlines the indignity of the act, by describing it in a string of near synonyms and repeating some ideas which he has already touched upon, namely that the act is a *contumelia*, that its perpetrator was extremely daring (*ausum esse*), and that it was made worse by the fact that it was performed openly before many other men. He works up to a climax with a series of exclamations, before returning to the idea that the decemvirs have been treated like slaves, and an *a fortiori* argument: if slaves resent ill-treatment, how are such well-born men going to react in the face of such indignities?

It may well have been the case that Cato was on the side of the law in both this case and in 149 against Galba, but his attitude to the use of emotional persuasion in each case seems to have been markedly different, and it is clear that he considered such arguments to be a valuable and necessary part of the orator's armoury. As I have already noted, even Cato's speech on behalf of the Rhodians of 167 made some use of such arguments, by appealing for clemency towards them,[93] although the surviving fragments of the speech are better known for their use of rational arguments. I now turn to consider these fragments, as taken together they provide the most complete picture of any Catonian speech which we have.[94] Before I do this a brief account of the historical background will help to provide the context.

The Third Macedonian War, begun in 171, ended in 168 with the defeat of the Macedonian king, Perseus, at the battle of Pydna. The island of Rhodes, a long-time ally of Rome, had played a largely neutral role during the course of the war. Furthermore, towards its

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92 Gellius 10. 3. 15.

93 Gellius 6. 3. 52.

94 I note once more that, owing to the shortage of other evidence, a study of the types of argument which Cato did use is the best material we have on which to base an assessment of his vision of the orator's role.

end a faction sympathetic towards Perseus persuaded the Rhodians to make an offer to arbitrate between the Romans and the Macedonians. This was ill-timed since the envoys reached Rome at the same moment as news of Pydna. Further Rhodian envoys were sent in 167 in order to apologize, but there were moves at Rome to declare war on the Rhodians. Cato spoke in the senate to oppose any inclination towards war, but Rhodes was still deprived of her mainland possessions and the alliance was not renewed until 164.[95]

It is also important to consider the context in which Gellius preserves these fragments, since it perhaps has a bearing upon their nature. The whole chapter (6. 3) is a response to criticisms of the speech which had been made by Cicero's freedman, Tullius Tiro, in a letter to Quintus Axius.[96] In this letter he had taken various passages of the speech in turn, quoting them and criticizing them separately. It is clear from Gellius' response that Tiro did not attempt to deal with the whole speech, and this is where Gellius is most critical of Tiro's approach: *inique igitur Tiro Tullius, quod ex omnibus facultatibus tam opulentae orationis, aptis inter sese et cohaerentibus, parvum quippiam nudumque sumpsit, quod obtrectaret.*[97]

Gellius' overall characterization of the speech is notable for its sustained use of battle imagery, and offers a valuable corrective on the picture provided by the *verbatim* quotations.

> *Praeterea animadvertere est, in tota ista Catonis oratione omnia disciplinarum rhetoricarum arma atque subsidia mota esse; sed non proinde ut in decursibus ludicris aut simulacris proeliorum voluptariis fieri videmus. non enim, inquam, distincte nimis atque compte atque modulate res acta est, sed quasi in ancipiti certamine, cum sparsa acies est, multis locis Marte vario pugnatur, sic in ista tum causa Cato, cum superbia illa Rhodiensium famosissima multorum odio atque invidia flagraret, omnibus promisce tuendi atque propugnandi modis usus est, et nunc ut optime meritos commendat, nunc tamquam si innocentes purgat, nunc ne bona divitiaeque eorum expetantur obiurgat, nunc quasi sit erratum deprecatur, nunc ut necessarios reipublicae ostentat, nunc clementiae, nunc mansuetudinis maiorum, nunc utilitatis publicae commonefacit.*[98]

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95 On the Rhodian episode, see R. M. Errington, *The Dawn of Empire* (London, 1971), 249-52. E. S. Gruen, 'Rome and Rhodes in the Second Century B.C.: A Historiographical Inquiry', *C.Q.* 25 (1975), 58-81, presents a slightly different picture of these events, suggesting that the Rhodians subsequently played up the idea of a pro-Macedonian faction in order to exculpate the majority, and more importantly arguing that Rome sought to play up Rhodian infidelity in order to justify an expansionist policy: 'The senate justified its actions by charging Rhodes with disloyalty and recalcitrance' (p. 81).

96 Gellius 6. 3. 8-11.

97 Gellius 6. 3. 54.

98 Gellius 6. 3. 52.

Gellius' use of battle-imagery powerfully reinforces his picture of the speech as a wide-ranging and practical attempt at persuading his audience. Cato ignored the opportunities offered by none of the possible arguments, even if they were in the strictest terms mutually conflicting: so the Rhodians could be depicted as blameless, but he might still seek forgiveness for their actions. Gellius had highlighted this all-inclusiveness earlier in the chapter: *quia non Rhodiensibus magis quam reipublicae consultabat, nihil sibi dictu factuque in ea re turpe dixit, quin omni sententiarum via servatum ire socios niteretur.*[99] This accords well with the picture which is to be detected in the fragments of Cato's other speeches, that is they afford a broad mixture of arguments, including those based on rational, ethical and emotional appeal.

I now turn to consider the extant fragments in turn, whilst bearing in mind the limited extent to which they represent the original speech. The first comes from the very start of the speech:

> *scio solere plerisque hominibus rebus secundis atque prolixis atque prosperis animum excellere atque superbiam atque ferociam augescere atque crescere. quo mihi nunc magnae curae est, quod haec res tam secunde processit, ne quid in consulendo advorsi eveniat, quod nostras secundas res confutet, neve haec laetitia nimis luxuriose eveniat. advorsae res edomant et docent, quid opus siet facto, secundae res laetitia transvorsum trudere solent a recte consulendo atque intellegendo. quo maiore opere dico suadeoque, uti haec res aliquot dies proferatur, dum ex tanto gaudio in potestatem nostram redeamus.*[100]

Tiro had criticized this opening for being excessively arrogant and critical of his audience, arguing that an advocate should try to win over the jurors to sympathize with his cause.[101] This view treats the speech as a court case, with Cato pleading on behalf of his clients, the Rhodians, and it is for this reason that Gellius rejects the criticism insisting that as a leading figure of the senate and speaking for the good of the state it was appropriate for Cato to express his great authority and prestige.[102] Whilst Gellius' comments focus upon the genre of the speech, they also emphasize Cato's personal prominence. The first-person singular of the opening word *scio* conveys this prominence and the idea that he is speaking from his own

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99 Gellius 6. 3. 44.

100 Gellius 6. 3. 14 (=*O.R.F.* 8. 163).

101 Gellius 6. 3. 12-13.

102 Gellius 6. 3. 17-21.

personal knowledge of human character. It is also to be noted that the force of his argument is directed against the possibility that a decision should be taken while the senate was still in the thrall of its emotions at the victory and not in control of itself (*in potestatem nostram*). This perhaps set the tone for the speech - namely that Cato would attempt to put the rational argument clearly - but we should again be wary of drawing general conclusions. As we have seen, Gellius insists that Cato had recourse to every possible argument, and it is likely that he chose to take a stand against emotional decision-making at the start of his speech because the emotions of the situation ran counter to his own cause: anger at the Rhodian behaviour must have run high.

In the second fragment similar themes are evident.[103] Here Cato admits that the Rhodians had wished the Romans would not win the war with Perseus, but argues that they were not alone in these sentiments and that such feelings were driven by Rhodian desire for freedom. He concludes this argument by noting that even though they had such feelings, they were not driven to take any action. Tiro objects to this manoeuvre on the grounds that it did not exculpate the Rhodians if others were guilty of the same fault.[104] However Gellius again notes the way in which the admission of the Rhodian 'guilt' helps Cato to establish his own authority, since it conveys the impression that he is being frank with his audience.[105] And it is significant that he puts himself to the fore by using the first-person: *atque ego quidem arbitror...* As with the initial *scio*, Cato is putting himself at the centre of the debate: as the orator, it is his role not simply to set out the arguments in an anonymous fashion, but to set on record what he thinks, and he expects these sentiments to carry weight with his audience on the basis of his own experience and authority within the senate.

But Tiro is most critical of Cato's suggestion that no action should be taken against the Rhodians because they had not actually got round to doing anything substantial against Rome. The four succeeding fragments are all illustrative of Cato's development of this argument. In the first he asks if they, the Romans, were to forget their previous alliance and be the first to carry out what the Rhodians had only said they wished to do.[106] He continues by asking his audience personally whether they would feel that they had been fairly treated if they were to be

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103 Gellius 6. 3. 16 (= *O.R.F.* 8. 164).

104 Gellius 6. 3. 22.

105 Gellius 6. 3. 25.

106 Gellius 6. 3. 26 (= *O.R.F.* 8. 165).

punished merely for having wished to commit a crime,[107] offering as one particular example the Licinian law which limited the amount of public land which an individual could hold to 500 *iugera*, and capped the number of animals which could be pastured on it: would they be happy to be fined for desiring to surpass these limits?[108] Later he introduces another comparison, maintaining that no-one receives honours simply from a desire to do well: how then could it be right to punish the opposite?[109]

Tiro seems to have attacked these comparisons as a sophistic device:

> *induxisseque eum dicit quam dialectici* ἐπαγωγήν *appellant, rem admodum insidiosam et sophisticam neque ad veritates magis quam ad captiones repertam, cum conatus sit exemplis decipientibus conligere confirmareque, neminem qui male facere voluit plecti aequum esse, nisi quod factum voluit etiam fecerit.*[110]

In his opinion, a desire to make war was not comparable with a wish to use too much public land, and that rewards and punishments belonged to two different categories: it was folly to allow a crime to take place without taking moves to prevent it.

This criticism of Cato for using rhetorical sophistry is striking, and while it is possible that Cato derived these comparisons from his personal ingenuity rather than any specialised training or study, it is clear that he is trying to advertize his arguments as logical ones, drawing a disputed conclusion from commonly held premises. Gellius' defence of Cato's argumentation reveals that it was even more carefully structured, and that he sought to strengthen it by other means.[111] Principally this seems to have been done by working through a gradated series of comparisons, whereby he moved from less significant delinquencies such as wanting to hold too much public land towards greater ones which were comparable with the Rhodian desire to make war, with the result that the logic of the comparison was less blunt than Tiro

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107 Note Gellius 6. 3. 36 (= *O.R.F.* 8. 166), where he again has recourse to the first person and the expression of his own opinion: *nemo, opinor; nam ego, quod ad me attinet, nolim.* There is a further, more homely, example at Gellius 6. 3. 49 (= *O.R.F.* 8. 169): *Rhodienses superbos esse aiunt id obiectantes quod mihi et liberis meis minime dici velim.*

108 Gellius 6. 3. 36-37 (= *O.R.F.* 8. 166-67).

109 Gellius 6. 3. 38 (= *O.R.F.* 8. 168).

110 Gellius 6. 3. 35.

111 Gellius 6. 3. 44: *sed enim Cato non nudam nec solitariam nec inprotectam hanc* ἐπαγωγήν *facit, sed multis eam modis praefulcit multisque aliis argumentis convelat.*

suggested.[112]

This clever arrangement suggests that Cato was concerned to portray his argument as being driven by logic, although that logic might be faulty on closer inspection. This impression is reinforced if we compare one of the arguments which he was to use in a later speech, *De bello Carthaginiensi* from about 150: *Carthaginienses nobis iam hostes sunt; nam qui omnia parat contra me, ut quo tempore velit, bellum possit inferre, hic iam mihi hostis est, tametsi nondum armis agat.*[113] This seems to be directly opposed to the sentiments expressed in the earlier speech with its insistence that the Rhodians had been guilty of no illegal *action*,[114] and in particular we can compare fragment 165: *quod illos dicimus voluisse facere, id nos priores facere occupabimus?* Indeed Cato's attitude towards Carthage approximates very closely to the criticism which Tiro was to make against this very fragment.[115]

It must be emphasized once more that the picture that emerges even of this speech is a partial one, but it does provide evidence of the manner in which Cato combined different types of argument. We see him playing the figure of authority attempting to persuade his senatorial audience by the force of his personality - particularly by his repeated use of the first-person and the frequent expression of his own sentiments - we see him attempting to stir his audience's emotions on behalf of the Rhodians - having opposed emotional input to decision-making at the start of the speech - and we see him presenting his argument as a rationally driven one, although Gellius reveals that his logic was more of the presentational kind rather than completely rigorous. The speech provides examples of all three of the Ciceronian/Aristotelian types of persuasion - rational, ethical and emotional - and it clear from this as from the other fragments that Cato could present himself as drawing, as a statesmanlike orator should, upon all three resources in fulfilling his role of winning over the audience.

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112 Gellius 6. 3. 45-47: *ac primum ea non incallide conquisivit, quae non iure naturae aut iure gentium fieri prohibentur, sed iure legum rei alicuius medendae aut temporis causa iussarum; sicut est de numero pecoris et de modo agri praefinito. in quibus rebus quod prohibitum est fieri quidem per leges non licet; velle id tamen facere, si liceat, inhonestum non est. atque eas res contulit sensim miscuitque cum eo, quod neque facere neque velle per sese honestum est.*

113 *O.R.F.* 8. 195.

114 However, he could claim that there was not a direct contradiction between these two arguments, since he had objected to the Rhodians being punished for their desires, whereas he was urging punishment against the Carthaginians for actual preparations.

115 Gellius 6. 3. 27-29.

2. Gaius Sempronius Gracchus[116]

Where the fragments of Cato tend to represent the orator as a figure who was removed from and superior to his audience - not least in the opening to the *Pro Rhodiensibus* - it might be expected that the populist tribune, Gaius Gracchus, presented his role in a rather different way, perhaps portraying it as less specialized, and picturing himself more as one of his popular audience's own number. There are some signs of this in the tradition, but I shall argue on the basis of the surviving fragments that this is not always the case, and that he often represents the role in a way akin to Cato before him.

As I have remarked above,[117] Gaius received a thorough training in Greek rhetoric thanks to the careful attention of his mother Cornelia, and there are indications in the tradition that he used this grounding to develop a new style of speaking. First of all, Plutarch records that he was responsible for adopting a change in the direction he faced when addressing a *contio* in the forum, urging the passing of his judicial law. Where earlier popular orators had faced the senate and the Comitium in delivering their speeches, Plutarch claims that Gaius was the first to turn towards the main body of the forum, a change of attitude which Plutarch sees as a highly significant, even constitutional, change: μετενεγκὼν τρόπον τινὰ τὴν πολιτείαν ἐκ τῆς ἀριστοκρατίας εἰς τὴν δημοκρατίαν, ὡς τῶν πολλῶν δέον, οὐ τῆς βουλῆς, στοχάζεσθαι τοὺς λέγοντας.[118] This change[119] would suit the ideology of a man who was later to move house from the Palatine to the forum, since the latter was a more democratic location.[120] It would also fit well with the interpretation which Sherwin-White has given to his *lex repetundarum* in which he emphasizes the importance of publicity in all its

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116 In this section I use the name Gaius to refer to Gaius Sempronius Gracchus.

117 See p. 198.

118 Plutarch, *C. Gracchus* 5. 3-4. This change is not to be confused with that recorded by Cicero (*De amicitia* 96) and Varro (*De re rustica* 1. 2. 9), and attributed by them to Gaius Licinius Crassus in 145. L. R. Taylor at *Roman Voting Assemblies* (Ann Arbor, 1966), 23ff. has shown that these notices refer not to a change in the orientation of speech-making at *contiones* held in the forum, but a transferal of actual voting from the Comitium to the south-east corner (see also F. Coarelli, *Il Foro Romano* vol II (Rome, 1985), 163-64). See the previous chapter, p. 175, n. 155. For the difference between *contiones* and *comitia*, see Gellius 13. 16 and A. Lintott, *The Constitution of the Roman Republic* (Oxford, 1999)[= Lintott (1999b)], 42-43.

119 However, Taylor (1966), 23 attaches little credence to Plutarch's evidence, saying of earlier tribunes that 'they could never have directed their public speaking at the senate.' But even if Plutarch has garbled the reality of the change, the existence of the notice suggests that Gaius had made some innovation in this area.

120 Plut., *C. Gracch.* 12. 1.

procedures.[121]

Moreover Cicero associated both of the Gracchi with a new style of speaking, a *multo faciliore et liberiore genere dicendi.*[122] And of the two brothers, it was Gaius who gained a particular reputation for a powerfully popular delivery, and Cicero conveys this elsewhere in the dialogue: *grandis est verbis, sapiens sententiis, genere toto gravis.*[123] Plutarch describes him as ἔντονος καὶ σφοδρὸς , and compares his restless approach to that of the Athenian demagogue, Cleon: τὸν δὲ Ῥωμαίων πρῶτον ἐπὶ τοῦ βήματος περιπάτῳ τε χρήσασθαι καὶ περισπάσαι τὴν τήβεννον ἐξ ὤμου λέγοντα, καθάπερ Κλέωνα τὸν Ἀθηναῖον ἱστόρηται περισπάσαι τε τὴν περιβολὴν καὶ τὸν μηρὸν πατάξαι πρῶτον τῶν δημηγορούντων. [124] According to Plutarch this active manner of delivery was matched by the content and style of his words, saying his λόγος was φοβερὸς καὶ περιπαθὴς εἰς δείνωσιν and πιθανὸς καὶ γεγανωμένος.[125]

Indeed Plutarch's whole life portrays Gaius' powerful oratory as the basis on which he established his position within the state. The first speech to which he refers is a defence of his friend Vettius where his performance is said to have made the other speakers appear to be no better than children, as a result of which the nobles began to plot as to how they might prevent him from achieving the tribuneship.[126] Similarly, it was his rhetorical gift upon which he relied in order to justify his decision to abandon his role as quaestor in Sardinia after more than two years in the post, and to clear his name after allegations that he had been in some way involved in the Fregellae revolt of 125 B.C.[127] Once he had been elected to the tribuneship of 123, Plutarch asserts that his oratory was again important: it was this which enabled him to take the lead over his colleagues, even though he had not been returned first in the vote.[128]

If we turn to the fragments themselves, there is indeed some evidence of this powerful

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121 A. N. Sherwin-White, 'The *lex repetundarum* and the political ideas of Gaius Gracchus', *J.R.S.* 72 (1982), 21: 'The People is associated with a court in which it has no part, and in which the real power is in the hands of the limited oligarchical class of the equestrians. The function of the People is thus that of a witness to the truth or of a watch-dog.'

122 Cicero, *Brutus* 333.

123 Cic., *Brutus* 126.

124 Plut., *Ti. Gracch.* 2. 2.

125 Plut., *Ti. Gracch.* 2. 3.

126 Plut., *C. Gracch.* 1. 3.

127 Plut., *C. Gracch.* 2. 5 - 3. 1.

128 Plut., *C. Gracch.* 3. 2.

and demagogic style of oratory. As tribune in 123, Gaius passed a *lex frumentaria* in which he provided for a monthly distribution of grain to Roman citizens at a cheap price, and met with strong opposition from Lucius Calpurnius Piso Frugi: perhaps as a result of this opposition Gaius delivered a speech against him, with which Cicero was familiar.[129] The latter refers to this speech in his defence of Fonteius where he contrasts his own client with the example of Piso: for he emphasizes that Fonteius' character must be exceptional since it has not been attacked by his opponents in the trial, whereas even the exemplary Piso - whose rectitude was celebrated even by his name Frugi - was subjected to an attack on his character by Gaius: *qua in oratione permulta in L. Pisonem turpia ac flagitiosa dicuntur.*[130] This picture is reinforced by the scholiast's reference to Gaius' extant speech as an *oratio maledictorum magis plena quam criminum.*[131]

These testimonies perhaps exaggerate the extent to which Gaius' speech was dominated by ethical argumentation, as is dictated by the context in which Cicero refers to the speech, but it is clear that Gaius did include a vehement - and perhaps notorious - attack upon Piso's character within the speech. And by such attacks he may have attempted to arouse strong emotions, as Cicero suggests by his use of the words *turpia ac flagitiosa.* That Gaius employed such an approach is supported by another fragment which contains a climax, and which may or may not have come from this same speech: *pueritia tua adulescentiae tuae inhonestamentum fuit, adulescentia senectuti dedecoramentum, senectus rei publicae flagitium.*[132]

A fragment which reflects an even greater emotional intensity comes, unsurprisingly, from a speech which Gaius seems to have delivered in the course of the final crisis of his life in 121 B.C.: *quo me miser conferam? quo vortam? in Capitoliumne? at fratris sanguine redundat. an domum? matremne ut miseram lamentantem videam et abiectam?*[133] The short sentences, the rhetorical questions, and the references to his own brother's fate and his mother's plight combine to produce a strong emotional effect. But Cicero records this fragment in a section of the dialogue in which Crassus is emphasizing the contribution of delivery to the effect of a speech. He cites contemporary reports of the speech: *quae sic ab illo esse acta constabat oculis,*

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129 Cicero, *Pro Fonteio* 39. Malcovati preserves the fragments at *O.R.F.* 48. 39-43, although 41 seems to belong to a separate occasion, and fragments 42 and 43 are not securely attributed and could easily belong elsewhere. Stockton prefers to assign them to the fragments *incertae sedis* (Stockton (1979), 220).

