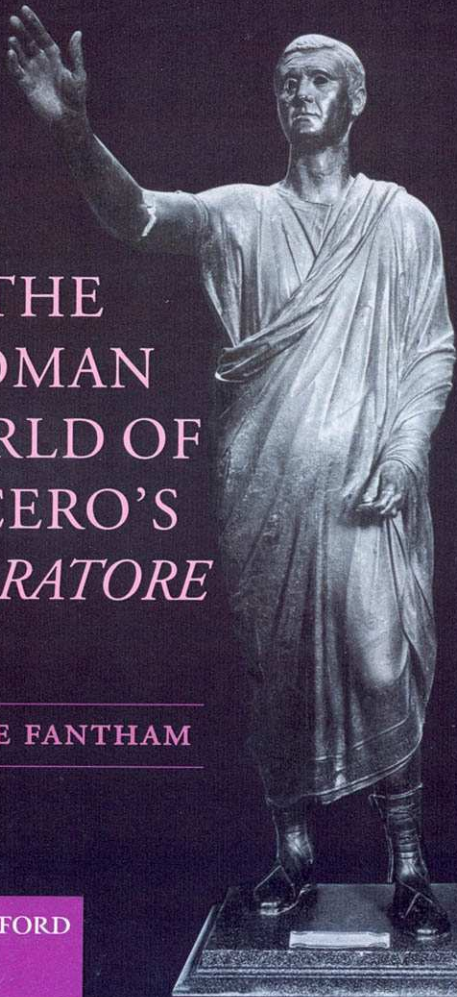# THE
# ROMAN
# WORLD OF
# CICERO'S
# *DE ORATORE*

ELAINE FANTHAM

OXFORD

# THE ROMAN WORLD OF
# CICERO'S *DE ORATORE*

*This page intentionally left blank*

# The Roman World of Cicero's *De Oratore*

ELAINE FANTHAM

**OXFORD**
UNIVERSITY PRESS

# OXFORD
## UNIVERSITY PRESS

# Preface

This book is largely the result of my years of offering the study of *De Oratore* in graduate courses on Ciceronian rhetoric. I have been blessed in some extraordinarily good students, who are already established teachers, and I could probably have learned more from them than I actually did. But those years reinforced my conviction than *De Oratore* was a brilliant and beneficial work and a marvellous key to Roman life and values in the late republic. In recent years it has been enriched with the distinguished multi-volume philological commentary of Anton Leeman and Harm Pinkster, which most individuals and hardly any libraries can afford. It should be noted that the fifth volume, now approaching completion, will appear in English with the same publishers. Jakob Wisse, the editor of this volume, has already combined with James May to produce a fine new translation *Cicero: On the Ideal Orator* (Oxford, 2001) equipped with first-class introduction and annotation. But there is a wider audience out there who may not be able to benefit fully from either work: besides the graduate students in classics who were my inspiration, there are scholars of Roman history or Latin literature without a background in classical rhetoric, just as many scholars of rhetoric have areas of expertise far from the culture of the Roman republic. I would also hope that I can encourage students of Cicero's work by supplementing Cicero's idealized picture of the older generation with an account of his own career, techniques, and practice: in some respects his experiences in the decade after the apogee of his consulship in 63 offer a striking, even depressing contrast with the conduct of political life in the 1990s: I would like modern readers of this book to come away with a picture of that world as close to Cicero's own as possible.

If Cicero's perspective was limited by his own privileged circumstances as well as his times, he is still manifestly an honest observer who also tries to maintain some standards of integrity in his actions, as much in his misguided attempt to hold back Caesar's land policies as in his fiscal correctness as a reluctant provincial governor and his efforts to reconcile Caesar and Pompey as they duelled for supreme power at Rome. There is such universal

disillusionment about present-day political life that any study which exposes the constraints under which a statesman must operate can only improve understanding and sympathy. Politically, Cicero failed in a failing form of government, but through the quality of his writings, his ideals, and hopes for educating future leaders remained available to Quintilian and Tacitus, the educator and historian at the beginning of the 'golden age' of the Antonines: the full form of *De Oratore* seems to have been all but lost until the early fifteenth century, when its rediscovery opened up the humanist values of the Renaissance and later enlightenment. In an anti-rhetorical age, in which many of the finest minds and personalities pursue a very different education, I believe this work still has an ideal to offer that will enhance much of our reading and our power to communicate in whatever new medium our society devises now and in future. While I hope to provoke increased interest in Cicero's work on the Ideal Orator, I am not attempting to match the scholarship of the great Dutch commentary. It will be reward enough if I succeed in helping this work to be enjoyed in its historical and cultural context.

I have also aimed to shape this monograph as a companion to the work: hence the chapters single out major topics in the order in which they are introduced by Cicero himself. As Anton Leeman wisely observed (in *Form und Sinn: Studien zur römischen Literatur* (Frankfurt, 1985), 39–40) the sheer scale of *De Oratore* has deterred even classicists from reading it, or at least reading it with the care it was written. I have aimed to apply his method as a reader: to ask what Cicero has written (its content), how he has written it, and for what purpose.

Like Cicero himself in this dialogue I have not focused on the history and theories of the philosophical schools, except where philosophers and rhetoricians are disputing the same topics as their territory. There are a number of excellent recent discussions that set Cicero's later philosophical works in their Greek context and analyse his originality of structure and argument: these I have thankfully consulted and listed in the bibliography.

Inevitably there are many debts to acknowledge: to Cambridge University and its Faculty of Classics for the enjoyment of their libraries, to Newnham College for its warm welcome, and to Clare Hall for the Fellowship I enjoyed in 2000 and its continued hospitality; to the University of Toronto for readmitting me to its bosom

after fifteen years away from Canada; to the warmth and kindness of my former colleagues at Princeton, especially to Bob Kaster from whom I have learnt so much; and to a number of scholars of rhetoric, especially Doreen Innes, Donald Russell, Gualtiero Calboli, and Lucia Calboli Montefusco for precious offprints and kindly encouragement. In particular Jaap (Jakob) Wisse has provided me with vigorous challenges, and a precious copy of the concordance which he created to *De Oratore*: It has been a constant aid to me. He has also read and annotated with the utmost patience and care texts of several chapters, at various stages when I sought his help. But I can be obstinate, and he should be not blamed for any errors or misjudgements persisting in the text.

I would like to think the book will be useful to my fellow members of the International Society for the History of Rhetoric and to a generation of students and teachers on both sides of the Atlantic.

*Toronto 2003* E.F.

*This page intentionally left blank*

# Contents

# Abbreviations

| | |
|---|---|
| *AJP* | *American Journal of Philology* |
| *BICS* | *Bulletin of the Institute of Classical Studies (London)* |
| *CA* | *Classical Antiquity* |
| *CAH* | *Cambridge Ancient History* |
| *CP* | *Classical Philology* |
| *CQ* | *Classical Quarterly* |
| *CW* | *Classical World* |
| *HSCP* | *Harvard Studies in Classical Philology* |
| *JRS* | *Journal of Roman Studies* |
| *LCL* | *Loeb Classical Library* |
| *MH* | *Museum Helveticum* |
| *MRR* | *Magistrates of the Roman Republic* |
| *OLD* | *Oxford Latin Dictionary* |
| *ORF* | *Oratorum Romanorum Fragmenta* |
| *PBSR* | *Papers of the British School at Rome* |
| *PCPS* | *Proceedings of the Cambridge Philological Society* |
| *RE* | *Real Encyclopädie (Pauly Wissowa)* |
| *REL* | *Revue des Études Latines* |
| *Rh. M.* | *Rheinisches Museum* |
| *TAPA* | *Transactions of the American Philological Association* |
| *TLL* | *Thesaurus Linguae Latinae* |
| *W. St.* | *Wiener Studien* |

# I
# Cicero at 50

Often as I reflect and return in memory to the old days, my dear brother, I think that those great men were immensely blessed who flourished in their tenure of office and glorious achievements in the best period of our political life: for they could hold to a course in life that let them choose between political engagement without personal risk or leisure with public respect.

Cogitanti mihi saepenumero et memoria vetera repetenti perbeati fuisse, Quinte frater, illi videri solent qui in optima r(e) p(ublica), cum et honoribus et rerum gestarum gloria florerent, eum vitae cursum tenere potuerunt, ut vel in negotio sine periculo vel in otio cum dignitate esse possent.   (*De Oratore* 1.1)

## Retrospect: Cicero's Perspective in Defeat

Cicero turned 50 on 3 January 56 BC. This was perhaps not yet the year in which he turned to composing *De Oratore*, but it is a good year for taking stock of Cicero's own position, and the condition of the republic—that is, of senatorial government.[1] Fifty is an age when we take stock of our lives, even with the increased longevity of recent generations, but in the Rome of Cicero's day, given both the average life expectation among the elite and the rigid structure of a political career, 50 would correspond more closely to the way our western society views the age of 60 or 65. Indeed it has been estimated that in Cicero's time only half the young Romans

---

[1] For Cicero's political vicissitudes in 59–50 BC, see T. N. Mitchell, *Cicero: The Elder Statesman* (New Haven and London, 1991), and for the wider context *Cambridge Ancient History* (2nd edn.), ix. *The Last Age of the Roman Republic* (Cambridge, 1995), ch. 9, by T. P. Wiseman, 'The Senate and the Populares', E. S. Gruen, *The Last Generation of the Roman Republic* (Berkeley, Calif., 1974), ch. 3, with chs. 7 and 8 on political trials. Gruen is more detailed but less Cicero-centric, and reflects a prosopographical approach. For a reading of Cicero based on his correspondence, see D. R. Shackleton Bailey, *Cicero* (London, 1971; New York, 1972); on his intellectual and literary activities see E. Rawson, *Cicero: A Portrait* (London, 1975), and ch. 19 (M. Griffin) in *CAH* ix listed above.

aged 25, the normal age for the most junior magistracy, would reach
the age of 50, and the pattern of successive public offices in late
republican Rome may have developed on this assumption.[2]

For those born in the senatorial class, or aspiring to a political
career, offices began with election to one of the junior boards of
annual magistrates (*vigintiviri*), around the age of 25: election to
the quaestorship about five years later would place the young
political careerist as financial assistant to a domestic magistrate or
provincial governor. It was this rank which, by the legislation of
Sulla in or around 82 BC, gave admission to the senate.[3] Barring
disgrace (*infamia*) or removal by the censors' *nota* of condemna-
tion, the senator remained a member of this deliberative body for
life, but was likely to stand for at least two more offices. After the
quaestorship he would choose whether to stand for election to the
tribunate of the people or as aedile. If he had the disposable wealth
to spend on public games as a source of popularity for future office,
he might choose to stand as candidate for the aedileship, as did
Cicero in 70 at the age of 36. But if he saw scope either for making a
name as an intermediary for senatorial policies, recommending
them to the people, or for taking a popularist political stance, he
would opt to stand for election as one of the college of ten trib-
unes.[4] These tribunes were more often sons of the elite than
outsiders, and many simply stood for this office on their way to a
conventional career as a higher magistrate: but for two generations
or more a significant few had used the tribunate to propose radical
social and economic legislation, which was unacceptable to the
majority in the senate. Such proposals could be frustrated if
other tribunes exercised their right of veto, but Tiberius Gracchus
had shown that this too could be overridden. From a conservative
point of view the office itself was becoming dangerously powerful,

---

[2] On the basis of Ulpian's life-expectancy tables—cf. B. Frier, *HSCP* 85 (1981).
Late republican career structure was as much determined by customary practice as
by law, but both ages of candidacy and intervals between offices were largely
standardized by the Lex Villia annalis (171 BC).

[3] On the quaestorship, see Andrew Lintott, *The Constitution of the Roman Re-
public* (Oxford, 1999), ch. 8, pp. 133–7.

[4] The tribunate was however a plebeian office, not open to members of the few
surviving patrician families. Their only access to this office would be through
adoption into a plebeian family, as negotiated by P. Clodius and later P. Cornelius
Dolabella.

and had been disabled as part of Sulla's legislative programme to restore the authority of the senate.[5] Throughout the 70s tribunes were prohibited from independent legislation and from any further candidacy for higher office. It is not surprising that, even after popular agitation restored some of its powers, this office did not attract Cicero.

Successful public men went on to be elected as one of the ten[6] praetors who presided over the public courts during their year of office. Traditionally one could not hold the praetorship before the age of 39. The candidate voted into first position, as Cicero was for his praetorship in 66 BC, won high prestige: he might be appointed as urban praetor, who determined both the procedural rules in civil-law cases between fellow citizens, and the terms on which individual lawsuits were judged, or as Peregrine Praetor, presiding over lawsuits between citizens and non-citizen provincials, or, like Cicero, preside over the *quaestio de rebus repetundis*, the standing court which tried provincial governors for financial or other abuses of their office. The reward for his year of work in Rome would be a provincial governorship, from which most governors emerged wealthy, even without corrupt practices. A military man like Caesar could even earn himself a triumph from a frontier province, and in Cicero's day many ex-praetors held their governorships for two years or more.[7]

The most ambitious ex-praetors would aspire to be candidates for the consulship—the highest annual office, normally held at or after the age of 43. Statistically only one ex-praetor in five could expect to be elected, and the presiding officer of any year could refuse to let a man's name go forward if he were

---

[5] See Lintott, *Constitution*, ch. 8, pp. 121–9. Sulla limited the tribunes' right of veto and may also have prohibited them from initiating legislation (Cic. *Leg*. 3.9.22): according to Appian (*BC* 1.100) he disqualified tribunes from standing for the higher magistracies, thus making the office a dead-end.

[6] See Lintott, *Constitution*, ch. 7, on the higher magistracies, and the detailed study of T. Corey Brennan, *The Roman Praetorship* (2 vols. Oxford, 2000). Sulla increased the number of praetors from eight to ten to cover the increased number of standing courts over which a praetor would normally preside, and perhaps also the growing number of positions governing the less important provinces.

[7] Caesar renounced the triumph which he had earned from his victories in further Spain, in order to accelerate his return to Rome. As an example of tenure as provincial governor, the appalling Verres held his position as governor of Sicily for three years despite repeated petitions for his recall.

technically eligible but personally negligible or controversial.[8] After the consulship came the chance to govern a major province, often for two or three years, before returning to resume one's place in the senate, or possibly to be elected as one of the two censors appointed once every five years for eighteen months' duty.

Cicero learnt from his first provincial service as quaestor in Sicily that efficiency and popularity in the provinces were irrelevant to the political world at Rome: absence abroad was particularly adverse to Cicero himself, who had made his name and fortunes in the courts. After his praetorship he declined to take on a province, as an obstacle to his private career as an advocate.[9] Circumstances, including rumours of conspiracy, enabled this newcomer to Rome with no senatorial forebears to reach the consulship at 43, the earliest possible age. But even before the crisis which led to the suppression of a domestic conspiracy in the last month of his consulship, Cicero again saw the political necessity of declining a province to remain in the city. Early in 63 Julius Caesar, who would be elected praetor for 62, had mounted a showcase trial to challenge the validity of the state of emergency decreed by the senate and Marius as consul in 100 BC to permit the summary execution of supposed revolutionaries.[10] In December, when Cicero had obtained proof that the five chief supporters of the outlawed Sergius Catilina were inciting the Allobroges of Transalpine Gaul to rebellion, he arrested the men and brought the evidence to the senate. He had the support of a strong majority for their execution, but the Lex Sempronia of Gaius Gracchus prohibited the execution of any citizen except by the verdict of a court appointed by the Roman people itself: putting these conspirators to death was a calculated risk in an alarming situation.

---

[8] It is a measure of change during Cicero's career that C. Calpurnius Piso, presiding over the elections for 66, could reject the candidacy of Pompey's former officer, Lollius Palicanus (cf. *MRR* ii. 143), but a decade later the aristocrat L. Domitius Ahenobarbus was driven from the election field by the violence of supporters of Pompey and Crassus when he tried to lodge his candidacy.

[9] So did C. Antonius Hybrida, who would become his colleague in the consulship, thinking it more profitable to serve as a military *legatus* under Pompey.

[10] This was the trial of the elderly C. Rabirius for treason (*perduellio*) before the popular assembly conducted by Caesar and T. Labienus as *duoviri*. Cicero's speech for the defence survives, but Rabirius was neither condemned nor acquitted: the trial itself was aborted by exploiting a technicality.

One particularly alarming aspect of the situation was that domestic politics were overshadowed by growing anxiety about the immense military power of Pompey, expected to return to Italy after his victorious campaigns and the suicide of his enemy, Mithridates of Pontus. Any ex-praetor or consul could expect to function as a military commander while governing a province after his year of office, but Cicero's generation had produced this extraordinary counter-example, a unique military genius who earned two triumphs before holding the consulship as his very first political office in 70 BC. Still under 40 at the end of his consulship, Pompey had disdained any regular province in favour of a major command, first covering the Mediterranean itself to eradicate the pirate fleets (by the Lex Gabinia of 67), followed by or overlapping with the super-command against Mithridates covering several eastern provinces, and bringing several more lucrative provinces into the Roman empire. Fear that Pompey would repeat Sulla's return and impose a military autocracy on Rome dominated domestic politics in 63 and would persist even after Pompey dismissed his troops and returned to Rome.

When Cicero turns in *De Or*. 1. 3–4 to a quick review of his past career, he marks his year as consul as a time when he was plunged into the conflict between senate and populist leaders. But his own description 'the thick of the conflict and crisis in political life' (*medium rerum omnium certamen atque discrimen*) does not speak of the new threat to senatorial government which arose when the wealthy Crassus and rising Julius Caesar, due to be elected consul for 59, saw they could exploit their different strengths to manipulate the returning Pompey. Within a year of his return they formed an unofficial coalition so powerful that they would dominate Roman political life.[11] Even before 56 BC Cicero's confidential correspondence reveals an oppressive awareness of this loss of republican political liberty which he chooses to conceal in his public writings.

The consulship was the height of a Roman career, and would usually be followed by a provincial governorship, then the continuing advisory activity of an ex-consul, who would exercise his authority in determining senatorial decisions. By customary

[11] This collaboration, often misleadingly called the 'first triumvirate' was paraded rather than concealed, and would last from 60 to the death of Crassus in 53.

procedure these *consulares* were asked in order of seniority to give their views on any issue at the beginning of each debate. For such men political life had traditionally brought dignity and a good deal of leisure—Cicero's *otium cum dignitate*. Looking at his predecessors such as Q. Catulus (Cos. 78), L. and M. Lucullus (Coss. 74, 73), L. Gellius Publicola and Cn. Lentulus Clodianus, the consuls of 72 elected together as censors in 70 BC, or even his predecessor as Rome's leading defence orator, Q. Hortensius, consul in 69, Cicero must have expected a similar leisured life divided between the senate and his work as advocate, using the spring and summer recesses to retire to one of his villas and write his memoirs. As a consul hailed by the senate as 'Father' and 'Saviour' of the state, Cicero must have wondered whether it would be his turn to be elected censor in the next round, but the abdication of the quarrelling censors of 65, and failure of the censors of 64 or 61[12] to complete the ritual enumeration of the citizen body may have reconciled him to life without further office.

Cicero's own speeches and the biographies of Suetonius and Plutarch have made the main events of this decade almost deceptively familiar to the student of Roman history.[13] But to Cicero himself the years after his consulship brought not only loss of power, but public attacks from Caesar and followers of Pompey and isolation from the conservatives he had seen as his allies. In the three years from 62 to 59 he tried at first to maintain his policies of protecting the propertied interests of landowners and occupiers of public land, seeking to preserve some level of cooperation between the senate and the wealthy business class of knights, until it was clear that the interests of the two groups were in conflict. Cicero's conservative allies in the senate opposed the financial interests of the business class, whose leader was the enormously wealthy Crassus: at the same time his own opposition to attempts at legislating the land settlements needed for Pompey's demobilized veterans alienated Pompey: thus he was partly responsible for drawing Pompey into the alliance with Crassus and Caesar.

---

[12] On the vicissitudes of the censorship between 70 and 28 BC, see T. P. Wiseman, 'The Census in the First Century BC', *JRS* 59 (1969), 59–75.

[13] See Suetonius' *Divus Iulius* (the life of Caesar, seen as founder of the principate) and Plutarch's lives of Cicero, Pompey, Caesar, Cato, and Brutus, also those of the earlier autocrats Marius and Sulla.

In 59, as consul acting in the interests of all three men, Caesar overrode his conservative colleague M. Calpurnius Bibulus to drive his legislation through the popular assembly in open defiance of technical religious objections. He also secured for himself by a tribunician law a five-year command over the provinces of Illyria and Cisalpine Gaul. It was to Illyria that he looked for military glory, but he was unexpectedly offered the province where he would win his wealth and triumphs, Transalpine Gaul, by the senate itself on the sudden death of its designated governor Metellus Celer. To protect his command and his consular legislation from challenge during the years of absence as commander in Gaul Caesar needed to neutralize or remove Cicero's voice, and when Cicero was unwilling to collaborate Caesar gave Cicero's personal enemy P. Clodius Pulcher access to the tribunate so that he could silence Cicero.[14] As tribune in 58 Clodius secured the cooperation of both consuls, and combined with a popular legislative programme a re-enactment of the Lex Sempronia of Gaius Gracchus forbidding the execution of citizens 'without the authorization of the people.'[15] Cicero knew this was aimed at his responsibility for the senatorial decision to execute the Catilinarians: he appealed in vain to the consuls, to Caesar and to Pompey, and finding himself without support, did not wait to be prosecuted but fled Rome. On his departure Clodius passed a *privilegium* naming Cicero and ordering that he be denied 'water and fire', that is, any kind of shelter, within 700 miles of Rome.

At 48 Cicero was a virtual outlaw; when old friends who owed him obligations, like C. Virgilius the praetor governing Sicily, were forced by Clodius' *privilegium* to turn him away, he followed an uncertain course to Thessalonica (the ban excluded him from staying at Athens) where he was sheltered by the quaestor

[14] Clodius could only stand for the position of tribune of the plebs by having himself adopted by a plebeian, for which he needed Caesar's authorization as consul and Pontifex Maximus. Caesar had postponed granting Clodius' request until Cicero publicly condemned Caesar's use of force to put through his consular legislation: the tradition is that Caesar with Pompey as augur performed the adoption ceremony the same day.

[15] Cicero himself is our source for this law, first in his defence of the elderly Rabirius, whom Caesar prosecuted in a show trial in 63 for killing the radical tribune Saturninus during a senate-decreed state of emergency thirty-seven years before (*Rab. Perd.* 12). Caesar again invoked this law during the senatorial debate on the execution of the Catilinarian conspirators, as Cicero reports in *Cat.* 4.10.

Cn. Plancius, and then to Dyrrachium, the port of embarcation for Italy, from where he could exchange news and correspondence. His wife and children withdrew from the city, his brother's life was threatened, his favourite villa at Tusculum destroyed, and his town house on the Palatine first burnt, then replaced by a new construction with a religious sanction, a portico and temple of Liberty dedicated in Clodius' name. It is not surprising that in *De Oratore* Cicero writes of risking his life since the consulship by opposing himself as a breakwater to prevent stormy political seas from causing universal ruin.[16]

For almost eighteen months Cicero lived in this dreadful isolation and uncertainty, first waiting for the end of Clodius' year of office, then attempting to guide from a distance the growing efforts to legislate his return with full personal status—not only his citizen rights (*caput*) but his former standing (*dignitas*). Even out of office Clodius could mastermind other obstructions through fellow tribunes and mob violence, but by August 57 Cicero was alerted to expect a massive vote of the centuriate assembly for his recall. He left Epirus for Brundisium the day of the vote, and travelled up to Rome, hailed by huge popular rallies in the Italian towns and the city itself. From suicidal depression Cicero was swept into a dangerous level of elation, in which he believed he could resume his political advocacy of conservative measures and his opposition to Caesar's agrarian and other legislation. He was immediately invited to propose a major command for Pompey to reorganize maritime trade and ensure the grain supply of the city, and with his brother Quintus was appointed as one of Pompey's legates. Living through these extremes of rejection and revival, he now attempted to reclaim his old standing by his public action and to vindicate his past by memoirs in prose and even epic poems on his consulate and on his tribulations (*De Temporibus Suis*).

The year 56 seemed to begin well: Cicero successfully averted Clodius' attempt to turn some portents against him in his 'On the Pronouncements of the Diviners' (*De Haruspicum Responsis*) and won acquittal from a charge of public violence for his supporter P. Sestius with a highly politicized defence. The success of this speech, which included an impassioned manifesto for conservative

---

[16] *De Or*. 1.3, *hoc tempus omne post consulatum obiecimus iis fluctibus qui per nos a communi peste depulsi in nosmet ipsos redundarent.*

policies, encouraged him to give notice in April that he would move a debate on Caesar's Campanian land law on the Ides of May.

## The Frustration of Cicero's Policy and his Decision to Turn to Writing

For what happened next, and for many details of the changing political scene, we must turn to Cicero's correspondence. His confidential letters to his old friend T. Pomponius Atticus and slightly more guarded letters to his brother Quintus are our best source for all the events of these years, but the sequence of letters is often broken, not, it is generally thought, because he was afraid to put his thoughts into writing, or because too explicit letters were suppressed by his posthumous editors, Atticus and Cicero's secretary Tiro.

More simply, letters ceased when Cicero and Atticus or Quintus were together or close to each other in Rome. Thus both in 56 and in 55, the year of *De Oratore*, there are months on end without any of these intimate letters.[17] Even so, the letters up to early May of 56 show no sign that Cicero was expecting his first attempt at independent political action to bring him trouble. Pompey voiced no objection in private interviews before he left the suburbs of Rome ostensibly for Sardinia. But all this would change when Pompey travelled to Luca (now Lucca) in Cisalpine Gaul to discuss policy with Caesar, followed by over 200 senators. We only learn how immediately this affected Cicero from one of his later letters to Lentulus Spinther, absent from Rome in 56–54 as governor of Cilicia. According to this letter of spring 54[18] Pompey had intercepted Quintus Cicero as soon as he reached Sardinia, with the peremptory message that Quintus must tell Cicero to keep quiet, if he wanted to remain safe from further threats of exile.

None of the letters of 56 or 55 reports this episode, but from May 56 onwards they show that Cicero knew he had lost his freedom of speech—and speech was his life. He could no longer voice his own political principles without urgent risk—that is the

---

[17] As an active legate to Pompey's reorganization of the grain supply Quintus seems to have been moving between the Italian ports and Sardinia.

[18] *Fam.* 1.9. The story of Quintus' encounter with Pompey is at 1.9.13. It is remarkable that neither this episode nor the completion of *De Oratore* reported in 1.9.23 was mentioned in 1.8, the outspoken letter of early 55.

risk of prosecution and expulsion from life at Rome. Nor did he have any hope of embracing *otium* if he wished to retain his full dignity. Even the option of silence was excluded, and he was pressured to use his eloquence in Caesar's and Pompey's interests.

This is almost certainly the background to an extraordinary letter, written to Atticus from Antium, apparently in June 56 (*Att.* 4.5 = SB 80).[19] It opens with an allusion to a composition that has shocked Atticus by its change of loyalties, and continues in a melodramatic style that reflects Cicero's extreme emotion over his political isolation:

Come now! Do you really think there is anyone to whom I would sooner have read and approve my compositions than yourself? Why then did I send this one to anybody else first? Because the person to whom I sent it was pressing me and I did not have two copies. There was also the fact...that I was not exactly proud of my palinode. But goodbye to principle, sincerity and honour! You will scarcely credit the treachery of our public leaders, as they set up to be and *would* be if they had a grain of honesty about them. I had seen, knew it, led on by them as I was, deserted, thrown to the wolves...

You will say that you recommended what I should *do*, not that I should write as well. The truth is, I wanted to bind myself irrevocably to this new alliance so as to make it quite impossible for me to slip back to those people who won't give up their jealousy even when they ought to be sorry for me. However, I have observed moderation in my 'apotheosis'.

I provide the Latin only for the last, key sentences:

...ego mehercule mihi necessitatem volui imponere huius novae coniunctionis ne qua mihi lice<re>t<re>labi ad illos qui etiam tum cum misereri mei debent non desinunt invidere. Sed tamen modici fuimus *apotheosei*, ut scrips<eram>.   (*Att.* 4.5 = SB 80, translation modified)

What was this 'apotheosis', this hymn of praise that Cicero wrote? It has usually been identified as the senatorial speech on the allocation of consular provinces (*De Provinciis Consularibus*) which Cicero delivered in late May or June 56, in which he proposed the selection of Syria and Macedonia as provinces for the outgoing consuls of 56, rather than Caesar's Gallic provinces, and did so by both damning his enemies Piso and Gabinius, who

---

[19]  All quotations of the correspondence with Atticus will be cited with references to the numbering of D. R. Shackleton Bailey's bilingual *editio maior* and his 2-vol. Penguin translation. Some Greek forms in SB's text have been transliterated.

governed Syria and Macedonia, and praising Caesar's conquests in Gaul. The later part of the speech is filled with an explicit justification of renouncing his opposition to Caesar, that is, a declaration of his new friendship, for the sake of the state and—less justifiably in modern eyes—his right to retaliate against all those who had treated him with public spite. For in both the speech and the letter Cicero justifies what we now know was the enforced abandonment of his political principles: respect for the primacy of the senate and resistance to the concentration of power in the hands of military leaders. His only comfort for this embarrassing volte-face was that it allowed him to inveigh against the consuls of 58 who had rejected his pleas, and to score off his conservative former allies who had betrayed him (whether by malice or inertia), taking no steps to protect him from Clodius' legal and physical attacks.

Only two letters to Atticus follow 4.5 in the year 56, the politically inconsequential 4.12 (SB 81, now dated to the end of June), and 4.8a (SB 82) written around 17 November, when the consular elections had not yet been held, but Domitius Ahenobarbus had been excluded by force from professing his candidacy. The consulship of 56 had been seen as his by right of birth—and he would no doubt have been elected by an assembly weighted in favour of elite voters, if he had not been prevented from standing. After this letter (which alludes to the dynasts without naming them) no letter to Atticus is datable to the first three months of 55. Two letters, one to Quintus (2.8 (7)) and one to Lentulus Spinther (*Fam*. 1.8) reflect Cicero's despair about the present and future state of political life:

Public life is beyond doubt in the control of our friends, and to such an extent that it seems there will never be any change during this generation ...

[res communes] sunt quidem certe in amicorum nostrorum potestate, atque ita ut nullam mutationem unquam hac hominum aetate habitura res esse videatur.   (*Fam*. 1.8.1)

But the ideals I had set before me ... dignity in giving my senatorial recommendations, and liberty in pursuing my own policy, have been completely taken from me, yet I am no worse off than all others ... the whole nature of the senate, the courts, and all public life, has been transformed.

Quae enim proposita fuerant nobis ... dignitas in sententiis dicendis, libertas in re publica capessenda, ea sublata tota sunt, nec mihi magis quam

omnibus: . . . commutata tota ratio est senatus, iudiciorum, rei totius pub-
licae   (*Fam*. 1.8.3–4)

For the first time Cicero concludes that he must withdraw: *otium
nobis exoptandum est*.

   After *Att*. 4.5 the next letter in the manuscript sequence, 4.6 (SB
83), used to be assigned to April 56, close in time to 4.5. But its
tone of political discouragement would have been out of keeping
with Cicero's relative optimism in April 56. It reflects the
same bitter awareness of his dependence on the goodwill of
Pompey and Caesar, and the same attraction towards withdrawal
as in *Fam*. 1.8:

As for me, reckoned a madman if I speak on politics as I ought, a slave if
I say what is expedient and a helpless captive if I say nothing—how am I to
feel? As I do, I suppose, and all the more bitterly because I can't even
grieve without seeming ungrateful to you. Suppose I choose to fold my
hands and seek a haven of refuge in retirement? Vain thought! On the
contrary I must join the fray . . .

Ego vero, qui si loquor de re publica quod oportet, insanus, si quod
opus est, servus existumor, si taceo, oppressus et captus, quo dolore
esse debeo? Quo sum scilicet, hoc etiam acriore quod <ne> dolere
quidem possum, ut non in te ingratus videar. Quid si cessare libeat et
in oti portum confugere? nequaquam. immo etiam in bellum et in
castra . . .   (4.6 = SB 83, 2)

This letter was redated to April 55 in an important paper by Lily
Ross Taylor, endorsed in Shackleton Bailey's edition of the letters
which also attributes the letter to Cicero's new villa at Cumae.[20] It
seems to belong with 4.10 and 4.9 (in that order) in the second half
of April, and can also be linked to *Fam*. 5.12, Cicero's well-known
request to Lucceius to make him the hero of a historical mono-
graph. Miss Taylor connected the letter with *De Oratore* because
of its allusion to some previously mentioned writings associated
with Hortensius, 'illa Hortensiana'. Material about Hortensius?
Cicero would write about Hortensius later, in the *Brutus*, com-
posed four years after Hortensius' death.[21] Rather, as Miss Taylor
argued, something addressed to Hortensius, a work concerned
with their common interest in oratory.

   [20]   See L. R. Taylor, *CP* 44 (1949), 217–21, and *Letters to Atticus*, app. 2 (233–5).
   [21]   The death of Hortensius is the occasion of the dialogue reported in *Brutus* (cf.
1–2) and its penultimate theme is an evaluation of Hortensius' oratory and career
(317–27).

With this in mind, and the end of *De Oratore,* in which Catulus hails the young Hortensius as a rising star, Taylor made the inspired guess that Cicero was talking about what became *De Oratore.* But the *Hortensiana* of 4.6 are something that Cicero is still only beginning to write and has currently left off (*incipiendo refugi*). Apart from allusions to feasting on Faustus Sulla's library and devouring literature with his Greek secretary Dionysius, *Att.* 4.10, 9 and 11 (this last from late June) offer no further hint of work in progress, but it is notable that even in June Cicero is staying away from Rome.

It was left to two *privati*, Cato and M. Favonius, to combat the tribunician legislation of Trebonius on behalf of Pompey and Crassus' five-year commands, in episodes of violence unreported by Cicero, but fully described by Dio and Plutarch.[22]

There is no letter to Atticus until November, when Cicero reports that he returned to Tusculum for four days on 14 November.[23] But it seems he has not come from Rome, and has been away from the city for some time, since he asks Atticus to bring him up to date on the present state of affairs, so that he will not seem a stranger when he returns:

> I have not been idle over the work on oratory. It has been in my hands much and long. You can copy it. May I ask you again to give me the present situation in outline, so I shall not come back to Rome like a foreigner?

> De libris oratoriis factum est diligenter. Diu multumque in manibus fuerunt. describas licet. Illud etiam te rogo, *tên parousan katastasin tupô-dôs*, ne istuc hospes veniam.    (4.13.2 = SB 87, translation modified)

The letter presupposes previous discussion of the work between them: let us suppose Cicero stayed away from Rome throughout the spring and summer. Even so composition and revision have been completed in less than six months. And by July 54 (*Att.* 4.16 = SB 89) he was launched into *De Re Publica*: he had finished two books by October or November (*Q.Fr.* 3.5) of that year.[24] Even at

---

[22] M. Porcius Cato, tribune of 62, held no magistracy until he was elected praetor in 54: Favonius, his supporter, had been quaestor in 59. For the riots associated with this legislation see Ch. 9.

[23] There are virtually no letters in 55, except the brilliant reportage on the theatrical and circus games opening Pompey's theatre for the invalid M. Marius, *Fam.* 7.1.

[24] But as Leeman and Pinkster, *M. T. Cicero: De Oratore libri III*, i (Heidelberg, 1981) rightly stress, *De Re Publica* was not finished until 51. It was a work that required a great deal of preliminary research into Roman history and Greek political theory.

this rapid rate of progress, Cicero would require more than six months for the three much longer books of *De Oratore*—surely beyond even his fluency of writing? We could construct a scenario in which, for example, Cicero had already begun *De Oratore* in the second half of 56, was encouraged by Atticus to consider dedicating a separate treatise to Hortensius, and felt uninspired, so paid tribute instead by weaving him into the finale of the long work he had already begun and dedicated to Quintus. And for this there is some support—there can be nothing stronger—in Cicero's references in letters of June 56 (*Att*. 4.4a and 4.8) to Tyrannio's services in arranging his library at Antium. Cicero must have been eager to use his library for scholarly writing even then, and conversations with the learned Tyrannio can only have stimulated his urge to write. Later, Tyrannio worked for Faustus Sulla, who had inherited from his father the esoteric Aristotelian works owned by Apellicon; by May 55, as we saw, Cicero had moved into his new villa at Cumae and was certainly using Faustus' library either as his guest, or, as Shackleton Bailey suggests, as its new owner (*Att*. 4.10, SB 84). Faustus was heavily in debt and Cicero may have bought the collection, especially if he had learnt from Tyrannio the previous year that it included previously inaccessible and uncatalogued Aristotelian material. The question will be important for determining whether Cicero had access to the Aristotelian *Art of Rhetoric* while he was working on *De Oratore*.[25] Another less imaginative possibility is that *Att*. 4.6 is indeed written from Cumae in 55, but somewhat earlier than its conjectured April dating.

How unreasonable is it to suppose that Cicero began *De Oratore* in 56, when he was first galled by his loss of political liberty, and would seek escape by turning to study and composition? Cicero does not mention any writing to Atticus or Quintus, but then only one letter between them is preserved after June of that year, *Att*. 4.8a (SB 82), prompted by the scandal of the postponed consular election campaign of November 56. Since correspondence with Atticus lapsed whenever they were in reach of each other and had

[25] On Cicero's relations with Tyrannio and the timing of his first acquaintance with the *Rhetorica*, see now J. Barnes, 'Roman Aristotle', in J. Barnes and M. Griffin (eds.), *Philosophia Togata*, ii (Oxford, 1997), 18 and 44–54, and the discussion in Ch. 7 below.

no need to write, any argument from silence is futile.[26] The only evidence for Cicero's private writings from 56 is a reference in *Q.Fr*. 2.6 to Quintus' reception of Cicero's poem 'On his times' (*de temporibus suis*). But in *Fam*. 1.8.3, written early in 55, Cicero speaks of possible writings only as something for the future: first he must support Pompey's agenda, and failing that, he must keep quiet, or even return, as he would most like, to study and composition—both are implied by *studia...litterarum*.[27] In January or February 55 this is still ahead (*quod profecto faciam*), and contingent on Pompey's needs, *si mihi per eiusdem amicitiam licebit*.[28] It is natural to read this letter only as a further step towards the literary activity that we find consummated in November.

In the end we may conclude that there is simply not enough evidence to determine when Cicero began work on *De Oratore*.

## Cicero's own Critical Judgements of De Oratore

How did Cicero perceive this first dialogue when he had completed it? The first reference, as we have seen, speaks only of the labour he has spent on it. The following summer in the long letter *Att*. 4.16 (SB 89), he is chiefly concerned with his current work on *De Re Publica*, but mentions Atticus' enthusiastic reactions and comments on some of the implications of the first dialogue's historical setting. Since it was set back a generation, to 91 BC, there could be no references by the speakers to anyone they did not know or had not studied with (*nisi eius qui illis notus aut auditus esset*). But Atticus had questioned Cicero's procedure in removing the old augur Mucius Scaevola from the conversation of *De Oratore* at the end of the first book. So Cicero explains by quoting Plato as his model (4.16.3). Plato had taken Cephalus, Socrates' host in the

[26] On the hazard of making assumptions about interruptions in the correspondence, see now Mary Beard, 'Ciceronian Correspondence: Making a Book out of Letters', in T. P. Wiseman (ed.), *Classics in Progress: Essays on Ancient Greece and Rome* (Oxford, 2002), 103–45.

[27] Given not just Cicero's own habits, but the pattern of elite Roman 'leisure', it is if anything more likely that *litterae* meant writing and the research that preceded it than that it implies the intention of non-productive reading.

[28] Although Cicero did not undertake any defences of Pompey's or Caesar's supporters until 54, it is clear that Pompey had asked Cicero to give his active support both in the courts and senatorial debate.

*Republic*, out of the dialogue after he spoke in the first book, which Cicero interprets in social terms, assuming that Plato thought it would be inappropriate to keep such an old man present through such an extended conversation.[29] On the same principle Cicero thought he should spare Scaevola: given his age and frail health and distinction, it did not seem proper to keep him at Crassus' Tusculan villa for several days; besides the discussion in the first book was congenial to Scaevola's expertise in law, whereas the other books were full of didactic theory—*Technologia*.

This perhaps premature quotation introduces three aspects of our dialogue. The first is Cicero's concern for historical accuracy, not only in depicting the characters of his dialogue, but in reconstructing their social setting and cultural world, including their access to Greek and Roman *litterae*. The historical setting will be discussed in Chapter 2, on the careers of Cicero's teacher Crassus and his friendly rival Antonius. Their cultural world will be considered along with the literary judgements of Cicero's representatives in the dialogue, in Chapter 5. The second aspect, introduced at *Att*. 4.16.3, is Cicero's choice of Plato as a formal, literary model, in particular of Plato's *Republic*, a dialogue concerned not with rhetoric but with the state and the education of the wise statesman. This will be discussed in Chapter 3. Finally, as we saw, Cicero makes a distinction between his first book and the two that follow it, claiming that the contents of the first book are more general, whereas the second and third books resemble manuals of rhetoric (*technai*) in containing professional theory. This study will move sequentially through the dialogue. Although each of its chapters needs to incorporate many cross-references between the Ciceronian books, the argument of book 1 is largely covered in Chapters 1–5, that of book 2 in 6–9, and book 3 in 10–12.

Cicero's assessment of his own cultural models and sources emerges from the letter sent in 54 to Lentulus Spinther, the consul who had proposed and engineered Cicero's restoration. This letter (*Fam*. 1.9), which I have already considered in part, was almost certainly circulated to a wider readership and serves as a political

[29] In fact Plato's motives are more likely intellectual: as the argument became more innovative, Socrates would need to challenge his interlocutors more freely than was compatible with Cephalus' age.

apologia, explaining how Cicero had been constrained to change his political stance in the years since Spinther left for Cilicia early in 56. But apparently Lentulus had also asked Cicero to forward his recent writings. Besides some speeches and his autobiographical poem, Cicero describes *De Oratore*:

I have also composed three volumes in the form of an argument and dialogue *On the Orator* in the manner (so at least I intended) of Aristotle. I think your son will find them of some use. They do not deal in the standard rules, but embrace the whole theory of oratory as the ancients knew it, both Aristotelian and Isocratean   (*Fam*.1.9 = SB 20, 23)

Scripsi igitur, Aristotelio more, quem ad modum quidem volui, tris libros in disputatione et 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.

Thus the same dialogue which emulated Plato in its presentation, and used a Roman historical setting, was written in the fashion of Aristotle (*Aristotelio more*), and included the teachings of both Aristotle and Isocrates. This is indeed a paradox, since Aristotle is reputed to have been hostile to, if not contemptuous of, Isocrates, and to have turned to teaching rhetoric himself only in order to oppose and correct his older contemporary. But Aristotle's teachings on *inventio* (the *pisteis*) dominate the core of book 2, and his recommendations on style (*lexis = elocutio*) in *Rhetoric* 3 are recognizable in *De Oratore* 3, whereas Cicero's use of Isocratean theory is confined to his discussion of imitation in book 2, and of rhythm in book 3, from 170–98. Chapter 7 of this study tries to do justice to Cicero's relationship with Aristotle, while the last section of Chapter 4 deals more perfunctorily with Isocratean theory of imitation, and a section of Chapter 12 touches on both Aristotle and Isocrates in reporting Cicero's account of rhythm. However, the term 'Aristotelian fashion' refers to Cicero's formal structure, implying its difference from Plato in two radical ways. Cicero himself comments to Atticus that he has composed separate personal prefaces to each book of *De Re Publica*, just as Aristotle did in his (now lost) popular works,[30] and this is also a conspicuous feature of each book of *De Oratore*. Within *De Oratore* itself Cicero

---

[30] *Att*. 4.16 (SB 89), 2: *in singulis libris utor prohoemiis ut Aristoteles in iis quos exoterikous vocat* (I employ prefaces to each book, as Aristotle did in what he called his 'exoteric' pieces: modified from the translation of SB).

also identifies as an important Aristotelian practice the systematic presentation of arguments on both sides of a debate (*disputatio in utramque partem*).[31] We can contrast this with Plato's technique of letting some innocent put up a vulnerable thesis for Socrates to demolish. Finally in a letter to Atticus discussing his own *Academica* Cicero speaks of Aristotle's dialogues as designed so that he himself can be the leading voice, and expound his views in continuous speeches.[32] In *De Oratore* there are indeed continuous expository speeches, but Cicero has shared the leading voice between Crassus (who dominates books 1 and 3) and Antonius, who dominates successive topics in book 2.

## Proem, Preface, and Outline

In rounding off his quasi-dedication of *De Oratore* at 1.4 (cf. 1.23) Cicero returns to Quintus as if his brother had been urging him to write on this theme: Cicero's still poorly defined memories of a past generation, and the views of great speakers and distinguished men about the whole nature of eloquence are now offered as answer to Quintus' request.

In prefatory mode he puts words into Quintus' mouth. Since Cicero's immature writing from his youthful if not childish notebooks (*ex commentariolis nostris inchoata ac rudia*) are unworthy of his age and experience, Quintus has asked for a more refined treatment. And Quintus has his own distinct approach to oratory, for Cicero reports that they disagree: eloquence, which Cicero sees as a product of formal theory, Quintus sees as purely a product of talent and practice.[33]

The immature writings are the two volumes of *De Inventione*, a traditional treatise on sources of argument composed in the early 80s BC which the Middle Ages would take as Cicero's mature views, and use as their guide, together with the contemporary

---

[31] Cf. Crassus at *De Or*. 3.80: *qui Aristotelio more de omnibus rebus in utramque sententiam possit dicere, et in omni causa duas contrarias orationes praeceptis illius cognitis explicare* (a man who can speak in the fashion of Aristotle on either side of any topic, and compose two opposing speeches on every issue, having understood his recommendations).

[32] *Att*. 13.9.4 (SB 326), *in quo ita sermo inducitur ceterorum ut penes ipsum sit principium*.

[33] 1.5, *tu autem illam ab elegantia doctrinae segregandam putes et in quodam ingenii atque exercitationis genere ponendam*.

*Rhetorica ad Herennium*, the anonymous manual of rhetoric dedicated to an unidentified Herennius. Since it survives, a brief look at the preface of *De Inventione* will provide the most instructive contrast with the preface with which Cicero follows the personal dedication of *De Oratore*.

This too starts from the author's supposed reflections on the nature of oratory, but in terms of its power for political good or evil. Following in the tradition of Isocrates, the preface of *De Inventione* claims oratory, rather than philosophical wisdom, as the source of civilization, since philosophy is helpless to persuade without eloquence. On the other hand eloquence without philosophy—or at least morality—can do great political damage. It offers a historical reconstruction of the origin of eloquence as the wise man's tool to persuade men to unite in cities and make and observe laws. It was the eloquence of good and wise men that promoted the best societies.

But then unscrupulous lawyers successful in defending private cases without concern for morality rose to dominate in society, and brought the state to ruin, driving the better and wiser men to shun political life just when eloquence was most needed to resist unprincipled politicians.[34] As a result the best men studied other honourable disciplines and perfected them, neglecting eloquence. However, with a slight lurch in argument, the young Cicero claims that Rome's great political leaders of the previous century were indeed both virtuous and eloquent. He adds, more consistently, that it was essential that such good and wise men should use their eloquence to defeat the wicked, for the sake of the community; in doing so they would also obtain honour for themselves and provide protection for their friends, winning as their prize the gift by which men excel other animals. The last statement in this introduction takes as a fact that such eloquence cannot be brought about by nature and practice alone, but depends upon formal instruction— the very bone of contention between Cicero and Quintus.