130 *O.R.F.* 48. 39.

131 *O.R.F.* 48. 40.

132 *O.R.F.* 48. 43.

133 Cicero, *De orat.* 3. 214 (= *O.R.F.* 48. 61).

voce, gestu, inimici ut lacrimas tenere non possent. This aspect of the speeches' original performances is not preserved in the written form in which they have reached us, and we should therefore perhaps be wary of concluding that some seemingly plain passages were delivered in an equally calm manner.

However, two such fragments come from another tribunician speech, the *De legibus promulgatis*,[134] which have been preserved by Gellius. These are cited in the same chapter in which he praises a passage of Cato's *De falsis pugnis* for its forcefulness.[135] In contrast he compares Gaius unfavourably with Cicero's ability to extract the maximum amount of effect from a particular situation. Gellius quotes Gaius' narration of two events which are intended to illustrate the unjust conduct of Roman officials towards Italians: the first describes how the quaestor of Teanum Sidicinum was beaten for failing to ensure that the baths were clean enough for a consul's wife, the second how a young envoy to Asia had a Venusian peasant beaten to death for cracking a joke.

In each passage, as Gellius remarks, Gracchus shuns any obvious rhetorical devices to heighten its emotional impact: *in tam atroci re ac tam misera atque maesta iniuriae publicae contestatione, ecquid est quod aut ampliter insigniterque aut lacrimose atque miseranter aut multa copiosaque invidia gravique et penetrabili querimonia dixerit?*[136] It is possible that Gaius proceeded to expand on these themes, but this would mean that Gellius was guilty of severe deception, as it would make his comparison with Cicero unfair,[137] and he does claim to have read the whole speech.[138] It also seems difficult to see how Gaius' delivery of these very plain passages could have been designed to raise their emotional intensity.[139] Perhaps in this speech he consciously strove to calm down his natural preference for popular and emotional rhetoric, and we might compare the anecdote about his slave, who was instructed to play a pitch pipe whenever Gaius' passions got the better of him.[140]

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134 Gellius 10. 3. 2-5 (= *O.R.F.* 48. 48-49). Malcovati and the majority of scholars assign it to his second tribunate of 122, but Stockton places it in the first, or even before it (Stockton, (1979), 222).

135 See above, pp. 218-9.

136 Gellius 10. 3. 4.

137 This may be the case even if his assessment of this particular speech is fair, since, as we have seen, the other fragments and ancient *testimonia* suggest that Gaius was more than capable of delivering emotionally powerful oratory.

138 Gellius 10. 3. 2.

139 Plainness can possess its own intensity ('he leaves a wife and three young children'), but it is an intensity of a rather different kind.

140 See above, p. 198.

If these fragments suggest that Gaius was able to restrain himself from exploiting the full emotional potential of certain incidents, other fragments illustrate that he was also capable of explicitly logical argumentation. In a speech against Publius Popillius Laenas for illegally putting to death Roman citizens delivered before the *rostra* in 123, he uses a dilemma to point up the inconsistency of his audience of Roman citizens: *quae vos cupide per hosce annos adpetistis atque voluistis, ea si temere repudiaritis, abesse non potest quin aut olim cupide adpetisse aut nunc temere repudiasse dicamini.*[141] As I discussed in the last chapter, the dilemma form of argument is an obvious way for an orator to advertize the fact that he was using logic in making his case.[142] A clear statement of the facts is followed by what purports to be an inevitable conclusion: *abesse non potest quin...* Gaius had used this same phrase in an earlier speech, when he was defending his decision to abandon his quaestorship in Sardinia before the censors in 124:[143] *abesse non potest quin eiusdem hominis sit probos improbare qui improbos probet.*[144] Cicero criticized this sentence for its lack of rhythm,[145] but with its clear chiastic balance it is intended as a statement of logical inevitability.

If we return to the first example, the dilemma which he uses does highlight an inconsistency in his audience's attitude. This is also significant, since it shows that Gaius was prepared to stand up to the popular will, and was quite happy to be explicit in doing so: there is no suggestion here that he is the demagogue who is content only to say what might delight his audience's ears. Of course it may be the case that he was in fact airing views that he expected to be received sympathetically by his hearers, but it remains significant that he presented his role as one in which he criticized his audience's attitude.[146] Indeed Gaius presents his own persona quite forcefully in several of the surviving fragments. Unsurprisingly, this is particularly true of the two speeches which he delivered justifying his decision to return from Sardinia, one delivered before the censors and the other before the people. As Plutarch's account makes clear, the criticism of his actions seems to have lain in the fact that he had abandoned his commander, Lucius Aurelius Orestes: ἀλλὰ καὶ τοῖς πολλοῖς ἀλλόκοτον ἐδόκει τὸ

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141 *O.R.F.* 48. 32.

142 See above, pp. 168-9.

143 *O.R.F.* pp. 180-181.

144 *O.R.F.* 48. 24.

145 Cic., *Orator* 233.

146 Compare Thucydides' assessment of Pericles' oratory before the Athenian people in his obituary of him at 2. 65. 8.

ταμίαν ὄντα προαποστῆναι τοῦ ἄρχοντος.[147] Plutarch's account of the speech before the censors does state that Gaius dealt with this precise issue, but his summary also suggests that Gaius included much more general material to illustrate the impeccable manner in which he had served his quaestorship, in particular his own loss of money during his years of service while others had been lining their own pockets.[148]

In the second speech before the people - if it really was a different occasion[149] - it is likely that Gaius was defending himself against the same precise charge of abandoning his commander, but the fragments which Gellius preserves from this speech are even more general in the scope with which they treat his conduct:[150] he did not run a *popina*, he kept no beautiful slaves and he treated the citizen soldiers with complete modesty. He also repeats the assertion that he made no personal profit from his service,[151] as well as insisting that he had no truck with prostitutes and that he had bribed no-one. This extends far beyond any direct relevance to the issue in question, but was clearly intended to win over his audience to believe that he was of excellent character. Moreover, it is noticeable that he does so by explicitly comparing himself with other less reputable characters: *itaque, Quirites, cum Romam profectus sum, zonas, quas plenas argenti extuli, eas ex provincia inanes retuli; alii vini amphoras quas plenas tulerunt, eas argento repletas domum reportaverunt.*[152]

As Cato had before him, Gaius uses ethical argumentation in this way, not only to assert his own trustworthiness, but to undermine that of his opponents. In a speech delivered against a certain Maevius (about whom nothing is known), Gaius attacks him for wearing too many rings: *considerate, Quirites, sinistram eius; en, quoius auctoritatem sequimini, qui propter mulierum cupiditatem ut mulier est ornatus.*[153] His opponent is dismissed as a woman, and someone who did not deserve to possess any *auctoritas* with Roman citizens (*Quirites*). A similar attack is made upon another opponent whose identity is unknown, but who had dared

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147 Plut., *C. Gracch.* 2. 7.

148 Plut., *C. Gracch.* 2. 10-11 (=*O.R.F.* 48. 23).

149 Malcovati (*O.R.F.* p. 181) and Stockton (1979), 219 both argue for two separate speeches, although others have postulated a single speech with a title such as *Apud censores in contione ad populum.* The arguments are not completely conclusive, but for my discussion here the issue is not of central importance.

150 Gellius 15. 12 (= *O.R.F.* 48. 26-28).

151 As Stockton (1979), 219 points out, this close correspondence between Gellius 15. 12. 4 and Plutarch, *C. Gracch.* 2. 10 is important since it suggests that Plutarch did have access to the actual words of Gaius' speeches.

152 Gellius 15. 12. 4 (= *O.R.F.* 48. 28).

153 Isidorus, *Etym.* 29. 32. 4 (= *O.R.F.* 48. 58). Isidorus explains the fragment as being a reference to the wearing of rings.

to criticize Gaius' mother, Cornelia: τίνα δὲ ἔχων παρρησίαν συγκρίνεις Κορνηλίᾳ σεαυτόν; ἔτεκες γὰρ ὡς ἐκείνη; καὶ μὴν πάντες ἴσασι Ῥωμαῖοι πλείω χρόνον ἐκείνην ἀπ' ἀνδρὸς οὖσαν ἢ σὲ τὸν ἄνδρα.[154] The man is dismissed as the worthless inferior of Gaius' own mother, a mother who had given birth to Tiberius.[155]

Indeed Plutarch's *Life* makes clear that early in his career Gaius took every opportunity to play upon his relationship with Tiberius, constantly reminding audiences of his fate.[156] In this way he could hint that devotion to the state was a family custom: like his brother he would offer similar service.[157] However, the relationship offered an opportunity not only for adding to his own authority, but for stirring the audience's emotions, and he seems to have concentrated upon two aspects of his brother's death in particular, that he had died a tribune and that his friends had been put to death untried.[158]

Moreover, he uses arguments from tradition in order to reinforce these points: in contrast to the treatment suffered by Tiberius, Roman ancestors had gone to war against the Falerii because they had insulted a tribune, Genucius, and C. Veturius was condemned to death for failing to make way for a tribune passing through the forum.[159] Secondly, he goes into detail about the ancient procedure which ensured that the defendant of a capital charge was always present in court to hear the judges' verdict, in contrast with Tiberius' supporters:

> καίτοι πάτριόν ἐστιν ἡμῖν, εἴ τις ἔχων δίκην θανατικὴν μὴ ὑπακούει, τούτου πρὸς τὰς θύρας ἔωθεν ἐλθόντα σαλπιγκτὴν ἀνακαλεῖσθαι τῇ σάλπιγγι, καὶ μὴ πρότερον ἐπιφέρειν ψῆφον αὐτῷ τοὺς δικαστάς. οὕτως εὐλαβεῖς καὶ πεφυλαγμένοι περὶ τὰς κρίσεις ἦσαν.[160]

Just like Cato and Cicero, by using this type of argument Gaius could add the authority of tradition to his own side, as well as advertizing his own knowledge of the Roman past. It is clear that, however revolutionary his tribunate, Gaius was not prepared to be seen as

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154 Plut., *C. Gracch.* 4. 6 (= *O.R.F.* 48. 66).

155 Compare *O.R.F.* 48. 65β.

156 Plut., *C. Gracch.* 3. 5.

157 Compare Cicero's reference to the Bruti at *Phil.* 3. 8, which is discussed above in chapter 3, pp. 177-8.

158 Plut., *C. Gracch.* 3. 5-7.

159 Plut., *C. Gracch.* 3. 5.

160 Plut., *C. Gracch.* 3. 7.

abandoning that past.

The fragments show Gaius able and willing to use the full range of arguments used by Cicero, making it difficult to see him either as a stereotypically popular orator or as one notably different in style to Cato, although the nature of the evidence means that we cannot be certain of this conclusion. This factor also prevents us from evaluating the extent to which he combined different types of argument, and his preferences for the different types. Even the ancient *testimonia* are at variance, with Gellius stressing Gaius' preference for a plain style, while others emphasize his power and forcefulness. This makes it impossible to assess which style of argumentation he thought was appropriate for the orator's role of persuading his audience.[161]

Similarly, there is comparatively little material which can give us an idea of the way in which he presented his relationship with the audience, but a couple of further fragments do offer some evidence. The first is another speech of which we have a fragment in which Gaius makes reference to his brother in order to excite the audience's sympathy, the *De legibus promulgatis*.[162]

> *si vellem aput vos verba facere et a vobis postulare, cum genere summo ortus essem et cum fratrem propter vos amisissem, nec quisquam de P. Africani et Tiberi Gracchi familia nisi ego et puer restaremus, ut pateremini hoc tempore me quiescere, ne a stirpe genus nostrum interiret et uti aliqua propago generis nostri reliqua esset: haud <scio> an lubentibus a vobis impetrassem.*[163]

In this passage Gracchus not only mentions his elder brother, but also refers to his descent from Scipio Africanus, the father of his mother Cornelia. On the grounds that he is now the last surviving member of such an illustrious line, he suggests that he might be forgiven for not speaking on this occasion and keeping his head down, but he replies to his own suggestion by implying that the people would not be prepared to make this concession to him: that is, the people will expect him to put his public duty of speaking out before his private duty towards his family and his ancestors. Moreover, he does represent this as a duty on his part: he owes it to the people of Rome to stand up and make his voice heard. There may also be

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161 Compare the differing assessments of Calvus in the ancient *testimonia* (see above, ch. 1, pp. 59-62): it appears that judgments were seldom objective, but rather directed by the general opinion of each orator held by the witness.

162 On the question of this speech's date, see above, p. 228, n. 134.

163 *O.R.F.* 48. 47.

a suggestion that he owes it to the family too, and that he is not so much begging for sympathy as reminding the audience of his family's distinguished achievements and service. This approach is perhaps not surprising for a 'popular' orator who might be expected to portray his role in speaking as one of service, but again a second fragment can be found which offers a somewhat different emphasis. This is the most famous of Gaius' surviving fragments and comes from the *Dissuasio legis Aufeiae*, a speech of 123 in which he seems to have successfully opposed a pro-Mithridatic law.

> *nam vos, Quirites, si velitis sapientia atque virtute uti, etsi quaeritis, neminem nostrum invenietis sine pretio huc prodire. omnes nos, qui verba facimus, aliquid petimus, neque ullius rei causa quisquam ad vos prodit, nisi ut aliquid auferat. ego ipse, qui aput vos verba facio, ut vectigalia vestra augeatis, quo facilius vestra commoda et rempublicam administrare possitis, non gratis prodeo; verum peto a vobis non pecuniam, sed bonam existimationem atque honorem. qui prodeunt dissuasuri ne hanc legem accipiatis, petunt non honorem a vobis, verum a Nicomede pecuniam; qui suadent ut accipiatis, hi quoque petunt non a vobis bonam existimationem, verum a Mithridate rei familiari suae pretium et praemium; qui autem ex eodem loco atque ordine tacent, hi vel acerrimi sunt; nam ab omnibus pretium accipiunt et omnis fallunt. vos, cum putatis eos ab his rebus remotos esse, inpertitis bonam existimationem; legationes autem a regibus, cum putant eos sua causa reticere, sumptus atque pecunias maximas praebent, item uti in terra Graecia, quo in tempore Graecus tragoedus gloriae sibi ducebat talentum magnum ob unam fabulam datum esse, homo eloquentissimus civitatis suae Demades ei respondisse dicitur: 'mirum tibi videtur, si tu loquendo talentum quaesisti? ego, ut tacerem, decem talenta a rege accepi.' item nunc isti pretia maxima ob tacendum accipiunt.*[164]

Here Gaius is explicit that nobody comes forward to address the Roman people *sine pretio*. In the previous fragment he portrays the role as a duty or a service, but in this passage his emphasis is upon the fact that speakers expect to get something tangible in return. Gaius takes care to stress that he has his audience's best interests at heart in increasing tax revenues and assisting the government of the *res publica*. However he does ask for *bona existimatio* and *honos* - that is election to office - in return. In being explicit about these expectations there remains a strong ethical element in his argument, since he compares himself favourably with the other speakers who come forward arguing in support of either Nicomedes or Mithridates, and doing so for pecuniary reasons. He can even allege that those who stay silent are the most

164 Gellius 11. 10 (= *O.R.F.* 48. 44).

corrupt of all, taking bribes from both sides to hold their tongues:[165] Gaius is not content to establish his moral superiority over his present opponents, but takes the opportunity to set himself above all other speakers.

This last comparison is made more striking by Gaius' decision to illustrate it with a Greek anecdote, recounting a boast by Demades that he received ten talents simply for holding his tongue. Gellius had earlier recorded that Critolaus preserved a similar story, but told it about Demosthenes, not Demades.[166] This difference may be due to alternative traditions or an error on the part of Gaius, but it is nevertheless significant that Gaius can parade a Greek anecdote so openly in a speech delivered to the Roman people. Indeed, Kennedy sees the whole passage with its frank admission of self-interest on the part of the speaker as influenced by similar argumentation from democratic Athens.[167] Such factors, together with stylistic considerations, have led Leeman to conclude that Gaius was 'the first (Roman) who used all the devices of Greek learning and rhetoric for the accomplishment of his political and oratorical aims.'[168] That is difficult to prove, when we lack so much contemporary evidence, but this single fragment offers a valuable snapshot of the popular orator openly negotiating the relationship with his audience, and doing so with the use of an explicitly Greek anecdote.

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165 Tactically he creates a very real difficulty for the other speakers: whatever cause they choose to adopt, they are damned.

166 Gellius 11. 9.

167 Kennedy (1972), 78.

168 Leeman (1963), 58.

3. Conclusion

As I made clear at the start of this chapter, the nature of our evidence prevents us from studying the ways in which Cato and Gracchus attempt to persuade their audiences in such detail as is possible with Cicero. Arguments from silence can carry no force, and the ancient *testimonia*, even when they are mutually consistent, seem to conflict with some of the actual fragments. It is probable that ancient posterity tended to pigeon-hole Cato and Gaius Gracchus' oratory just as it did with other aspects of their careers. Even though speeches survived in Cicero's time, they were not necessarily read.[169]

What emerges from the fragments of both Cato and Gaius is a picture of each orator ready to use all the varieties of arguments which were later to be employed by Cicero: those based on logic, emotion and character as well as individual types, such as the use of historical *exempla*. What we cannot do, however, is evaluate the way in which they combined these arguments in any one speech, although the fragments of Cato's *Pro Rhodiensibus* taken together with Gellius' comments do show that the censor was capable of combining the different arguments effectively within one performance. Another fact that emerges from Cato's fragments is that he was prepared to use mutually opposed arguments on different occasions: the picture is not so much of the rigorous moralist who was always faithful to his views, as of a practical orator who was prepared to use whatever arguments suited a particular occasion.

There is also limited evidence for the way in which both orators constructed their role in addressing an audience. The Catonian material suggests that the censor often distanced himself from his audience and presented himself as possessing superior knowledge to it, a role he adopted even within the senate as the *Pro Rhodiensibus* shows. The last two of my Gracchan fragments reveal a more explicit negotiation of the audience-orator relationship. They do not allow us to build up a complete picture, but the difference of emphasis between them shows that Gaius could and did represent that role in a variety of ways, sometimes stressing the ideas of service and duty, sometimes emphasizing more openly that he was getting something in return. What he expected was clearly of a different nature from the money which he claimed that other speakers received: indeed, the achievement of *honos*, that is subsequent magistracies, would provide the opportunities for further service. However, the reciprocal relationship which Gaius portrays is importantly different from one stressing only the idea of service.

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169 Cicero, *Brutus* 65: *Catonem vero quis nostrorum oratorum, qui quidem nunc sunt, legit? aut quis novit omnino?*

V. Speeches in Historical Narrative: Sallust and Caesar

Since Herodotus, the tradition of Greek and Roman historiography had endorsed the practice of including speeches within the historical narrative. A great deal of scholarly attention has been devoted to the interpretation of these speeches and the role which they play within the various works as a whole.[1] In this chapter, my focus is slightly different: primarily, in accordance with my overall thesis, I consider the way in which the orator's role is portrayed in the various speeches. I use a similar approach to that adopted in previous chapters, considering the different types of argument which the speakers are portrayed as employing, and how the selection of these arguments contributes to the way in which they represent their relationship with their various audiences.

However, it is impossible to ignore the fact that these speeches are located within a historical narrative, and have indeed been selected - and composed - by the historian. There are two important implications for my analysis. First of all, there is the positive fact that in the case of these speeches at least we do have a clear account of the context of their delivery which is independent of the words of the speaker. Moreover, the historian often records the reception of a speech, and sometimes provides other speeches which were made in response to the original one. This allows us to perceive the performance of a speech as a two-way transaction, in which the orator delivers his speech, but the audience too has a role in the manner in which it receives the speech.

Furthermore, the historians are often concerned with the relation between speeches and the surrounding narrative, making the distinction between word and fact an explicit theme. This was especially important for Thucydides, and as a result there has been much modern work on this subject.[2] At Rome, Sallust, who was strongly influenced by the historian of the Peloponnesian War,[3] was also concerned to explore this theme, in part through the speeches which he included in his works. As a result the whole of a historical work can provide important evidence for the way in which public speakers were portrayed, and more generally perceived, at Rome.

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1 This is particularly true of Thucydides, on which see the various approaches adopted by the contributors to P. A. Stadter (ed.), *The Speeches in Thucydides* (Chapel Hill, 1973).

2 See, for example, A. Parry, *Logos and Ergon in Thucydides* (New York, 1981).

3 On this influence see T. F. Scanlon, *The Influence of Thucydides on Sallust* (Heidelberg, 1980) and P. Perrochat, *Les Modèles Grecs de Salluste* (Paris, 1949), 1-39.