In contrast with the earlier work, the main part of Cicero's preface to *De Oratore* asks a question, itself based on a presupposition:

---

[34] *De Inv*. 1.4, *cum ad gubernacula rei publicae temerarii atque audaces homines accesserant maxima ac miserrima naufragia fiebant. Quibus rebus tantum odii atque invidiae suscepit eloquentia ut homines ingeniosissimi . . . se in studium aliquod traderent quietum.* Cicero will remodel this argument in his interpretation of Greek intellectual history in *De Or*. 3. 59–61.

we ought, he says, to investigate why there are more men of admirable achievement in any other art than in oratory (1.6). This is true even of the greatest arts, such as generalship—and here he narrows focus to Rome: this state has produced countless great generals, but we can hardly produce a few orators. Or take statesmen who can guide the state with advice and formal political judgements (*consilio ac sententia qui regere ac gubernare rem p(ubli-cam) possent*, 1.8): there have been a good many in the time of our fathers and even our forefathers, whereas there has scarcely been one tolerable orator in each generation.

This distinction between the statesman and the orator is not one that Cicero will maintain consistently: indeed we will come to realize that the main reason for the rarity of a great orator is that he is being required to have the ability not just of a speaker, but of a statesman.

At this point Cicero moves back for a different approach, reviewing the intellectual arts from the oldest art of philosophy to mathematics and astronomy, and music and literary interpret-ation. Anyone who has devoted himself to these arts has been able to master them, even the art of poetry (1.11) in which the smallest number have excelled. Cicero finds this all the more surprising, since the other intellectual pursuits depend on rarified learning, whereas the art of speaking is publicly accessible, deriving from common usage and the customs and conversation of ordinary men; in fact it is the greatest fault in speaking to deviate from normal practice (1.13).

Cicero has moved on to the circumstances that facilitate and encourage any art: after all, he claims, it is not that more people devote themselves to other arts, or find more enjoyment or better prospects or greater rewards than in oratory. But this comparison is only a transition to an outline of the development of oratory at Rome itself. From the time when her rule over other nations guaranteed Rome a peaceful society (*otium* again), all the young men with ambition thought they should aim to possess eloquence; at first they had to rely on talent without any theory or instruction; then after hearing Greek orators and coming to know Greek writings they employed Greek teachers and were consumed with enthusiasm. The abundance of major trials gave young men op-portunities for practice, and vast rewards in influence, wealth, and prestige. Besides, Romans always outstripped other nations in

sheer talent. With intelligence, opportunity, and incentive, how could there be so few orators?[35]

The explanation has to be the sheer difficulty of the art: the knowledge of subject matter, without which fluency is hollow and absurd, the shaping of one's diction, the understanding of rousing or calming the emotions on which all power in speaking depends, charm, humour, a gentleman's cultural equipment (*eruditio libero digna*), quickwitted brevity in exchanges, combined with charm and taste (1.17). To this Cicero adds a knowledge of history and its examples, and the civil and constitutional law. Then performance requires all the skills of an actor and the orator must control the memory of his speech or it is wasted.

Now that Cicero has answered his own question, he applies himself to the duty of inspiring the young and convincing them of the need for knowledge as the foundation of all speech. But since the Greeks in their leisure have developed specialization in this as in other disciplines, Cicero now agrees to limit his consideration of oratory to the needs of the courtroom and political debate (1.22). What will be new is his declared source, not in standard childhood instruction such as the Greeks have made freely available to all, but in the mature discussion of Romans renowned for both oratory and public leadership. And with this phrase and their authority Cicero has returned to his original address to Quintus.[36] In contrast with *De Inventione*, *De Oratore* sets out a demand not just for rhetorical training, but for the orator's profound education. Each of the requirements alluded to in this preface will receive considered attention at least once in the course of the ensuing dialogue.[37]

It is time now to offer a preliminary outline of the setting and structure of the dialogue. As his setting Cicero chose the Tusculan

[35] We have here a sort of microcosm of the arguments Cicero will use as a framework for his *Brutus: De Claris Oratoribus*, composed in 46.

[36] Cf. the motifs of eloquence and political distinction repeated in *De Or.* 1.23 *in nostrorum hominum eloquentissimorum et omni dignitate principum disputatione* from 1.4, *quae viri omnium eloquentissimi clarissimique senserint.*

[37] Cf. *De Inv.* 1.5, *si [eloquentia] forte non natura modo neque exercitatione conficitur, verum etiam artificio quodam comparatur* (if eloquence is not achieved by talent and exercise alone, but also by some technical training) with *De Or.* 1.5: *ego eruditissimorum hominum artibus eloquentiam contineri statuam, tu autem illam ab elegantia doctrinae segregandam putes, et in quodam ingenii atque exercitationis genere ponendam* (I declare eloquence to be contained in the technical works of the most learned men, while you think it should be kept apart from the refinement of teaching and counted as a product of talent and exercise).

villa of his own great teacher L. Licinius Crassus (Cos. 95) during the public holidays which enabled political figures to withdraw from Rome. It is 91 BC, the year of crisis just before the social war between Rome and her Italian allies, and the last few days of Crassus' life, as Cicero will reveal in his last preface, to the third book of the dialogue. With Crassus is his fellow orator M. Antonius, slightly older than his host, and consul four years earlier in 99 BC.

Two younger men who have been pupils of Crassus, L. Aurelius Cotta and P. Sulpicius Rufus, who had also studied with Antonius, have been invited, and provide the justification for the serious instruction about oratory which will emerge in the dialogue.[38] Of these the longest lived, Cotta, is represented as Cicero's source, recounting the series of discussions faithfully from his memory. But this nucleus of teachers and pupils is enhanced in book 1 by the presence of Crassus' father-in-law, Q. Mucius Scaevola, an augur and a great jurisconsult. When Scaevola goes home at the end of the first day and the first book, he meets his friends and neighbours Q. Lutatius Catulus (Cos. 102) and his younger stepbrother C. Julius Caesar Strabo. As a result, they come to call on Crassus at the beginning of book 2, and are invited to stay, which they do until the dialogue ends. Each of these three makes his own special contribution: Scaevola with his defence of philosophy and concern for Roman civil law in book 1, Strabo in his discussion of wit and humour in the second half of book 2, and the philhellene Catulus by providing a literary and aesthetic viewpoint on the discussion of historical writing and the style and ornament of oratory.

Although Cicero distinguishes the first book from the other two in its freedom from technical discussion, the first and third book act in many ways as symmetrical and corresponding panels of a triptych. In both the first and third book Cicero confronts the challenge of Platonic philosophy—personalized as Socrates—to the integrity of rhetoric: both books allude to Plato's *Gorgias*, in which he refuted the claims of the great sophist, and denounced Athenian political oratory: both books also refer, early in 1 and late in 3, to Plato's later *Phaedrus*, in which he offered the prospect of a scientific and morally acceptable art of oratory.

---

[38]  Leeman–Pinkster, i. 23, note that both men were already about 33 years of age, but that Cicero has enhanced their relative youth in keeping with his representation of the dialogue as aimed at their instruction.

But Cicero actually approaches the challenge of philosophy indirectly. Certainly Scaevola, the senior member of the party, responds to Crassus' brief and traditional eulogy of rhetoric (1.30–4) by affirming the equal rights of the philosophical schools to claim responsibility for the education of Rome's future leaders (1.41–4). But his criticism has a wider range and a more traditionally Roman aspect. First he answers Crassus' Isocratean claims that civilization and civil societies were created by orators,[39] rather than wise and courageous leaders (35–6), supporting his argument with Roman examples, from Numa and L. Iunius Brutus, founder of the republic, to the elder Ti. Sempronius Gracchus, whose policies preserved the conservative predominance in the Roman electorate. Then he protests on behalf of Roman cultural tradition, represented by *mos maiorum*, ancestral practice, and two disciplines in which he has personal authority. The first to be mentioned (1.39) is augury, and other religious observance (*religiones et caerimoniae*); the second is jurisprudence. Crassus will argue for the importance of jurisprudence in the first conversation (1.169–203). But we will hear no more of religion. One of the most surprising aspects about *De Oratore* is that it is completely secular: neither the traditional gods nor the single deity of Stoic and other philosophies play any role in the entire dialogue. Ten years later Cicero will devote himself to analyses of Roman theology and divination in *De Natura Deorum* and *De Divinatione*, but in this first of his dialogues religion is absent, except as a rhetorical ornament:[40] it is

---

[39]  For the role played by rhetoric in forming civil society compare Cicero's early *De Inventione* 1.1–3. Here there are already some modifications of Isocrates' claims, e.g. the depiction of primitive man as lacking the morality provided by an 'ordered system of religious worship or of social duties' (*non divinae religionis, non humani offici ratio colebatur*, 1.2) and the supplementary explanation of how rhetoric itself could be perverted in civil society 'when a kind of affability acquired the power of eloquence in a depraved imitation of virtue lacking any consideration of moral duty' (*postquam vero commoditas quaedam prava virtutis imitatrix sine ratione offici dicendi copiam consecuta est*, 1.3–4). On Isocrates' claims see W. Jaeger, *Paideia*, iii, tr. G. Highet (Oxford, 1944), ch. 2, 'The Rhetoric of Isocrates and its Cultural Ideal'. The theory receives no separate discussion in George Kennedy's *Art of Persuasion in Greece* (Princeton, 1963).

[40]  This may seem an extravagant claim, but consider the following data: *religio, religiones*, occur only 4 times (add to 1.39, quoted here 1.31, 2.268 and 367, in the sense of scruple(s)), *religiosus* only at 2.184 of appealing to the jury by depicting the client's moral scruples: *deus, di (immortales)* occur 17 times: *deus* of exalting the eloquent as gods among men (1.106, 202; 2.179, 180 bis), as a rhetorical topos or ploy (1.56, 85; 2.47, 71, 196), 5 times in exclamations (like our 'good God!'

philosophy that is prominent, but prominent as a rival for the 'hearts and minds' of Rome's future statesmen. And for all his own philosophical training and praise of the discipline, Cicero is only prepared to accept philosophy as a source of logic and *inventio* (two aspects of argumentation), not as a guide to moral or political decision-making.

I will return to philosophy in Chapter 3, where we will need to study in detail Cicero's response to both the content and the form of Plato's teaching on rhetoric. Once Crassus has fended off other issues raised by Scaevola he redirects debate in book 1 to the question whether rhetoric can claim to be an art. The negative judgements by contemporary Greek philosophers that are paraded in book 1 will be answered in book 3 through a reinterpretation of the history of the art of words which makes Socrates a destructive schismatic, and a redefinition of rhetoric which attempts to incorporate both logical argumentation and ethical principles.

At the same time the contents of *De Oratore* follow in a freer and more discursive form the traditional sequence of topics handled by rhetoricians; in book 1 the requirements of natural, physical, and intellectual talent (*natura, ingenium*), of personal appplication (*studium*), and of practice (*exercitatio*), to which Cicero adds his demands for a more encyclopedic education in philosophy, history, and law. The role of imitation (*imitatio*) and the far more complex theme of invention and argumentation is handled by Antonius in book 2, along the lines of threefold 'proofs' or persuasive techniques (*pisteis*) from Aristotle's *Rhetoric*; this is followed by a briefer discussion of *dispositio* (arrangement of the parts of the speech), of the contexts of public oratory, and of memory. Finally Crassus again dominates book 3 as he first gives Cicero's answer to the challenge of Socratic philosophy, then offers a guide to intrinsic style, to the enrichment of speech by philosophical digression, and to more extrinsic ornament in language and rhythm. The last element in traditional theory, performance, is treated by analogy

1.185; 2.202, 225; 3.126 and 3.93, *si dis placet!*). The nearest the dialogue comes to belief is at 1.115 and 3.8 where eloquent men and Crassus' timely death *seem to be* actions or creations of the gods. There are no references to Jupiter, or other gods above or below the earth, no religious instances of *colere, cultus, vovere, votum, orare, precari*, or *preces*, and temples are mentioned only as architectural and political sites.

with that of classical drama, before a brief epilogue marks the end of the day and the discussion. All this deserves and will receive fuller treatment as the book moves to discuss separate themes and issues covered by the dialogue and to relate them to the variety and vicissitudes of public life during Cicero's career.

# 2

# The Public Careers of L. Licinius Crassus and M. Antonius

Quam multi enim iam oratores commemorati sunt . . . cum tamen spisse atque vix . . . nunc ad Antonium Crassumque pervenimus! Nam ego sic existimo, hos oratores fuisse maximos et in his primum cum Graecorum gloria Latine dicendi copiam aequatam.   (Cic. *Brutus* 138)

How many speakers have been mentioned when we have barely and laboriously reached Antonius and Crassus! For it is my belief that these were very great orators, and that Latin eloquence matched the pride of the Greeks for the first time in their oratory.

If there are two public speakers of the generation before Cicero whose talents and careers can still be recovered, these are L. Licinius Crassus and M. Antonius. Of course it is Cicero's witness that has kept them alive: more than half of the details of their advocacy and actual speeches come from their 'own' claims and the comments of other interlocutors in *De Oratore*.[1] Much of this is confirmed with valuable further comment ten years after *De Oratore* in Cicero's *Brutus*, which outlines the early career of Crassus and gives stylistic character sketches of both men. Yet

---

[1]  Evidence for the speeches of Antonius and Crassus is based on the 4th edn. of H. Malcovati, *Oratorum Romanorum Fragmenta* (Pavia, 1975), cited here as *ORF*. For discussion of the career of Antonius see Udo Scholtz, *Der Redner M. Antonius* (Nurnberg, 1963), and on Crassus, Elizabeth Rawson, 'L. Crassus and Cicero', *PCPS* 17 (1971), 75–88 = *Studies in Roman Culture and Society* (Oxford, 1991), 16–33. Since Cicero himself was not yet 16 when Crassus died, he has to authenticate his knowledge through intermediaries; Sulpicius is made to cite Crassus' secretary (1.136, *ex eius scriptore et lectore Diphilo suspicari liceret*) for Crassus' practice as a mentor, and Cicero in his own person cites his uncle Lucius and friend C. Aculeo (2.2) as witnesses to the broad Greek culture of both Crassus and Antonius.

Crassus had almost come to the end of his career by the time the young Cicero could know and observe him, and Antonius was an elder statesman before Cicero was 10 years old. Evidence from other later sources amplifies but does not contradict the picture left to us by Cicero: most of it seems to derive from him. One should certainly ask how far he has idealized these men, or adjusted their political stance to his own values. Yet while Cicero may be exaggerating the degree of friendship and harmony between them, he can surely be trusted in his documentation of their public performances. Indeed one of the strongest arguments for his veracity is the striking contrast he establishes between the two men's talents and careers.

Cicero's family was on good, if perhaps respectful, terms with Crassus. His grandfather was one of the leading men of Arpinum, and his father and paternal uncle Lucius both knew Crassus well, as did his maternal aunt's husband C. Visellius Aculeo. Indeed Cicero depicts Aculeo as Crassus' confidant and friend. This older generation entrusted Cicero and Quintus, along with Aculeo's children, to Crassus to supervise their education. According to the preface to book 2 of *De Oratore* Crassus decided their course of study and chose their teachers: they worked at his home and heard him debating and practising disputation with their teachers with apparent omniscience and in fluent Greek.[2] This may also be the reason why Cicero describes Crassus' great speech on behalf of Servilius Caepio's pro-senatorial jury law as his virtual teacher. The orators of Crassus' generation did not usually publish their speeches, but this one, delivered in the year of Cicero's birth (*Brutus* 161, 164), was still being circulated and memorized among student orators fifteen years later when Cicero began to train with Crassus. However it must be remembered that Cicero was not yet 16 when Crassus died. He may never have heard Crassus in court, as is surely the implication of his description of

---

[2] *De Or.* 2.2, *cumque nos . . . et ea disceremus quae Crasso placerent et ab iis doctoribus quibus ille uteretur erudiremur, etiam illud saepe intelleximus cum essemus eius domi . . . illum et Graece sic loqui nullam ut nosse aliam linguam videretur, et doctoribus nostris ea ponere in percontando eaque ipsum omnia in sermone tractare, ut nihil esse ei novum, nihil inauditum videretur.* (Since we learnt what Crassus thought good for us, and were trained by the teachers he himself employed, we realized when we were at his house . . . that he spoke Greek as well as if he knew no other language, and put such questions to our teachers, all of which he treated in discussion, that nothing seemed new or unfamiliar to him).

Antonius as 'the most eloquent of all men that I myself have heard.'[3]

Crassus seems to have begun his career as a speaker much earlier than his older contemporary Antonius.[4] In *Brutus* 102 (cf. *De Or.* 2.54) Cicero reports that Crassus studied with the orator, jurisconsult, and historian, Coelius Antipater. Yet despite crediting his father with giving him an excellent education, Crassus insists even in *De Oratore* that he did not have time to study philosophy. He first spoke in a criminal court at the age of 21 in 119 BC:[5] 'My training was the forum, my teacher experience and the laws and customs of the Roman people and practices of our ancestors.' Cicero supplements this with Crassus' supposed experience as quaestor in Asia (the former kingdom of Pergamum in north-east Asia Minor) when he 'was able to sample some of these subjects, taking my contemporary Metrodorus of the Academy as a trainer.'[6]

Antonius outlived Crassus by three or four years, and Cicero claims to have asked Antonius questions as a boy, but it is not clear in what context. His talk of bashfulness confirms that he was on less intimate terms with Antonius.[7] Given that his uncle Lucius died during his period in Antonius' entourage in Cilicia in 102, when Cicero was only 3 or 4 years old, we may see special pleading in Cicero's claims that his uncle often told them about Antonius' interest in hearing the debates of *doctissimi* (whether philosophers or rhetors) at Athens and Rhodes. It suits Cicero's purpose in *De Oratore* to maximize the Greek learning of the two great orators. Crassus' indifference may have been just a pose for public consumption (*De Or.* 2.4) but Antonius, as Cicero later admits, showed no knowledge of Greek culture and is unlikely to have

---

[3] *Tusc.* 5.55: *M. Antonii, omnium eloquentissimus quos ego audierim.*

[4] For detailed discussion of the relative ages of Antonius and Crassus, see G. V. Sumner, *The Orators in Cicero's Brutus: Prosopography and Chronology* (Phoenix Suppl. 11; Toronto, 1973), 93–7. In *De Or.* 2.364, Cicero speaks of Antonius, who held his consulship in 99 four years before Crassus, as four years older, but corrects this to three in *Brutus* 161.

[5] This was his prosecution of C. Papirius Carbo, discussed below (see *Brutus* 119). Tacitus *Dial.* 34 mistakenly dates this to when Crassus was 19.

[6] *De Or.* 3.74–5: *cui disciplina fuerit forum, magister usus et leges et instituta populi Romani mosque maiorum. Paululum sitiens istarum artium . . . gustavi, quaestor in Asia cum essem, aequalem fere meum ex Academia rhetorem nactus Metrodorum.*

[7] *De Or.* 2.3: *ipse adulescentulus, quantam illius ineuntis aetatis meae patiebatur pudor, multa ex eo saepe quaesivi.*

read the Greek historians he discusses so informatively in the
second book of the dialogue.[8]

Again, if both men rose to the highest public distinction, their
beginnings were very different. Antonius, born in 143 BC, seems
to have been almost a *homo novus*, coming from a family with no
magistrates since the tribune of 167, who is perhaps too old to have
been his father.[9] His first reported public speech came when he
was 30, and was made in his own defence. When he was about to
leave Italy as quaestor in 113, he heard that he was being accused of
incest with one of the vestal virgins who had been subjected to
religious trial, and returned to Rome to clear his name. For once
Cicero does not mention this speech, perhaps because the occasion
was scandalous.[10] Though Antonius was acquitted, the three ac-
cused vestals were all found guilty by the second and more severe
investigation. But while Crassus' talents lay in political oratory,
and he refused many court cases, Antonius is said to have been
very willing to take them on.[11] So the most likely explanation for
Antonius' apparently late political start might be that he made his
name by taking on civil lawsuits, which do not get commemorated.
Most of these were conducted before a single judge, and only the
most important testamentary and property disputes went to the
multiple jury of the centumviral court.

Thus the only occasion reported by Cicero on which Antonius
and Crassus spoke for opposing sides was a civil case between

[8] Compare Catulus' surprise in *De Or*. 2.59, also 2.156–60, where Antonius
himself dismisses philosophy as alien to public taste. Cicero's later comment in
*Brutus* 214 seems to speak as much of Antonius' indifference to the Latin as to the
Greek tradition: 'he had read no poet, and no orator, he had acquired no command
of history, nor learnt any public or private law'.

[9] Pauly Wissowa records only two earlier Antonii from the 2nd cent. BC, the
tribune of 167 (*RE*, Antonius 27) known for opposing Juventius Thalna's demand
for war against the Rhodians and for providing a *contio* for Aemilius Paulus after his
triumph, and a M. Antonius who was one of Paulus' three envoys after the victory of
Pydna in 168 (*RE* Antonius 18, Livy 45.4.7) It was Antonius himself who earned the
reputation which promoted his sons' and grandsons' careers.

[10] The sources are anecdotes in Val. Max. 3.7.9 and 6.8.1. For the trials of the
vestals, see nos. 38–40, in M. Alexander, *Trials in the Late Roman Republic: 149–50
B.C.* (Toronto, 1990), and for the *quaestio extraordinaria* in which Antonius was
defendant, no. 41. These trials are discussed in E. S. Gruen, *Roman Politics and the
Criminal Courts, 149–78 BC* (Cambridge, Mass., 1968), 128–30. Cicero does men-
tion Crassus' defence of another of the accused vestals, his own cousin Licinia,
because it was honourable, even expected, to defend a member of one's family.

[11] Cf. *Brutus* 207, *facilis in causis recipiendis erat; fastidiosior Crassus, sed tamen
recipiebat*.

M. Marius Gratidianus, a kinsman of Cicero,[12] and C. Sergius
Orata. Orata had bought back from Gratidianus the same villa he
had once sold to him. Then he discovered the villa was under a
lien, and sued Gratidianus for concealing this. In this case Crassus
urged the letter of the law, since the seller had not acknowledged
the deficiency, whereas Antonius argued from equity in that Orata,
as former owner, must have already known this.[13] The family
connection would have made this case well-known to Cicero,
who dates it shortly before the dramatic time of *De Oratore*. But
although both advocates were by then famous orators and leading
statesmen there was no other reason to recall the case, just as no
one except Cicero would have recalled his own speech for Cae-
cina[14] over his land dispute.

  The circulation of successful court speeches in written form
would serve as a source of professional legal memory, but this
was still an uncommon practice in the generation before Cicero
himself. And since Cicero reports in *Orator* that Crassus published
very little, and none of his court cases, whereas Antonius did not
publish any of his speeches,[15] this suggests a pattern in which
political interest was the original determinant of publication. An
orator might circulate a political speech in senate or assembly to
make his attitudes known and further his career, but there was not
yet sufficient interest even in the most politicized trials to provoke
anything like publication, and the routine civil disputes were for-
gotten by anyone who had not actually heard a first-class speaker in
action.

  There is a sense in which Crassus was naturally far more 'polit-
ical' than Antonius. His early launching into politics can be ex-
plained at least in part by his nobility of birth and his family's
political commitments: the Licinii were strongly linked with
the Mucii Scaevolae: thus his father-in-law's cousin, P. Mucius

---

  [12] See Alexander, *Trials,* no. 362. Gratidianus was the child of M. Gratidius,
Cicero's great-uncle; he would have been a cousin, if he had not been adopted out of
the family into the Marii, the *gens* of his mother Maria. See Leeman–Pinkster–
Nelson, ii. 189.

  [13] This is mentioned by Crassus in *De Or.* 1.178 to illustrate the importance of a
good knowledge of civil law, and again in *De Off.* 3.67 to illustrate moral obligations
in every day life. Cf. Ch. 5 below.

  [14] It is perhaps more remarkable that Cicero published this speech from the years
before his consulship than that he cites it at *Orator* 102 to illustrate the type of brief
where legal technicalities had to be explained in plain style.

  [15] *Orator* 132, *sed Crassi perpauca sunt, nec ea iudiciorum, nihil Antoni*.