A second implication of the context of these speeches within a historical narrative and of the traditions of Greco-Roman historiography is that the speeches are not the verbatim reproductions of the actual performances. As we have seen, this is also true of those speeches published by the orators themselves subsequent to delivery,[4] but the historians were often even more liberal in their selection of words and content, including speeches at which they were not themselves present and for which they could have possessed little testimony about the original version, although this is not to say that Sallust, for example, was entirely ignorant of what had originally been said.[5]

Furthermore, they tended to write the speeches to suit their own style more than that of the original orators, with the result that those included by Sallust and Thucydides are recognisably written by the same person as the surrounding narrative. However historians did attempt to characterize the various orators through their style of speaking: indeed the different approaches taken in their speeches by Caesar and Cato in Sallust's *Bellum Catilinae* are important in contributing to their respective characterizations. But it is a dangerous step to assert that these stylistic variations are always representative of historical reality, although some have suggested that this is the case. Schnorr von Carolsfeld, for example, has compared the other surviving *testimonia* of the oratory of men such as Marius and has argued that Sallust's version of his oratory closely reflects his actual style.[6] However, the majority of scholars tend to emphasize the fact that the speeches are very much Sallust's own compositions: 'Even if he had been able to reproduce *ipsissima verba*, Sallust certainly would not had done so; they would have been accommodated to his own style, to effect the overall consistency which Roman taste required.'[7]

As a result of this lack of a desire to reproduce the precise words or styles of the

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[4] See appendix.

[5] For a balanced view see P. McGushin, *Bellum Catilinae. A commentary* (Leiden, 1977), 134-36. But some attempts to argue that the substance of the arguments closely reflect the original are incautious. For example, T. F. Carney contends that Marius's speech in the *Bellum Iugurthinum* is close in substance to the original on the grounds that Plutarch (*Marius* 9. 2-3) and Sallust offer similar versions ('Once again Marius' speech after election in 108 B.C.', *Symbolae Osloenses* 35 (1959), 66 n. 1). This does not seem a very compelling argument in such an extreme form, but it has been expressed more carefully and selectively by H. I. Flower in *Ancestor Masks and Aristocratic Power in Roman Culture* (Oxford, 1996), who suggests that 'Both writers were using a common source which preserved some points made by Marius' (p. 18).

[6] H. Schnorr von Carolsfeld, *Über die Reden und Briefe bei Sallust* (Leipzig, 1888), 52-55.

[7] McGushin (1977), 135. Indeed, this is often an unspoken assumption on the part of scholars. Skard is typical: 'In Marius' speech, Sallust has borrowed from many sources: phrases from the elder Cato and from the Greek orators, thoughts and sentences from Greek philosophy.' (E. Skard, 'Marius' Speech in Sallust, Jug. Chap. 85,' *Symbolae Osloenses* 21 (1941), 102.

various speakers, there is a loss of diversity in approaches for the modern historian to study.[8] However, my focus is to explore the various ways in which the orator's role at Rome were represented, and the viewpoints of Sallust and Caesar are as valid as any others.[9] Moreover these viewpoints are not simple to elucidate, since the historical writer may on occasion allow the speakers to present their own visions of the orator's role contentiously, while on other occasions he may himself suggest contentiously what the orator should be and do. However, despite these complexities and limitations, the speeches in substance are texts which purport to have been delivered in order to persuade their audience, even if part of the individual historian's purpose may on occasion have been to show a failure of persuasion.

In this chapter I concentrate upon Sallust and, to a lesser extent, Caesar. Sallust, as I have touched upon above, seems to have been particularly interested in the role played by oratory in the course of events, and all three of his surviving works contain major set speeches. Caesar, by way of contrast, is extremely sparing in his use of direct speech within the narratives of both the *Bellum Gallicum* and the *Bellum Civile*. As a result he plays only a secondary role in this chapter, but his very reluctance to include what purport to be the actual words of the characters within both works is itself significant.[10] One particular exclusion calls for some explanation, that of Livy. In part this is due to the lack of space available to discuss such an enormous text, but can also be justified by his later date. Even with the earlier dating proposed by Luce,[11] his project comes after those of Sallust, who seems to have produced his

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8 A further effect which needs to be considered is that, whereas orators will have sought always to present themselves in the best possible light in genuine speeches, the historians can on occasion construct their speeches and the surrounding narrative in order to reveal the less appealing characteristics of the speakers, and even to undermine the value of what they have to say, a process which I shall consider in the second part of this chapter.

9 Both Sallust and Caesar were also experienced public speakers in their own right.

10 Caesar is much readier to include indirect speech, and indeed I will discuss the indirect speech which he gives to himself before crossing the Rubicon (*B. C.* 1. 7). However, the use of direct speech is qualitatively different since it seeks to represent the actual words of a speaker and the process of a speech, whilst indirect speech attempts to reproduce the purport of what was said: although the speaker's voice remains important in the latter, the reader is conscious of a new perspective as the role of the reporter is brought to the foreground. The similar silence in direct discourse of Sallust's Jugurtha is discussed by C. S. Kraus, 'Jugurthine Disorder', in C. S. Kraus (ed.), *The Limits of Historiography. Genre and Narrative in Ancient Historical Texts* (Leiden, 1999), 221-22, with n. 15.

11 T. J. Luce, 'The Dating of Livy's First Decade,' *T. A. Ph. A.* 96 (1965), 209-40. He argues convincingly that seemingly later passages, such as the use of the name Augustus and the famous excursus on the *spolia opima*, were added during a subsequent revision. Therefore he dates the first pentad earlier, perhaps even before the Battle of Actium. A. J. Woodman in *Rhetoric in Classical Historiography* (London, 1988) is more confident in asserting that the preface was written in the course of the civil wars, but he does not challenge in any way Sallust's priority.

three historical works between 44 and 35 B.C.[12]

The chapter is divided into two main sections. In the first I examine the types of argument which the historians give to the various speakers, and therefore the way in which they allow them to portray their roles as orators. Although I make reference to other speeches, I focus upon those of Caesar and Cato from the *Bellum Catilinae*, Marius' from the *Bellum Iugurthinum*, and those of Lepidus and Philippus from the fragmentary *Histories*. Of the speeches in Caesar's own works I consider those of Curio from the *Bellum Civile* as well as one of Caesar's own, albeit in reported speech.[13] In the second part I turn to consider the context within which the historians set these speeches, and the role that they ascribe to oratory in the worlds which they depict. Within this section I consider Sallust's focus upon the contrast between words and deeds, and Caesar's decision to limit the amount of direct speech which he included within his two narratives.

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12 For a sober and succinct account of the evidence, see P. McGushin, *Sallust. The Histories*, vol 1 (Oxford, 1992), 3-4.

13 Caesar, *B. C.* 1. 7.

1. The self-representation of speakers within Sallust and Caesar

a. Cato and Caesar in the *Bellum Catilinae*

Sallust's earliest historical work, the *Bellum Catilinae*, includes five speeches, two made by Catiline himself, one each by Manlius, Caesar and Cato.[14] Those of Caesar and Cato were both delivered on 5th December 63 during the senatorial debate about the punishment to be meted out to the conspirators. Although this was also the occasion of Cicero's already published *Fourth Catilinarian*, theirs are the only two speeches which Sallust singles out for inclusion within his narrative, because they marked the crucial turning points within the debate. Indeed the whole work is dominated by these two speeches: on a simple page-count of the Teubner edition their combined length is eight pages out of a total of fifty for the whole work.

This very length is reinforced by their location at the climax of the work and the following character comparison between the two men[15] which places an even greater emphasis on the two speeches. Ullmann underlines their contribution to the characterization of the two speakers: 'C'est la peinture de la personnalité parlante qui a été le but que se proposait avant tout Salluste.'[16] This is borne out by the following comparison of the two men, but in the speeches they can only be portrayed and distinguished within their roles as orators, speaking both within the Roman rhetorical tradition, and at an important juncture of events.

D. Junius Silanus had given his *sententia* first, proposing the death penalty.[17] But as Syme notes, Sallust omits to mention that the following consular contributors all supported Silanus,[18] and instead passes immediately to Caesar (*sed Caesar, ubi ad eum ventum est, rogatus...*),[19] who seems to have been the first to oppose the death penalty.[20] Therefore

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14 These are found at *B. C.* §§20, 58, 33, 51 and 52 respectively. The historian's selectivity in the choice of the speeches which he includes is made more noticeable by his references to other speeches which he excludes, particularly Cicero's *First Catilinarian* (*B.C.* 31.6).

15 Sallust, *B. C.* 53-54.

16 R. Ullmann, *La Technique des Discours dans Salluste, Tite Live et Tacite* (Oslo, 1927), 28.

17 As A. Drummond, *Law, Politics and Power. Sallust and the Execution of the Catilinarian Conspirators* (Stuttgart, 1995) notes, there is no indication that Silanus justified his *sententia* in a speech.

18 Syme, *Sallust* (Cambridge, 1964), 108-9. For Cicero's list, see *Ad Att.* 12. 21.

19 Sallust, *B. C.* 50. 5.

20 There is a slight uncertainty over this since Sallust, and Appian (*Civil Wars* 2. 5), refer to a proposal by Tiberius Claudius Nero which Silanus supported after having his mind changed by Caesar (*B. C.* 50.4). However, the evidence of the other sources, which is not explicitly contradicted by Sallust, and the fact that Nero was probably a praetorian and therefore due to speak after Caesar, the praetor designate, suggest that Caesar should be given priority. See T. R. Holmes, *The Roman Republic*. vol. 1 (Oxford, 1923), 467-69.

Caesar was the first man to speak against the tide,[21] and this perhaps helps to explain the tone of his speech's opening. Here he emphasizes the need for rational debate on the part of the senators, and for controlling their emotions:[22] *omnis homines, patres conscripti, qui de rebus dubiis consultant, ab odio, amicitia, ira atque misericordia vacuos esse decet.*[23] He continues by stressing that emotional passion stands in the way of the powers of the mind: *si lubido possidet, ea dominatur, animus nihil valet.*[24] He contrasts the speeches which have already been made:

> *plerique eorum, qui ante me sententias dixerunt, conposite atque magnifice casum rei publicae miserati sunt. quae belli saevitia esset, quae victis adciderent, enumeravere: rapi virgines, pueros; divelli liberos a parentum conplexu; matres familiarum pati quae victoribus conlubuissent; fana atque domos spoliari; caedem, incendia fieri; postremo armis, cadaveribus, cruore atque luctu omnia conpleri. sed per deos inmortalis, quo illa oratio pertinuit?*[25]

This is a striking passage, since it serves almost as a model passage of oratory aimed at stirring the audience's emotions. It contains all the typical *topoi* for arousing pity for a fallen - or in this case endangered - state: the defenceless members of the community suffering at the victors' hands, the destruction of familial bonds, general slaughter and the physical destruction of the city. It is as if Caesar is showing that, as an orator, he possesses the ability to stir the emotions, a ploy which gives him even greater weight in his call to reject such arguments in the debate. Similarly it is notable that he shuns any such appeals to pity in arguing that the conspirators should be put to death.

He reinforces his stance further by claiming that the examples of Roman tradition

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21 The strength of this tide is best illustrated by the impressive list of consular names at Cic., *Ad Att.* 12. 21. 1. As Syme urges, Sallust's narrative perhaps does not clarify the evolution of the debate as much as it might have (Syme (1964), 109). With typical brevity, he highlights Caesar's contribution by omitting those of others, where greater impact may have been derived from stressing the unanimity of the opposition.

22 For the purposes of brevity and clarity, throughout this chapter I will use the equivalent of 'Caesar says...' for 'Sallust makes Caesar say...'

23 Sall., *B. C.* 51. 1. Caesar's call for an absence of *ira* and *misericordia* from the debate can be compared with the attitude of the speakers in Thucydides' Mytilenian debate, where Cleon had demanded the exclusion of compassion (Thuc. 3. 37), Diodotus that of anger and pity (3.42, 48). In general Sallust has reversed the structure of Thucydides' debate in his own - the 'Cleon' figure arguing for the death penalty speaks second and proves victorious. On the widespread influence of the Mytilenian debate on Sallust here, see Drummond (1995), 51-54.

24 Sall., *B. C.* 51. 3.

25 Sall., *B. C.* 51. 9-10.

support his calls for unemotional debate. Indeed, he notes that paying attention to the emotions in deciding an issue is characteristic of other peoples,[26] and he prefers Roman ancestral custom: *sed ea malo dicere, quae maiores nostri contra lubidinem animi sui recte atque ordine fecere.*[27] As examples of such decision-making he singles out Rome's treatment of Rhodes after the war against Perseus and her attitude towards Carthage after the Punic Wars.[28] The first of these is particularly significant since it is more than a straightforward *exemplum*, as McGushin notes: 'It involves a subtle reminder of a famous speech of Cato's ancestor, a reminder which would not be missed by his audience and which could place the younger Cato in an embarrassing position.'[29]

I have discussed this speech in the previous chapter,[30] and it is sufficient to note here that the main tenor of its opening was a call for restrained emotion and the suppression of *superbia* and *ferocia*.[31] Caesar's echo of the elder Cato's speech derives extra piquancy from the fact that it is the younger Cato who will most successfully oppose his position. As McGushin notes, this raises the issue of Sallust's process of composition: did Caesar know that Cato would speak later and oppose him, or is it Sallust's addition? The former is less likely and can never be proven.[32] If it were the case, it would be further evidence for the *ad hominem* nature of speeches within the senate, which would in turn contribute to a picture of agonistic debate. However, even if it is his own composition, the historian paints just such a picture of senatorial oratory, in the same way as he portrays, in Caesar, a speaker who has within his grasp not only the events of Roman history, but even the important speeches which have been made in the course of that history: here is a man able to use previous Roman oratory to reinforce his own arguments,[33] and fully aware of the tradition within which he is speaking.

Caesar's tone remains moderate when he deals with two further opponents of his own proposals, Silanus and the consul, Cicero. The latter is praised for his vigilance, which is so

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26 Sall., *B. C.* 51. 4: *magna mihi copia est memorandi, patres conscripti, quae reges atque populi ira aut misericordia inpulsi male consuluerint.*

27 Sall., *B. C.* 51. 4. On the traditional nature of Caesar's calls to exclude the emotions, see A. W. Lintott, *Violence in Republican Rome*[2] (Oxford, 1999)[= Lintott (1999a)], 35ff, especially pp. 46-48.

28 Sall., *B. C.* 51. 5-6.

29 McGushin (1977), 242.

30 See above, pp. 219-24.

31 Gellius 6. 3. 14. Compare also 6. 3. 50: *idne irascimini, si quis superbior est quam nos?*

32 McGushin (1977) prefers the second alternative (p.242).

33 This speech had been published by Cato, when he included it in the fifth book of his *Origines*.

great that there can be no reason for any fear to affect the senate's decision.[34] He recognizes that the former had spoken in favour of the death penalty from the correct motives: *D. Silanum, virum fortem atque strenuom, certo scio quae dixerit studio rei publicae dixisse, neque illum in tanta re gratiam aut inimicitias exercere: eos mores eamque modestiam viri cognovi.*[35] This is an interestingly different approach to the traditional method of besmirching the opponent's character. Rather Caesar has focused his criticism upon more general failings, attacking the use of emotion in debate and the style of oratory used, whilst exonerating those who practise it. This serves to enhance Caesar's own authority in a rather different way: he recognizes the qualities of his opponents, whilst insisting that they have been - quite justifiably - led astray. Moreover, in this section he is explicit about his own personality, with repeated use of first-person verbs (*scio, cognovi*).[36] In combination with his generosity to others, this helps to present him as an authoritative and mature senator, a self-representation which is even more striking in the light of his age and relatively junior role: Silanus was the consul elect, Caesar the praetor elect.

So far I have been discussing Caesar's explicit construction of the role of the orator, but in the rest of the speech this construction is extended implicitly by the way in which he actually puts his theories into practice. His advocacy of a rational debate is reinforced when he explains his opposition to the death penalty. There are no emotional appeals to pity: rather he contends that death would be an end to suffering for the conspirators.[37] This argument depends upon the Epicurean belief that everything ends at death, and despite McGushin's contention that it is a weak case[38] Cato is made to reply to it by restating the traditional view of punishment for the wicked after death.[39] Caesar continues to advertize his adherence to rational

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34 Sall., *B. C.* 51. 19.

35 Sall., *B. C.* 51. 16.

36 Skard has noted the elder Cato's propensity for the use of the introductory *scio ego* in his discussion of Marius' speech in the *B. I.* (E. Skard, *Sallust und seine Vorgänger* (Oslo, 1956), 93: 'das einleitende *scio ego* erinnert hier an Cato'), and collects the Catonian examples at p. 81. Also see above, pp. 221-22.

37 Sall., *B. C.* 51. 20: *de poena possum equidem dicere, id quod res habet, in luctu atque miseriis mortem aerumnarum requiem, non cruciatum esse; eam cuncta mortalium mala dissolvere; ultra neque curae neque gaudio locum esse.* Diodotus too, in the Mytilenian debate, had opposed the death penalty not on emotional grounds but for a number of rational and self-interested reasons (Thucydides 3. 45-7).

38 McGushin (1977), 247: 'he reveals the weakness of his argument by his essay into philosophy in sec. 20.' However Caesar had presumably used this argument in the real debate, since Cicero refers to it at *In Cat.* 4. 7: both Caesar's use of it and Cicero's non-mocking mention of it suggest that it cannot be dismissed as ridiculous.

39 Sall., *B. C.* 52. 13.

persuasion when he constructs a *reductio ad absurdum* on the question of whether the conspirators should also be beaten: if that is avoided because the *lex Porcia* forbids it, it would be a great deal worse to contravene other laws which forbid the even greater penalty of death for convicted citizens.[40]

Again McGushin is not impressed by this argument: 'For his purpose Caesar dispenses with the crucial premise of whether the arrested men were *cives* or *hostes* and proceeds with an argument whose logic is based on ignoring this factor.'[41] This failure to discuss the correct definition of the conspirators may indeed be a weakness of his case, but in terms of his self-presentation - as an orator capable of drawing logical conclusions from the facts for the benefit of his audience - the argument remains significant. For Caesar concludes it by using the rhetorically ostentatious dilemma:[42] if beating is worse than death, then it should be acceptable since these men are guilty of such crimes, but if it is not so serious, why should the senators proposing the death penalty fear the law in the less significant case?[43] He introduces further subtlety by pointing out that the laws even prescribe that citizens who have been condemned should be exiled, not executed: *at aliae leges item condemnatis civibus non animam eripi, sed exilium permitti iubent.*[44] He allows this small point to reinforce his case *a fortiori*: the men presently in question have not even received a trial.

As Ullmann pointed out, the legal issue was clear-cut: 'une exécution des conspirateurs était contre la loi Sempronienne, et tout le monde savait qu'une sentence capitale était une violation ouverte de la loi.'[45] However, apart from the reference to Silanus' proposal as a *genus poenae novom*,[46] the section comparing the death penalty with that of beating is the first to develop its unprecedented and illegal nature. Ullmann, following Schnorr von Carolsfeld, argues that this arrangement is constructed by Sallust for its contribution to Caesar's characterization: 'C'est ainsi que Salluste a caractérisé la personnalité de César en faisant

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[40] Sall., *B. C.* 51. 21-24.

[41] McGushin (1977), 249. In fact Caesar's arguments seem to be based on the premise that the criminals be counted *cives*: this fact not only dictates that they should be spared death but renders their crimes all the more dastardly.

[42] On this see above pp. 168-9.

[43] Sall., *B. C.* 51. 23-24.

[44] Sall., *B. C.* 51. 22.

[45] Ullmann (1927), 30.

[46] Sall., *B. C.* 51. 18. On the nature of this novelty see Drummond (1995), who argues that Caesar's most pressing concern lay in the possibility that a future consul could abuse the power of his position to conduct a witch-hunt (pp. 32-36)

ressortir, pour faire valoir sa clémence, le côté politique au dépens du côté judiciaire.'[47] But this analysis does not do justice to the complexity of Caesar's argument.

First, it needs to be noted that Caesar makes no explicit reference to clemency, nor indeed any appeal to pity on behalf of the conspirators. Secondly, he has to tread carefully with the *lex Sempronia*. His own proposal seems to have transgressed that law also, albeit not so violently, and when he returns to the legal issue at the end of the speech it is to make the simple point about exile being allowed for those condemned to die: *tum lex Porcia aliaeque leges paratae sunt, quibus legibus exilium damnatis permissum est.*[48]

However, the most thoroughly developed section of the argument is that in which he sets the whole issue within the Roman historical context.[49] It is in reference to this part of the speech that Ullmann claims that Caesar emphasizes *le côté politique*, and this is in an important way true. To summarize this section, the praetor designate begins by accepting that all support the death penalty at present, but that it is important to bear in mind the example which will be established for the future by such a decision, maintaining that *omnia mala exempla ex rebus bonis orta sunt.*[50] To support this aphorism he draws upon previous *exempla*, including both the Thirty at Athens and the proscriptions under Sulla. Both régimes were initially well received for their executions of notable criminals, but soon they became unpopular as they turned upon innocent victims. Caesar is careful to note that he does not fear a similar pogrom under Cicero's consulship, but suggests that a future consul may be led to violence on the basis of a false report.[51]

He continues by considering the Roman practice of willingly adopting foreign customs: their ancestors had borrowed weapons from the Samnites and magisterial customs from Etruria. From even further afield they had adopted the Greek practice of flogging and putting to death citizens, but had subsequently changed their minds in the light of the growth of *factiones* within the *res publica.* As a result he is opposed to this particular innovation.[52] This entire section is therefore bound up with the issue of the public good: first, the senators should have

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47 Ullmann (1927), 30, following Schnorr von Carolsfeld (1888), 36-38.

48 Sall., *B. C.* 51. 40.

49 Sall., *B. C.* 51. 25-42.

50 Sall., *B. C.* 51. 27.

51 However, Drummond (1995) argues that it is precisely because he had almost been framed by Cicero that Caesar was so anxious to oppose the death penalty now (pp. 35-36).

52 Sall., *B. C.* 51. 37-41.

concern about the future implications for the *res publica* of their present decision, and, second, the present legal situation needs to be understood in the light of the development of the state's customs and laws.

Therefore Ullmann is correct to stress the political aspect of Caesar's speech, but this is not to exclude the judicial side: rather it serves as a context within which the legal issues should be understood. And even more striking in terms of the orator's self-portrayal is the depth of temporal perspective which this section of the speech gives to the whole debate. The nub of his argument is concern for the precedent which the death penalty will establish for the future, but this is illustrated by previous *exempla* from both Greek and Roman history. This is followed by a recognition that there is a long history of Roman innovation,[53] but an insistence that the penalty at issue has already been rejected by the Roman *maiores*, who furnish the supreme *exemplum*. Their primacy is reinforced by reference to the general history of the Roman *res publica*: *profecto virtus atque sapientia maior illis fuit, qui ex parvis opibus tantum imperium fecere, quam in nobis, qui ea bene parta vix retinemus.*[54]

After rejecting the emotional pleas of his opponents, Caesar does not content himself with insisting exclusively upon the legal point. Rather his whole speech represents an attempt to step back from the specific situation, and encompass the historical continuum of Rome, looking Janus-like to both the future and the past. Moreover he advertizes his own easy familiarity with that past, including Greek and Roman history, ancient Italian customs and, as we saw above, those speeches such as Cato's which had been made at similar, earlier crises. This approach is perhaps surprising, and Syme discerns a paradox:

> 'Caesar, arguing for tolerance and clemency, invokes the example of "maiores nostri", and adduces the wise and magnanimous conduct of the Romans towards the Rhodians... Furthermore, winding up his discourse, Caesar deprecates innovation and extols the "virtus et sapientia" of the Roman tradition, as any Cato might have done.'[55]

The young radical is portrayed as immersing himself in the Roman past, and seizing the very

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53 On a similar approach adopted by Cicero, see above in chapter 3, p. 183. On the fluidity of *mos* as a traditional idea at Rome, see A. W. Lintott, *The Constitution of the Roman Republic* (Oxford, 1999)[= Lintott (1999b)], 4-6.

54 Sall. *B. C.* 51. 42.

55 Syme (1964), 112-13.

ground on which he might expect Cato to base his case later.[56] He does this for his own rhetorical ends: whatever the personal convictions of the individual speaker, he had to engage with traditional arguments in order to make himself into a persuasive figure.

Cato's reply follows closely on Caesar's contribution, with Sallust making only a laconic comment: *postquam Caesar dicundi finem fecit, ceteri verbo alius alii varie adsentiebantur.*[57] Like Caesar, Cato begins with a criticism of those who have contributed to the debate so far, accusing them of a failure to comprehend the true nature of the situation: they were talking of punishment, when the reality was that the state still faced a severe threat to its existence unless decisive steps were immediately taken.[58] Again there seems to be an echo of the elder Cato's speech on behalf of the Rhodians, when he insisted that it would be wrong to punish the islanders for a desire to do wrong, which they had not gone so far as to carry through.[59] In contrast, his descendant insists that anticipatory action is necessary in this instance: *nam cetera maleficia tum persequare, ubi facta sunt; hoc nisi provideris ne adcidat, ubi evenit, frustra iudicia inplores; capta urbe nihil fit reliqui victis.*[60] So Cato seems to be accepting Caesar's transference of roles, but the true picture is more complex, since the comparison is broken down by the elder Cato's own flexibility on such issues: he had argued the opposite case later in his life, when he insisted that the Carthaginians must be anticipated in their hostile action.[61]

This careful redefinition of the situation which faces Rome enables Cato to circumvent Caesar's opposition to emotional argument,[62] and he takes the opportunity - albeit rather modestly - to reiterate some of the themes which the earlier speaker had deemed inappropriate, mentioning the threat to *patriae, parentibus, aris atque focis*[63] and insisting that the struggle is

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56 Again this raises the question of how far Caesar's speech was directed *ad hominem.*

57 Sall., *B. C.* 52. 1.

58 Sall., *B. C.* 52. 2-4.

59 Gellius 6. 3. 36.

60 Sall., *B. C.* 52. 4. This echo is reinforced by the sentence: *cetera maleficia tum persequare, ubi facta sunt.* For the elder Cato had reinforced his call for no action to be taken against the Rhodians, by comparing other crimes when such an approach would be ridiculous (Gellius 6. 3. 37), while the younger insists that such parallelism is invalid. The parallel gains even greater point if we bear in mind that the younger Cato's reference is somewhat less apposite since the *lex Cornelia de sicariis* included a clause which made the carrying of a weapon for the sake of killing a man a capital offence.

61 *O.R.F.* 8. 195.

62 See above, p. 241.

63 Sall., *B. C.* 52. 3.

for *libertas* itself.[64] However, he uses this emotional appeal as a base from which to launch another attack upon his own hearers: *saepenumero, patres conscripti, multa verba in hoc ordine feci, saepe de luxuria atque avaritia nostrorum civium questus sum, multosque mortalis ea causa advorsos habeo.*[65] The use of the first person is again important: the speaker is emphasizing his record to the senate and setting himself above his audience. He has been consistent in his complaints; they had taken little enough notice of his words on previous occasions, which had been of little concern as the *res publica* prospered, but now there was a crisis, they must take heed.[66]

This criticism of his audience is markedly more personal than that of Caesar, but again it is intended to enhance his own credentials. Where the praetor designate had drawn much of his authority from a well-advertized ability to set the present debate within the context of Roman history which other contributors had failed to do, Cato essays a much more direct form of character-based persuasion. He buttresses his own authority by reminding the audience of his many previous warnings of the decline of Roman morals, which they have left unheeded.[67] This is all the more striking when we remember that Cato was still only in his early thirties at the time of this speech. Indeed, McGushin sees that the whole speech is characterized by an 'air of elder statesmanship', and suggests that this may be the result of a conscious desire to echo the words and opinions of the elder Cato.[68] The present speech with its denunciation of others' immorality, coupled with an insistence upon the rectitude of the speaker,[69] is typical of the censor's style, and perhaps the boast of having made frequent warnings of declining morals in the past serves as a way for the younger Cato to reclaim his ancestor's mantle from Caesar.

In the next section of the speech Cato presses his ethical argumentation further by replying directly to Caesar's speech. In large part he deals with it by putting forward a logical argument against Caesar's proposal of holding the conspirators in custody throughout Italy: they would be even more open to liberation if they were held there.[70] However, he does add a

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64 Sall., *B. C.* 52. 6.

65 Sall., *B. C.* 52. 7.

66 Sall., *B. C.* 52. 9-10.

67 Again there is an echo of Thucydides' Mytilenian debate, when Cleon had recourse to the boast that he for one had been consistent (Thuc. 3. 38. 1; 3. 40. 2).

68 McGushin (1977), 260.

69 Sall., *B. C.* 52. 8: *qui mihi atque animo meo nullius umquam delicti gratiam fecissem, haut facile alterius lubidini male facta condonabam.*

70 Sall., *B. C.* 52. 15.

cutting aside as an appendix to this argument. If Caesar's expressed fear over this liberation is not genuine, then the rest of them have cause for even greater fear:[71] the unstated implication is that Caesar himself might be involved in the plot.[72] This is the most effective way to undermine his opponent's authority as a speaker: where he had attempted to portray himself as constructing an argument steeped in the tradition of the Roman *res publica*, Cato suggests that he might even be a supporter of those who are at this very moment trying to destroy that *res publica*.

He attempts further to undermine Caesar's position by countering with his own references to the Roman past and the *maiores*. He takes as his starting-point one of Caesar's *exempla* which was intended to show how Romans had never shunned adopting foreign customs, namely their use of Samnite weapons.[73] Cato is indignant:

> *nolite existumare maiores nostros armis rem publicam ex parva magnam fecisse. si ita esset, multo pulcherrumam eam nos haberemus: quippe sociorum atque civium, praeterea armorum atque equorum maior copia nobis quam illis est. sed alia fuere, quae illos magnos fecere, quae nobis nulla sunt: domi industria, foris iustum imperium, animus in consulendo liber, neque delicto neque lubidini obnoxius.*[74]

This is not very satisfactory as a direct response to Caesar, since the latter had never explicitly attributed ancestral greatness to arms, and had indeed referred to their *virtus atque sapientia* as the characteristics which had distinguished them and made their example particularly worth following.[75] However Cato's denunciation serves again to reclaim some of his opponent's ground. Just as he had with the elder Cato, he recasts Caesar's portrayal to support his own analysis, and the *maiores* are introduced to mark the decline in Roman *mores* even more clearly. In the place of past industry, justice and rational thought are now to be found luxury, greed and inertia.[76]

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71 Sall., *B. C.* 52. 16: *si in tanto omnium metu solus non timet, eo magis refert me mihi atque vobis timere.*

72 Plutarch's accounts of Cato's speech (Plut., *Caesar* 8; *Cato minor* 23-24) suggest that he had in fact been much more explicit in his allegations of Caesar's involvement, but whether Plutarch had access to a genuine version of the speech (*Cato minor* 23. 3) can be doubted.

73 Sall., *B. C.* 51. 38.

74 Sall., *B. C.* 52. 19-21.

75 Sall., *B. C.* 51. 42.

76 Sall., *B. C.* 52. 22-23.

On the basis of this reaffiliation, Cato urges that a true interpretation of ancestral custom points to a need for severity. He cites the *exemplum* of Manlius Torquatus: *apud maiores nostros A. Manlius Torquatus bello Gallico filium suom, quod is contra imperium in hostem pugnaverat, necari iussit.*[77] Using an *a fortiori* argument he insists that where ancestral custom had been so harsh towards one showing courage they should not now fail to be equally severe against traitors. His proposal at the end of the speech resumes this idea of ancestral precedent: *de confessis, sicuti de manufestis rerum capitalium, more maiorum supplicium sumundum.*[78]

But he does not confine himself to this positive use of ancestral precedent: rather than answering Caesar's own history of the development of the Roman legal tradition, he represents any opposition to his own proposal as generated by pity and a desire to show clemency: *misereamini censeo - deliquere homines adulescentuli per ambitionem - atque etiam armatos dimittatis: ne ista vobis mansuetudo et misericordia, si illi arma ceperint, in miseriam convortat.*[79] This word-play is reinforced by a repetition of the seriousness of the situation, and pity is shown to be undeserved by the conspirators since they possess such depraved characters.[80] Caesar for one had made no such appeals, and had done nothing to suggest that the characters of the men were anything but wicked.

As Syme notes, there is a certain level of surprise in Cato's position as there is in Caesar's: 'Cato in his political creed held rigorously by the laws and the constitution; he refused to allow any plea of exception; and he was against extending the sphere of governmental authority. On December 5, it is Caesar who is the champion of legality, whatever be his design or motives.'[81] But in terms of the speech's argument, there are perhaps fewer surprises than there are in Caesar's. In it he attempts - albeit in a rather limited fashion - to reinterpret the past as supporting his own position, and he reasserts his claim to the inheritance of the elder Cato as prior. For the tone of the speech, as Ullmann notes, while it pretends to be concerned with expediency and necessity, is overwhelmingly focused upon issues of morality.[82] There is an underlying sense that the conspirators should die, as they are symbolic

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77 Sall., *B. C.* 52. 30. McGushin (1977), 266 notes two inaccuracies here; they are probably Sallust's.

78 Sall., *B. C.* 52. 36.

79 Sall., *B. C.* 52. 26-27.

80 Sall., *B. C.* 52. 32-34. On the importance of this section, see below. One can again compare the strategy of Cleon in the Mytilenian debate, and his insistence that pity was out of place on such an occasion, particularly towards such undeserving men (Thucydides 3. 40).

81 Syme (1964), 112.

82 Ullmann (1927), 32.

of a general Roman decline: *verum parcite dignitati Lentuli, si ipse pudicitiae, si famae suae, si dis aut hominibus umquam ullis pepercit.*[83] I return to reconsider this pair of speeches and their relation to the surrounding narrative in the second section of this chapter, but I now turn to Marius' speech in the historian's second monograph.

b. Marius in the *Bellum Iugurthinum*

The speech which Sallust gives Marius is delivered *pro contione* after his election as consul for 107, and in part at least to encourage enrolment in the legions. It has received a great deal of scholarly attention, with an equal variety of approaches. Schnorr von Carolsfeld notes that its style matches well with what is known of Marius' style from elsewhere; Ullmann accepts Marius' self-portrayal as an untrained speaker (§31), calling him 'le soldat illettré', but proceeds to analyse the speech as an example of rhetorical education, dividing the *tractatio* into five sections; in contrast, Paul denies the existence of such a structure.[84] In his earliest study of the speech, Skard considered the Sallustian Marius to be strongly influenced by Greek Cynicism,[85] but later he focused more upon the speech's debts to the elder Cato:

> 'Zusammenfassend dürfen wir sagen: die Marius-Rede enthält so viele Gedanken und Wedungen, die dem Schrifttum des Cato maior entstammen, dass ein gebildeter Römer, wenn er die Rede las, fühlen musste, dass hier eine Nachahmung von - und eine Huldigung für - Cato Censorius vorlag.'[86]

Syme also recognizes this Catonian debt, but links it with the idea of *novitas*: 'If the personality that emerges is vaunting and self-righteous, it will be recalled that the *novus homo*, speaking before the People, had to push his claims loudly. He had no ancestors, and nobody else was going to proclaim his merits. In that matter Cato set a high standard.'[87]

This brief summary of previous scholarship shows the rich diversity of interpretation which the speech has promoted, and all are important in varying degrees for an interpretation of

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83 Sall., *B. C.* 52. 32.

84 Schnorr von Carolsfeld (1888), 52-55; Ullmann (1927), 37-40; G. M. Paul, *A Historical Commentary on Sallust's Bellum Jugurthinum* (Liverpool, 1984), 207.

85 E. Skard (1941).

86 E. Skard (1956), 100.

87 Syme (1964), 168.

the speech's role within the narrative which I consider in the second section of the chapter. For the moment, however, I am concerned to evaluate Marius' self presentation as an orator. In many ways the speech is more of an anti-speech, in which Marius rejects elaborate oratory, preferring to parade other abilities: *non sunt conposita verba mea: parvi id facio. ipsa se virtus satis ostendit; illis artificio opus est, ut turpia facta oratione tegant.*[88] Marius argues that fine rhetoric is not necessary since his virtues will stand by themselves. This is argument from character taken to its purest form: where a man's achievements and qualities are usually incorporated as one of several approaches within a speech in order to win the audience over to his point of view, Marius' qualities are such that they render elaborate speech redundant and are sufficient as the only argument. As I argue below, this is a partial view, since Marius does develop other arguments within the speech, but it is significant for his own representation of the speech-act. Moreover, he reinforces this portrayal by the use of another *topos* at the conclusion of the section in which he exhorts his audience to be ready to join the enrolment: *plura dicerem, Quirites, si timidis virtutem verba adderent; nam strenuis abunde dictum puto.*[89] Again Marius argues that the persuasive function of speech is limited: men's characters are innate, and mere words cannot hope to change them.

A further aspect of Marius' attitude is the contrast between himself and his opponents: for them oratory is useful, an *artificium* by which they might hope to cover their vices. Therefore Marius' admission that they are the more eloquent speakers is not really an admission at all, but a way of condemning them as feeble in achievement.[90] Indeed, Marius is confident enough of his own achievements to aver that no speech can harm him, since either his opponents will have to declare the truth, or the reality of his character will show them to be liars:[91] again speech, despite its dangers, is portrayed as something which is weaker than 'reality' and 'truth'. However, even in the midst of this denial of the desirability or even the efficacy of rhetoric, Marius includes a sophisticated argument, since he suggests that his opponents' speeches are also directed against his audience who have elected him consul and chosen him as leader of the war against Jugurtha - the converse of a *captatio benevolentiae*: *sed quoniam vostra consilia accusantur, qui mihi summum honorem et maxumum negotium*

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88 Sall., *B. I.* 85. 31.

89 Sall., *B. I.* 85. 50.

90 Sall., *B. I.* 85. 26: *equidem ego non ignoro, si iam mihi respondere velint, abunde illis facundam et conpositam orationem fore.*

91 Sall., *B. I.* 85. 27.

inposuistis...[92] As a result of this attack, Marius urges them to reconsider their decision one more time, and thereby presents himself with the justification for another speech in which he can compare himself with the established nobles.

So far I have been considering Marius' explicit statements about oratory, and these say a great deal about what he thought the role of the orator should be or rather, since he rejects that role, about that of the public figure who sometimes has recourse to making speeches. However, as with Caesar's speech in the *Bellum Catilinae*, much of his representation of what a speaker should be doing is conveyed implicitly through his selection of arguments. Throughout the speech Marius makes reference to his own military achievements. One brief example will suffice: *ita ad hoc aetatis a pueritia fui, uti omnis labores et pericula consueta habeam.*[93] He paints his whole life as one of labour and risk[94] undertaken out of service for the *res publica* and the *populus Romanus*.

As I mentioned above, this persuasion based on character is the major foundation of his speech, but he does not confine himself to self-promotion, and an equal part of the speech is devoted to a denunciation of his opponents. Again their own self-presentation is an important aspect of this comparison. They attack Marius for his lack of ancestry,[95] while promoting themselves with long discourses on their own ancestors: *atque etiam, quom apud vos aut in senatu verba faciunt, pleraque oratione maiores suos extollunt: eorum fortia facta memorando clariores sese putant.*[96] Their ethical persuasion is based around the achievements of their *maiores*, but Marius insists that such rhetoric is weak and ineffective when set beside his own, since as a *novus homo* he has had to rely upon his own merits. And at one point within the speech he directly juxtaposes his own claims with theirs: *non possum fidei causa imagines neque triumphos aut consulatus maiorum meorum ostentare, at, si res postulet, hastas, vexillum, phaleras, alia militaria dona, praeterea cicatrices advorso corpore.*[97] They cite their ancestors' glories in order to establish their own worth and trustworthiness (*fidei causa*), but Marius seeks to replace these with new and superior means of espousing his own worth.

He does not, however, content himself with this attack upon their rhetoric; he also

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92 Sall., *B. I.* 85. 28.

93 Sall., *B. I.* 85. 7.

94 He repeats this linking of *labores* and *pericula* at §30.

95 Sall., *B. I.* 85. 14.

96 Sall., *B. I.* 85. 21.

97 Sall., *B. I.* 85. 29.

seeks to establish a new reading of the Roman past. They sought to base their claims to supremacy upon a family orientated interpretation of Roman history: the leadership of the *res publica* was their birthright, since it was men with their names who had made it great. At one level Marius deals with this claim by insisting that these family histories only served to show up the present nobles' own failings.[98] But in addition he attempts to put that past in a new perspective:

> *quamquam ego naturam unam et communem omnium existumo, sed fortissumum quemque generosissimum. ac si iam ex patribus Albini aut Bestiae quaeri posset, mene an illos ex sese gigni maluerint, quid responsuros creditis nisi sese liberos quam optumos voluisse? quod si iure me despiciunt, faciant item maioribus suis, quibus, uti mihi, ex virtute nobilitas coepit.*[99]

The crux of this argument is Marius' point that the *maiores* of the nobles had themselves once been *novi homines* like himself. This piece of historical comment has important implications, for it helps Marius to nationalize the *maiores* of the individual noble families. Once this step has been taken, they can serve not only as *exempla* for their direct descendants, but also for other Romans such as Marius, who can claim to be following their example more truly than the nobles themselves,[100] and he can boast that these *maiores* would have preferred as their sons men of Marius' qualities. This new perspective on the past enables him to produce his radically new definition of the epithet *nobilis*, as one not exclusively open to the descendants of the notable *maiores*, but all those who are willing to follow their example of brave conduct (*fortissimum*).[101]

This association can be carried even further, when we consider as a whole the style of Marius' oration. As I mentioned above,[102] Skard and other scholars have detected many similarities between Marius' speech and surviving fragments of the elder Cato's orations. The opening sentence provides several examples: the use of *scio ego*,[103] his promise to practise the

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98 Sall., *B. I.* 85. 22-23.

99 Sall., *B. I.* 85. 15-17.

100 Compare the decision of Augustus to honour those Romans who had increased the size of Rome's *imperium* in the *Forum Augustum*.

101 A similar perspective on the past is taken by C. Canuleius in Livy 4. 3-4, when he uses the history of innovation at Rome to support his present calls for changes to the laws.