Scaevola was one of Ti. Gracchus' advisers, and as consul in 133 had refused to condone senatorial action against the tribune, while his father P. Licinius Crassus Mucianus was consul in 131 and an important ally of Gracchus. When Crassus made his debut, it was to prosecute the former Gracchan supporter and ex-consul C. Papirius Carbo, who had betrayed his former loyalties by defending L. Opimius, the consul who authorized and led the killing of Gaius Gracchus.[16] Yet it would be a mistake in Roman politics to read this prosecution as doctrinaire support for the social policies of the Gracchi, rather than a matter of family or personal loyalty. Parts of this speech survived for Cicero to quote in *De Or.* 2.170:

Those friends of yours will not think you a good citizen just because you defended Opimius: it is obvious that you were adopting a false pretence out of self-interest, since you have often lamented the death of Tiberius Gracchus in public assemblies, you were involved in the death of Scipio Africanus, and carried that law in your tribunate, and have always stood apart from right thinking public men.[17]

Here certainly is a conservative argument avoiding appeal to populist or reformist causes, and yet in the very next year, before holding any office, Crassus spoke in a public assembly on behalf of the proposed colonial foundation at Narbo Martius (Narbonne in Provence).[18] This is more extraordinary than it might seem at first glance. No one could address an assembly unless the magistrate who had summoned it wanted that person to speak. In *Brutus* Cicero says that Crassus had wanted to be one of the founders of the colony and to win popular approval by it: so he could have been invited simply as one of the projected founding *tresviri*, but only if there was confidence that he would help the cause. Other Ciceronian allusions show that Crassus had argued in criticism of the senate's formal recommendation (*auctoritas*) against founding the

---

[16] For this trial see Alexander, *Trials*, no. 30, Gruen, *Roman Politics*, 107–9.

[17] (Fr. 14 *ORF*), *non si Opimium defendisti, Carbo, idcirco te isti bonum civem putabunt; simulasse te et aliquid quaesisse perspicuum est, quos Ti. Gracchi mortem in contionibus saepe deplorasti, quod P. Africani necis socius fuisti, quod eam legem in tribunatu tulisti, quod semper a bonis dissedisti.*

[18] On this colonial foundation, which has been dated as late as 110 or 107 BC, see Sumner, *Orators in Cicero's Brutus*, 94–6. Sumner argues that the colony was indeed proposed before 118, but delayed, and that Crassus, 'wishing to be elected a commissioner under the original proposal', spoke against a counter-proposal to abolish the colony before it had been founded.

colony, and contrasted former senatorial generosity in ransoming prisoners and providing wealth for the poorer classes with current opposition to this beneficial project. He even published this speech, clearly as an act of self-advertisement, less for his eloquence than for its political usefulness and popular stance.[19]

The different circumstances of the two orators' public appearances also explain our lack of knowledge of Antonius' early career. After his first public prosecution in 112, no other datable speeches are recorded before 103, in his fortieth year. But the prosecution of Cn. Papirius Carbo, the consul of 113, in many ways follows the pattern of Crassus' entry into public oratory. For his debut Antonius chose a natural target. Cnaeus Carbo was brother of Crassus' victim, and like his older brother, had earned great unpopularity by a major defeat against the Cimbri during his consulship. He was accused of *perduellio*, ostensibly on the grounds that his treachery had provoked the Gallic attack. He apparently committed suicide before the verdict. It was probably the circumstance of Antonius' victory by default which led Cicero to omit any references to this debut in *De Oratore*.[20]

While there is no further evidence that Antonius was concerned with the fierce politics of the next decade, Crassus was involving himself in high politics: he opposed the populist tribune C. Memmius in speeches to the assembly during the period when Memmius had launched his investigation into senatorial collusion with Jugurtha. Sallust speaks enthusiastically of his powerful eloquence but while Cicero admits his fierceness as a prosecutor in *Brutus*, he still calls Memmius a mediocre orator. Crassus' sallies of wit in these assemblies were surely passed on to Cicero by Crassus himself.[21]

Crassus obviously had the gift of swaying assemblies, for his next and most famous speech was in support of Servilius Caepio's law of 106 restoring a share of the jury panel to the senate in the

[19] Compare with *Brutus* 160 the earlier comment in *Clu*. 140, and for publication *De Off*. 2.63: *quod quidem in oratione Crassi scriptum copiose videmus*. It is hardly surprising that Crassus, according to *Clu*. 140, strongly criticized the senate as a young man in 118, but had changed his attitude to praising and defending it on behalf of Caepio's jury law in 106.

[20] For this trial see Alexander, *Trials*, no. 47; Gruen, *Roman Politics*, 131. The Ciceronian sources are *De Off*. 2.49 and *Fam*. 9.21.3, on which see Malcovati, *Studi Funaioli* (Rome, 1955), 216–17. For Carbo's military incompetence see App. *Bell*. *Gall*. 31, Vell. 2.12.2, Livy, *Periochae* 63.

[21] For Memmius' oratory contrast Sall. *Jugurtha* 27 with *Brutus* 136, and for Crassus' personal sallies see *De Or*. 2. 240, 267.

major political courts. No doubt Caepio as consul presided over
the meeting and invited the young Crassus, who had just stepped
down from an apparently uneventful tribunate, to speak for his
law. This is the highly theatrical appeal to the Roman people which
Scaevola quotes ironically against Crassus in our dialogue: 'rescue
us from impoverishment, rescue us from the jaws of those men
whose cruelty cannot be sated by our blood; do not let us be
enslaved to any man except to you all as a body, as we both can
and should be'.[22] The same skill in creating a bogey out of the
equestrian jury panels and pitting the emotions of the people
against them is shown in another excerpt cited by Cicero purely
for its rhythm: 'for when greed is tyrant, the protection of inno-
cence is frail.'[23] Both passages represent the recent rash of senators
and provincial governors condemned in the courts as innocent
victims of a greedy and vindictive financial class, but according
to *Brutus* 164 Crassus couched his conservative message in a popu-
list style, mixing weighty and severe accusations with mild and
witty contrasting passages.[24]

Antonius would make only one of his famous defence pleas
before his consulship, on behalf of yet another failed military
commander, Cn. Mallius Maximus. Mallius, the consul of 105,
had held command against the Gauls on the same sector as his
predecessor, the proconsul Servilius Caepio. Their quarrelling
resulted in the disastrous defeat at Arausio and the immediate
cancellation of Caepio's command, his exile, and the confiscation
of his goods. According to Livy the defeat was provoked by
Caepio, but two years later in a climate of rising populist violence
the tribunes Saturninus and Norbanus launched an extraordinary
inquiry, rather like the previous inquiry established by Mamilius
in 109. It is simplest to see Saturninus' prosecution of Mallius as a
trial before the assembly,[25] since the fragmentary historian

---

[22] *De Or.* 1.225 (*ORF* 24): *eripite nos ex miseriis, eripite ex faucibus eorum, quorum crudelitas nostro sanguine non potest expleri; nolite sinere nos cuiquam servire nisi vobis universis, quibus et possumus et debemus.* A slightly different version is given at *Paradoxa Stoicorum* 5.41.

[23] *Orator* 219 = *ORF* 26: *nam ubi lubido dominatur, innocentiae leve praesidium est.*

[24] *Brutus* 164 reports that the speech was published in a shortened form—*plura etiam dicta quam scripta, quod ex quibusdam capitibus expositis nec explicatis intelligi potest.*

[25] For this trial before the assembled people (*iudicium populi*) see Alexander, *Trials*, no. 64; Gruen, *Roman Politics*, 165.

Granius Licinianus reports that he too was exiled 'by a vote of the plebs (*plebiscito*) on the proposal of Saturninus.' Despite Antonius' passionate plea for mercy (Mallius had lost two sons in the notorious battle) he was made the scapegoat for what would be the last Roman defeat by the Cimbri: for Marius, fresh from tricking Jugurtha into surrender, was re-elected and sent as commander to put an end to the Gallic aggression.

But the first tribunate of Saturninus in 103 also saw the establishment of a new court for a new offence, often called *maiestas* as a shortened form of the phrase *maiestas populi Romani minuta*, 'damage to the dignity of the Roman people.' The definition of this offence was left undetermined, and prosecution and defence alike would take advantage of this indefinite charge to make cases an issue of definition: from the time of the *Rhetorica ad Herennium* to *De Oratore*[26] and beyond ever new definitions of *maiestas minuta* would be coined, and the most famous instance would be a later defence by Antonius.

Praetor in 102, Antonius was given command with consular status in Cilicia, where he was awarded a triumph for his campaigns against the pirates: he had probably not yet returned to hold this triumph when Marius as consul declared the state of emergency in the city which caused Saturninus' murder in 100. However he was back in Rome in time to be elected consul for the following year, 99 BC.

If Antonius benefited by his absence during this dangerous time, Crassus too seems to have kept a low profile. The threat implied by Saturninus and his allies, and the subsequent resentment, must have led conservative politicians to avoid prominence in these years. Like Antonius, Crassus advanced promptly in office, duly reaching the praetorship in 98 and consulship in 95, but like Antonius, Crassus seems to have made no important speeches, even as defence lawyer, until after his consulship. Cicero's own letters in the years before his candidacy for the consular election for 63 show how careful a prominent advocate had to be not to offend one man by defending or acting for another; one might, as Cicero did, even contemplate defending an obviously guilty peer

---

[26] Compare *Rhet. Her.* 1.12.21, 2.12.17, and 4.25.35, and successive definitions of *maiestas* at *De Or.* 2.109 (with Antonius' warning against a definition being distorted by the adversary) and 2.164.

like Catiline, but still find it wiser to abstain.[27] But as ex-consul in
98 Antonius took on one of the most famous cases in his rhetorical
career, the defence of Marius' old lieutenant Manius Aquilius on a
charge of extortion while governor of Sicily. Cicero's report of
Antonius' *coup de théâtre* in *De Oratore* was powerful enough to
leave a mark in Livy's history. Book 70 is lost, but the epitome
explicitly notes that Cicero is the sole authority for Antonius'
action: when the tough old soldier would not cringe before the
jury in the fashion expected of defendants, Antonius stepped for-
ward and stripped bare the warrior's scarred breast, provoking
tears even from Marius himself. Livy may in fact be recalling
other allusions by Cicero to Antonius' defence of Aquilius, since
Cicero had already[28] celebrated this episode in the Verrines and
*Pro Flacco*. In *De Oratore* the case is prominent in the discussion of
*inventio* in book 2, where Crassus first introduces it (2.124) and
Antonius elaborates upon it (2.194–6) to illustrate the power of
moving the jurors by one's own sincere emotions. Here Antonius
amplifies with vivid detail his poignant contrast of the former
consul and commander and *triumphator* with the frail defendant
dressed in ritual mourning. It cannot have hampered his pleas that
he had Aquilius' old commander Marius in the audience and could
repeatedly beg the weeping Marius to speak on behalf of the
dangers shared by all generals, and appeal simultaneously to gods
and men, Roman citizens and their Sicilian allies.[29]

Only an incidental allusion by Antonius to the need for elo-
quence even in giving evidence (*De Or.* 2.48 = *ORF* 18) reveals
that as consul in 99 Antonius had to oppose protests led by the
tribune Sextus Titius at the fate of Saturninus: the tribune could
not be prosecuted until he left office, when Antonius served as
witness for the prosecution, justifying his own consular measures
against Titius. Cicero assigned enough political importance to the

[27] Compare *Att.* 1.1.3–4 = SB 10 from summer 65 on the risk of Cicero offending
Satyrus and his patron Domitius if he acts for Atticus' uncle in his lawsuit
against Satyrus, and *Att.* 1.2 = SB 11 on the possibility that Cicero would defend
Catiline. For the trial see Alexander, *Trials*, no. 212.
[28] See *ORF* Antonius 19 with Malcovati's testimonia, pp. 227–8.
[29] In Antonius' reminiscences at *De Or.* 2.194–6, *meminissem . . . viderem,* like
*crebro appellans collegam . . . commendarem atque ipsum . . . invocarem,* and his use of
*imploratio* reflect Antonius' words as much as *excitavi . . . feci . . . ut discinderem . . .
ostenderem* recall his actions. For further details of the trial see Alexander, *Trials*,
no. 84; Gruen, *Roman Politics*, 194–5.

evidence given by Vatinius against his client Sestius in the year preceding *De Oratore* to edit and publish his own cross-examination and denunciation:[30] when Antonius cites his own evidence in the dialogue it may reflect Cicero's personal experience of the effect witnesses could exercise in the courts.

On the other hand Antonius' testimony in 98 would carry more weight, because he was not only a *consularis*, but would be elected as one of the censors for 97. It might seem strange that he held both consulship and censorship without delivering any memorable political speeches,[31] but Crassus too passed through his consulship without making any speeches known to our sources. Even so Crassus' year of office in 95 produced one very controversial conservative measure, the Lex Licinia Mucia put forward by both consuls, expelling non-citizens from Rome. The very fact that both consuls put their name to it confirms that it was a response to impending crisis, as the pressure increased from the Italians too long denied citizenship of the state for which they were required to fight.

Most scholars see the same political conservatism as the motive for Crassus' joint edict with his fellow censor in 92, expelling the *Latini . . . magistri.* Justifying his edict in *De Oratore* Crassus claims that he was concerned for the young men of Rome and wanted to save them from a training that developed their daring and lack of respect at the expense of their intelligence: he contrasts the new style of teaching unfavourably with the systematic and cultured teaching of the Greek rhetors.[32] The chief of these new teachers, Plotius Gallus, was a friend of Marius, and may well have attracted young sons of the equestrian class or Italians seen as a threat to senatorial control. The actual words of the censors' edict are preserved by Suetonius and repeated by Gellius.

---

[30] For the trial of Titius see Alexander, *Trials*, no. 80. Cicero delivered his *In Vatinium Testem Interrogatio* as part of his defence of Sestius in 56 BC (Alexander, *Trials*, no. 271).

[31] I would assume that consuls did not usually have time to take on court cases during office. Cicero's defence of the consul designate Licinius Murena on a charge of electoral bribery late in 63 is an exception justified, as Cicero himself argued, by the urgent need to have consuls in office to combat the expected military force of Catiline.

[32] *De Or.* 3.93–4, *ingenia obtundi nolui, corroborari impudentiam . . . Apud Graecos . . . videbam tamen esse praeter hanc exercitationem linguae doctrinam aliquam et humanitatem dignam scientia* (L. Kumaniecki, cf. Leeman–Pinkster–Wisse, iv. 312), 'for I saw that with the Greeks besides exercising the tongue there was some basis of theory and culture worthy of being known'.

It has been reported to us that there are men who have introduced a new kind of training, and that our young men frequent their schools; that these men have assumed the title of Latin rhetoricians and that young men spend whole days with them in idleness. Our forefathers determined what they wished their children to learn and what schools they desired them to attend. These innovations . . . neither please us nor seem proper. Therefore it seems necessary to make our opinion known both to those who have such schools and those who are in the habit of attending them, that they are displeasing to us.   (Suet. *De Gramm*. 25.2,[33] cf. Gellius 15.11.2)

The language is not coercive, but Gellius groups this act with some earlier and more recent expulsions of rhetoricians and philosophers. In this case there was no question of expelling the teachers—they were probably citizens—and Kaster argues from Crassus' words in *De Or*. 3.93 that their schools may have suffered only a temporary closure as a result of this edict, since they seem to have sprung up again before 91.

   Cicero composed *De Oratore* approximately seven years after his own consulship: Crassus was dead within four years of his consulship, and Antonius murdered just over a decade after his. We can probably assume that Crassus too would have met a violent death if he had lived into the awful years of 88 and 87. But until 91 political life was proceeding much as usual. To what extent do their years as *consulares* reflect a common pattern, and how far do they set a precedent that Cicero would have hoped to follow?

   From 95 both men were *principes*. It is perhaps a mark of their different natures that although both had significant speeches ahead of them, Antonius would make his name by a highly political defence of his ex-quaestor Norbanus (the populist tribune of 103) on the new charge of *maiestas*, whereas Crassus would triumph in a celebrated civil-law case, the so-called *causa Curiana*.[34] And just before his death he would thrill conservatives with a last impassioned defence in the senate of that body's rights against the consul Marcius Philippus.

[33]  See now R. Kaster's commentary on *De Gramm*. 25.2 (Oxford, 1996).
[34]  For the *causa Curiana* see Alexander, *Trials*, no. 93, and below, with further discussion in Ch. 5. For the notorious trial of Norbanus, see Alexander, *Trials*, no. 86 and extended discussion in E. S. Badian, *Studies in Greek and Roman History* (Oxford, 1964), also Gruen, *Roman Politics*, 196.

Norbanus does not seem to have been politically active after 100 BC. The charge against him in 96 or 95 was a revenge prosecution for his long-past actions in stirring up a public assembly against the general Caepio to a point where the violence injured many leading senators. Cicero cannot himself have been present at this trial, but he reconstitutes it systematically through Antonius' discussion of argumentative techniques in the second book of *De Oratore*, supplementing it with the account he attributes to Sulpicius, the young prosecutor, in the same dramatic dialogue.

Thus the case illustrates the issue of definition at *De Or*. 2.107 and 109, since both prosecutor and defendant used all their fluent arguments to explain what was covered by *maiestatem minuere*. It is almost certain that 2.164 and 167 again recall Antonius' defence: first Antonius illustrates defining a concept by its associations. 'If *maiestas* is the greatness and dignity of the state, that man diminishes it who surrenders an army to the enemies of the Roman people, not the man who commits the loser to the power of the Roman people.' Then he illustrates argument from category: 'if magistrates should be under the control of the Roman people, why are you accusing Norbanus, whose tribunate was obedient to the popular will?'

Antonius follows the account of his successful emotional appeal for Aquilius in *De Or*. 2.194-6 with a report of the supposed facts behind Norbanus' prosecution. Sulpicius as prosecutor was able to evoke the tribune's violence and pursuit and the stone-throwing by the assembly, his cruelty to the ruined Caepio, the injury to Aemilius Scaurus, the *princeps senatus*, and his violation of the sacrosanctity of the tribunes Cotta and Didius, driven from the temple when they tried to exercise their veto against Norbanus' proposal. In terms of prestige and rank it was both right for the young man to prosecute on behalf of constitutional practice, and scandalous for a former censor to defend a trouble-maker who had exercised cruelty over a ruined former consul. It is left to Sulpicius in the dialogue to complete the narrative, describing how Antonius snatched his prosecution from him (2.202), first appeasing the indignant jurors by his modest opening apology for fulfilling his obligation to his former quaestor; then, when it seemed that Antonius was only seeking pardon, he gradually built up the picture, not of Norbanus' provocation, but of the righteous anger of the Roman people.

From there Antonius rose to a denunciation of Caepio which he maintained throughout his interrogation of the respected hostile witnesses (2.203).

At some point in this transformation of Norbanus' violence into the legitimate indignation of the Roman people Antonius began to enlarge on the occasions of justified rioting (*seditiones . . . iustas*), citing as precedents the expulsion of the Tarquins and creation of the tribunate, the use of decrees of the plebs against overweening consuls and the origin of appeal against arbitrary magisterial power (*provocatio*). To abridge and paraphrase *De Or.* 2.199–200: 'If these actions had been the origin of Roman liberty and saved the state, why should public anger against Caepio's disgraceful flight and surrender, and the vast casualty list, be made a capital charge against Norbanus?' Caepio offered Antonius an easy victim, since his law on the jury panel had reduced, if not eliminated, *equites* (members of the wealthy order of knights) from the panels. But by 95 these men again controlled the juries, and their anger was ready to blow.

The orator describes his manipulation of the jury's emotions by stages: at the last stage (2.200), when he felt himself in control, he began to work the softer emotions of mercy for his client into the indignation he had stirred up. Now, in his final *miseratio*, he pleaded for this acquittal as a favour to one who had always worked for his friends and not himself; on his own behalf he begged to be spared the shame of failing to save his old colleague who had only tried to serve Roman citizens, however remote from Antonius' own political position. Antonius reports (2.201) that he limited the technical issue of definition to a brief section, squeezed as it were between the two expanded emotional aims of his speech, to provoke anger against the dead Caepio and win goodwill for his own role as defender. As he admits, he overcame Sulpicius' accusation not by instructing the jury through narrative and argument, but by swaying their feelings and passions. Whatever the political impact of the verdict, the very nature of the case made it a model for Cicero's version of the Aristotelian 'proofs' of character and emotion.[35]

At some time before the dramatic date of *De Oratore* Antonius composed a rhetorical treatise, the *libellus de ratione dicendi*

---

[35] On these two aspects of rhetorical theory see below Ch. 7.

mentioned in the dialogue.[36] It is most likely that he was already beyond his last public office, the censorship, since the one quotation cited repeatedly by Cicero presupposes many years of experience. Antonius claimed, probably at the opening of his work, to have known many elegant or capable speakers, but no one truly eloquent. We might hazard a guess that Antonius put his recommendations in writing precisely because, unlike Crassus, he took on very few 'pupils' in the *tirocinium fori*; but *De Oratore* implies that he was Sulpicius' mentor before he urged the young orator to study with Crassus, and Antonius also served as a model for Cotta.[37] Crassus certainly was teaching in this period, since Antonius describes how Sulpicius' eloquence had developed by 95 after only a year of working with Crassus.

It is to these years after 95 that we must assign Crassus' most celebrated court case, the so-called *causa Curiana*, in which Crassus appeared for the centumviral court on behalf of Manius Curius, whose claim to inherit from his friend C. Coponius was being contested by Coponius' next of kin. When Coponius wrote the will he either assumed that his wife would in the future give him a son, or more likely knew that she was pregnant and hoped for a son. In wording his will he inadvertently made his naming of Curius as his secondary heir dependent on the condition of a son being born and predeceasing him. No son was born, and the next of kin claimed the inheritance because the wording of the will disqualified Curius, and effectively invalidated the will itself. Cicero's earliest allusion to the case occurs in *De Inventione*. There the wording is given as 'if one or more sons is born to me, let him be my heir . . . if my son dies before coming of legal age, then let +the other man+ be my heir.'[38]

In *De Oratore* Antonius answers Crassus' insistence on the great orator having a full knowledge of the law code by pointing out that

---

[36] *De Or.* 1.94 (recalled at 3.54), 1.208, and *Brutus* 163, *illum de ratione dicendi sane exilem libellum*. Compare with Antonius' comment at 1.94 *disertos me cognosse nonnullos, eloquentem adhuc neminem*, *Orator* 18, 33, 69, 100, and 105.

[37] On Sulpicius compare Antonius *De Or.* 2.89, where he has just claimed that he wants a young speaker to have sufficient growth for him to prune him back (*unde aliquid amputem*). For Cotta's choice, cf. *Brutus* 203, *Cotta malebat Antonium*.

[38] *De Inv.* 2.122, *si mihi filius genitur unus pluresve, is mihi heres esto . . . si filius ante moritur quam in tutelam suam venerit tunc mihi +dicet+ heres esto*. See Ch. 5 and J. W. Vaughn, 'Law and Rhetoric in the Causa Curiana', *CA* 4 (1985), 208–22, citing A. Watson, *The Law of Succession in the Roman Republic* (Oxford, 1971), 53–4 and 94–6, and *Lawmaking in the Later Roman Republic* (Oxford, 1974), 106 and 129–31.

Crassus did not win this case with the written legal texts of Scaevola the Pontifex or the oral instruction of his father-in-law, old Scaevola, but through his passionate advocacy of fairness and defence of the deceased's will (in both senses), and above all because of his wit.

Cicero expands on this more vividly in *Brutus*, where he makes Crassus the pivotal figure of his history of Roman oratory, pitting him first against Scaevola the Pontifex, his own consular colleague and antagonist in this civil suit,[39] then against Antonius himself. We are told that Crassus overwhelmed the immense legal learning of Scaevola by his sheer fluency and variety in defining and interpreting the meaning of the terms involved, and the abundance of his arguments and examples. Later in the dialogue Cicero will illustrate this by citing Crassus' opening analogy, comparing his legal adversary to a fanciful young man who found a single rower's bench when he was walking on the shore and wanted to construct his own boat. It was the wit of this analogy that turned the tables, followed by Crassus' gentle mockery of Scaevola, as he pretended admiration of his opponent's brilliance in discovering that it was necessary to be born before one could die (*De Or.* 1.243) and his concern for Scaevola's loss of time for business, duty, or leisure if no one could be sure of a correct will unless he composed it for them (*De Or.* 2.24): Crassus even pretended to fear the excessive power his opponent would enjoy if no man dared henceforward to make any will without his prior approval (*Brutus* 198).