102 See p. 243, n. 36.

103 Compare Cato at *O.R.F.* 8. 21; 122; 163; 164. See above, ch. 4, pp. 221-22.

same *artes* in office as he had in winning it,[104] and even perhaps the contrast between *plerosque* and *mihi*.[105] Other examples proliferate, but it is not necessary to cite them here:[106] throughout the speech the most striking similarity with Cato is the relentless focus of the orator upon himself and his own achievements. Skard has no doubt that any educated Roman reader would recognize the allusions to Cato, and this is possible.[107] Equally important is the suggestion that Marius' speech may draw upon a broader tradition, namely that of the *novi homines* in general, a tradition in which Cato will have played an important part, but was not alone. So Paul describes Marius' *topos* of claiming to behave in office just as he had done before achieving it as 'part of the traditional armoury of the *novus homo*.'[108] Therefore, even by his style of oratory Marius could align himself within a tradition of great *exempla* to match that possessed by the nobles with their *imagines*.

Wiseman has noticed this rivalry as a common tendency in *novi homines*:

> 'In fact, though he was naturally proud of the local significance of his own family, the new man challenged the nobles' past not with his own ancestors but with his spiritual predecessors... Certainly the famous *municipales* of the past formed a large part of his self-justification and helped him to counter the great names of the nobles.'[109]

He cites Cicero's oft-repeated list of exemplars: *non modo Curiis, Catonibus, Pompeiis, antiquis illis fortissimis viris, novis hominibus, sed his recentibus, Mariis et Didiis et Caeliis, commemorandis*.[110] By his style of oratory Marius could align himself within this tradition, but, as I argued above, he could do even better: by reinterpreting the Roman past, he was attempting to assimilate an even broader pantheon of famous names as his own 'spiritual predecessors'. These subtle effects do create some tension with Marius' basic assertion that he is not a good speaker - and does not want to be one - and his explicit statements that elaborate rhetoric is often undesirable, but I return to consider this tension in the second section of the

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104 Compare Plutarch, *Cato maior* 11. 3.

105 Compare *O.R.F.* 8. 163.

106 See Skard (1956), 92-100; Paul (1984), 207-215.

107 Skard (1956), 100.

108 Paul (1984), 208.

109 T. P. Wiseman, *New Men in the Roman Senate. 139 B.C. - A.D. 14* (Oxford, 1971), 107-8.

110 Cicero, *Pro Murena* 17. For further examples and variations on this list, see Wiseman (1971), 108, n. 1.

chapter: now I turn to the *Histories*.

c. Lepidus and Philippus in the *Histories*

Although we have lost the vast majority of this work, and what survives does so largely in small and relatively uninformative fragments, four speeches and two letters have been preserved in an independent manuscript tradition. In the first book, there are the speeches of the consul of 78, Marcus Aemilius Lepidus, and of the *princeps senatus*, Lucius Marcius Philippus; in the second, that of the consul of 75, Gaius Aurelius Cotta, and a letter of Pompey to the senate; in the third, a speech of the tribune of 73, the historian Gaius Licinius Macer; in the fourth, a letter of Mithridates to Arsaces.[111] The absence of much of the narrative context creates certain limitations when these are compared with those speeches contained in the two monographs, but there are signs that Sallust was - unsurprisingly - using the speeches to serve similar purposes to those of the earlier works: Macer's speech with its rich references to the Roman past appropriately characterizes a man who was to write history. Cotta's speech can be read in the light of Sallust's introduction of him as a man who was *cupiens gratiam singulorum*.[112] These difficulties are more pertinent to the second part of this chapter, but here I focus upon the two speeches of the first book, since they form a pair despite the fact that they are delivered on separate occasions and before different audiences.

Lepidus' speech *pro contione* belonged early in his consulship, and forms a sustained assault upon Sulla and his régime, which may seem rather anachronistic since it depicts Sulla as still exercising his power.[113] However the speech helps to establish the historical context of the previous decade, and might be justified on the grounds that Sulla's *satellites* remained all-powerful. There is no precise proposal and it is difficult to see how the oration would have tied in with the following historical narrative and Lepidus' ensuing plans as proconsul.[114] Syme is

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111 These are respectively the fragments 1. 55; 1. 77; 2. 47; 2. 98; 3. 48; 4. 69 in the edition of B. Maurenbrecher (M), *C. Sallusti Crispi Historiarum Reliquiae* (Leipzig, 1891), and 1. 48; 1. 67; 2. 44; 2. 82; 3. 34; 4. 67 in the more recent edition of P. McGushin (McG), *Sallust. The Histories* (Oxford, 1992 and 1994). Syme (1964) discusses whether there were further speeches which have not survived, and suggests that there is likely to have been one made by Gabinius at least in the debate on the *lex Gabinia* early in 67 (pp. 196-98).

112 Fragment 2. 42 M (=2. 40 McG).

113 The phrase *ut Sulla ait* (§16) suggests that Sulla was still alive, although it is possible that it is simply a pointer to an opinion expressed by Sulla during Lepidus' candidature for the consulship.

114 Perhaps it is worth comparing Sallust's approach in the *Bellum Catilinae*, where he gives Catiline a conspiratorial speech at §20 before the consular elections for 62 had even been held.

particularly harsh on Sallust's decision to include the speech:

> 'His bold and wilful contrivance is not merely designed to illustrate the situation created by Sulla at Rome and throughout Italy. It enables him to indulge his propensities and produce a long denunciation of Sulla, in a sharp and vivid form, going beyond what the factual digression had permitted.'[115]

Whatever the inadequacies of the context of the speech within the narrative may have been, it is designed to be a powerful piece of rhetoric. It is dominated by slogans and catchwords, with an aspiration for *libertas* set against the depiction of the Sullan régime as a tyranny. Indeed the speech contains three uses of *tyrannis/tyrannus*, one of *imperitandum*, three of *dominatio* and seven of *servitium* and its cognates. To set beside these, there is one use each of *otium* and *concordia*, two of *quies*, three of *pax*, *lex* and *iudicium*, five of *ius*, and most importantly seven uses of *libertas* and its cognates, including one as the last word in the final call to arms: *quae si probatis, adeste, Quirites, et bene iuvantibus divis M. Aemilium consulem ducem et auctorem sequimini ad recipiendam libertatem.*[116] Throughout the speech the two states of *servitium* and *libertas* are set out as mutually exclusive alternatives: *hac tempestate serviendum aut imperitandum, habendus metus est aut faciendus, Quirites.*[117]

The speech exemplifies Syme's classic chapter on political catchwords,[118] and the style is akin to that of the *Philippics* and the 'disjunctive mode' in which the issue is put as clearly as possible in black and white terms, with no grey areas left in between.[119] As Cicero was to do later, Lepidus is careful to be precise about the definition of his terms: in particular he attacks Sulla's use of language. The latter considers nothing glorious unless it is safe, nothing honourable unless it serves to preserve his domination.[120] More seriously Sulla has labelled him as *seditiosus* and *bellum cupiens*, but he insists that all he has done is object to rewards for

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115 Syme (1964), 186. Further on this difficulty, see McGushin (1992), vol. 1, 113.

116 Sall., *Hist.* 1. 55. 27 M (=1. 48. 27 McG).

117 §10.

118 Compare for example Syme, *The Roman Revolution* (Oxford, 1939), 152: 'Merely to accuse one's opponents of aiming at *regnum* or *dominatio* - that was too simple, too crude. It had all been heard before: but it might be hard to resist the deceitful assertions of a party who claimed to be the champions of liberty and the laws, of peace and legitimate government.'

119 On this characteristic of the *Philippics*, see above pp. 171, 184-5.

120 §8.

incitement to riot whilst seeking the rights of peace.[121]

In spite of an absence of explicit statements on the orator's role, the style of the speech can tell us a great deal about 'Lepidus'' understanding of it. Like Cicero, by insisting upon a precise perception of the situation and an exact use of language, Lepidus portrays his role as an orator as one which in part consists in revealing the 'facts' of the situation facing his audience. He takes it upon himself to strip away the obfuscation of the opposition and throw new light on events. This approach also helps to shape his relationship with that audience, since it presents him as their superior, a man who can tell them how it is, rather than merely their equal.

The most thorough insistence upon the correct terminology comes towards the end of the speech, when he says that Sulla has relabelled (*nomina indidit*) *scelus* and *parricidium* as *concordia* and *pax*.[122] He points out the illogicality of this terminology by reminding the audience of the 'reality' of the situation:

> *quae si vobis pax et conposita intelleguntur, maxima turbamenta rei publicae atque exitia probate, adnuite legibus impositis, accipite otium cum servitio et tradite exemplum posteris ad rem publicam suimet sanguinis mercede circumveniendam!*[123]

Such contrasting use of language is typical of a speech dominated by slogans: it is not enough simply to parade one's own terminology - it is also necessary to repudiate that of the opponents. Not only does this defuse their propaganda, but it serves to reduce their threat in the future if they can be shown to propound falsehoods in attempting to persuade their audience. But this passage introduces a further consideration - one which we have often seen before - that is a temporal perspective. Lepidus points out that if the Roman people now accept Sulla's régime they will set a precedent for all future generations of Romans.

But more important for the purpose of the speech is the historical perspective which Lepidus brings to bear upon his argument. At one level it is very simple: Sulla is dismissed as a *scaevos Romulus*.[124] This reinforces Lepidus' portrayal of him as a tyrant, while dismissing him as inferior even to a king. Memory of the past also helps to set Sulla's crimes within context. According to Lepidus he was the first man in human memory not to content himself

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121 §16.

122 §24. Compare Marius' insistence on the correct definition of *nobilis*. See above, pp. 253-4.

123 §25.

124 §5.

with punishment against the living but who also penalized those who were as yet unborn:[125] his proscription law had not only debarred the children of the proscribed from their father's property, but had prevented them from seeking public office.[126]

He also compares Sulla's noble followers with their famous ancestors. He describes them as *homines maximi nominis optimis maiorum exemplis* and the *praeclara Brutorum atque Aemiliorum et Lutatiorum proles*, but they do not live up to the example which has been set for them: *geniti ad ea, quae maiores virtute peperere, subvertenda.*[127] For their ancestors had helped to achieve the *libertas* which their descendants are now subverting: *nam quid a Pyrrho Hannibale Philippoque et Antiocho defensum est aliud quam libertas et suae cuique sedes, neu cui nisi legibus pareremus?*[128] This historical comparison further colours Lepidus' portrayal of the Sullan party, since their ancestors had defended Roman liberty against foreign enemies, whereas they were treating the Roman people like foreign enemies.[129]

But Lepidus' opponents are not the only ones who are failing to live up to the example which has been set for them by the *maiores*, for he implies similar criticisms of his popular audience, although the statement is explicitly directed at Sulla's army: *nisi forte tribuniciam potestatem eversum profecti sunt per arma, conditam a maioribus suis, utique iura et iudicia sibimet extorquerent.*[130] Where the early *populus Romanus* had striven to win tribunician powers in order to secure their own rights, the present people are rebuked for their failure to stir themselves to protect these rights, or rather to win them back. Lepidus had already noted that his greatest cause for fear was the *socordia* of his audience,[131] and similar insinuations are frequent in the second half of the speech: let them go ahead and set a bad example for generations to come.[132]

Taken as a whole, the speech is dominated by partisan invective and emotive use of language. This is supported by an insistence not only on the correct perception of the current situation but also by some references to the Roman past: however the latter are strongly bound

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125 §6: *quin solus omnium post memoriam humani <generis> supplicia in post futuros composuit, quis prius iniuria quam vita certa esset.*

126 Velleius Paterculus 2. 28. 4.

127 §§2-3.

128 §4.

129 §5: *quasi ab externis.*

130 §23.

131 §20.

132 §25.

up with the emotive language and do little to develop Lepidus' own authority as a speaker. As an instructive comparison we might consider Macer's speech of the third book, where the references to the Roman past are extensive, and are perhaps intended by the speaker to support his own credentials in seeking their support. Lepidus however could not afford to be seen to abandon all references to Roman history and, as we have seen, he uses them to reinforce his portrayal of the Sullan régime as a travesty. That Lepidus can use these references in such a bald manner demonstrates just how integral they were to the perceived fulfilment of the Roman orator's role.

What Lepidus does offer is leadership in the fight to recover popular rights, but he provides little in the way of evidence to make this offer attractive: the speech demonstrates his hostility to the régime, but he talks of himself only in rebutting - rather ineffectually - opposition claims that he possesses the property of the proscribed.[133] In terms of his relationship with his audience, he does distance himself to a certain extent by criticizing their *socordia*, with his insistence upon his own view of the present circumstances being correct, and by offering himself as their *dux* and *auctor*,[134] but as Ullmann has noted, he cannot be excessively condemnatory of them or distinguish himself from them too clearly, since he is playing the part of a demagogue and needs their support.[135] Although he makes few explicit statements about the role of the orator, the style, like that of Cicero in the *Philippics*, is revealing: he should explain the 'reality' of the situation in the clearest possible terms to his audience, using a wealth of slogans to achieve this.

Philippus' speech forms a pair with that of Lepidus although it was delivered later and in front of the senate. Ullmann detects a very similar structure in the two orations,[136] and there is a great deal of similarity of language between the two. Lepidus had asked of the Sullan régime: *quaeve humana superant aut divina impolluta sunt?*[137] Philippus counters with a similar accusation against Lepidus himself: *quae ille adversum divina et humana omnia cepit, non pro sua aut quorum simulat iniuria, sed legum ac libertatis subvertendae.*[138] Like Lepidus,

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133 §18.

134 §27.

135 Ullmann (1927), 43: 'Le démagogue ne doit pas pousser le blâme des auditeurs trop loin pour ne pas perdre sa popularité, mais doit au contraire les flatter par l'espoir d'une victoire facile.'

136 Ullmann (1927), 43.

137 §11.

138 Sall., *Hist.* 1. 77. 11 M (=1. 67. 11 McG).

Philippus is ready in his use of slogans, and this same sentence exhibits another example, *legum ac libertatis subvertendae*. Lepidus had used the same gerundive in his speech of Sulla's supporters;[139] *leges* and *libertas* had been two of the most important catchwords of the whole oration, but Philippus now turns the tables by asserting that Lepidus was destroying the very things which he claimed to be defending.

Again the frequency of certain key words within the speech is suggestive. On the negative side there is one use of *discordia*, two of *tumultus*, three each of *seditio* and *turba* (and its cognates): most strikingly there are *eleven* uses each of *arma* and *bellum*. Of the positive slogans there is one use of *otium*, three each of *lex* and *quies* (and its cognates), four of *libertas*, five of *concordia* and a further nine of *pax*. Where the imagery of Lepidus' speech was dominated by the idea of servitude, this simple count shows that Philippus concentrates on the idea of upheaval and the disturbance of the peace,[140] recalling the fact that Lepidus had noted such accusations against him in his own speech.[141]

The essence of Philippus' case is stated at the very opening of the speech: it is necessary to go to war in order to preserve the now threatened peace.[142] His use of slogans, like Lepidus', helps to establish this necessity and to paint the situation that faced the senate in similarly black and white terms. Moreover he launches a direct attack upon Lepidus' own claims: *qui placere ait sua cuique reddi et aliena tenet, belli iura rescindi, cum ipse armis cogat, civitatem confirmari, quibus adeptam negat, concordiae gratia tribuniciam potestatem restitui, ex qua omnes discordiae accensae.*[143] This attack makes plain that the reader cannot take both Lepidus' and Philippus' speeches at face-value, and despite the absence of a narrative context it is suggestive for Sallust's own representation of the orator's role to which I shall return in the next section.

He also appears to offer a direct response to Lepidus' charges against Sulla's followers by attacking those of Lepidus. He uses not only the same word - *satellites* - but also refers to the Roman past: *hi tumultum ex tumultu, bellum ex bello serunt, Saturnini olim, post Sulpicii,*

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139 Sall., *Hist.* 1. 55. 3 M (=1. 48. 3 McG): *geniti ad ea, quae maiores virtute peperere, subvertenda.*

140 The idea of *libertas* was not altogether abandoned, but was of a different sort, that is senatorial *libertas* - for which the image of slavery is perhaps pertinent. But under the principate this became a more pressing issue, and Tacitus repeatedly refers to senatorial *servitium* (eg. Tacitus, *Annals* 1. 2).

141 Sall., *Hist.* 1. 55. 16 M (=1. 48.16 McG).

142 Sall., *Hist.* 1. 77. 2 M (=1. 67. 2 McG).

143 §14.

dein Mari Damasippique, nunc Lepidi satellites.[144] Where Lepidus had detected a failure on the part of the nobles to follow their distinguished ancestors who had defended Rome from Pyrrhus and his ilk,[145] Philippus focuses on the rogue's gallery of *populares* - from an optimate point of view - suggesting that they always appealed to the same kind of men. This appears to be intended simply as a riposte to Lepidus - even if it is only Sallust's - but it remains important since the ability to make such a riposte demonstrates a grasp of the past and a facility in using it that matches Lepidus, even if Philippus does not expand upon it at such length.

But more than Lepidus he does seek to establish this authority before his senatorial audience, and discredit the peace-mongerers. As Cato had been made to in the *Bellum Catilinae*, he emphasizes the consistency of his own position: *equidem a principio cum Etruriam coniurare, proscriptos arcessi, largitionibus rem publicam lacerari videbam, maturandum putabam et Catuli consilia cum paucis secutus sum.*[146] And while he had spoken up from the start, others had urged peace for their own personal ends: *sibi quisque opes aut patrocinia quaerendo consilium publicum corruperunt.*[147] This is a grave charge and serves to undermine potential opposition by denying that they would be speaking in the public interest: *corruperunt* is a strong word.[148]

This assertion of his own authority to the detriment of his opponents is linked with another significant difference from Lepidus' speech, namely his greater readiness to criticize his own audience. In the second half of his speech he begins by begging his audience to take action against Lepidus' *licentia.*[149] He then turns to indignant rhetorical questions, asking whether they are going to wait until the city itself is attacked,[150] and like Lepidus he accuses his listeners of *socordia.*[151] But this was the limit of Lepidus' rebukes for the people, while Philippus continues: he cannot decide whether to attribute their behaviour to fear, laziness or

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144 §7.

145 Sall., *Hist.* 1. 55. 3-4 M (=1. 48 3-4 McG).

146 Sall., *Hist.* 1. 77. 6 M (=1. 67. 6 McG).

147 §6.

148 Compare the similar ploy of C. Gracchus; see above, pp. 233-4.

149 §9: *quod ego vos oro atque obsecro, patres conscripti, ut animadvertatis neu patiamini licentiam scelerum quasi rabiem ad integros contactu procedere.*

150 §10.

151 §11. Compare 1. 55. 20 M (=1. 48. 20 McG).

madness.[152]

The criticism reaches a new pitch in the concluding section of the speech. This begins with what appears to be an echo of Cicero's *FirstCatilinarian*: *vos autem, patres conscripti, quo usque cunctando rem publicam intutam patiemini et verbis arma temptabitis?*[153] That speech had begun with a similar question: *quo usque tandem abutere, Catilina, patientia nostra?*[154] The repetition of the stem *pati-* reinforces the allusion, although it must be Sallust's as Philippus' speech was prior.[155] But the echo is still significant, since it suggests that the two rebellions were parallel.[156] But whatever stress we might ascribe to the similarity of the two questions, the difference is also important: where Cicero was to rebuke Catiline, Sallust makes Philippus direct his criticism against the senate, and there is none of the self-inclusiveness provided by Cicero's *nostra*. He presses this home, by reproaching them for their torpor and even for their forgetfulness of the recent past, wondering if they are *obliti scelerum Cinnae, cuius in urbem reditu decus ordinis huius interiit.*[157] Here perhaps Philippus is advertizing his greater familiarity with - or at least awareness of - the Roman past than his audience. The climax of his assault comes with the dismissive phrase *agite ut libet.*[158] It is almost as if he is daring them to ignore his dire prognostications of what lies in store, before finally turning to make his concrete proposal.

Therefore it is true that there is much to be found within the speech that echoes Lepidus' words quite closely. However, the differences in self-presentation are equally important. Where Lepidus, the popular orator, had delivered a speech which was meant largely to appeal to his audience, Philippus takes a much more censorious role: he is happy to isolate himself from the majority of his listeners, as a man who had advocated the same policy from the start although he went unheeded, a failure for which he is prepared to apportion blame. In adopting this style, he is also much more concerned to emphasize his own merit, and underline that he is a man worth listening to. This difference in approach is perhaps to be attributed to the respective audiences which they were addressing, but was perhaps also intended to contribute

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152 Sall., *Hist.* 1. 77. 12 M (=1. 67. 12 McG).

153 §17.

154 Cic., *Cat* 1. 1.

155 The alternative that Cicero had echoed Philippus' speech seems unlikely in the extreme.

156 So McGushin (1992), vol. 1, 143.

157 §19.

158 §20.

to their distinctive characterizations, although this is difficult to evaluate owing to the loss of the bulk of the narrative. I return to consider further the relationship of these two speeches in the second half of the chapter, but now I turn to Caesar's own writings.

d. Caesar's *Bellum Civile*

When we turn to Caesar, it is important to remember that the orator in the camp or on campaign is likely to have been different from the man speaking in the senate or forum. Indeed, any similarities between the former and the latter are themselves suggestive for the relationship which Caesar was trying to portray as existing between the speaking commander and his troops. As I mentioned above, Caesar's use of direct speech in his *commentarii* is extremely sparing. In the *Bellum Civile* the most notable passages of it are given to Gaius Scribonius Curio in successive chapters, first in his address to his council of advisers and secondly in a *contio* held before his soldiers.[159] Curio had been entrusted with the Caesarian command in Africa,[160] after he had ensured control of Sicily. The final result of his campaign was defeat and death at the hands of Juba's forces who had come to the aid of the Pompeians. At the moment of the speeches' delivery, he had won some preliminary successes but two Marsic centurions with twenty-two of their men had recently deserted to the Pompeian forces under the command of Attius Varus.[161] These men had suggested to Varus that Curio's army was of doubtful loyalty, and Attius had engineered a situation in which a member of his army, Sextus Quintilius Varus, made an appeal to Curio's soldiers that they should join Varus' forces.[162]

As a result of the ensuing disquiet, Curio called a council to discuss options. Caesar reports that some advocated immediate action to settle the army's nerves, while others favoured retreat to a more distant camp, and, if need dictated, a further withdrawal to Sicily.[163] Curio, however, is the only person who is allowed to speak directly. The speech is notably rhetorical compared with the surrounding narrative, particularly in its use of questions, but it is largely a carefully argued rejection of both alternatives: an attempt to storm the enemy camp would be excessively ambitious in the light of its strong defences, while a retreat would only harm

159 Caesar, *Bellum Civile* 2. 31-32.
160 Caes., *B. C.* 1. 30.
161 Caes., *B. C.* 2. 27.
162 Caes., *B. C.* 2. 28.
163 Caes., *B. C.* 2. 30.

morale. The latter point is reinforced by the use of a dilemma-style argument, evidence that he is keen to advertize that he is employing rational argument: *nam neque prudentis suspicari oportet sibi parum credi, neque improbos scire sese timeri, quod illis licentiam timor augeat noster, his studia deminuat.*[164] This emphasis upon rationality is reinforced by the end of the speech where he insists that he is not influenced by excessive emotion of whatever sort: *quare neque tanti sum animi, ut sine spe castra oppugnanda censeam, neque tanti timoris, uti spe deficiam.*[165] Therefore he resolves upon testing his soldiers' loyalty by addressing them openly.

As Carter notes, this second speech is more notably full of obvious rhetorical devices, such as rhetorical questions, dramatic objections, antitheses and paradoxes.[166] He begins by outlining the soldiers' past services to Caesar, most notably their decision to join his forces at Corfinium, and by underlining the importance of their present role: *Caesar me, quem sibi carissimum habuit, provinciam Siciliam atque Africam, sine quibus urbem atque Italiam tueri non potest, vestrae fidei commisit.*[167] This sentence also allows Curio to begin developing his own authority in his men's eyes, but it is notable that he does so through the transferred authority of Caesar himself: the latter held him most dear (*carissimum*), and the implication is that the soldiers should therefore respect him. This approach is reinforced by his later mention of Caesar's own successes in Spain, and an account of his *res gestae* in that war: *an vero in Hispania res gestas Caesaris non audistis? duos pulsos exercitus; duos superatos duces; duas receptas provincias; haec acta diebus XL, quibus in conspectum adversariorum venerit Caesar.*[168] This passage is typical of ethically based persuasion, but since the achievements and the authority are not Curio's own, this section of the speech is akin to persuasion by proxy.

Curio continues by attempting to refute the enemy's appeals to his soldiers loyalty - they had been abandoned by Domitius at Corfinium, and hence owed them nothing further.

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164 Caes., *B. C.* 2. 31. 4. The text here is slightly problematic. R. Du Pontet in the *O.C.T.* (adopting Chacon's emendation, as do the Budé and Teubner editions) prints *pudentis* ('scrupulous': i.e. loyal), but more difficult seems to be the use of *illis* and *his* where you would expect the reverse. J. M. Carter, *The Civil War. Books I & II* (Warminster, 1990) translates: 'Good soldiers should not suspect they are distrusted, nor bad soldiers know they are feared, because our fear increases the insubordination of the latter while it erodes the loyalty of the former.'

165 Caes., *B. C.* 2. 31. 8.

166 J. M. Carter (1990), 233.

167 Caes., *B. C.* 2. 32. 3.

168 Caes., *B. C.* 2. 32. 5.

Although this section is based on rational argument, its force is heightened by rhetorical questions and the use of paradox.[169] Moreover this section is again directed entirely at the loyalty which the men owe to Caesar rather than to Curio himself. It is only in the final section that Curio finally turns to himself, promising ultimate victory, and mentioning all the victories which he has achieved with them since he has been their commander.[170] He closes by reminding them of their own previous respect for him which they had shown by hailing him as *imperator*.[171] The men responded to the speech positively, and Curio took confidence from this and joined battle with the enemy. Such a portrayal of the speech-act and its reception by the audience approximates very closely to a *contio*, with the speaker winning the approval of his listeners: this suggests to the reader that Curio led an army of willing citizens, glad to serve him.

As we have seen the speech allowed Caesar to present some of the arguments which dictated that his men should be loyal to himself, albeit delivered by another. In contrast Caesar allows himself no direct speech in either the *Bellum Gallicum* or the *Bellum Civile* except for the shortest exhortation to his men on the eve of the battle of Pharsalus.[172] Such a technique resembles the historiographical equivalent of the ideology of Sallust's Marius: he is letting his actions speak louder than words. I shall explore this further in the next section, but it is worth noting here that Caesar does give himself an important piece of indirect speech at the start of the *Bellum Civile*.

This directly precedes his decision to cross the Rubicon and so invade Italy,[173] and the summary of the speech is quite full. Although the language of the 'original' speech is not conveyed, the arguments are. These include an appeal for sympathy by means of a list of all the wrongs done to him personally.[174] However the core of the speech is dedicated to the way in which the Pompeians have bypassed the tribunician veto and have passed the decree entrusting the safety of the state to the magistrates and pro-magistrates. Both are treated within a historical perspective. He argues that Pompey has surpassed Sulla in his debasement of the tribunician

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169 Caes., *B. C.* 2. 32. 7-10.

170 Caes., *B. C.* 2. 32. 12.

171 Caes., *B. C.* 2. 32. 14.

172 Caes., *B. C.* 3. 85.

173 However, he does not explicitly mention this crossing, mentioning simply the destination of the march: *Ariminum cum ea legione proficiscitur* (*B. C.* 1. 8). Moreover Suetonius (*Divus Iulius* 33) puts the speech after the crossing. On this see below, p. 269, n. 180.

174 Caes., *B. C.* 1. 7. 1.

powers, and that the 'ultimate decree' has previously been passed only in circumstances of the greatest internal upheaval, citing the examples of Saturninus and the Gracchi.[175] With a form of ring-composition he then returns to himself: *hortatur, cuius imperatoris ductu VIIII annis rem publicam felicissime gesserint plurimaque proelia secunda fecerint, omnem Galliam Germaniamque pacaverint, ut eius existimationem dignitatemque ab inimicis defendant.*[176]

This speech offers a subtle mix of arguments, appealing to the emotions, his own character and achievements, and the Roman past. It is particularly notable that he avoids making the speech into a plea for himself, concentrating rather on the treatment of the tribunes and linking himself with his audience through their services to the *res publica*: a failure to support him would therefore represent a blow against the whole state and the traditions of the Roman past. This motif is an important one, because it serves as another reminder that the speech-act is a two-way process: the various orators are not simply representing their roles, but are doing so primarily to the audience which is listening to them, and even in historical texts to the internal audiences which they are portrayed as addressing, as well as to the actual readers of the works. We can study the types of argument given to Cato and the rest, and we can consider the resulting implications for the ways in which they are presented as understanding their own roles, but importantly in a historical narrative we have an idea as to how the audiences - even if ideal or imagined - reacted to the speeches which they heard, and it is to the reception of these speeches which I now turn.

175 Caes., *B. C.* 1. 7. 2-6.

176 Caes., *B. C.* 1. 7. 7.

2. *Sub honesto nomine*: speeches within historical narrative

After his own reported speech at *Bellum Civile* 1. 7, Caesar narrates the reaction of the soldiers in his audience: *conclamant legionis XIII, quae aderat, milites - hanc enim initio tumultus evocaverat, reliquae nondum convenerant - sese paratos esse imperatoris sui tribunorumque plebis iniurias defendere.*[177] We may also compare the report of the reaction to Curio's speech delivered later in the year to his soldiers in Africa:

> *qua oratione permoti milites crebro etiam dicentem interpellabant, ut magno cum dolore infidelitatis suspicionem sustinere viderentur; discedentem vero ex contione universi cohortantur, magno sit animo, nec ibi dubitet proelium committere et suam fidem virtutemque experiri. quo facto commutata omnium et voluntate et opinione consensu suo<rum> constituit Curio, cum primum sit data potestas, proelio rem committere.*[178]

Both these passages illustrate an important difference between those speeches published as free-standing works and those set within historical narratives. The literary form of the latter permit the inclusion of audience reaction both during and after the speeches. This is important because it helps to give a more complete picture of ancient speech-making as a reciprocal activity between the orator and his audience. The importance of this fact is made particularly clear by the circumstances of Curio's speech. He had concluded his earlier speech to his military council by explaining his intention to test the loyalty of his troops: *atque omnia prius experienda arbitror magnaque ex parte iam me una vobiscum de re iudicium facturum confido.*[179] The way in which he carries out this test is to address his men and gauge their reaction, and this reaction does indeed shape the future course of events, since it leads to his decision to fight.

The reaction of Caesar's men to his speech is in many ways even more important. I have already argued that within the speech Caesar the orator had attempted to link himself closely with his men by mentioning their shared exploits in Gaul, but Caesar the narrator reinforces this connection by recounting the Thirteenth Legion's positive response to his words. For this response not only served the purpose of encouraging the proconsul to continue

177 Caes., *B. C.* 1. 7. 8.
178 Caes., *B. C.* 2. 33. 1-2.
179 Caes., *B. C.* 2. 31. 8.

with his march into Italy, but for the later reader of his narrative the soldiers are thereby linked with their commander in the decision which was taken. Furthermore, they can also act as embedded readers whose response to the speech might influence that of the actual readers of the text.

Both these factors are important at a crucial stage of a propagandistic work in which Caesar was aiming to justify his decision to invade Italy and fight a civil war. This is reinforced by the place in the text at which Caesar locates the speech, namely at the very moment before he crossed the Rubicon: no other source actually includes a speech of Caesar at this point.[180] Carter is generous in suggesting motivation for the placement of the speech: 'Caesar, then, is here employing a Thucydidean technique: this speech spells out, at the appropriate logical point, the considerations which actuated him to take the actions he did.' This seems a naive view in the light of the different aims of Thucydides and Caesar and the fact that in the rest of the work Caesar is so sparing in his use of both direct and indirect speech. Moreover, when he does use it, he never juxtaposes opposing speeches in the way that is so common in the Greek historian.

Indeed this sparing use of speeches is itself significant for Caesar's own ideas about the role of the orator. It has often been linked with Caesar's simple narrative style and use of the third-person as a means of presenting events in a 'factual' manner,[181] thereby lending greater credibility to the work. Eden, in particular, has traced the development of his style from the traditional form of *Annales* and *Commentarii*.[182] Despite the greater freedom in using direct speech and the more ornate approach which he detects as Caesar writes more, he considers that Caesar's conservatism may have been dictated by a response to the more literary approach of Pompey's chronicler, Theophanes of Mytilene: 'Could it be that his approach to the writing of *commentarii*.... was prompted in part at least by the more traditional practice of his rival, in

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180 Carter (1990), 163. Appian, *B.C.* 2. 33 and Plutarch, *Caes.* 31 (both associated with Pollio's original account by E. Kornemann, 'Die historische Schriftstellerei des C. Asinius Pollio,' *Supplementband der Jahrbücher für class. Phil.* (Leipzig, 1896), 573-74) are alone of the other sources in even suggesting a speech at Ravenna, but they place it after the arrival of the tribunes which Caesar puts after he reached Ariminum (Caes., *B.C.* 1. 8). There is a large measure of consensus that Caesar has antedated the speech: E. Meyer, *Caesars Monarchie und das Principat des Pompejus* (Stuttgart, 1919), 292-293 (with n. 1 on p. 293); M. Rambaud, *L'art de la Déformation Historique dans les Commentaires de César*^{2} (Paris, 1966), 135-37; J. Carcopino, *Jules César*^{5} (Paris, 1968), 366 (with n. 2).

181 At striking example of the disjunction between general and author effected by the third-person narrative is *B. C.* 3. 17: *quibus rebus neque tum respondendum Caesar existimavit, neque nunc, ut memoriae prodantur, satis causae putamus.*

182 P. T. Eden, 'Caesar's Style: Inheritance versus Intelligence,' *Glotta* 40 (1962), 74-117.

which the 'literary' quality of the result militated against an appearance of truthfulness?'[183]

The absence of direct speech contributes to this effect, as Carter makes clear: 'Direct reporting creates great vividness and immediacy, but at the same time undermines the impression of dispassionate objectivity, and hence trustworthiness, given by the rest of the narrative. It is therefore hardly surprising that it is so rare in Caesar.'[184] When he does use it, he tends to do so to highlight the major climaxes of the narrative. There is an increasing frequency in the final book of the *Bellum Civile* as the battle of Pharsalus draws nearer, when short speeches are given to Pompey, Labienus, a Caesarian *aquilifer*, and on the very eve of the battle to Caesar, Pompey and Labienus again.[185] In the second book, the direct speech given to Curio helps to build up the drama of the episode and contribute to the eventual pathos of his downfall. In the *Bellum Gallicum* the longest direct speech comes in the Gallic council at Alesia, which marks the culmination of Caesar's achievements in Gaul.[186] Moreover, there is a further reason for the inclusion of Critognatus' speech, that is the abhorrent nature of his proposal that they should eat the old and weak: the speech highlights the fact that Caesar's victory also had a moral dimension, representing the triumph of Roman civilisation over Gallic barbarity.

But despite this use of direct speech to mark moments of high drama, Caesar refrains from giving himself any except the briefest of exhortations at *B. C.* 3. 85 and, as I noted above, he does not juxtapose opposing speeches in the Thucydidean manner. As a Roman who had enjoyed a rhetorical training, Caesar had practised the art through exercises such as *controversiae* and will have been expected to master the art of speaking on either side of an issue. Such an education will also have been enjoyed by his readers. Moreover, all will have witnessed the frequent debates in the senate and in the forum, with the leading figures of the state arguing on opposite sides. For such a readership, the inclusion of speeches within the narrative - even if they were only those supportive of Caesar's own actions - would have encouraged the support or development of opposition arguments, and could have opened up different readings of the text, by creating tensions between opposing speeches and between the

183 Eden (1962), 117.

184 Carter (1990), 25.

185 Caes., *B. C.* 3. 18, 19, 64, 85-87.

186 Caes., *B. G.* 7. 77.

speeches and the narrative.[187] Better to preclude this in a work with some propagandistic aims and present the narrative in an apparently straightforward way:[188] Like Sallust's Marius,[189] Caesar preferred the 'facts' to speak for themselves.[190]

This choice on Caesar's part was perhaps motivated by a knowledge of the ancient historiographical tradition in which the theme of dissonance between the narrative and the speeches within it was an important one. For Sallust, inspired in part by the Greek tradition, the observation of this dissonance seems to have been one of his major historical interests. One of the surviving fragments from the preface to his *Histories* is particularly illuminating:

> *postquam remoto metu Punico simultates exercere vacuum fuit, plurimae turbae, seditiones et ad postremum bella civilia orta sunt, dum pauci potentes, quorum in gratiam plerique concesserant, sub honesto patrum aut plebis nomine dominationes affectabant, bonique et mali cives appellati non ob merita in rem publicam omnibus pariter corruptis, sed uti quisque locupletissimus et iniuria validior, quia praesentia defendebat, pro bono ducebatur.*[191]

This fragment represents the false terminology of public discourse as an integral part of

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187 On the way in which opposed sets of speeches can open up the possible readings of a work in this way, see D. Levene, 'Sallust's *Jugurtha*: an "Historical Fragment," *J. R. S.* 82 (1992), 64-67. However I would argue that the inclusion of any speeches would have encouraged the ancient readership to consider the relationship between them and the surrounding narrative and possible opposing speeches. If Caesar had included speeches only in his own favour, that would have immediately conveyed the impression that the narrative was being told from a very biased viewpoint. If he had included them from both sides, it might have been possible for him to allow the events of the narrative to expose the inadequacies of his opponents' arguments, but any speech would at least allow the reasoning by which his opponents had arrived at their conclusions to be aired even if that reasoning was subsequently shown to have been erroneous.

188 There has been a great deal of scholarly attention on this aspect of Caesar's work. See, for example, J. H. Collins, *Propaganda, Ethics and Psychological Assumptions in Caesar's Writings*, (Frankfurt, 1952) and M. Rambaud (1966). In contrast, as Levene (1992), 65 says, 'There will always, to a greater or lesser degree, be the possibility that the reader... will find one of the 'opposing' voices at least partially persuasive.'

189 See above, pp. 252-3.

190 C. Hammond, *Narrative Explanation and the Roman Military Character* (D. Phil. Thesis, Oxford, 1993), 362 suggests that 'Caesar may be treating *O.R.* as a sophisticated historiographical technique of persuasion, and hence that he may himself be avoiding its use to imply that he is above the need for such persuasion.' This does not of course mean that his narrative was without art in its construction. See H. C. Gotoff, 'Towards a Practical Criticism of Caesar's Prose Style,' *Illinois Classical Studies* 9 (1984), 1-18. More recently the contributors to K. Welch and A. Powell (edd.), *Julius Caesar as Artful Reporter: the War Commentaries as Political Instruments* (London, 1998) have highlighted various ways in which Caesar selceted and structured his material for rhetorical ends. In particular see C. Torrigan, 'The Λόγος of Caesar's *Bellum Gallicum*, especially as revealed in its first five chapters', 45-60; A. Powell, 'Julius Caesar and the presentation of massacre', 111-137; A. Goldsworthy, ''Instinctive genius': the depiction of Caesar the general', 193-219.

191 Sall., *Hist.* 1. 12 M (=1. 12 McG).

Roman decline since the Punic Wars. Both sides, the popular and optimate, are portrayed as responsible for the use of dishonest slogans (*sub honesto nomine*), and the conventional terms of *boni* and *mali* were applied not on merit, but on the basis of wealth. Coming as it did in the preface to his major historical work, it encourages a critical reading of the use of language within the speeches of that work, as Syme notes: 'He is alert all the time for the contrast between the words and the facts, with an especial delight in orations designed to demolish the speaker. The behaviour of language draws his interest, provoked or sharpened by study of Thucydides.'[192]

The Athenian historian had traced a similar breakdown in language-use parallel to the decline of a state in Corcyra: καὶ τὴν εἰωθυῖαν ἀξίωσιν τῶν ὀνομάτων ἐς τὰ ἔργα ἀντήλλαξαν τῇ δικαιώσει. τόλμα μὲν γὰρ ἀλόγιστος ἀνδρεία φιλέταιρος ἐνομίσθη...[193] He continues with many further examples, but the similarity to Sallust's interests is most clear, when he talks of the slogans used by the opposing parties:[194] οἱ γὰρ ἐν ταῖς πόλεσι προστάντες μετὰ ὀνόματος ἑκάτεροι εὐπρεποῦς, πλήθους τε ἰσονομίας πολιτικῆς καὶ ἀριστοκρατίας σώφρονος προτιμήσει, τὰ μὲν κοινὰ λόγῳ θεραπεύοντες ἆθλα ἐποιοῦντο...[195] Nor was this a later development of Sallust's historical interests, for he had offered a closer rendering of this passage in the digression on party strife at Rome in his first monograph.[196] These authorial comments strongly encourage the reader to question the motivation of those who speak within Sallust's works, and in the absence of any further authorial guidance the universal nature of his indictment urges scepticism.

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192 Syme (1962), 255.

193 Thucydides 3. 82. 4. Further on Thucydides' interest in the relationship between language and events see Parry (1981), especially pp. 79-89. Note that Thucydides, and Sallust, are not saying that the meanings of words change, only the types of actions to which people applied them. See J. Wilson, ''The Customary meanings of words were changed' - or were they? A note on Thucydides 3. 82. 4', *C. Q.* n.s. 32 (1982), 18-20: 'What changed was men's *use of* the available descriptions: they abandoned the usual ones and adopted others, because they wanted to make different value-judgements about the phenomena described' (p. 19). See also I. Worthington, 'A note on Thucydides 3. 82. 4', *Liverpool Classical Monthly* 7 (1982), 124; S. Hornblower, *A Commentary on Thucydides* vol. 1 (Oxford, 1991), 483.

194 This is not to say that other Romans were not interested in the same idea. For Cicero, see above pp. 186-88, and for further examples see Scanlon (1980), 80.

195 Thuc. 3. 82. 8.

196 Sall., *B. C.* 38. 3: *honestis nominibus, alii sicuti populi iura defenderent, pars quo senatus auctoritas maxuma foret, bonum publicum simulantes pro sua quisque potentia certabant.* See Perrochat (1949), 15. Compare also §10. 5: *ambitio multos mortalis falsos fieri subegit, aliud clausum in pectore, aliud in lingua promptum habere.* On Sallust's continued interest in the word/deed antithesis, see Scanlon (1980), 80-82; 141-42; 190-91.