Earlier in *Brutus* (148–9) Cicero compares Crassus and his consular colleague Scaevola for their double expertise, the orator Crassus in his secondary field of jurisprudence, and the jurist Scaevola in oratory: he gives a formal evaluation of the balanced merits of their contrasting styles. But when he wants to explain the difference between the good and the excellent, Cicero shows his readers how Scaevola would have impressed the audience by his learning and concision and elegance until Crassus began to speak. From the first witty analogy of the boat-builder to his warning against the danger of neglecting men's intent out of respect for the letter of the law (*Brutus* 197–9) Crassus proved himself equal master of the three essential modes of proof: winning over the

---

[39] *Brutus* 144–5, 148. This serves as a preliminary to Cicero's description of the styles of the two advocates at 197–8.

audience's mood, convincing them of his arguments, and swaying their emotions into assent.

It would not be unfair to see Crassus' wit and word play as diversionary tactics in this, as in other, cases. One of the most extended samples of his wit offered by Caesar Strabo in *De Oratore* is all that survives of another apparently successful case. Crassus was defending a certain Plancus against the habitual prosecutor Iunius Brutus, the spendthrift son of a great legal expert.[40] Brutus himself had provoked the digression by having two clerks read out in court conflicting statements made by Crassus in two earlier political speeches, for the colony at Narbo and for Caepio's jury law. In retaliation Crassus mocked his antagonist for his extravagance by quoting the introductions to his father's three books on civil law, each of which had a different setting, his father's estates at Privernum, Alba, and Tibur, all of which Brutus had sold: why, if he had written a fourth book, he could have set it while they were using the baths which Brutus had just been forced to sell! But when the funeral procession of Brutus' aunt passed through the forum during the same case Crassus turned on a more tragic vein. He asked Brutus what the dead woman was to tell her ancestors about her nephew's disgrace, and rose to a thundering denunciation of his adversary for the vicious practice of vexatious prosecution—the indictable offence of *calumnia*. Thus wit was offset by the other extreme of ostensible moral passion.

Both Cicero and others cite Crassus' witty exchange of insults (*altercatio*) with his fellow censor Domitius Ahenobarbus in a public speech of 92, although Cicero notes that Crassus did not preserve more than summary notes of his speech.[41] The censors had presumably quarrelled, either over the senatorial list, or some sumptuary proposal against luxury.

At this point it becomes relevant, if not politically, at least rhetorically, to introduce a major criminal prosecution in which

[40] *ORF* 45–7: the case, Alexander, *Trials*, no. 98, cannot be dated more precisely than between 101 and 91.

[41] *ORF* 34–40. With *De Or.* 2.227, cf. *Brutus* 162–4, which calls this *non oratio, sed quasi capita rerum et orationis commentarium paulo plenius*. Douglas notes that Cicero here calls it *postrema oratio*, probably in the sense of his last speech preserved in written form. Further details about the censors' mutual accusations of luxury and extravagance are provided by Pliny, *NH* 17.1.1–4, Val. Max. 9.1.4, and Aelian *HA* 8.4. Suetonius, *Nero* 2.2. adds Crassus' pun on Domitius' name Ahenobarbus: 'no wonder he has a beard of brass, since he has a nerve of steel and a heart of lead.'

neither Crassus nor Antonius took part. Cicero, at least, thought it important to Antonius' argument in *De Oratore* that our friends should cite the wrongful condemnation of P. Rutilius Rufus on a charge of provincial extortion.[42] Thanks to Rutilius himself, who spent his exile in writing self-justifying memoirs, and to Cicero, who visited him in Asia and read the memoirs, this case would become notorious. Even the epitome of Livy book 70 gives prominence to this case: 'P. Rutilius, a man of the highest integrity, was condemned and sent into exile: he was loathed by the equestrian order who then manned the juries, because he had defended Asia from the iniquities of the *publicani* (tax collectors) as legate of Q. Mucius in his proconsulship.' What is the story? According to Antonius, Rutilius as a strict Stoic and model of integrity (*exemplum innocentiae, De Or*. 1.229) so disapproved of all emotional appeal in oratory that he exposed himself to exile by refusing to supplicate the judges or enrich the plain truth: so he only allowed Cotta, as his nephew, to speak on his behalf, and his superior, Mucius Scaevola the Pontifex, to speak in his usual straightforward way. If only Crassus had spoken for him! But as Antonius has mentioned, Rutilius actually called Crassus' emotional appeal to the assembly 'disgusting and scandalous' (1.227) and probably did so in writing.

Since *De Oratore* (and Cicero's similar account in *Brutus* 115) the case has been interpreted as a malicious attack by resentful tax companies on the governor's subordinate because they dared not attack the more powerful superior, Scaevola the Pontifex and consul of 95, for their attempts to control exploitation of the Asian tax system. Because our Roman sources see it as a proximate cause of the attempted transfer of the juries in 91 from the equestrian order to members of the senate, the prosecution has also been dated to immediately before *De Oratore* in 92. But as Robert Marx has shown, Rutilius was probably prosecuted as early as 94, and did not ask either Crassus or Antonius to defend him, because he was estranged from them by their rapprochement to his enemy Marius.[43] It was almost certainly another personal enemy, the

---

[42] On this trial (Alexander, *Trials*, no. 94; Gruen, *Roman Politics*, 205–7, 209), see R. Kallet Marx, 'The Trial of P. Rutilius Rufus', *Phoenix*, 44 (1990), 122–39, whose interpretation I follow here.

[43] This is shown by Antonius' defence of Aquilius and Norbanus, and the marriage of Crassus' daughter to Marius' son.

senatorial *éminence grise* Aemilius Scaurus, who backed the pros-
ecution, and with Rutilius' patron Metellus Numidicus in exile
there was no one who cared to defend him. Cicero has either been
given a false picture of the political situation, or adapted it so as to
put his old teachers in a good light and make his point about the
need for emotionalism in defensive oratory. The issue had been
raised by Aristophanes in his courtroom drama, *The Wasps*, and
more directly by Socrates in Plato's *Apology* (34c-e). Cicero can
also exploit the case because Rutilius provided a Roman counter-
part to Socrates (cf. *De Or*. 1.231) who supposedly refused the help
of Lysias, and preached to the jurors instead of humbling himself
to them. Whether Rutilius was innocent or guilty of the charges,
even if Cicero had not believed his self-justification, his fate pro-
vided a fine vindication of emotional rhetoric against its enemy
Socrates and his high-minded contempt.

Crassus, and less prominently Antonius, are associated by
Cicero's introduction to *De Oratore* with the sponsorship of Ruti-
lius' nephew, the controversial tribune, Livius Drusus. At the
dramatic date of our dialogue Drusus was already promoting,
and the senate initially ratified, a series of laws about which we
know too little; they included measures to satisfy all classes, with
land for the common people, the restoration of the jury panels to
the senate (but a senate to which some 300 equestrians had been
co-opted), and a proposal to enfranchise either the Latins or
Rome's Italian allies. The other laws have been seen as sweeteners
either to make his removal of the jury panels from the equestrians
acceptable, or to obtain support for the unpopular but urgent
enfranchisement, but it is not possible to recover Drusus' motives.
By the end of the year his laws would be declared invalid, the
tribune himself was murdered in his own home, and the infuriated
Italian leaders would be driven to initiate war against Rome. But
before war broke out Crassus delivered his last great tragic speech,
on 13 September 91 BC. During the public holidays of the *Ludi
Romani*, while Crassus was relaxing at Tusculum, the consul Phi-
lippus attacked Drusus at a *contio*, and Drusus, stung, summoned
the senate to register protest.[44] At the senate meeting presided over
by Drusus, Philippus denounced the senate itself because it was

---

[44] *De Oratore* gives the earliest and fullest account of the fatal senate meeting of
13 September. For Livius Drusus see Münzer, *RE* 18.859–81. Other sources for his

resisting his pressure to abrogate Drusus' laws. As consul he used his power of coercion to levy penalties from members of the senate.[45]

The circumstances of Crassus' speech are known only from Cicero's preface to the third book of *De Oratore*. Given his seniority as *Censorius* Crassus would speak early, if not first, in the debate. He reacted passionately to the consul's attack on the senate's rights:

when you treat the unanimous authority of this entire body as forfeit, and destroy it in front of the Roman people, do you think I am intimidated by these forfeits? It is not those forfeits you must take and destroy if you wish to coerce Lucius Crassus: you must take out this tongue of mine, and even if it is pulled out my freedom with its mere breath will refute your wanton demands.[46]

On this occasion Crassus would contract the pleurisy of which he died a week later: hence Cicero's romantic designation of this last speech as his hero's 'swan song'.

When the Italians declared war on Rome from their stronghold at Corfinium, even the less politically committed Antonius would be implicated in the subsequent witch hunt launched by the tribune Varius to find those guilty of instigating the rebellion of Rome's allies. There is an implicit contradiction in Cicero's evidence about Antonius' last known speech. In *Tusculans* (2.56) he declares he himself witnessed Antonius' self-defence in the following year, when the great orator bent his knee to the ground in the intensity of his plea. Yet Cicero made no mention of this speech in his treatment of Antonius or Varius in *Brutus*: indeed he

tribunate are Vell. 13.2–3, Livy, *Periochae* 70–1, Diodorus 37.10, and Appian, *BC* 1.155. Cicero himself reports that Drusus had tried in vain to legislate so that equestrian jurors would be subject to the same penalties as senatorial jurors had been.

[45] Instead of imposing fines (*multae*) or confiscating goods (cf. Gellius 14.7.10) from senators failing to attend, Philippus invoked the forfeiture of possessions, entailing their destruction; the same procedure is attested for the early republic by Livy 3.38.12 and was again threatened by Mark Antony against Cicero in 43 (*Phil.* 1.12).

[46] *De Or.* 3.4 = *ORF* 41: *An tu, cum omnem auctoritatem universi ordinis pro pignore putaris eamque in conspectu populi R(omani) concideris, me his existimas pignoribus posse terreri? Non tibi illa sunt caedenda, si L.Crassum vis coercere; haec tibi est excidenda lingua, qua vel evolsa spiritu ipso libidinem tuam libertas mea refutabit.*

mentions that Antonius was absent from Rome and implies that he did not hear any more interesting speakers in the sessions of the Varian commission than Memmius and Q. Pompeius.[47] It seems more likely, then, that Cicero is exploiting the rhetorical trope of autopsy in the *Tusculans* and missed hearing Antonius' final court speech. By 87 he would be dead, assassinated at the command of Marius, to whom the orator's bleeding head was brought as a table decoration for his feasting.[48]

The rhetorical talents of these two great men seem to have corresponded at least in part with those of Demosthenes and Aeschines. Antonius, like Demosthenes, was a mighty attacker, a superb strategist, brilliant in his power of *inventio* and exploitation of argument, but also of emotional range. Cicero himself praises both Antonius, in the Norbanus trial, and Demosthenes, for their skill in pacing the rise of emotion during the speech so as to dominate their jury.[49] Crassus, in contrast, surely resembled Aeschines in his rich vocabulary and his command of tragic tones, but he added a wit which is not recorded as characteristic of Aeschines. And Cicero himself does not make this double comparison, because, I believe, he could not have brought himself to deny to his master Crassus any of the uncontested greatness of Demosthenes. Instead let us round off this chapter with a sampling from *De Oratore* and *Brutus* of Cicero's critical description of the two orators.

Antonius was famous for his command of argumentation; 'every possibility occurred to him' says Cicero in *Brutus* 139: 'he would array every argument in position in the most appropriate parts of his speech, to obtain the strongest effect, like a general drawing up his cavalry, infantry and light armed troops'.[50] The orator's

---

[47] Contrast *Tusc*. 2.56 with the language of *Brutus* 305.

[48] E. Rawson, 'Sallust on the Eighties?', *CQ* 37 (1987), 163–80 = *Studies in Roman Culture and History*, (Oxford, 1991), 546–69, traces the description of Antonius' death in Lucan 2.121–4 back to Sallust's lost *Histories*. She also suggests (551–2) that the *Adnotationes* to Lucan 2.121 have preserved an otherwise lost testimony to Antonius' oratory: *qui Metello dixit, ni mature adduxisset exercitum, hoc passurum populum Romanum quod Senones iam fecerunt* (that unless he rapidly brought up his army, the Roman people would suffer what the Senones had previously inflicted upon them).

[49] For this aspect of Demosthenes' skill, cf. *Orator* 26.

[50] *Omnia veniebant Antonio in mentem; eaque suo quaeque loco, ubi plurimum proficere et valere possent, ut ab imperatore equites pedites levis armatura, sic ab illo in maxime opportunis orationis partibus conlocabantur.*

first person account in *De Oratore* stresses his tactics, as much in avoiding weak or offensive arguments as in arranging his strongest arguments to dominate the weaker issues. His language is military as he speaks of retreating from arguments that would harm his cause. He places his skill too in the art of concealment, appearing only to wish to instruct the jury when he is in fact seizing every chance to sway their emotions.[51] The dialogue form also enables Cicero to attribute to Crassus a powerful description of Antonius' infinitely flexible performance 'tough, passionate, emotional in his delivery, but wary and protecting himself from all sides, fierce, pointed, concentrated, lingering over each matter, giving way with dignity, then fierce in pursuit, intimidating, wheedling, all with the greatest variety of diction and no excess to weary us his audience'.[52] But Cicero's fullest portrayal of Antonius in *Brutus* 139–40 adds his fantastic memory, his apparent spontaneity, and his diction, clearly less beautiful than that of Crassus, but weighty and in well-rounded periods. However, as Cicero adds, his control of rhetorical figures lay particularly in figures of thought, the *schemata* or poses of wrestling applied metaphorically to verbal combat. Antonius' actual postures, his arm and shoulder movements, the twist of his torso and stamp of his foot, harmonized perfectly with his thought, rather than with each phrase.[53] His voice, powerful but slightly husky, was well adapted to the pathos of complaint, and as well suited to produce conviction as compassion. In invention, in memory, in artifices of action and delivery, Antonius was clearly supreme.

After such a tribute to the eloquence of Antonius, the reader wonders how Cicero will find reason to honour Crassus for equal, let alone superior, performance. But he uses Crassus in both critical texts to cap Antonius. In *De Oratore* 3.33 Crassus modestly limits his self-evaluation to his more restrained movements, his greater concentration on language rather than ideas: to this Cicero can add in *Brutus* 143 his supreme impressiveness (*gravitas*) his charm of urbane wit and humour, his unostentatiously fastidious

---

[51] *De Or.* 2.302–10.

[52] *De Or.* 3.32, *forte, vehemens, commotum in agendo, praemunitum et ex omni parte causae saeptum, acre, acutum, enucleatum, in una quaque re commorans, honeste cedens, acriter insequens, terrens, supplicans; summa orationis varietate, nulla nostrarum aurium satietate.*

[53] *Brutus* 141, *gestus non verba exprimens sed cum sententiis congruens.*

language, his brilliance in explaining issues, and sheer abundance of argument and analogy in matters of equity and civil law. What Cicero most values, then, is the richness of Crassus' style and argument, which he will illustrate not from the heroics of his teacher's political speeches, but the calmer context of the famous *causa Curiana*.

In the two orators, Crassus and Antonius, it is possible to see clearly how Romans of the governing class could rise to the heights of a political career through widely different applications of eloquence. Antonius seems to have come from an undistinguished family and may have had to make his own name through his success in the courts: this might also explain his relatively low profile in the political alignments and realignments of the years from his first office as quaestor in 113 to his last as censor in 97. Crassus was born to a noble family linked to the Mucii Scaevolae by the adoption of P. Licinius Crassus Mucianus, the liberal consul of 131: his cousin Licinia was a vestal and another more distant kinsman P. Licinius Crassus was consul only two years before him. Hence his early debut in a highly political prosecution, and his invitations from aristocrats like the consular Domitius Ahenobarbus or Servilius Caepio to speak for their proposals to the assembly. Their styles, too, seem to match their inherited status, with Antonius specializing, even as a defending *patronus*, in aggressive rhetoric, while Crassus championed the senatorial cause with grand passion, and defended elite clients with sophisticated wit, elegance, and authority. Even so, it can be said of both that it was their oratory, rather than any political or military skills,[54] which earned them the glory of high office. In this either man could serve as a precedent and model for Cicero's ambitions to achieve the consulship through his oratory alone. And together their contrasting styles and fields of oratory made them choice advocates for the education and training of the ideal speaker and statesman who is the theme of *De Oratore*.

---

[54] Their military skill can be inferred only from the triumph awarded to Antonius after his praetorship of 102 as proconsul in Cilicia. Triumphs were common in this period and one was requested by Crassus after his engagement with Alpine tribes as proconsul in 94, but it was denied to him. Cicero too was officially awarded a triumph for his defeat of a Cilician hill tribe, the Pindenissitae.

# Constructing the Dialogue: The Challenge of Plato

Cur non imitamur Crasse Socratem illum qui est in Phaedro Platonis? nam me haec tua platanus admonuit, quae non minus ad opacandum hunc locum patulis est diffusa ramis quam illa cuius umbram secutus est Socrates, quae mihi videtur non tam ipsa acula quae describitur quam Platonis oratione crevisse.   (*De Or*. 1.28)

Crassus, why don't we imitate the Socrates of Plato's *Phaedrus*? This is what your plane tree suggested to me, with its branches spreading to shade this spot as broadly as the tree whose shade Socrates sought out, a tree which seem to me to have been fostered less by the stream that is described than by Plato's own eloquence.

*De Oratore* is not the first dialogue to have been composed in Latin, but it is the first to survive. In fact it survived intact by a thread. A large part of the text was lost to lovers of both rhetoric and Cicero until the rediscovery of a manuscript that contained all of *De Oratore*, *Brutus*, and *Orator* at Lodi, near Milan, in 1421. This manuscript, known as *Laudensis* from its place of discovery, was lent to various humanists for copying and soon lost, but can be reconstructed from the best direct copies of its separate works that have survived.[1] Now that the full text is available it is clear that

---

[1]  About one half of books 1 and 3 was lost from the archetype of the so-called *codices mutili* (some of which underwent further damage) on which readers had depended until this discovery. The text of *Harleianus*, the fullest of the *mutili*, jumps from 1.128 to 1.157 (thus lacking the *communia praecepta* and Crassus' training methods) from 1.194 to 2.13, from 2.90 to 2.92 and from 3.17 to 3.110 (including most of Cicero's reply to Plato's charges against Gorgias and the rhetoricians). For a precise account of the *mutili* see Reynolds, Reeve, and Winterbottom in L. D. Reynolds (ed.), *Texts and Transmissions* (Oxford, 1983), 102–7, and for an appraisal of the five main representatives copied directly or indirectly from the Laudensis before it was lost in or after 1428, K. Kumaniecki, 'La Tradition manuscrite du ''De Oratore'' ', *REL* 44 (1966), 204–18. It was the humanist Bartolommeo Barzizza who inserted into his copy from the Laudensis the divisions by chapter and section which are used for reference in this and most edns.

*De Oratore* did not owe its superior qualities of both form and content simply to Cicero's learning and stylistic gifts. It achieves its special brilliance of vivid characterization and dramatic representation, because Cicero set out in this, his first dialogue, to emulate the form and manner of Plato's early and middle dialogues as well as to answer the challenge of their anti-rhetorical content.

When Cicero extended his conception of style in his later treatise, the *Orator*, to include discussion of literary genres like history, sophistic, epideictic, and philosophical texts, he acknowledged Plato as the most important inspirer and teacher of style (*Or.* 10, *dicendi gravissimus auctor et magister*) and claimed Plato's Academy as the source of his own eloquence, because it was the ground traversed during the many and varied dialogues in which Plato's footsteps were first imprinted.[2] Later in the same treatise, hailing Plato as a greater writer than Thucydides, Cicero implicitly recognizes the naturalism of his dialogues by singling out the practice of elision[3] as a requirement of conversational writing.

Cicero himself is our source for the two Roman expository dialogues known to have preceded him. The earlier conforms to a familiar pattern; it is a didactic work of three books in which the father, the jurist Marcus Iunius Brutus, instructed his son in civil law. From the excerpts preserved in *De Or.* 2.224 (illustrated in Ch. 2), it is clear that each of these books opened by introducing father and son in a different private setting; in the family's villa at Privernum, in their place at Alba, and their estate at Tibur. Despite their dramatic frame it is unlikely that these dialogues, which later writers seem to have expanded,[4] were more than thinly

---

[2] *Illa enim [sc. Academiae spatia] sunt curricula multiplicium variorumque sermonum, in quibus Platonis primum sunt impressa vestigia.* The metaphor is based on the idea of philosophical discussions developed during walks in the grove of Academus where Plato established his school. For *sermo* as a translation of Greek *dialogos*, cf. *Orator* 151, cited n. 3, where Cicero explicitly identifies *sermones* with *dialogoi*.

[3] *Or.* 151: 'The far greater writer, Plato [elided] and not only in these conversations called *Dialogues*, where this was necessarily a systematic stylistic practice' (*haud paulo maior scriptor Plato nec solum in eis sermonibus, qui dialogoi dicuntur, ubi etiam de industria id faciendum fuit*). The best Greek and Roman stylists aimed to avoid both elision and hiatus by arranging words to keep initial vowels from following words with a vowel termination.

[4] This can be inferred from Pomponius' listing of the work as seven books, and Cicero's comment in 2.224 that only three of the books under this heading were really by Brutus. Varro's three books *De Re Rustica*, composed in dialogue form in the 30s, were presumably influenced at least in part by Cicero's dramatic dialogues of the 50s.

disguised lectures or catalogues. The other example, probably written soon after *De Oratore*, is cited by Cicero when he discusses the oratory of the elder Scribonius Curio in the *Brutus*. Curio was very forgetful, and apparently wrote a treatise in the form of a conversation with his son as he left the senate house in 59 after Caesar as presiding consul had adjourned the session. When young Curio asked what business the senate had done, his father attacked Caesar extensively 'and there arose a discussion, as is the way with dialogues (*ut est consuetudo dialogorum*) in which Curio criticized the actions taken by Caesar in Gaul in the year after that and other subsequent years', (*Brutus* 218). As Cicero points out, if this criticism was the theme of the dialogue, Curio should have set the conversation after the events had taken place.

Did Cicero's predecessors get their idea of the dialogue from Plato? It does not seem like it. The jurist Brutus' books may have had a dramatic setting but they sound as though they resembled Cicero's *Partitiones*, which open with a request from his son Marcus for instruction and then proceed mechanistically through the categories and parts of different types of speech. And Curio's dialogue obviously set a fairly perfunctory frame around his political invective.

It is not clear how familiar Romans of Cicero's day were with Plato's dialogues, but they were quite familiar with the more conventional Socratic texts of Xenophon.[5] Xenophon's Greek was both easy for Romans to follow and an accepted stylistic model. Most members of the Roman elite had probably been treated in school to excerpts from the educational *Cyropaedia* and learnt about the views and martyrdom of Socrates from the *Memorabilia, Apology*, and *Symposium*, even if as adults they might limit themselves to his works on equitation and dog breeding. In his youth Cicero had translated the *Oeconomicus*, with its Platonic device of an opening dialogue reporting a more extended discussion between Socrates and Ischomachus, and he knew the *Cyropaedia* well enough to select excerpts for translation in his later dialogue *De Senectute*.[6] Again better educated Romans probably

---

[5] The classic study of the dialogue in Greece and Rome is R. Hirzel, *Der Dialog*, i–ii (Leipzig, 1895). For a brief introduction to the Roman dialogue, see J. G. F. Powell's edn., *Cicero: Cato Maior De Senectute* (Cambridge, 1988).

[6] Cf. Powell, *Cato Maior*, 6–7 and extensive index listings s.v. Xenophon; E. Rawson, *Intellectual Life in the Late Roman Republic* (Baltimore, 1988), 46 and 62.

also knew choice speeches of Isocrates and some of the works of Socratic followers like Antisthenes.

Crassus may never have read Plato's *Gorgias*, as he claims to have done in *De Or.* 1.47, nor yet his *Phaedrus*, but Cicero certainly had, and Crassus' proposal that the company should imitate Socrates in the *Phaedrus* by sitting under a plane tree (*De Or.* 1.28), signals his adoption of the dialogue as a model or precedent.[7] And certainly the *Phaedrus*, with its construction of an alternative, morally and epistemologically sound, rhetoric, must have been welcome to teachers of rhetoric after the demolition of its claims in the earlier *Gorgias*. It is no wonder that both the sophist Gorgias and the dialogue in which Plato humiliated him are mentioned ruefully (and programmatically) at *De Or.* 1.102–3 and 3.122: indeed Cicero makes Catulus return to the dialogue in 3.129, to claim that Socrates only defeated Gorgias, 'the defending counsel of rhetoric', if in fact he did so, through his deployment of greater eloquence.[8] But the choice of the literary Catulus rather than Crassus as speaker suggests that Cicero was not completely satisfied with his own argument, and the dialogue ends, as it began, with overt echoes of the more rhetoric-friendly *Phaedrus*.

Even in book 1, however, Cicero takes pains to establish the credentials of his interlocutors as students of philosophy. The oldest man present, Scaevola, invokes the natural philosophers Pythagoras and Democritus, and all the rival schools (*greges*!) descending from Socrates, including the Academy for its sceptical

---

[7] I have deliberately translated *De Or.* 1.28 above to reflect two nuances of Scaevola's suggestion; that *Socratem illum* is not 'the famous Socrates,' but the character or dramatis persona of the dialogue, and that the whole scene, like the plane tree, is a fiction idealized by Plato's eloquence. Cicero skilfully introduces the potential model of the rhetoric-friendly *Phaedrus*, before tackling the more hostile *Gorgias*. The most recent discussion of the reflection of *Phaedrus* in *De Oratore* by W. Görler, 'From Athens to Tusculum: Gleaning the Background in *De Oratore', Rhetorica*, 6 (1988), 215–35, takes its starting point from G. Zoll, *Cicero Platonis aemulus* (Zurich, 1962); see scholarship listed in the bibliography of Leeman–Pinkster, i.

[8] *Gorgias, quo patrono, ut Plato voluit, philosopho succubuit orator, qui aut non est victus umquam a Socrate, neque sermo ille Platonis verus est, aut, si est victus, eloquentior videlicet fuit et disertior Socrates*. But Catulus' values are strictly social, as is shown by his praise of the solid gold statue erected in Gorgias' honour at Delphi.

refutation of propositions, the Stoics with their dialectic, and even the Peripatetics, excelling in the theory of rhetorical ornamentation.[9] And before the reader reaches the first reference to the *Gorgias*, Crassus cites his own position as heir to the philosophical succession of Plato: twenty years back, as a quaestor, he had heard the contemporary representatives of the three major schools—the Academics, Charmadas, Clitomachus, Aeschines and Metrodorus, students of Carneades; the Stoic Mnesarchus, student of Panaetius, and Diodorus, the Peripatetic student of Critolaus (1.46). Indeed it was with Charmadas that he had given the *Gorgias* careful study (*diligentius legi Gorgian*, 1.47). Antonius will also report (1.83–91) hearing a dispute between the philosophers Mnesarchus and Charmadas and his own host, the orator Menedemus. The names of Carneades and Critolaus inevitably suggest the visit of these heads of schools as envoys for the city of Athens to Rome in 155, which Cicero will invoke as a cultural landmark at the heart of the whole dialogue, in 2.155.[10]

It was, of course, the form of Plato's dialogues, both in their dramatic setting and their conversational style, which won Cicero's admiration: their argument, and their mode of argument, was alien to his beliefs as a committed statesman as it would be to the decorum of Roman society. Indeed, perhaps the most important features of Plato's dialogues, the Socratic *elenchus*, would be inconceivable in Roman society, whether in Cicero's generation or beyond it. For Socrates' mode of reaching the truth through questioning in the *elenchus* aimed to challenge received moral beliefs and demonstrate their lack of foundation or logical coherence. In well-behaved Roman society the hierarchy of age and class would have made such behaviour unacceptable, just as it was alien to Cicero's own conservative values. His purpose in *De Oratore* was not to overthrow existing *mos maiorum*, but to enlist Greek education in its service: or, from a different point of view, we can be sure that Cicero did not want to reject Greek philosophy, but to

[9] Antonius' reference to Aristotle and Theophrastus (1.43), acknowledged by Crassus in 1.49 and 1.55, serves as advance notice of Cicero's use of Aristotelian and Theophrastan material in book 3.

[10] The three heads share their central position in the dialogue with Antonius' own insistence on his adherence to Aristotle and first-hand knowledge of his *Rhetoric* (2.161; cf. Ch. 7)

reconcile the quarrel between philosophers and rhetoricians by arguing for a new, Roman, synthesis of philosophical and rhetorical training.[11]

But besides considering the difference between the values and purpose of Plato (or Socrates himself), and those of Cicero as a practitioner and theorist of public rhetoric, we must also recognize a difference between the level of fictionality in Cicero's dialogue and in those of Plato. Cicero presents his dialogue as the report of one of the participants, his older contemporary C. Aurelius Cotta (Cos. 75).[12] But we need not doubt that the text we have is a sympathetic creation, rather than the reconstruction of a systematic discussion held in Crassus' Tusculan retreat, and that it goes well beyond a synthesis of recommendations given at different times by Crassus or Antonius to their pupils. Even so, the lack of real antagonists gives Cicero less need or motive than Plato had to fabricate.[13]

Plato's scripts are brilliant and lifelike scenarios, but it would be a mistake to assume there had ever been any such arguments as we are made to witness in the *Gorgias* or even the more intimate *Phaedrus*. Rather, these dialogues create a drama out of what Socrates, Gorgias, and lesser figures said at different times or were likely to have said, given their characters—something like Thucydides' free reconstruction of what Pericles or Cleon must have said in given political situations. So Plato could use and

[11] As Long expresses it ('Cicero's Plato and Aristotle,' in J. G. F. Powell (ed.), *Cicero the Philosopher* (Oxford, 1995), 37–62), Cicero 'wants to represent his own ideal—the proper combination of philosophy and eloquence—as true to the spirit, though not to the letter of Plato's discourses . . . he offers his ideal combination of philosophy and rhetoric as a distinctly Roman contribution' (p. 50).

[12] Cf. 1.26 and 29 in which Cotta is represented as reporting the conversation on more than one occasion (*quo quidem in sermone multa . . . narrabat* 25, *solebat narrare*, 29): in 2.7 Cotta is omitted and Cicero simply claims to be committing to writing the discussion Crassus and Antonius once had, either to safeguard what he believed these consummate orators had been inspired to say (*quae existimarem . . . divinitus esse dicta*) or simply to preserve their glory from being forgotten. In 3.16, however, he modifies his claim: since he was not present at the discussion, and Cotta, his source, had only transmitted the *loci et sententiae*—topics and opinions—Cicero cannot guarantee faithful reproduction of the orators' actual idiom.

[13] By 'real antagonists' I mean philosophically motivated opponents of political rhetoric: Crassus himself reports in 3.92 the rise of schools of rhetoric which may have been politically as well as methodologically opposed to inherited Greek rhetorical training. Although both Epicurean and Stoic philosophies criticized traditional rhetoric (see 3.63–4, 65), these schools were not yet significant in Rome in the early 1st cent. BC.

combine statements of Gorgias or his pupils to enable Socrates to expose the moral and logical failures of their value system. And it is personal values, and the salvation of the soul, which interest Plato, in *Gorgias* as in the *Republic*, far more than the communal and political contexts which he exploits as more visible and obvious models of interaction between the parts of the individual soul.

   Plato's Seventh Letter confirms that he held the highly negative views of political life and politics which are voiced in the later phases of the *Gorgias*,[14] but they were incidental to his (or Socrates') dominant concern with truth and personal morality. Cicero, on the other hand, had made his name as an advocate, and his political career as a defender of the status quo, the power and properties of the governing and landed classes. He seems to have believed that this policy was right and necessary, and to have accepted the compromises he made as means to ideological ends and preserving political stability. How could he answer or at least neutralize Plato's charges? It may have been easier for Cicero because there was so clear a difference between the operation of politics in democratic Athens at the end of the fifth century and in the tempered oligarchy still surviving intact at Rome at the beginning of the first century BC. We can see for ourselves today that politicians cannot flourish in a democracy without either secrecy and deception, or sacrificing their better judgement to both general and special interests. It is possible that when a smaller and better educated group of people, such as the late republican senate, has to be persuaded in order to put through legislation, less wholesale deception is called for and there can be more consideration for the long-term needs of the state. But Cicero, as an experienced politician, must have recognized that personal integrity could only be relative, and political success was measured by the ability to achieve policies in spite of interest groups in the electorate. We might compare the subordination of morality implicit in the successful advocate's career: the advocate gains more prestige by defending the guilty than the innocent, the notorious rather than the respectable. Both his own career and the purpose of his

---

[14] For a convenient summary of the argument of the Gorgias see T. Irwin, *Plato: Gorgias* (Oxford, 1979), 8–12. Plato argues at the opening of the Seventh Letter (324a–26a) from Socrates' fate and other failures of the Athenian post-war democracy that it was impossible for any man to keep his integrity while participating in politics, such as they were conducted in existing states.

dialogue required Cicero to defend not only rhetoric but the need for rhetoric in political life. We will return to this conflict between Cicero's values and those of Plato (or Socrates) in considering Socrates' assault on political rhetoric in the last phase of the *Gorgias*.

Since the two dialogues in which Plato challenged rhetoric are far too complex and influential to treat as read, it is important to set each of them in context and offer an outline of their claims and counterclaims. When Gorgias first came to Athens in 427 he was already famous in Greek Sicily as both teacher and speaker. Several of his display speeches have survived, among them the defences of Palamedes and Helen. Palamedes was notoriously an innocent victim of slander, framed for treason by Odysseus, but the speech for Helen proudly exploits paradox and verbal pyrotechnics in an exercise of defending the indefensible, and illustrates Gorgias' boast that he could be eloquent about any topic.

And this boast is the way we are introduced to Gorgias in Plato's dialogue, when his admirer, the aspiring politician Callicles,[15] urges Socrates to come and hear him. Gorgias has issued his traditional call to the audience to ask him to speak on any topic, and Socrates catches him by asking about the nature of Gorgias' skill (*techne*). How does it compare with, for example, his brother's profession of medicine? What is its subject matter? What is its product? Since after all medicine and mathematics and other skills also deal with speeches, what is distinctive about rhetoric? Gorgias' reply is that it produces both freedom for the speaker and power over others, 'the ability to persuade by speech judges in a law-court, councillors in a council meeting, and assemblymen in an assembly or any other political gathering that might take place' (452e).[16] This is of course the application of rhetoric that most concerned Cicero. And this is also where Socrates traps Gorgias, for power can only be good if it is wielded justly by a just man.

---

[15] Irwin, *Gorgias*, 110, describes Callicles as 'a disciple of neither main character . . . probably a historical person.' Certainly the historicity of his beloved, Demos, son of Pyrilampes (482e) is guaranteed by his name inscribed on *kalos*-vases. Since Callicles is represented as the host of Gorgias, he was surely a supporter if not a pupil: he also talks like an oligarch, and was associated like other oligarchs with a group (*hetaereia*) of named young men (487c).

[16] On Plato's attitude to Athenian politics in the *Gorgias* see *Plato: Gorgias*, ed. E. R. Dodds (Oxford, 1959), 30–4, and for his attitudes to rhetoric and statesmanship, G. M. A Grube, *Plato's Thought* (London, 1935) 208–15 and 251–89.

Gorgias has been teaching this powerful art without considering the uses to which his pupils may put it. In the dialogue he spontaneously points out that his rhetoric can be used to persuade the people of Athens to obey the good advice of his brother the doctor, or of a professional like a naval architect, where the professional cannot himself persuade them, 'for there isn't anything that the orator couldn't speak about more persuasively to a gathering than could any other craftsmen whatsoever' (456a–b). This is a claim that Cicero wanted to retain, and puts into the mouth of Crassus in *De Or.* 1.62–70.[17]

So the orator is not concerned to teach what he knows to be true, but to persuade, regardless of truth. He may be acting quite morally, persuading the audience of material borrowed from an expert, which he believes to be the true basis for decision. But he can also use his eloquence to persuade ignorant people of something quite false. If the subject matter of rhetoric is the just and the unjust, and its function is to persuade people in the courts and political life about what is just and unjust, it will be essential for the orator himself to know the nature of justice. What if Gorgias' student comes to him without any understanding of justice? When cornered, Gorgias supposes that he will be able to teach justice to the man who does not yet know it, but he has already admitted that oratory can be used to persuade people unjustly, and even argued that the teacher should not be held responsible if his student misuses this power (460d–461a). Thus in this first of the dialogue's three main arguments, the essentially decent Gorgias is forced to admit that the moral abuse of rhetoric to obtain political power gives the lie to his claim that he will teach justice to the student who does not know it.

In the dialogue Gorgias is further undermined by his appalling associates, the pupil Polus and his host Callicles. Presumably he agreed to teach them for the sake of the fees they paid. But their

[17] In this section of his argument Crassus is clearly echoing the *Gorgias* while trying to skirt Plato's trap for the sophist. Thus he uses contemporary technical examples of the naval architect and the doctor, but passes on to civil eloquence (1.65) before making the claim that if the young orator Sulpicius has to speak about warfare he will get his information from Marius. Yet as a trained orator he will speak so well that even Marius will believe Sulpicius knows the issues better than he does himself (1.67). Whatever subject he has learnt from any expert, the orator will speak more eloquently (*ornatius*) than the man from whom he acquired his knowledge.

unscrupulous natures betray him morally, as their clumsy arguments let him down intellectually. First Polus interrupts, to claim that Gorgias spoke only out of shame and did not believe what he said.[18] For Polus, the power to do what he wants is the absolute goal and he sees oratory as his access to such power. In reply Socrates challenges the autonomy of oratory as an art: rather than any true systematic art, it is simply a knack of flattering the audience, more like the servile crafts of cookery or cosmetics than true medicine or physical training (464a–465e).

This is a charge which Plato repeats as already proven in *Phaedrus*. It would give rise to a series of arguments and adjustments, starting with Aristotle's own redefinition of oratory as a *dunamis* or faculty of discovering the means of persuasion (*Rhet*. 1355. [b]25, or of providing arguments (1356 [a]33) about any topic. Like other *dunameis* it could be used positively or negatively, just as a pharmacist could use his drugs to heal or kill. But Aristotle continued to talk about the *techne* of rhetoric, if only because he was writing a formal manual or *techne*.

We can see how this dispute developed after Plato from the arguments presented by Antonius in *De Or*. 1.84–93, under the guise of a learned discussion he attended when passing through Athens. There Charmadas the Academic mocked the ignorance of rhetoric teachers and their precepts, claiming that no one could acquire ability in speaking (*facultas dicendi*) unless he studied the discoveries of philosophers. In reply Menedemus shifted from the theory of teaching to the practice of orators: he argued more modestly that successful orators had a kind of wisdom (*prudentia*). Charmadas persisted, attributing any success they had to their training in philosophy, and denying that there was any art of rhetoric (89): the success of orators was simply the product of nature (*ita nati essemus*), habit (*consuetudo*), and practice (*exercitatio*). For nothing was an art, unless it consisted of a body of material known and thoroughly tested, tending towards a single

[18] *Gorg*. 461b. But is Polus talking of the moral and professional shame that prevents Gorgias from admitting that he could fail to teach a pupil justice, or of the technical shame at opening himself up to refutation? Polus himself is caught by his own failure to reconcile his juvenile immoralism with his conditioned recognition of the shameful (474c–77c). Since Isocrates does not hold it as axiomatic that knowledge implies virtue, he can declare the teacher free of responsibility for a morally offending pupil (*Antidosis* 251–2).

purpose and never misleading (1.92).[19] Instead, the subject matter of orators was all uncertain and indeterminate . . . the product not of knowledge, but short-lived opinion.[20] Like Menedemus, Crassus sidelines the problem as a dispute over names (*verbi controversia*, 1.107) and sets up his own more flexible definition: 'If the techniques observed in practice and the handling of speech are examined and identified by shrewd and experienced speakers, then defined in words, exemplified in categories, and distributed over sub-categories—I don't see why this should not seem to be an art, if not by that precise definition, at least in the common judgment' (1.109).[21]

In the *Gorgias*, after disqualifying rhetoric as an unscientific and pandering counterpart of proper dialectic, Socrates uses a new argument to reject Polus' claim that oratory will enable a man to do what he wants in a city; for he can only truly want what is good for himself, and Polus' goal of enjoying power over others and abusing them is not good for himself. It is actually worse for a man who acts unjustly to go unpunished than if he were punished. Plato's Socrates comes closest to the reality of Cicero's world when he examines the consequences achieved by the successful defence of a guilty man in court. Acquittal will not cure the unjust man of his moral sickness: 'If oratory is used to defend injustice . . . one's own or that of one's relatives, companions and children, or that of one's country when it acts unjustly, it is of no use to us at all' (480c–d). To benefit the unjust we should ask for their punishment to heal their soul, as a doctor seeks medicine for the sick, and it is only in order to harm our enemies that we should try to keep them from punishment.

[19] There is an ambiguity in *numquam fallentibus* which reveals itself in the difficulty of translation. How is this material not deceiving? Is it that the propositions of the art do not match facts, or is the deception rather a fault in the relationship between separate elements or arguments? The same criteria are suggested by Crassus in 1.188–9 to define what would be needed to reduce the cumulative body of legal knowledge at Rome to a genuine art of jurisprudence. This he would pursue by applying the other (philosophers') art of logical analysis and dialectic.

[20] 1.92, continued: 'All the material handled by orators was questionable and uncertain, being voiced by men who did not clearly grasp the topic as a whole, and heard by an audience which did not expect knowledge but an opinion for the moment, either false or at any rate hazy', (*exigui temporis aut falsa aut certe obscura opinio*.)

[21] *Sin autem ea, quae observata sunt in usu atque tractatione dicendi, haec ab hominibus callidis ac peritis animadversa atque notata, verbis definita, generibus inlustrata, partibus distributa sunt . . . non intellego quam ob rem, si minus illa subtili definitione, at hac volgari opinione ars esse videatur.*

So much for the values of the law-court. But when Socrates' host Callicles dismisses these moral arguments as the opposite of what is needed in real life, Socrates returns to politics and argues that Callicles, in order to get popular support, actually enslaves himself to the people. Without answering this charge Callicles protests that 'justice' is an invention of the weak, and philosophy, while acceptable as mental exercise for boys, makes a man incompetent in the real political world, where the stronger dominate the weaker. After showing Callicles that a life spent in gratifying one's own desires is hollow (492d–499b) Socrates turns the argument back to the original issue of rhetoric as mere catering, like cookery, to the desires of one's audience. His approach is determined by the opening formulation at 500c. The issue is presented as a choice: 'how should one live, in the way you challenge me to, doing the business of a man, by speaking in the assembly and practising rhetoric and politics the way that you now do, or by living the life of philosophy?' But surprisingly, Socrates carries his attack outside rhetoric, including in the category of activities controlled by pleasing a mass audience music, dithyramb, and even tragedy (501d–502c). It is not clear why he stigmatizes tragedy in this phase of his argument, except perhaps to entice Callicles into easy assent. But from tragic poetry he needs only one step to the *logos* of rhetoric, speech without music, rhythm, and metre, and the entertainment value of tragedy serves his theme of catering to an audience: indeed the audience of tragedy is baser than that of political rhetoric, since it includes women, children, and slaves (502d).

Since Gorgias and other sophists taught their pupils how to tailor their speech to please or manipulate the audience, it is the dishonesty inherent in the relationship between orator and audience that determines the course of the argument. Unlike his refutation of Polus, set in an imaginary context of tyranny, Socrates will refute Callicles by his condemnation of political life in Athens itself, and the political leaders, whom Athenian idiom called *rhetores*. This section of the dialogue is as fierce an indictment of the Athenian people as of its politicians, for Socrates and Callicles can find no contemporary statesman who tries to improve the souls of the citizens 'striving valiantly to say what is best, whether the audience will find it more pleasant or more unpleasant'. Indeed the more successful politicians are simply those who are better at playing servants of the people (517b). Although Callicles has cited the

great statesmen of two generations past, Themistocles, Miltiades, Cimon, and Pericles, as leaders who educated and disciplined the Athenian people, Socrates shows that these leaders must have failed as politicians, since they were all ostracized or punished by the people they had supposedly made better (503a–517a).

In a climactic speech stretching from 517b–519d Socrates denounces the swollen material wealth of Athens and the lack of justice which led the people to blame and penalize its leaders. At the climax of this argument Socrates transfers blame for the people's injustice to the leaders who have failed to educate them: 'No leader of a city can ever be unjustly destroyed by the actual city he is leading' (519c). Just as the teacher of oratory cannot teach his pupil virtue and justice, so the oratory of political leaders can persuade the people of their city to take the right decisions for the wrong reasons—representing a good proposal as in their material interest—but they cannot teach their audience to understand and desire what is just for its own sake. (Only philosophy can hope to make the citizens virtuous and just.) From here on, the dialogue and its eschatological myth are no longer concerned with oratory but with the power to act unjustly which Polus and Callicles had seen as in its gift.

Plato's *Gorgias* condemned the teaching and practice of eloquence by moving from the art to its abuse and to the motives which led ambitious men to abuse it. It passed from disparaging eloquence as a knack of flattering, rather than an art based on objective knowledge of the right and true, to a denunciation of contemporary political life which could with variations be used to condemn eloquence in the context of Cicero's Roman world. And it is noticeable that Cicero only tries to answer Plato's first argument: in book 1 he will take up the denial that rhetoric is an art, by drawing distinctions between different definitions of *ars*,[22] and between science and a practical skill responding to circumstances. It is no accident that in book 3 Cicero follows the very brief glance at the dreadful implications of giving rhetorical fluency to the unjust (3.55: see Ch. 10 below) with a detailed appreciation of Socrates' eloquence (3.60). But he passes over Socrates' most powerful attack on political oratory, and the career of a statesman.

---

[22] *De Or*. 1.83–106: cf. 1. 186–90, offering a definition of what would constitute the *ars* of jurisprudence (discussed in Ch. 4).

In 55 Cicero had returned from the personal annihilation of exile, to attempt a re-entry into policy-making and be reduced to silence by the threats of renewed exile. Nothing could have struck nearer home than Socrates' examples of political leaders condemned or ostracized. In his public speeches the post-exilic Cicero had cited the triumphant return from exile of the politically virtuous Metellus Numidicus, an event of 98 BC, before the dramatic date of *De Oratore*.[23] But Crassus does not consider any comparable issue, nor does Antonius in his few discreet comments on the politician's relationship with the Roman people.[24]

Since Cicero must surely have studied the last phase of the *Gorgias* as well as its opening arguments, we have to find a different explanation. First, if we return to *Gorgias* 500c quoted above, it is clear that most members of the Roman governing classes would have refused to consider the alternative of political disengagement in order to pursue philosophy. Active participation in political life was seen by idealists as serving the *res publica*[25] and by careerists as the way to personal success. Thus he would not have accepted Socrates' fundamental assumptions. And Cicero had gone on public record as distinguishing the irresponsible direct democracy of modern Asian Greek cities and classical Athens itself[26] from the politics of Rome, guided by an educated senate and protected by controls over both speaking and voting in the public assembly. The superiority of Roman government might be something he hoped

[23] Compare *Sest*. 100–2, *Planc*. 69–70, and *Dom*. 87, where Cicero draws a parallel between his own recall and that of Metellus, on the proposal of the tribune Q Calidius.