In this earlier work he also followed Thucydidean practice in juxtaposing two opposing speeches, those of Cato and Caesar: this fact can supply further opportunities for the historian to question and challenge the orators' arguments. But in this case the historian offers extra material for his reader in the syncrisis of the two men which follows the speeches.[197] Because of this syncrisis, the prominence given to the two speeches within the work, and the subsequent fame of the two men involved a mass of bibliography has been generated; to use McGushin's words, 'The basic aim of these and other treatments of this topic has been to designate and to substantiate to what extent Sallust's own verdict is discernible in his final treatment of these two outstanding personalities of the period.'[198]

One of the most persuasive arguments is based upon the nature of Cato's speech. This appears to follow Sallust's own thought quite closely in several places. The most obvious similarity is his analysis of Roman history which he depicts as one of decline: in the past the *maiores* had made the *res publica* great,[199] while corruption has now become rife as a result of *luxuria* and *avaritia* and a desire for wealth.[200] Sallust himself had singled out *avaritia* as the key factor in Rome's decline after Sulla.[201] Perhaps even more striking is Cato's own analysis of the shifts of language: *iam pridem equidem nos vera vocabula rerum amisimus: quia bona aliena largiri liberalitas, malarum rerum audacia fortitudo vocatur, eo res publica in extremo sita est*.[202]

These similarities have encouraged the majority of scholars to conclude that Sallust supports Cato's arguments and therefore favours him in the syncrisis. However, this seems to be a partial view of the text with which Sallust presents us, for he also allows Caesar to present

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197 Sall., *B. C.* 53-54.

198 McGushin (1977), 309. As he notes, this topic has been discussed in most general works on Sallust: E. Skard, 'Sallust als Politiker', *Symbolae Osloenses* 9 (1930), 69ff.; W. Schur, *Sallust als Historiker* (Stuttgart, 1934), 191ff.; K. Vretska, 'Der Aufbau des Bellum Catilinae', *Hermes* 72 (1937), 214 ff; D. C. Earl, *The Political Thought of Sallust* (Cambridge, 1961), 99ff.; Syme (1964), 103ff.

199 Sall., *B. C.* 52. 21. Compare Sallust in his authorial voice at §§9-11, where like Cato he notes hard work and justice as distinguishing characteristics of the *maiores*.

200 Sall., *B. C.* 52. 7.

201 Sall., *B. C.* 11. 1.

202 Sall., *B. C.* 52. 11.

arguments which resemble his own.[203] In the first place, he extensively develops arguments on the basis of ancestral practice, for example citing the *maiores* for their readiness to adopt foreign customs.[204] This not only fits well with Sallust's general approval of the old *res publica*, but in the preface to the *Bellum Iugurthinum* he cites with approval the way in which the *maiores* could inspire later Romans with their *exempla*.[205]

More striking still is the way in which Caesar stresses the need for the *animus* to be dominant if rational debate is to take place, and that a precondition for this is an absence of emotion and in particular *lubido*, again explicitly putting forward the example offered by the *maiores*.[206] This attitude - though here restricted to the narrower limits of political debate - closely resembles the more general thoughts which Sallust expresses in his authorial voice in the preface. Here he emphasizes that it is the *animus*, the capacity for rational and intellectual thought, which raises humans above animals: *animi imperio, corporis servitio magis utimur; alterum nobis cum dis, alterum cum beluis commune est. quo mihi rectius videtur ingeni quam virium opibus gloriam quaerere*.[207] Significant also is the way in which he subsequently envisages the decline of individuals or states: *verum ubi pro labore desidia, pro continentia et aequitate lubido atque superbia invasere, fortuna simul cum moribus inmutatur*.[208] The same failing, that of *lubido*, is noted by Sallust himself, just as by Caesar in his speech, when he states that the *maiores* had allowed *animus* to take priority: *sed ea malo dicere, quae maiores nostri contra lubidinem animi sui recte atque ordine fecere*.[209]

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203 In any case, even the fact that Sallust allowed only Cato views to mirror his own would not be a conclusive argument for favouritism, since ancient historians often seem to allow uncongenial characters 'good' arguments, just as Thucydides does Cleon in the Mytilenian Debate. Syme detects a similar pattern in Tacitus with Eprius Marcellus' speech at *Histories* 4. 8: 'The argument is set forth with eloquence and power, and (as is typical of Tacitus) by a bad man trying to pass for plain and honest, none other than the orator Eprius Marcellus.' (R. Syme, *Tacitus* vol. 2 (Oxford, 1958), 547; see also vol. 1, p. 109.) Furthermore Cato is not the only Sallustian speaker allowed to comment upon the problematic relationship between words and deeds: With a varying degree of explicitness Memmius does at *B. I.* 31. 8, Lepidus at *Histories* 1. 55. 24 M (=1. 48. 24 McG), and Macer at 3. 48. 13 M (=3. 34. 13 McG).

204 Sall., *B. C.* 51. 37.

205 Sall., *B. I.* 4. 5: *nam saepe ego audivi Q. Maxumum, P. Scipionem, praeterea civitatis nostrae praeclaros viros solitos ita dicere, quom maiorum imagines intuerentur, vehementissume sibi animum ad virtutem adcendi.* However, it might be possible to take a further step and note that any agreement between Caesar or Cato and what Sallust expresses in his authorial voice is not conclusive for the historian's approval of what the speaker is saying: it may be that the respective speakers are able to exploit these insights for their own unworthy rhetorical ends.

206 Sall., *B. C.* 51. 1-4.

207 Sall., *B. C.* 1. 2-3.

208 Sall., *B. C.* 2. 5.

209 Sall., *B. C.* 51. 4.

A comparison with Thucydides' analysis is again suggestive. Parry has distinguished two separate, but connected, threads in Thucydides' treatment of the relationship between λόγος and ἔργον. The first he calls the popular distinction: this rejects λόγος as deceptive in favour of ἔργον which is assumed to be knowable. On the other hand there is also the literary distinction which gives greater prominence to λόγος and 'suggests further that ἔργον by itself is unknowable except through λόγος.'[210] Parry sees a constant and productive tension between these two distinctions, which generates an interest in the ability to perceive and direct the external world through λόγος:

> 'Imbued with a kind of abstract and analytic language, the creation largely of the Sophists and the foundation of his own style, he sees this language as the attempt to organise and control the external world. And he is concerned, in his account of the Peloponnesian War, with the degrees of success and failure which the use of this language and this mode of thought enjoyed throughout the course of the war.'[211]

Although Sallust does not engage with these ideas in such a thoroughgoing way in his monographs - and perhaps could not, given the limited scale of these works - in his authorial voice and the paired speeches of Cato and Caesar he does address this tension. In the preface to the *Bellum Catilinae* he emphasizes that human understanding (ie. λόγος) is what distinguishes men and represents the highest level of achievement - Parry's literary distinction, while in the digression on factions he avers that at Rome language has failed and words are being misapplied, that is λόγος and ἔργον have become detached and λόγος has failed - Parry's popular distinction.[212] And the speeches of Cato and Caesar concentrate upon these two different parts of the relationship in their assessments of the debate, Caesar putting the positive view that the *animus* must take precedence - albeit that he recognizes that it is under threat - while Cato stresses the negative: at Rome language has now failed.

This balanced position is matched by that of the *syncrisis*, which, as Levene says, 'encourages us to treat them as equals.'[213] There Sallust highlights the differences between

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210 Parry (1981), 79.

211 Parry (1981), 85.

212 Sall., *B. C.* 38. 3. It should be noted that where Greek has the word λόγος, Latin does not actually have a precise equivalent, and I use the Greek terms λόγος and ἔργον also of the Roman historians for clarity, since they use a broader range of terms to encompass this antithesis, as indeed did Thucydides in his history.

213 Levene (1992), 67.

their characters and behaviour, but emphasizes an underlying equality: *igitur iis genus aetas eloquentia prope aequalia fuere, magnitudo animi par, item gloria, sed alia alii.*[214] It is significant that among the qualities which Sallust singles out is *eloquentia*, again suggesting that the two speeches which he gives them are of comparable merit. They both offer important perspectives on the orator's role within the 'external world': like Sallust himself, they comment upon the need to rationalize that world through λόγος, but also the difficulties which were inherent in that process: their speeches are themselves ensnared within these difficulties, but Sallust allows them to perceive and comment upon them.

For Caesar and Cato are unique among Sallust's surviving texts for being speakers to whom the historian attributes unequivocally positive character assessments.[215] Elsewhere Sallust seems to focus upon Parry's 'popular distinction' of λόγος and ἔργον, that is the failure of public speakers to match their words to reality, although there does remain a 'true' λόγος, the historian's: Sallust himself is able to perceive the failure and, as a result, his historical perspective can encompass and correct it by revealing it to the reader of his narrative.

There are many different ways in which λόγος can misfire, and several of these are exemplified within Sallust's works. One limited example is provided by comparing Cotta's speech in the second book of the *Histories* with Sallust's thumbnail sketch of him as *ambitione tum ingenita largitione cupiens gratiam singulorum.*[216] While it would be possible to take the speech as 'the attempt by a veteran politician, unjustly blamed for something for which he was not responsible, to exonerate himself', the sketch, as McGushin notes, 'with its stress on the man's excessive ambition sounds a warning note.'

Another type of failure is that of Adherbal's speech of entreaty to the senate in the *Bellum Iugurthinum.*[217] The arguments are unimpeachable, and he makes a clear case that right is on his side against Jugurtha, but it was not only bribery that led to failure: it could also be ascribed to the character of the speech. In it Adherbal appeals only to Roman pity, and services rendered in the past by his family, and as Ullmann observes 'c'est surtout la faiblesse et l'inertie d'Adherbal que Salluste a voulu dépeindre par son discours.'[218] But this speech offers

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214 Sall., *B. C.* 54. 1.

215 Licinius Macer is another candidate, but the absence of any narrative context for his speech makes this hard to evaluate. Even he is perhaps not a very likely candidate given Sallust's general assessment of post-Sullan Rome at *B. C.* 36. 4 - 39.

216 Sall., *Hist.* 2. 42 M (=2. 40 McG).

217 Sall., *B. I.* 14.

218 Ullmann (1927), 33.

evidence for more than Adherbal's weakness of character, since it also shows him as a failed orator. He constructs a speech which did not suggest what the Romans would gain from assisting him, but rather highlighted his own weakness: for example, he refers to his grandfather Masinissa's services to Rome (§6), when he was also Jugurtha's grandfather, and he explicitly acknowledges the absence of any services which he had personally rendered to Rome (§3). As a result the Roman senate could not see the benefits of maintaining such an ally.

Caesar also often uses what little direct speech he includes in his works to highlight the failure of λόγος, although he usually concentrates upon the failure of men to perceive the reality of the external world that faces them, rather than an inability to persuade an audience to a given course of action. One example is offered by Pompey on the eve of the battle of Pharsalus. He outlines his cavalry plan to his troops and ends with a positive conclusion: *ita sine periculo legionum et paene sine vulnere bellum conficiemus. id autem difficile non est, cum tantum equitatu valeamus.*[219] Likewise, in his speech to test the loyalty of his men, Curio has no doubt as to the final outcome of his campaign: *sed tamen sui laboris milites semper eventu belli praemia petiverunt, qui qualis sit futurus, ne vos quidem dubitatis.*[220] These confident predictions make the downfall of these men more tragic, but they also represent a failure of their intellect. More importantly, they highlight once more the fact that oratory, even when it is misguided, involves two groups, the speaker and his audience: in these instances the audiences are persuaded of the wrong outcome by the orators. In Curio's case the success of his speech as a persuasive act leads directly to the ultimate disaster, since the positive reaction of his men encourages his confidence.

A more complex example of the problematic relationship between λόγος and ἔργον is provided by Marius' speech in the *Bellum Iugurthinum.* At one level there is a contrast between what he says in the speech and what Sallust tells us. Throughout the speech Marius claims that he is content with hard work, and that his own *virtus* is to be contrasted with the nobles' wickedness, but the surrounding narrative qualifies these claims. Sallust's initial sketch is positive,[221] but he quickly notes Marius' excessive *ambitio*, and his surrender to *cupido* and *ira.*[222] These emotions lead to excessive zeal in winning popularity among the soldiers and

219 Caes., *B. C.* 3. 86. 4.
220 Caes., *B. C.* 2. 32. 11.
221 Sall., *B. I.* 63. 1-2.
222 Sall., *B. I.* 63. 6; 64. 5.

unsubstantiated boasting to Roman traders in Utica.[223] Indeed his challenge to the nobles is portrayed as a personal crusade and the speech is given as one example of his stinging attacks.[224] Marius is portrayed as himself tainted by some of the diseases which he detects among the nobility whom he attacks.

But the speech also exemplifies another aspect of the problematic relationship between λόγος and ἔργον. In the first section of this chapter I noted that the whole speech encompasses a major paradox: Marius rejects the need for or desirability of fine words - actions can stand for themselves: however he does himself deliver a finely structured speech.[225] In Thucydides a similar paradox is evident in Archidamus' speech at the first congress at Sparta: he rejects excessive education, arguing that it was an absence of this which enabled the Spartans to be wise.[226] Parry expresses the difficulty clearly: 'He furthermore both denies the validity of λόγος, and yet sets up a kind of λόγος as supreme: for the very thing, by his own account, that has taught the Spartans to distrust the calculations of the intellect is their education.'[227] With Marius, Sallust explores a similar idea. Although men might reject speech, it takes a speech in order to persuade others of this. But the historian's undercutting of the orator in this example also reveals that while λόγος is unavoidable, the orator's performance is also always open to question.

This is made most clear in the paired speeches of Lepidus and Philippus: these are mutually opposed performances and Sallust's reader cannot accept both speeches in their entirety without contradiction. The loss of most of the narrative deprives us of direct authorial comment on the two performances which may have encouraged the reader in a particular direction, but the speeches themselves trigger certain responses. In particular their fondness for slogans and the way in which they both depict the conflict in black and white terms recall Sallust's own comments upon factional speeches in the preface and their *honesta nomina*.[228]

Lepidus' speech has attracted the harsher response in modern scholarship. Syme calls it 'violent and vaunting', 'abrupt and disjointed.'[229] Like Marius' it achieves what Syme calls a

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223 Sall., *B. I.* 64. 5.

224 Sall., *B. I.* 84.

225 See above, pp. 255-6.

226 Thuc. 1. 80-85, especially 1. 84. 3.

227 Parry (1981), 81.

228 Sall., *Hist.* 1. 12 M (=1. 12 McG).

229 Syme (1964), 199.

'double demolition',[230] attacking not only the Sullan régime, but puncturing the speaker's own self-portrayal as a champion of *libertas* through the surrounding narrative. But Philippus is not exempt, and although he asks his audience whether they had forgotten the crimes of Cinna,[231] he had himself held the censorship during Cinna's domination, as Syme points out. Indeed the whole structure of the pairing serves to underline the complete decline of Rome: the speakers can both make their accusations stick. However, through the polarization of language, speeches can do little to help improve matters. The two sides can no longer speak to each other since the same words mean different things to each of them: speech serves only to create more dissension within the state.

A final point to be made on Sallust's composition of speeches within his works concerns his allusions to earlier texts, both historical and otherwise. Scholars have detected debts to many figures: among the Romans, to Cato in particular, among the Greeks to Demosthenes, Isocrates and Plato,[232] as well as many allusions to particular speeches in Thucydides - most notable are the similarities which have been detected between the Mytilinean debate and that between Caesar and Cato in the *Bellum Catilinae*.[233] This ready adoption of earlier modes of expression is perhaps largely to be attributed to the continuum of Greco-Roman rhetorical education. But as I have shown in this section, many of Sallust's ideas on the relationship between 'words' and 'things' owe their origin to Thucydides. In making a conscious decision to adopt the Athenian historian's analysis, Sallust must have considered such an approach not only penetrating, but relevant to the circumstances of contemporary Rome. Not only did men express themselves in similar language to those who had spoken over four centuries before, but in doing so they raised similar issues in the opinion of the Roman historian. Just as Caesar and Marius might attempt to set themselves within the Catonian tradition of oratory, so Sallust could set their performances within an even broader context by analysing them in Thucydidean terms. By doing so he projects an intertextually nimble and adept image not only of himself, but also of the orators whom he inserts into the Greek tradition, just as Cicero did of himself by calling his own speeches against Antony *Philippics*.

These texts therefore afford the modern historian the rare opportunity of perceiving how the various self-representations which were open to orators were received by other

230 Syme (1964), 198.

231 Sall., *Hist.* 1. 77. 19 M (=1. 67. 19 McG).

232 For examples of these, see Perrochat (1949).

233 Scanlon (1980), 102-108; Drummond (1995), 51-54.

Romans, in spite of the fact that these are not 'real' speeches delivered to 'real' audiences. To take one example, Marius presents himself as an unwilling orator, who attempts to redefine the concept of nobility on the basis of his reinterpretation of the Roman past, and Sallust portrays his attempt as successful within the immediate context of the audience which he was addressing. However, the longer perspective afforded to the historian allows him to challenge Marius' self-portrait: his claims to be a poor speaker are unmasked by his skilful use of traditional *topoi* and not least his use of arguments from the Roman past. Furthermore the surrounding narrative, which his immediate audience did not have the advantage of reading, explodes many of the claims which he makes with regard to his own good character.

And it is the opportunity offered to the historian by the longer perspective which is most important: by pairing opposing speeches which had both been successful in their original contexts, or by undercutting the assertions of the speaker by the surrounding narrative, the historian could challenge the usually exclusive nature of any orator's arguments: the character of his opponents was not necessarily any worse than his own, his perception of events was not the only possible one, and other interpretations of the Roman past could be made. Where the speaker sought to portray himself to his audience as the figure who was the worthiest of a hearing, the historian could expose the limitations of his self-representation. From this point of view the 'good' orator would be more balanced, a man who took into account diverse points of view and spoke for the whole populace rather than for any one group within it. But in contemporary Rome such an orator might in practice be rather ineffective, and Sallust's final conclusion might be that the λόγος of the orator was always ineffectual and shortsighted when set beside that of the historian.[234]

234 On this, the prefaces to both monographs are suggestive: *B. C.* 3-4; *B. I.* 3-4.

3. Conclusion

In this chapter I began by considering the way in which Sallust - and to a lesser extent Caesar - allowed speakers within their works to represent and develop their own roles in addressing audiences. Unsurprisingly, their approaches resembled closely those evident in other published speeches that I have studied in this thesis. But the context of these speeches within a historical narrative creates further perspective, firstly through the presentation of the circumstances and response to the speeches - in particular asserting the importance of the contribution made by audience - and secondly as a result of the location of the orations within the historians' larger projects.

Sallust makes into an explicit theme the analysis of the role of orators and their speeches within the course of events, an analysis which provides no simple conclusions. Unadulterated 'reality' is supreme, but it cannot be comprehended or communicated to others without speech; different orators can use the same language and words, but mean different things by them. Above all, speeches expressing rational argument are portrayed as the supreme example of human achievement, whilst they are open to the greatest abuse in contemporary Rome.

VI. Conclusion

I have examined the way in which the Romans represented the orator's role through a very diverse set of texts, ranging from the dry instructions of the rhetorical handbooks to the historical prose of Sallust and Caesar. These texts have included or commented upon both judicial and deliberative oratory, and they make clear how central rhetoric and the delivery of speeches were to the world of the Late Roman Republic. The evidence of the handbooks with their agonistic tone demonstrates that they were the product of a competitive market, as rival teachers with their differing theories strove to promulgate their own as widely as possible.

It will have been the Roman élite who had the most contact with such men as they were eager to offer themselves the best possible chance to thrive in the competitive world of Roman politics, and they alone would have the money and leisure to pursue their rhetorical studies not only in Italy, but in some cases even travelling to Greece. However, these men went on to speak in public, whether in the senate, at *contiones* or in the law courts, and the world of the *forum* became one dominated by various forms of speech-making. In the *Brutus* Cicero gives a *vignette* of that world:

> *volo hoc oratori contingat, ut cum auditum sit eum esse dicturum, locus in subselliis occupetur, compleatur tribunal, gratiosi scribae sint in dando et cedendo loco, corona multiplex, iudex erectus; cum surgat is qui dicturus sit, significetur a corona silentium, deinde crebrae assensiones, multae admirationes; risus cum velit, cum velit fletus: ut qui haec procul videat, etiam si quid agatur nesciat, at placere tamen et in scaena esse Roscium intellegat.*[1]

Cicero paints this picture as part of his definition of what constituted true 'Atticism', urging that oratory must appeal to the audience in order to deserve this tag. However, it remains a sharply drawn picture of the *forum*: the benches are filled and a throng of spectators surrounds the court in order to hear the speaker. Even the casual passer-by might pause at the sight and listen to the orator in action. Nor is such a world a Ciceronian fantasy: I began this thesis with a quotation from Vergil's *Aeneid*, in which the poet compared Neptune calming the stormy sea to an orator pacifying a riotous crowd in the first programmatic simile of the epic.[2]

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1 Cic., *Brut.* 290.