[24] For discussion of Antonius' comments in 2.334–40, see Ch. 9 below. But just as Callicles prophetically warns Socrates of his future condemnation by Athenian jurors, so Cicero gives to Antonius in 1.227–33 (see Ch. 2 above) an indictment of the misplaced principles of the Stoic Rutilius Rufus (cf. 1.231, *imitatus est homo Romanus et consularis veterem illum Socratem*) which leads to his denunciation of Socrates for refusing the assistance of orators or the techniques of defence rhetoric.

[25] As Scipio Africanus explains to his grandson in *De Re Publica* 6.13, it is by serving the state that men reach the blessed afterlife.

[26] Cf. Ch. 9 for *Flacc*. 15–17 supporting Cicero's condemnation of the rash and ignorant assemblies in contemporary Asian Greek cities with an a fortiori argument from Athenian democracy at the height of her empire. So too the semi-public letter to Lentulus Spinther in 54 (cited in Ch. 1) claims Plato as Cicero's model in politics (1.9.18) and quotes Plato's justification of his own withdrawal from Athenian politics, because he realized the people of Athens were becoming senile: he no longer believed they could be controlled by persuasion, and thought it wrong to control them by force.

for rather than believed, but its formal practices might seem to justify his presentation of Roman public oratory as wise conservative guidance of the mob rather than popular flattery. So neither Crassus nor Antonius mentions the rabble-rousing tribunates of Appuleius Saturninus, nor the popular repercussions of the current political crisis. Yet Cicero cannot entirely exclude the problem of populist oratory from his dialogue. When Scaevola first challenges Crassus' encomium of oratory in 1.35–44, he precedes his philosophical or Platonic objection to accepting rhetoric as an art—the theoretical issue which preoccupies the opening sections of both book 1 and book 3 of *De Oratore*—by citing the negative political example of the brothers Tiberius and Sempronius Gracchus, who misused the defensive powers of learning (*doctrinae praesidiis*, 1.38) and eloquence (cf. Crassus' imagery in 1.32, *arma, quibus vel tectus ipse esse possis* etc.) to fragment and destroy the commonwealth. The more intellectual issue of the dispute between philosophy and rhetoric over the different realms of discourse is allowed to thrust the political realities of democratic or demagogic oratory into the background. Even Antonius' discussion of political harangues in book 2 adheres closely to the assumptions that our speaker will be a benevolent conservative, whose role is to calm and control the crowded public meetings (2.35, cf. 334–40). The bad memories of populist eloquence will not return until Crassus' mission of creating the ideal orator is almost completed, and a renewed mention of the Gracchi (3.226) is again suppressed in the last sections of the dialogue.

In book 3 Cicero makes the person of Socrates the pivot on which his argument turns at *De Or*. 3.60–1. Only when he has demonstrated the fragmentation of moral and intellectual discourse resulting from Socrates' initial separation of head and tongue, and brought the renewed argument for the claims of eloquence to a satisfactory conclusion, does he allow Catulus to return to the *Gorgias* (3.129), and assert that if Socrates defeated Gorgias in argument, he won this victory by and through eloquence.

Written perhaps twenty or more years after *Gorgias*,[27] Plato's *Phaedrus* also uses public oratory only to serve his greater

[27] Neither dialogue can be dated absolutely, but *Phaedrus* tends to be placed close to the *Republic* around 470, whereas *Gorgias* (cf. Dodds, *Gorgias* 24–30) is seen as nearer in spirit to the seventh letter and the bitterness shown by Plato soon after Socrates' death in 399.

preoccupation with the individual soul. Its unity has often been criticized, because of an apparent shift of both theme and tone halfway through the dialogue. Up to and throughout the great central myth—in which the charioteer of reason within the soul tries to control the good horse of the spirit and bad horse of the passions—rhetorical criticism has simply been a tool for the examination of the nature of love. After the myth and its concluding prayer, the tone lapses to a more prosaic and didactic level as rhetoric itself becomes the focus, both in general and as exemplified by the Lysianic model speech. As Ferrari puts it: 'Rhetoric is first displayed, then investigated: the investigation displays philosophic technique. In the second part rhetoric is examined and philosophy exhibited; in the first, conversely, rhetoric parades for the purpose of examining philosophy.'[28] Now Socrates' great central myth might thrill the student of rhetoric with the poetry of its exquisite allegory of love, but it did not speak to his practical concerns. And there is another issue raised in the *Phaedrus* which would concern Cicero in the context of *De Oratore*, but only concern him marginally—the fascinating comparison of the written versus the spoken word. A critical approach to the use of the written word is implicit in the opening situation of Plato's dialogue, but only realized and explored in the epilogue, the myth of Theuth the inventor of writing and the critical rejection of his new tool by King Thamos. But the opening phase of the dialogue (227a–243e) and the extended criticism and construction of a reformed rhetoric after the myth (257b–274b) both deeply concerned all advocates of rhetoric, and were surely as influential on Aristotle as they would later be on Cicero.

   The only participants in the dialogue are Phaedrus, a handsome young enthusiast of display rhetoric, and Socrates himself, but as in the *Gorgias*, a third figure, a professional speech-writer, is proposed by the enthusiast for Socrates' admiration. Where Gorgias was presented as a master of epideictic, especially the art of eloquent improvisation, Lysias, whom we know as a writer of law-court speeches, is here presented in the form of a carefully written text. This is Phaedrus' faithful copy of a paradoxical exercise urging an imaginary beautiful boy to grant his sexual favours to

---

[28] G. R. F. Ferrari, *Listening to the Cicadas: A Study of Plato's Phaedrus* (Cambridge, 1987), 31.

the speaker, who does not love him, rather than to a lover. The genre is deliberative, then, but the context is not public but private, and the challenge to the orator's invention lies in the perversity of the argument. Plato has included the full, if short, speech, which echoes Lysias' known simple elegance and several formal traits of his style, while lacking his usual gift for convincing and unified argument. Thus the speech lies open to criticism whether of its purpose or its execution.

The setting of the dialogue too is private, even intimate: Phaedrus has led Socrates into a secluded place shaded by a plane tree and kept cool by the Ilissus brook: this is a real *locus amoenus*, presented throughout the dialogue, with its presiding spirits, the cicadas, as a source of inspiration.[29] It also lends itself to a level of flirtation between the two men: as we have noted, the theme of love and its relationship with truth and knowledge will become a central concern of the dialogue, just as the most exalted kind of love is at the heart of Diotima's speech reported by Socrates in the *Symposium*. But in *Phaedrus* Plato reaches this goal through two stages of criticism. First, Socrates accepts the proposed argument of the speech, and offers a better speech in terms of both invention and arrangement. At this point he establishes only that the argument requires a contrast between the good sense of the non-lover and the folly of the lover, and this traditional approach is the basis of his first speech. More concerned with form than thought, Phaedrus hopes for a fuller, more ornate, speech, but Socrates turns this aside, contrasting what he can hope to achieve impromptu with the result of an expert's preparation.[30] It is ostensibly out of embarrassment at the risk of making an incompetent speech that he now covers his head, but the dialogue will show that this 'shame' is related not to the form of his speech, but to its lack of truth value—we might say its insincerity (235e–237a). As Hackforth comments,

[29] This is reflected twice in *De Oratore:* with the claim at 1.28 that the plane tree of the dialogue was the product not of the stream (*non tam ipsa acula*) but of Plato's inspiration, and less obviously at 2.162, where Antonius represents the Aristotelian theories of *inventio* as a *universum flumen* where the pupil will find a full choice of ideas instead of being beguiled by a secluded stream. I take the echo in 2.162 of the unusual diminutive *acula* from 1.28 as pointing back to the setting of the *Phaedrus*.

[30] This implicit comparison of improvisation (*autoschediazein*) with prepared or written speech glances at a major issue of 4th-cent. rhetoric, the dispute between Alcidamas the improviser and Isocrates the advocate of careful written preparation (and practitioner of written rather than spoken communication).

'the whole standpoint of the present speech is in a sense unreal. The *eros* that Socrates is condemning is not what Plato conceives to be the true *eros*.'[31] And Plato shows this, first by acknowledging that Socrates completes the speech in an irrational dithyrambic state nearer to poetry than argument, then by putting into his mouth a condemnation of his own speech and its thesis as blasphemy against the god of love, which he must now atone for by a recantation or palinode (242d):[32] that palinode will be the analysis of the divine madness of love and the great myth that follows.

We might expect the topic of rhetoric to be left behind once Socrates has subjected his purpose-designed model speech to both rhetorical and ethical correction. But rhetoric returns after the great myth by a detour, when Phaedrus quotes abuse of Lysias by a *rhetor* (speaker-politician) for being a mere 'speech-writer' (257c). The Greek word *logographos* had a particular reference to paid ghost-writers of speeches for defendants to deliver in court, but Plato deliberately takes it in its widest sense and turns it around to apply to the legislative proposals of these politicians. This leads to the problem of defining good and bad 'writing' across the whole range of texts, from political proposals to private discourse, to literary verse or prose (258e). Without self-conscious comment this section has moved to take into account different forms of written *logos*,[33] the written word that will later be rejected as an inferior form of instruction.

Socrates then raises the issue of knowledge that was central to the argument against Polus in the *Gorgias*, contrasting mere persuasion with the teaching of the truth. There the argument had revolved around conscious deception or dishonesty by the political speaker eager to win public support. But this time he posits, not deception by the orator, but an ignorance shared by both speaker and audience: he shows by an absurd example how disastrous it could be if an ignorant orator were advising on warfare. Even if the orator studied the beliefs of the masses like Callicles in order to

---

[31] R. Hackforth, *Plato's Phaedrus, Translated with an Introduction and Commentary* (Cambridge, 1972), 48.

[32] As Görler notes (*Rhetorica*, 6 (1988), 223), this has an equivalent in Antonius' palinode, *De Or.* 2.28–38.

[33] The next allusion to written *logoi* comes with Plato's ironic introduction of alleged Homeric rhetorical manuals and the subsequent criticism of contemporary manuals of public speaking.

please them, he would still need to know the truth of the situation for himself, since it is only by recognizing subtle differences that he can misrepresent persuasively. This is the only point in the dialogue where Plato puts words into the mouth of personified Rhetoric. Echoing Gorgias, she proclaims that she will indeed want the orator to know the truth:

I never insist on ignorance of the truth on the part of a man who wants to learn to speak. On the contrary if my advice goes for anything, it is that he should only resort to me after he has come into possession of truth. What I do pride myself on is that without my aid knowledge of what is true will get a man no nearer to mastering the art of persuasion.   (259d)

Once again, as in *Gorgias*, Socrates answers his ventriloquized claim by shifting ground. If oratory is merely the skill of being persuasive, it is no art, but simply a knack (260e) in which through his exploitation of appearances[34] the orator can persuade his audience of any thesis or its opposite.

Socrates follows this criticism with a semi-parodic history of Greek rhetoric up to Plato's own time that is of some historical interest. Defined as *psychagogia dia logon* (261a), the swaying of men's minds in courtroom or assembly by words/argument, rhetoric is seen as originating with the great speakers of Homer[35] and with Palamedes, the supposed inventor of writing and innocent victim of Ulysses' lies. Palamedes is thus doubly appropriate, for he exemplifies both writing and the defeat of justice by other men's rhetorical skill: what is more, Gorgias had composed a model defence speech for him. Ironically Socrates pretends these great advisers and orators wrote manuals like the recent rhetoricians. This phase of the argument, focused on 'contending with words', returns to the original example of Lysias' speech to prepare the way for a systematic criticism of written manuals. Socrates' first constructive criticism is that Lysias and other speakers should practise the analysis of ambiguous words so as to be able to open their argument with a definition;[36] next, recalling the weakness

---

[34] 'Probabilities and likenesses' evoke the Greek rhetorical topic of *to eikos*, used e.g. to argue for the defendant's innocence in court when the facts were not known.

[35] Cicero himself opens his account of Greek rhetoric in *Brutus* 40 with references to the styles of Nestor and Ulysses drawn from *Iliad* 1.247–9 and 3.221–3: cf. also *Brutus* 50 on the plain style of Menelaus (*Iliad* 3.213–14).

[36] Cicero will discuss the importance (and hazards) of definition in Antonius' teaching on *inventio* in book 2.

and arbitrary nature of arrangement in the Lysianic speech, that any speech should be organically whole, 'constructed like a living creature with its own body; it must not lack head and feet; it must have a middle and extremities so composed as to suit each other and the whole work' (264b).

This leads to one of the most important intellectual recommendations of the *Phaedrus*, that to understand any concept (we think back to the ambiguous words of 263a–b) a man must first gather together the scattered instances of its usage, then regroup these uses analytically into categories: again the metaphor of anatomy is used to advocate a rational analysis. These collections and divisions constitute the crucial Platonic method of dialectic, here outlined for the first time, which would later be a key to Aristotelian logic and argumentation. Such a scientific procedure is used to ridicule by contrast the false classifications and subdivisions used by the professional rhetoricians of the day.[37] As a sample we can take Polus (the same Polus Plato mocked in the *Gorgias*), to whom Plato attributes a 'treasury of phrases full of reduplications and maxims and similes', and fine words he had inherited from Licymnius (267c). A comparison with medicine shows what is lacking in the miscellaneous lore of these rhetoricians. They are like a man who has memorized the catalogue of a pharmacopoeia but cannot recognize the patient's condition so as to apply the right drugs in the right situations. The rhetoricians are useless because they 'do not bother about employing the various artifices in such a way that they will be effective, or about organizing the work as a whole' (269c). Although Socrates does not say so, this inability to provide application or guarantee correct reference of precept to situation is inherent in these manuals as written documents.[38]

To the recommendations of dialectical analysis and organic completeness, Socrates adds one more crucial requirement. Granted his speaker has the three prerequisites of natural talent, theoretical knowledge, and practice (269d),[39] he must know how to

[37] Socrates' criticism is echoed by Menedemus, cited by Antonius in 1.86, reproaching the rhetors (*rhetorici illi doctores*) with trivial rules about the use of parts of the speech, such as *prooemia* and *epilogi*.

[38] Cf. C. L. Griswold, *Self-Knowledge in Plato's Phaedrus* (New Haven, 1986), 186–97.

[39] For the triad compare *De Or*. 1.90–1 reported above, and Ch. 4. The triad of nature, practice, and theory (or theoretical knowledge) is first attested in *Phaedrus*.

apply that knowledge to the souls of his hearers. This is the true *psychagogia* (272a–b) based on understanding of every kind of soul, and acquired by careful observation of men so as to learn how each kind of man is affected by given arguments. In this way the speaker will know what arguments to apply to each kind of person and how to exploit the situation. This applied psychology draws in part on the teaching of Isocrates, based on the importance of *kairos*,[40] situation and timing, but more important, it will be at the core of one of the three modes of persuasion (*pisteis*) in Aristotle's *Rhetoric*, which would be directly or indirectly the source of the system of *inventio* proposed in *De Oratore*.[41]

Yet Plato cannot leave this satisfying outcome of the search for a true rhetoric without returning to the public world in which, as we saw, would-be politicians composed their speeches to please their audiences. Socrates' last message on this topic returns to the issue between him and Polus and Callicles in the *Gorgias*: that the orator should exercise all his efforts, not so as to please his fellow slaves, the human audience, but so as to please the gods. And yet with a touch of realism he acknowledges that the inferior purpose of pleasing the public can also be obtained in the process of aiming at meeting divine approval (273e).

Thus Plato's positive recommendations of definition and analysis of concepts, of applied audience psychology, and coherent organic invention, offered the most positive model for a future rhetoric, even one that would aim at success in the public world of courtroom and deliberative body. And Cicero, enamoured of the physical setting of this great dialogue, took comfort from its positive approach to excellence in speaking, and even echoed Plato's ambiguous praise of Cicero's stylistic and ethical model Isocrates. This too is partly imposed on Socrates by Phaedrus' enthusiasm. Just before the final prayer of Socrates to Pan and the other gods of his natural setting, Phaedrus asks him for a message of goodwill to Isocrates. Plato has dated the dialogue when Isocrates (Plato's elder contemporary) was still young: so Socrates first praises him for his natural powers and his character, nobler than Lysias, then

For its continuation in the rhetorical tradition see Paul Shorey, '*Phusis, Melete, Episteme*', *TAPA* 40 (1909), 185–201.

[40] On *kairos* see Isocrates' 'Brochure against the sophists' (*kata ton sophiston*) 13–14.

[41] See Ch. 7 below.

offers a two-edged prophecy, that if he persists in his kind of writing he will outstrip his predecessors, but that he will achieve even more if he becomes discontent with such work and follows a sublimer urge to turn to philosophy.

Now when Catulus compliments Crassus at the close of *De Oratore* on his almost divine command of rhetorical theory, he expresses the wish that his son-in-law Hortensius could have been with them, since he is surely going to excel in all the virtues of an orator. 'Yes', says Crassus: 'this young man lacks nothing either in talent or theoretical knowledge'. And he urges Sulpicius and Cotta to greater industry, for Hortensius is overtaking their generation and is likely to dominate it through his keen talent and burning enthusiasm, his exceptional mastery of theory and unique memory.'[42] Ten years after *De Oratore* Cicero will translate the same passage of *Phaedrus* word for word at *Orator* 42, adding: 'these are Socrates' good wishes for the young Isocrates. But Plato is writing about the old Isocrates, and though he is a contemporary and the denouncer of all *rhetores*, he admires Isocrates alone.'[43] Unfortunately what Isocrates called *philosophia* would prove to be little more than conventional morality and moralizing, and Plato was surely disappointed. Perhaps Cicero in his turn guessed at this disappointment. For in the same year as he wrote *Orator* Cicero noted in *Brutus* 320 that Hortensius—the rising star of 91 BC—had become lazy soon after his consulship (69 BC) and declined in his quality as an orator. The praise of Hortensius which Lily Ross Taylor saw as a sign that *De Oratore* was the outcome of Cicero's intended *Hortensiana*, his tribute to Hortensius, may have been a transparent veil for Cicero's own reservations. But he had no reservations in his admiration for the power and beauty of the Platonic dialogue, which glimmers at intervals through *De Oratore* and would return as a model for the sylvan setting of his *De Legibus*.

---

[42] *Nihil enim isti adulescentulo neque a natura neque a doctrina deesse sentio . . . non enim mediocris orator vestrae quasi succrescit aetati, sed et ingenio peracri et studio flagranti et doctrina eximia et memoria singulari. Cui quanquam faveo, tamen illum aetati suae praestare cupio* (*De Or.* 3.229). Here too Cicero follows the Platonic triad of nature, practice, and theory, but divides the natural component as in book 1 (see Ch. 4) into *ingenium* (talent) and *studium* (application or enthusiasm).

[43] *Haec de adulescente Socrates auguratur. At ea de seniore scribit Plato et scribit aequalis et quidem exagitator omnium rhetorum hunc miratur unum.*

This has only been a brief survey of the Platonic arguments which Cicero tries to answer in the dialogue, and his preliminary defence in 1.1–105. I will return to them when I consider his oblique attempts to complete his response in *De Oratore* 3.52–143. But besides attempting a philosophically valid defence of rhetoric Cicero was also a literary artist with a keen appreciation of both individual characterization and social *mores*. It is time now to consider the form in which he cast his response. And it must be admitted that the entire work is far more successful in its structure and dramatic form as a representation of ideal Roman courtesy and morality—to gloss Cicero's own term *humanitas*[44]—than as a logical or ethical vindication of public eloquence.

The world of *De Oratore* is Roman in all the most admirable ways, and charms us by a gracious blend of formality and relaxation throughout its discussions,[45] but its Romanness is perhaps best illustrated from the dialogue's successive dramatic settings. The occasion is a moment of political crisis, the crisis that would lead to the Social War between Rome and her Italian subject communities, but the challenge of Marcius Philippus to Livius Drusus' legislation is presented as a challenge to the authority of the senate (1.24) championed by Crassus. Even so the political emergency is kept at bay, returning only in the pathos of Cicero's narrative introduction to book 3, where the element of epilogue

[44] Cf. 1.27, 'but when they had come to an end of all this (political) discussion, such was Crassus' courtesy and tact, that when they reclined at dinner, all the grimness of the earlier discussion was dismissed': *eo autem omni sermone confecto tantam in Crasso humanitatem fuisse ut cum lauti accubuissent, tolleretur omnis superioris tristitia sermonis*. On *humanitas*, one of the most untranslatable of Roman values, see H. Haffter, 'Die römische *Humanitas*,' in H. Oppermann (ed.), *Römische Wertbegriffe* (*Wege der Forschung*, 34; Darmstadt, 1967), 468–82. On other aspects of refined Roman society see Carlos Lévy, 'La Conversation à Rome à la fin de la république,' *Rhetorica*, 11 (1993), 399–415 and for this dialogue, W. Steidle, 'Einflüsse römischen Lebens und Denkens auf Ciceros Schrift *De oratore*,' *MH* 9 (1952), 10–41, and Leeman–Pinkster, i. 66–70.

[45] In Roman thought the countryside was the proper place for *otium* (cf. J. M. André, *L'Otium dans la vie morale et intellectuelle romaine des origines à l'époque augustéenne* (Paris, 1966). While the best use of his leisure was a close concern of Cicero at this time, he had not yet reconciled himself to effective retirement from leadership, or worked out a balance between serious substitutes for political activity and genuine relaxation: compare his opening regrets (*De Or*. 1.1) at lost *otium cum dignitate*, and stress on the need for leaders to make serious and beneficial use of their leisure in the near-contemporary *Planc*. 66, with e.g. Crassus' nostalgic recall of the boyish pastimes of Scipio Aemilianus and Laelius in *De Or*. 2.22.

recalling the sad deaths of our conversationalists adds poignancy and significance to the ostensibly theoretical discussion.

It is September, the time of the Ludi Romani, when there can be no meeting of senate or assembly, and Crassus has withdrawn to his Tusculan estate to recuperate and gather strength (*quasi colligendi sui causa*). He has brought his pupil Sulpicius, currently a candidate for the tribunate, with him from Rome, but the other guests—his father-in-law, the elderly Augur Scaevola, and his political associate and personal friend Antonius—are both staying at their estates nearby in Tusculum (the aspiring politician Cotta comes as Antonius' guest). Lutatius Catulus and his half-brother Caesar Strabo also come over from their own villa nearby: even the offstage figure of Aelius Stilo, at whose villa Scaevola has a dinner engagement at the end of book 1, is to be found at Tusculum. Cicero loved his own Tusculan villa perhaps more than any other, but we can be sure that he is simply reflecting historical fact in setting the country homes of all these aristocrats in the hilltop community. With the exception of *Phaedrus* Plato set his dialogues in the public spaces or private homes of Athens. For Cicero the city was too beset with political duties and crowds of clients and dependants. If the scrupulous statesman could only leave Rome for the country during public holidays, this was also the only place where he could enjoy *otium*.

Once the company has bathed and is reclining for dinner Cicero quickly subordinates the residue of political anxiety brought from the city to an atmosphere more appropriate to their surroundings. It is Crassus' *humanitas* as host and his wit and charm that makes the friends' *convivium*—a word which Cicero himself praised as evoking the social aspects of dining together[46]—worthy of the leisure of Tusculum (1.27). The essence of a *convivium* was good conversation, *sermo*,[47] and the whole dialogue is presented as the

---

[46] Compare Cicero's praise of the Roman appreciation for conversation over dinner in *Fam.* 9.24.3 (SB 362) *sapientius nostri quam Graeci . . . nos 'convivia' quod tum maxime simul vivitur*.

[47] Three times, in a letter describing a private dinner with Caesar (*Att.* 13.52), in *De Fin.* 2.25, and again to *Atticus*, 14.2, Cicero quotes Lucilius' account of a good dinner *bene cocto et | condito, sermone bono et, si quaeris, libenter*. In commending the right kind of liberal conversation to his son Marcus, Cicero distinguishes *sermo* from *contentio* (*De Off.* 2.48) and the ease and friendliness of conversation (*comitas adfabilitas sermonis*) from the force and eloquence (*vis, eloquentia*) of formal public oratory.

relaxed *sermo* of friends free of any competitive or agonistic element: for in Roman thinking informal conversation was the opposite of public speaking or debate (*contentio*). Despite the prevailing atmosphere of respect, Cicero's group also consists of established friends who are truly comfortable with each other.