2 Verg., *Aen.* 1. 148-154.

That simile portrayed the orator as an aloof figure who stood apart from, and above, his hearers, and who relied upon his authority as well as his words in order to persuade his audience. The other texts which I have examined have often portrayed similar images of the Roman orator, but it remains important to stress that they do not offer a single paradigm which the speaker had to follow on each occasion that he rose to speak. Rather they suggest that it was open to the orator to redefine his role within each speech, and in particular to negotiate his relationship with the audience which he was addressing.

As I have already mentioned, it was a competitive world for these speakers in which they not only put a great deal of time and effort into their rhetorical training, but also engaged in a great deal of argument over the best form of speaking to adopt. The most striking example of this was the Atticist-Asianist debate, in which competing speakers denigrated each other with the charge of being excessively ornate. However, to judge from the limited evidence available to us it seems that much of this controversy was merely name-calling, and that in fact these speakers adopted largely similar styles.[3] That does not make the controversy any less important, since it again points to a competitive *milieu* in which orators sought to gain the smallest advantage over their rivals. It also points to a large measure of agreement over what was, and what was not, an acceptable style of speaking.

A contributory factor in this consensus was the fact that Greek influence was all-pervasive at Rome: the great majority of rhetorical teachers were still Greek. However, it would be a mistake to assume that the Romans adopted their ideas wholesale. Cicero for one was certainly capable of adapting Greek theory to suit the socio-political environment at Rome. In some areas the ideas which went back to Aristotle and Isocrates could not be applied without considerable revision. The most obvious example was provided by the courts and the fact that the Romans employed advocates, a practice which had been shunned in classical Athens.

This tradition probably drew its origins from the traditional ties at Rome between patrons and their clients. Many scholars - and most recently David[4] - have suggested that this practice continued into the Late Republic, but I have argued that in this period the conduct of advocacy was much more varied. Some men continued to operate in the same way, but the increased number of courts, and of cases in them, had led to the growth of a group of quasi-professional advocates who devoted much of their time to the conduct of cases.

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3 There is no secure evidence that any Roman proclaimed himself an Asianist.

4 J.-M. David, *Le Patronat Judiciaire au Dernier Siècle de la République Romaine* (Rome, 1992).

However, Cicero's speeches provide us with almost all the material which show how advocates operated in practice. In those which I have examined I have argued that Cicero exploits the changing world of the Roman courts to draw upon a wide range of roles. At times, as in the *Pro Caelio*, he plays the part of a traditional patron, whereas in other speeches - and most notably the *Pro Cluentio* - he adopts a more disinterested role as a worker in the courts. He made these choices according to the circumstances of the individual cases, and in particular was influenced by the nature of his relationship with his 'client'. Over the range of cases Cicero resembles a chameleon who was able to tailor his own self-presentation to suit his own client's personality: literate and learned when defending the poet Archias, but the grand consul when speaking for Murena.

This ability to associate closely with the various defendants did not preclude Cicero from choosing to distance himself from them at other times when it was expedient to portray himself as an assistant in the working of the laws, and thereby a servant of the state itself. In taking this step Cicero was increasingly aided by his own political career outside the courts. There was a complex relationship between these two spheres of Cicero's activity, as he could draw upon his political achievements to add to his authority as an advocate, and vice-versa. This added a further variable in the course of his work in the courts: as a distinguished consular when he spoke on Caelius' behalf in 56 B.C. he could not adopt the same strategy as he had when defending Roscius of Ameria as a relative unknown in 80.

However, Cicero's visible presence in the courts also helped to shape his political persona, and he drew upon his assistance both to individual Romans and to the laws in developing his public authority.[5] But in particular it was the common role he played in both arenas as a speaker which he exploited most successfully. In the courts defending Sestius he could depict himself as the voice of the state, which Sestius had saved from Clodius,[6] while in his final struggle with Antony I have argued that he made the theme of public speaking a central one. He portrayed the very fact that he was standing up in public and saying what he thought as the fulfilment of his duty as a distinguished consular, while Antony's inability to do the same even with expensive lessons marked him out as an opponent of the established order.[7]

Unlike other portrayals of the orator's role which I have delineated, this picture of

5 See most notably *Phil.* 6. 17.

6 Cic., *Pro Sest.* 2.

7 See ch. 3, pp. 167-8.

'speaking out' was not contestable and Antony had not tried to dispute it.[8] Indeed he had attempted to defeat Cicero precisely by denouncing him in a speech to the senate on 19th September, the effort which led to Cicero's barbed criticisms. Moreover, the fact that this position is not disputed is a very important one for our perceptions of the republican political system. The observation that a bad or unwilling speaker had no place in that system emphasizes how central oratory was to it, and ties in closely to recent work which has stressed that republican Rome was a democracy of sorts.[9]

The general acceptance that oratory played a crucial role within the political system did not necessarily entail a consensus as to how the speaker should develop his role. Again a lack of evidence creates problems, but Cicero at least generally seems to have adopted a didactic tone towards his audience both in the senate and in *contiones*. He often chose to elevate himself above his hearers by displaying his expertise in logical argument, in the interpretation of events, and in his knowledge and understanding of the Roman past. His points were often open to argument, but the way in which he presented them is significant: he told his audience how it was.

The surviving fragments of the Elder Cato and Gaius Gracchus are too vestigial for us to hope to trace any real signs of change through time in the way that Romans thought about oratory. However, in what remains it is possible to see both Cato and Gaius presenting themselves in a similarly didactic fashion, with Cato in particular showing a liking for the first-person, thereby putting himself at the centre of the debate. There are also signs in the Gracchan fragments that he did on occasion present himself as a servant of his audience. However, it is dangerous to draw any neat conclusion that this was because he was a populist tribune, since Cicero adopted such an approach both in the courts - as we have seen - and in his political speeches.[10]

In the final chapter I turned to the representation of speeches within historical narratives. These are a unique source in that they alone set speeches within a context, whether that means an opposing speech is given, or simply that the reaction to the speech or its effect

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8 This theme is also particularly prominent in the *Brutus* where oratory is seen to grow and develop in parallel to the republican political system. This is most clearly seen in the figure of Lucius Brutus, the founder of that system, of whom Cicero says: *qui potentissimum regem clarissimi regis filium expulerit civitatemque perpetuo dominatu liberatam magistratibus annuis legibus iudiciisque devinxerit... quod certe effici non potuisset, nisi esset oratione persuasum* (§53).

9 See especially F. Millar, *The Crowd in Rome in the Late Republic* (Michigan, 1998).

10 For example, Cic., *Phil.* 6. 17-19.

are recorded. Sallust uses a markedly Thucydidean framework for his interpretation of Roman oratory, a strategy which takes us back to Greece: for this historian at least Roman speech-making could sensibly be interpreted in a similar manner to that which Thucydides had applied to the Greek world, and Athens in particular. Indeed the failure of speeches, the emptiness of the slogans, and the shortsightedness of the orators' black and white vision of the world are major features of the corruption and decline which Sallust portrays at Rome.[11]

Caesar's approach was quite different, and particularly notable for the tiny amount of direct speech which he allows himself in the *Commentaries*. This perhaps stemmed from Caesar's equal knowledge of the Greek historiographical tradition, and his awareness that at best any words which he gave himself could be seen as 'a sophisticated historiographical technique of persuasion.'[12] At worst readers might be able to draw up the opposing arguments, even if he allowed them no voice within his text. He preferred rather to let his actions speak louder than his words.

The death of Cicero is a rather arbitrary finishing point, and it perhaps accepts too readily his own self-aggrandizement to end a study of republican oratory at this point. However, Tacitus and the speakers in his *Dialogus* were agreed that some change - for the better or worse - had overtaken Roman oratory by their time. Maternus, for example, makes an explicit link between the changing perceptions of eloquence and the loss of liberty: in his time orators could gain smaller rewards, but the Republic was a time when *mixtis omnibus et moderatore uno carentibus, tantum quisque orator saperet quantum erranti populo persuadere poterat.*[13]

Given the renewed interest in the precise nature of the republican system, and the importance of oratory within it, there would be good reason to attempt to trace the changing attitudes to the orator's role in the Augustan period and beyond. This would not only shed light on attitudes to the Republic under the Julio-Claudians, but would contribute a great deal to our understanding of the political shift which occurred between Republic and Principate. However, such an undertaking is beyond the scope of this thesis and we must - for the time being - leave republican oratory with Cicero.

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11 Compare also the comments on the partiality of Cicero's speeches in the pessimistic conclusion of C. J. Classen, *Diritto, retorica, politica. La strategia retorica di Cicerone* (Bologna, 1998), 368-9.

12 C. Hammond, *Narrative Explanation and the Roman Military Character* (D. Phil. Thesis, Oxford, 1993), 362.

13 Tac., *Dialogus* 36.

VII. Appendix: the Published Versions of Cicero's Speeches

Throughout this thesis I have been using the written versions of Cicero's speeches which we possess largely as if they were the faithful transcripts of his original words. However, the bald statement of Douglas should perhaps serve as a warning: 'The clear fact that there were important differences between the speeches as delivered and as published presents problems only for the historian, not for the critic nor for the moralist.'[1] In fact, there has been a remarkable divergence of opinion over how closely the texts resemble what was actually said. But it remains an issue which I must address, and since it has a bearing upon much of the thesis, I treat it here in one section for convenience. This does not, however, set out to be an exhaustive discussion, and indeed I seek to sidestep the main force of the problem. I shall argue that the extent to which our texts diverge from the original words is not a fundamental difficulty for my thesis, since the published versions at the very least purport to have been capable of delivery on each given occasion.

As I have already mentioned, the issue of pre-publication editing has long been a hotly contested one. Laurand was the first to put the case for a limited amount of alteration,[2] but in 1925 Humbert put the opposing case in its strongest form, arguing that any published judicial speech was a composite mix of the words uttered by the advocate on several occasions within the actual trial.[3] There was some opposition to Humbert's thesis,[4] but it remained highly influential until the opposite view was argued forcefully by Stroh.[5] Now there seems to be a measure of consensus that each speech needs to be dealt with individually, but that as a rule we should assume that they are fairly close to what was actually said. Berry is fairly typical, when he says of the *Pro Sulla*: 'like most of Cicero's speeches, it was probably published soon after delivery, and with a minimum of alteration.'[6]

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1 A. E. Douglas, *Cicero* (Oxford, 1968) [Greece and Rome. New Surveys in the Classics 2], 14.

2 L. Laurand, *Études sur le style des discours de Cicéron*[4] vol. 1 (Paris, 1936), 1-23.

3 J. Humbert, *Les Plaidoyers écrits et les Plaidoiries réelles de Cicéron* (Paris, 1925). He describes the published speech as 'une controverse qui avait comporté plusieurs prises de parole, entremêlées de répliques' (p. 12).

4 For example, the review by A. C. Clark, 'Cicero and Asconius', *C.R.* 41 (1927), 74-6.

5 W. Stroh, *Taxis und Taktik. Die advokatische Dispositionskunst in Ciceros Gerichtsreden* (Stuttgart, 1975), 31-54.

6 D. H. Berry, *Cicero. Pro P. Sulla oratio* (Cambridge, 1996), 58. He gives a balanced discussion of the whole problem at pp. 54-9. However, C. J. Classen, *Diritto, retorica, politica. La strategia retorica di Cicerone* (Bologna, 1998), 20-5, is less confident that the published versions keep so closely to the original words.

This conclusion makes the most balanced assessment of the ancient evidence, and it accepts that it would be difficult for speakers to publish a version of a speech which was entirely at odds with what the original audience had heard. Nepos, in particular, proves a salutary reminder that some members of that audience might subsequently read the published version: *refert Cornelius Nepos se praesente isdem paene verbis, quibus edita est, eam pro Cornelio, seditioso tribuno, defensionem peroratam.*[7] This demonstrates that a published speech might be very close - albeit not identical - to the spoken version. However, it should also be noted that Nepos thought it worthy of comment when this was the case. Therefore, a lot of grey areas remain, with much to be decided by the subjective feelings of scholars.

At the extreme end of the scale, the judgment can be easy. Initially there are those speeches which we know were never delivered on the supposed occasion, the second *actio* of the *Verrines* and the *Second Philippic*. But there is also a speech such as the *Pro Milone* for which there is strong evidence that our version differed considerably from that which Cicero delivered in court.[8] Laurand took the *Pro Milone* to be the exception which proved the rule and doubted that other speeches had been significantly adapted.[9] However, scholars have questioned the 'authenticity' of other parts of the *corpus* on a variety of grounds. Douglas, for example, condemns the digression on the *natio optimatium* at the end of the *Pro Sestio*, while allowing those in the *Pro Caelio* and the *Pro Sulla.*[10] Others have stressed that Cicero's publication of his consular speeches in 60 B.C.[11] was motivated by a desire to defend his conduct in 63 as a response to the increasing attacks from Clodius, and that this is reflected by the element of apologia in the *Catilinarians.*[12]

Scholars tend to base their judgments on an assessment - whether implicit or explicit - of why the orator was choosing to publish his speech. Cicero himself reveals some of the

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7 Nepos, frag. 45 (Halm) (= Jerome, *contra Joannem Hierosolymitanum* 12).

8 Asconius (§42C) is very confident that Cicero had not delivered the speech as published, and he records (§41) that Cicero had avoided the *pro re publica* argument - which others had espoused - whilst that approach is evident in his published version. There is also the anecdote recorded at Dio 40. 54. 3-4, in which Milo claims to be pleased that Cicero had had not delivered it as he had written it up. A second version of the speech was in the public domain (Asconius 42; Quintilian 4. 3. 17), although J. N. Settle, 'The Trial of Milo and the other *Pro Milone*,' *T.A.Ph.A.* 94 (1963), 268-80, doubts that such a version was Ciceronian.

9 Laurand (1936), vol. 1, p. 14.

10 Douglas (1968), 15, where he quotes approvingly R. G. M. Nisbet, 'The Speeches' in T. A. Dorey (ed.), *Cicero* (London, 1964), 66.

11 Cicero, *Ad Att.* 2. 1. 3.

12 So, for example, Berry (1996), 55, quoting E. Rawson, *Cicero* (London, 1975), 104, who describes this as part of a 'propaganda campaign.'

reasons for so doing. In his letter to Atticus about his consular speeches, he makes it clear that through their distribution he wishes to enhance his standing as a statesman, just as Demosthenes had done with his *Philippics*.[13] However, he discusses the motivations most fully in the *Brutus*:

> *nam videmus alios oratores inertia nihil scripsisse, ne domesticus etiam labor accederet ad forensem - pleraeque enim scribuntur orationes habitae iam, non ut habeantur -; alios non laborare, ut meliores fiant - nulla enim res tantum ad dicendum proficit quantum scriptio -: memoriam autem in posterum ingeni sui non desiderant, cum se putant satis magnam adeptos esse dicendi gloriam eamque etiam maiorem visum iri, si in existimantium arbitrium sua scripta non venerint; alios, quod melius putent dicere se posse quam scribere, quod peringeniosis hominibus neque satis doctis plerumque contingit, ut ipsi Galbae.*[14]

Although he is ostensibly discussing the reasons why some chose not to produce written versions of their speeches, he reveals in turn some of the motivations which might have encouraged them to do so. Notable among these are the desire to improve one's style through the practice of producing a written draft, and the possibility of preserving the memory of one's talent for posterity. The former shows that the writing up of a speech was a process closely enough related to that of oral construction to be of assistance on the next occasion one rose to speak. However, Cicero makes it clear that the two exercises called for some different skills, and ability in one was not always matched by a facility in the other: he goes on to describe how Galba was unable to reproduce the passion of his delivery in the written word.[15]

Here Cicero's reference to Demosthenes' dictum later in the *Brutus* is pertinent: this is the story that Demosthenes maintained that the most important skill for successful oratory was *actio*, or performance, and the second and third most important were - likewise - *actio*.[16] The written text could never reproduce the facial expressions, the gestures and the tone of voice employed by the original speaker. Moreover, in the passage of the *Brutus* quoted above, he makes it clear that the text is not a faithful transcript of what was said: most orations were

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13 Cic., *Ad Att.* 2. 1. 3.

14 Cic., *Brutus* 91-3.

15 Cic., *Brut.* 94. However Cicero's claim that writing up speeches was useful practice is important, since it suggests that the processes involved in producing a written text for publication were not completely alien to those required in delivering an actual speech.

16 Cic., *Brut.* 142.

written after the event, not before.[17]

Do these two points made in the *Brutus* leave us with a collection of texts which are completely removed from their original context as speeches delivered before real audiences? I do not think that this is a necessary consequence, and a large help in making this assertion is the very form of the texts themselves: namely that they are written in such a way that they could have been delivered in that form. There is a problem in claiming even this, in that we do not possess any live footage of real speeches with which to compare our texts, but we can say that they are consistent with what external evidence we do have about speeches.

One might take the academic paper as a modern counter-example to illustrate the point: there is usually a distinction between the paper that is delivered orally and the one that is published in written form. If an orally delivered paper is later published, it usually takes on a wholly new format with, at the very least, the addition of footnotes and the inclusion of further references. There is no maintenance of the fiction that it is a paper which is orally delivered on a specific occasion, although there may be a note referring to such an original performance.

In contrast, Cicero was so focused on the occasion of delivery for each speech that he went to the length of producing the text of an oration such as the *Second Philippic* in such a way that it might have been delivered in this very form on September 19th 44 B.C. as a direct response to Antony, although it was not delivered on that day or any other. We are immediately in the senate as the text begins: *quonam meo fato, patres conscripti, fieri dicam.*[18] In other published speeches he refers to monuments that were been visible to the original audience,[19] and he even incorporates their responses - whether fictional or real - to his words.[20]

It is a truism to say that there were no mass media in the Roman Republic, but it remained in the interest of the leading public figures that they should broadcast their performances as widely as possible. Millar has suggested that word of a speech may have got around quickly: 'It can surely be accepted without difficulty that the actual delivery of a speech, literally heard in the first instance by perhaps only a few hundred people, was only the start of

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17 Compare also the fragment of Nepos quoted above (frag. 45 Halm). Even he does not claim that Cicero had used exactly the same words in the spoken version (*isdem paene verbis*).

18 Cic., *Phil.* 2. 1.

19 For example, Cic., *Phil.* 6. 12: *aspicite illam a sinistra equestrem statuam inauratam, in qua quid inscriptum est? 'QUINQUE ET TRIGINTA TRIBUS PATRONO.'*

20 For example, Cic., *Phil.* 4. 1-2: *nam est hostis a senatu nondum verbo appellatus, sed re iam iudicatus Antonius. nunc vero multo sum erectior quod vos quoque illum hostem esse tanto consensu tantoque clamore approbavistis.*

a secondary process of dissemination, of course liable to simplification and distortion.'[21] However, the original speaker could attempt to control this process, and extend his speech's audience through both time and space by using the technology of writing.

Again Bloch's description of the introduction of literacy by missionaries among the Merina of Madagascar offers a suggestive parallel.[22] There the elders responded to the threat posed by the bible by using the new technology of writing to disseminate their own words more widely. Similarly Cicero and other orators could use the publication and distribution of their speeches to extend the horizons of their own words, and we have contemporary evidence for this type of distribution. When Cicero is describing his decision to return to Rome in the *First Philippic*, he maintains that one of the major factors that influenced this decision was a supposedly more conciliatory speech of Antony, a copy of which he received from some men of Rhegium.[23] Likewise, during the next year, we find Cicero sending his own speeches to Marcus Brutus. On 1st April the latter wrote to Cicero: *legi orationes duas tuas, quarum altera Kal. Ian. usus es, altera de litteris meis, quae habita est abs te contra Calenum... iam concedo ut vel Philippici vocentur, quod tu quadam epistula iocans scripsisti.*[24] Notable is the fact that Brutus reads them as speeches linked inextricably to the moment of their delivery, referring to the occasion of the performance of one of them.[25]

Therefore it seems a permissible step to read these texts as if they were delivered in this form. They may not be as faithful to the orator's original words as a modern recording, but the written version represented the ancient technology for such preservation and dissemination to a wider audience. We must accept that certain passages may have been altered for publication, but no surviving speech, judicial or deliberative, is composed in a form that could not have been delivered. Accurate or not, the written texts cannot recapture the full effect of the ancient occasions, but at the very least they are contemporary, albeit written, representations of the speech-act. In this sense they approximate to the speeches preserved in the historical texts which I discussed in the final chapter.

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21 F. Millar, *The Crowd in Rome in the Late Republic* (Michigan, 1998), 224.

22 M. Bloch, 'Literacy and Enlightenment' in K. Schousboe and M. T. Larsen (edd.), *Literacy and Society* (Copenhagen, 1989), 15-37. See above, p. 35.

23 Cic., *Phil.* 1. 8.

24 Cic., *Ad Brut.* 2. 3. 4. The two speeches to which he refers are the *Fifth* and *Seventh Philippics*.

25 It is important to note that ancient reading will have meant reading aloud. See G. L. Hendrickson, 'Ancient Reading', *C.J.* 25 (1929), 182-96; R. G. M. Nisbet, 'The orator and the reader' in A. J. Woodman and J. G. F. Powell (edd.), *Author and Audience in Latin Literature* (Cambridge, 1992), 2-3.

VIII. Bibliography

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