No other meals are mentioned during the two following days, but the narrative will always find the company when they are rested and follow them into the landscaped grounds of Crassus' estate. In book 1 they gather spontaneously at the *ambulatio*,[48] then Scaevola, as the senior figure, suggests that they imitate Socrates' behaviour in the *Phaedrus* and sit beneath the plane tree. There is already formal seating around it and Crassus sends for cushions to add to their comfort. The conversation starts naturally when he praises the young men for their successful development as orators, and glides into a general recommendation of the power of eloquence in public life.

The parallel between good conversation or speech and gentlemanly hospitality surfaces as an analogy for Crassus' intellectual generosity in an interlude halfway through this first book. When he has reached a natural pause after outlining the training he himself experienced, there is a courteous exchange of compliments appropriating the image of elegant entertainment. Young Cotta praises Crassus' easy fluency, but compares the dazzling effect of his swift pace to visiting a rich and well-furnished home where the tapestries have not been unfolded, the silver has not been set out nor the paintings and statues put on display: instead all these splendid things have been packed up and put away.[49] It is again the oldest person present, Scaevola, who encourages Cotta to do now what he would have done as a guest in such a house or villa, and ask the host to have his treasures brought out: 'now you will ask Crassus to bring everything into the light and set out his wealth of ornaments each in its place. For just now we only glimpsed everything crowded together in passing as if through a lattice'

---

[48] The symbolic evocation of the *Phaedrus* pointing forward to the theme of discussion, corrects the temptation for Cicero's readers to associate the *ambulatio* with Aristotle's *Peripatos*.

[49] *De Or.* 1.161, *tamquam in aliquam locupletem ac refertam domum venerim, non explicata veste neque proposito argento neque tabulis ac signis propalam conlocatis, sed iis omnibus multis magnificisque rebus constructis ac reconditis*. Cotta then transfers his metaphor to Crassus' intellectual riches, so far only seen through wrappings and covers, *quaedam involucra atque integumenta*.

(1.162). As a metaphor for the richness of Crassus' eloquence this works magnificently, reviving and anticipating the professional image of the orator's equipment as his *instrumentum* or *supellex*[50] (1.165): it also suggests indirectly the luxury which we know was characteristic of Crassus himself. But in what circumstances would guests find a friend's villa with its treasures in dustsheets except in his absence? The success of the image lies rather in the social pressure which it puts upon Crassus, reluctant to 'show off' his command of eloquence.

The end of book 1 is coordinated with book 2 through the departure of Scaevola who was already committed to visit Aelius Stilo at his villa and will take a rest until the heat of the day has eased. His role has been to speak up for philosophy (he was a Stoic) and provoke Crassus' defence of Roman civil law as of equal value; hence his parting jest, discounting Antonius' mockery of *ius nostrum civile* (1.265), since he had admitted his ignorance of the discipline. It is however Scaevola who causes the unexpected but welcome visit early the next morning of Catulus and Caesar Strabo (and here Cicero's offstage directions are worthy of comedy). The explanation is that Caesar met Scaevola as he was on his way to dine with Catulus, and heard that Crassus had agreed to talk about Eloquence. The social effect is, first, that Crassus warmly insists on their staying and, secondly, that their request obliges him to talk about *doctrina* (theory) like some Greek lecturing in a school (2.14). Apparently theoretical discussion is a more suitable activity for young men than old, that is, more a preparation for life than an adult activity. Crassus' demurral (*quasi recusatio disputationis*, 2.26) opens up criticism of the Greeks for their lack of judgement, being *inepti*[51] in their eagerness to talk theory at all times: in Roman eyes Greeks were impractical academics, and Cicero must somehow reconcile his audience to the impending and extended academic discussion.

---

[50] *Instrumentum*, tools or equipment, is far more common than *supellex* of the orator's professional skills, cf. 2.146, *hoc instrumentum causarum et generum universorum in forum deferre debemus*, 2.366 and 3.195; *Brutus* 268 and 331 and Quint. 2.21.24 *instrumentum voco, sine quo id quod velimus effici opus non possit*. *Supellex*, 'furnishings', used literally by Varro *RR* 1.22.6 alongside *instrumentum*, recurs as a metaphor at Cic. *Orator* 79–80, Sen. *Contr*.1. *Praef*. 23, quoting Latro, and Quint. 8. *Praef*. 28.

[51] On *ineptus* and Greek *ineptia* (cf. *akairia*, though Cicero denies they have a word for it, 2.17) see 2.16–20, and on 'eternal students' Crassus (again) in 3.86–9.

The first discussion took place in the *ambulatio*, the second is in the seating area of the *palaestra* at the end of the *porticus* (2.12 and 21) which provokes more jesting at the expense of Greek philosophers who occupy grounds intended for healthy exercise, and Crassus' last protest that the use of leisure is not to strain or stress (*contentio* again) the mind but to relax it: *otii fructus est non contentio animi, sed relaxatio* (2.22). But in the more than 300 sections between 2.22 and 2.362 there is little to remind Cicero's reader of the setting, until Antonius ends his last mini-lecture on memory and is thanked by Catulus. This is his moment to pressure Crassus for treatment of the whole issue of *elocutio* (something richer than mere style): Crassus has no excuse for refusing to do his share; not his status as ex-consul and censor, which he has in common with Antonius, nor his age, since he is four years younger, nor his expertise, since he had a superior education. Authority, most Roman of values, can also be used to impose *noblesse oblige*, and both Sulpicius and Cotta remind Crassus of his earlier agreement with Antonius (*ita partitum esse tecum,* 2.366, recalls *partitio*, 2.123). Once Antonius has brought up and educated the imaginary young speaker, he can hand him over to Crassus for dressing and personal adornment. The book ends as they rise and go indoors to rest, but first they agree to resume after the siesta.

The last book is overshadowed by the prefatory narrative and is made portentous even within the dramatic setting by the awesome moment when Cotta goes to rouse Crassus and finds him so deep in thought that Cotta steals away: they wait two more hours in silence as the afternoon declines before going to find Crassus together. Thence they follow him to the cool and shady heart of his plantation, which has been understood by more than one scholar as an allusion to the *silva rerum*, the intellectual and argumentative subject matter of oratory.[52] At the natural end of Crassus' discussion of both style and delivery, after a painful moment recalling the political disruption caused by the Gracchi, the conversationalists return to personal courtesies, and an optimistic glance into the future with the compliments paid to Hortensius, the rising Roman Isocrates. As host, Crassus announces that it is time to 'dress for dinner', and relax after this intellectual debate: *nosque*

---

[52] Cicero's related use of *silva rerum* at 3.93 and 103 for *materies* (raw material, subject matter) is a Grecism (cf. *hyle*) and as far as I know, a novelty in Latin.

*curemus et aliquando ab hac contentione disputationis animos nostros curamque laxemus* (3.230).

Cicero orchestrates the continuity of his extended conversation through many more discreet key phrases such as I have quoted above, and through devices such as imagery[53] which carry the reader back to earlier comments on the same issues. On the whole individuals are not given personal idiosyncrasies, but idealized in this as in Cicero's later dialogues, especially *De Re Publica*: the elders are benevolent and nurturing, the young appreciative and respectful. It is difficult to imagine an arrogant young Polus or an egoistic Callicles appearing in a Ciceronian dialogue, let alone asking difficult questions or voicing extreme views. This does not make Cicero's dialogues superior to their Platonic counterparts, but it does preserve their unity and promote constructive teaching.

Readers now have available the excellent discussions labelled 'Dialogue technique' and 'rhetorical techniques' in the introduction to May and Wisse's translation, and the useful outline in Brian Vickers's *In Defence of Rhetoric*.[54] I have also found helpful a recent discussion by Jon Hall.[55] Only in the first book does Cicero approach genuine debate, presenting Antonius, the experienced lawyer, as resisting Crassus' ideal of an encyclopedic education for the future orator. As he makes clear in his preface, Cicero is giving Antonius the point of view of his own brother Quintus, to whom he has dedicated the book as primary recipient. But this divergence does not last beyond the first book, for Antonius himself cheerfully declares in 2.40–1 that he was only opposing Crassus as an exercise; now he will expound his real beliefs.

Book 1 is in fact separated from the remaining two books by its function of setting out preliminaries. Cicero himself, writing to Atticus in 55,[56] distinguishes it from books 2 and 3 because of their *Technologia* and draws an analogy with Plato's *Republic*. As Plato

---

[53] See this author's *Comparative Studies in Republican Latin Imagery* (Toronto, 1972), ch. 6, for a more detailed discussion of systemic metaphors in *De Oratore*.

[54] See Brian Vickers, *In Defence of Rhetoric* (Oxford, 1988), 29–36, and *Cicero: On the Ideal Orator*, ed. James M. May and Jakob Wisse (Oxford, 2000), 13–19. Unfortunately Vickers seems to judge *De Oratore* by the criteria of a *techne*, and is impatient with the refinements of framework, setting, and conversational dialogue designed for Cicero's intended audience of mature and educated members of the governing class.

[55] 'Persuasive Design in *De Oratore*,' *Phoenix*, 48 (1994), 210–25.

[56] *Att*. 4.16.3 (= SB 89).

lets old Cephalus leave at the end of book 1 of the *Republic* before the more technical and argumentative books 2 to 10, so Cicero sends Scaevola offstage out of respect for his age. It is only in book 2 that the interlocutors move on from the early training of the imaginary young speaker to the recommendations for the five major functions he will exercise in composing and delivering a speech: Crassus and Antonius agree at 2.123 on a division of responsibility in which Antonius will expound the principles of *inventio* and related *dispositio*: he adds the brief survey of *memoria* (2.350–60) so as not to interrupt the transition from composition to performance.

In the third book Crassus has the task of outlining the principles of good *elocutio,* and of performance (*actio*). But Cicero has so constructed book 3 that Crassus includes in his account of the rhetorical excellence of *ornatus* the element of intellectual preparation, especially in Greek moral and logical analysis, which revives the issues raised in book 1 and answers the Greek philosophers' challenge to oratory. Through the two apparent digressions of 3.54–89 and 3.104–43, Crassus restores the leading topics of the legitimate territory of the orator and of his intellectual education, which were introduced in the parallel first section of book 1. He thus creates a kind of ring composition that reconfigures the trilogy, no longer as one introductory book followed by two linear treatments of technical precepts, but as a true triptych in which parallel material is given answering discussions on either side of the much longer central book. These aspects of the large scale of content and design make it easier for the reader both to be drawn forward constantly through the work and to leave it with a sense of closure.

# 4

# The Future Orator: Talent, Training, and the Choice of Model

Nemo fere laudis cupidus adulescens non sibi ad dicendum studio omni enitendum putavit. ac primo quidem totius rationis ignari, qui neque exercitationis ullam viam neque aliquod praeceptum artis esse arbitrarentur, tantum quantum ingenio et cogitatione poterant consequebantur. (1.14)

There was hardly an ambitious young man who did not think he should strive for eloquence with full commitment; but at first, since they were ignorant of the whole discipline, not realizing there was any system of training or rules of art, they achieved only what they could by native wit and deliberation.

Cicero was not yet 16 when his mentor, Crassus, died of complications from pleurisy brought on by his last great political speech in September 91.[1] Suddenly his hopes of completing his apprenticeship for public life (the *tirocinium fori*) with the great man were shattered. With the subsequent prosecution of Crassus' associates (and most speakers in this dialogue) by the hostile Varian commission, any prospect of a public career as advocate or politician must have seemed lost to him. So when he speaks in *De Oratore* of learning directly from Crassus, he must have enhanced his few memories of conversation with the great man by discussion with intermediaries like L. Cotta, and by rereading Crassus' few preserved texts, such as his famous *suasio* on behalf of the *Lex Servilia Caepionis*, delivered in the year Cicero was born.[2]

---

[1] For the occasion and excerpts from this 'swan song' see Ch. 2 above, and *De Or.* 3. 2–6.

[2] Cf. Ch. 2 above for this speech, called *quasi magistra* at *Brutus* 164.

How then does Cicero set about reconstructing Crassus' account of his own training, and his views on the selection and training of the ideal orator? We must inevitably assume that some of the principles and experiences ascribed to his mentor were Cicero's own, and this can be controlled by cross-reference to Cicero's account of his unusually extended education in the *Brutus*. But further questions arise. Given his mentor's early death, how much could Cicero himself have learnt about the training Crassus (and to a lesser extent Antonius) had received, or about their mature principles? What sources does Cicero cite for the evidence he uses to corroborate Crassus' speeches in other, narrative, parts of the dialogue?

To cover this gap of communication Cicero offers two forms of guarantee at the beginning of the second book of *De Oratore*. First he cites members of his own family from the previous generation, his father and uncle and his kinsman Aculeo,[3] Crassus' favourite student, as sources of information: it seems his uncle also became familiar with Antonius' views about Greek culture while travelling with him in Cilicia. Then, reverting to his own early years, Cicero claims that he and Quintus and their cousins were trained according to Crassus' recommendations and by the teachers whom he patronized.[4] These men were of course Greeks, as Cicero notes, and he claims that he and Crassus' other protégés used to hear Crassus interrogate them and expatiate in Greek on many topics. But many have sensed behind Cicero's arguments his own desire to maximize his mentor's Greek culture and sympathies, and it would be fair to ask whether Crassus himself, when young, had actually experienced the kind of training he recommended for his protégés. Cicero seems to hint as much when Crassus depreciates his own training in book 3:

I cannot claim to have learned the skills outlined in this discussion to the degree I am recommending. I embarked on public advocacy earlier than anyone, prosecuting a noble and very eloquent man at the age of 21. The

---

[3] *De Or.* 2.2, *domesticis testibus patre et C. Aculeone propinquo nostro et L. Cicerone patruo*.

[4] *De Or.* 2.2–3 again. Here I am translating *ea discerent* as a statement about learning techniques, but it could of course be understood as a memorization of texts or manuals. Similarly *eis doctoribus quibus ille uteretur* could be understood as implying that Crassus actually learnt from these teachers, but it is more likely that he conversed with them and employed them to teach the young.

forum was my training, experience and the laws and institutions and ancestral customs of the Roman people were my teacher.[5]

Certainly it was possible that the elite of Crassus' generation would train with Greek teachers. When Cicero recapitulates the first stages of Roman oratory in his preface to *De Oratore*, he starts with Rome's established domination of the Mediterranean (1.14, *imperio omnium gentium constituto*) which would most naturally imply the years after the destruction of Carthage and Corinth in 146 BC, but might go back earlier to the third Macedonian war. But at this time, he continues, rising young men had no knowledge of the discipline, and were unaware of any systems of exercise or principles of theory.[6] They had to succeed by natural talent alone, until they heard Greek orators, then came to know Greek writing (*auditis Graecis oratoribus et cognitis eorum litteris*). Cicero's language permits more than one reading, but I think we can assume that these Greek orators were the envoys of different states—such as Rhodes in 167 or the Achaean league, or the famous triple Athenian delegation of 155 consisting of the heads of the three active philosophical schools.[7] In this period, as in the second century of our era, the boundaries between 'philosophy' and epideictic oratory were almost invisible. *Audire* itself often goes beyond the mere fact of hearing a single presentation to something more like the systematic attending of a course of study. The other ambiguous reference comes with the possessive *eorum*: 'their' writings surely mean here 'the writings of the Greeks as a whole from Plato to Polybius' rather than the writings of these envoys who probably gave speeches without prior or subsequent publication.

<hr />

[5] *De Or.* 3.74–5, note especially *is sum qui . . . non possim dicere me haec, quae nunc complector, perinde ut dicam discenda esse, didicisse.*

[6] *De Or.* 1.14 *totius rationis ignari, qui neque exercitationis ullam viam neque aliquod praeceptum artis esse arbitrarentur.*

[7] Antonius reports at second hand (2.155, *hoc ex iis saepe audivi*) the reception given to the three philosophers, and the attention paid not just to their official representations but to the lectures or displays of their art which they gave; for *eos, dum Romae essent . . . frequenter auditos* implies unofficial presentations attended by these crowds of young men. Aulus Gellius 6.14.8–10 attributes comments on the three orator-philosophers and their different styles to Polybius and Rutilius Rufus, both writers whose work was known to Cicero. According to Plutarch, *Cato Major* 4.3–4 and 22.5, Cato urged the senate to hasten the departure of the envoys, after Carneades on successive days gave speeches first proving the value of justice in public life, then proving its undesirability.

Cicero's next phrase in 1.14, 'after employing <Greeks as> teachers' (*adhibitisque doctoribus*) probably moves to the next generation, and it is quite likely that there were no teachers of rhetoric—as opposed to Greek language and *grammatike*—at Rome before the generation of the Gracchi. Plutarch attests that Cornelia brought in the rhetorician Diophanes of Mitylene and the philosopher Blossius of Cumae to teach Tiberius and Gaius, presumably not before Tiberius was 16 towards 140 BC.[8] But the Roman tradition treats this as exceptional. So it is not surprising that Crassus and Antonius, born some twenty years after Tiberius, in 137 and 140, are not associated with any known Greek rhetorical teachers. If Cicero's Crassus speaks in some detail of his rhetorical exercises, we can choose between believing that he practised them with unknown *grammatici*, or that Cicero has improved on the facts, to strengthen his own case for the kind of training he himself did receive a generation later. This argument is borne out by the lapse of more than a century between the early figures in Suetonius' account of Roman republican *grammatici* (starting with Livius Andronicus) and the earliest native *rhetor*, Plotius Gallus. For Suetonius' introduction to the *Rhetores* (*De Gramm.* 25) does not hint at any significant transitional phase of prominent Greek teachers.[9]

When the mature Crassus is urged by his young protégés Sulpicius and Cotta to pronounce on the question whether there is such a thing as the art of rhetoric, his first reaction is to reject the question by referring it to young M. Piso's Greek tutor, the Peripatetic Staseas, then to deny rhetoric the status of an art.[10] There is, he suggests, only the observation by experts of ordinary practice, and their definition and classification of its particulars.[11] But

---

[8] Plut. *Ti. Gracchus* 8.4–5. As a political exile, Diophanes may have been in Rome as an independent immigrant rather than a professional teacher.

[9] Compare E. D. Rawson, *Intellectual Life in the Later Roman Republic* (Baltimore, Md., 1985), 76–9, on the anonymous beginnings of Greek rhetorical teaching: 'the fact that we know so little of the *rhetors* at Rome suggests their insignificance . . . Cicero does not think it worth while to mention their names even in the detailed account of his education in the *Brutus*. He does not in that work tell us of the teachers of any of his predecessors except the Gracchi, or of his contemporaries.'

[10] *De Or.* 1.104, *est enim apud M. Pisonem adulescentem iam huic studio deditum . . . Peripateticus Staseas.*

[11] *De Or.* 1.109 *ea quae observata sunt in usu atque tractatione dicendi . . . ab hominibus callidis ac peritis animadversa ac notata, verbis definita, generibus inlustrata, partibus distributa.*

there are other elements more important to oratory than this kind
of technical lore.

It is these elements which Crassus is finally induced to discuss,
starting in 1.113. As Leeman–Pinkster note,[12] *Ars*, formal rhet-
orical theory, is at this stage marginalized and reduced to some
eight summary sections, whereas two other elements, *ingenium*,
natural intellectual talent, and *exercitatio*, practical exercises, are
stressed and discussed at some length. It was in fact one of the first
principles of Greek *technai*, the formal manuals, that rhetoric
required these three elements, talent, theory, and practice. Both
Plato in the *Phaedrus* and Isocrates in his most didactic treatises
had set up the triad *phusis* (nature), *melete* (practice), and *episteme*
(knowledge),[13] and Cicero himself repeats it in the introduction to
his youthful *De Inventione*. Although Isocrates does not seem to
have published anything like a *techne*, Cicero's recommendations
in *De Oratore* also show consistent parallels with Isocrates' account
of his methods in the short manifesto *Against the Sophists* and the
second half of his lengthy *Antidosis*. Wherever possible these af-
finities will be footnoted.

But Crassus' discussion of *phusis* refines on this. He recognizes
the dual intellectual and physical aspects of natural talent: neither
physical *natura* nor *ingenium* can be created by theory. What is
mediocre can be improved and defects compensated, but real
excellence is extraordinarily hard to achieve. His opening demands
are for nimbleness of intelligence, the quick-wittedness necessary
for finding arguments, fluency of language for richness of speech,
and a firm and lasting memory (1.113), but these are immediately
followed by the physical requirements of a flexible tongue, and
good voice, of powerful lungs and an attractive face and body, and
the recognition that such gifts are born, not made (1.114).

It is in this context that Crassus introduces a comparison from
the art of the theatre, with the claim that oratory is actually more
demanding. A theatre audience is critical enough of actors' per-
formances, he claims, although attendance is optional and a mere

---

[12] Leeman–Pinkster, i, 213–15 and 217.
[13] Leeman–Pinkster, i, 210–11 ascribe the triad originally to Protagoras, but our
first extant text is *Phaedrus* 269d. Cf. Isocrates, *Antidosis* 188 (*pephukenai . . . labein
ten epistemen . . . gumnasthenai*) and 189–90, quoted Leeman–Pinkster, i. 214. For a
historical outline of the theme in classical rhetoric see Paul Shorey, '*Phusis, Melete,
Episteme', TAPA* 40 (1909), 185–201, cited in Ch. 3 above.

diversion (1.118, *in quibus non utilitas quaeratur necessaria*, *sed animi libera quaedam oblectatio*). But the orator has two audiences, those compelled by legal and business interest, and the larger crowd of onlookers free to make their own critical judgement. For the man with political ambitions such pleading in a lawsuit or criminal trial is more a means than an end. It is the qualities he shows as speaker rather than success in the client's case which will make his name. Recognizing that he himself is being judged, the orator knows the importance of each single occasion: hence he needs to feel what we call stage-fright. And Crassus supports this claim by an anecdote from his first performance as an accuser, when his stage-fright was so acute that the presiding magistrate dismissed the court.[14]

Antonius takes up this issue by confirming Crassus' argument that the orator cannot predict the reactions to his speech (120, 123, *eventus orationis*) and has always to meet his audience's expectations (120, *exspectatio hominum*, 125 *iudicium . . . opinio tarditatis*). In the theatre actors are excused occasional bad performances on the grounds that they are having an off day, but an orator will be condemned for a poor performance as stupid or slow-witted. The risk of losing reputation by such failures explains the behaviour of teachers of both acting and rhetoric. Now Antonius recalls the refusal of the rhetorician Apollonius of Alabanda to take on pupils who lacked the natural talents to become speakers, and Crassus cites as parallel Roscius' dissatisfaction with the pupils he had been offered because he found their faults and mannerisms offensive.[15]

The great comic actor Roscius of Lanuvium was a slightly younger contemporary of Crassus and Antonius. Cicero himself had spoken for Roscius in a civil lawsuit with his ex-partner over a former pupil; he knew him so well that according to Macrobius they used to compete to see which of them could find more ways of representing an idea, Roscius by his gestures or Cicero by his

---

[14] The presiding praetor was Q. Fabius Maximus. Crassus' first known speech (on which see Ch. 2) was the prosecution of C. Papirius Carbo in 119, when he was 21 years old (see Cic. *Brutus* 159 and Malcovati, *ORF* frr. 13–14). Carbo's role as a political turncoat against his former allies, the Gracchi, made this a case of the greatest public interest.

[15] Cicero will return in more specific detail to the orator's performance (*actio*) and its affinities with stage acting in 2.193–4, and in the formal discussion of *actio* (3.213–37). See now Fantham, '*Orator et/and actor*', in P. Easterling and E. Hall (eds.), *Greek and Roman Actors* Cambridge, 2002.

language.[16] Cicero repeatedly presents Roscius in *De Oratore* as the model for physical performance, in the perfection of his movements and their beauty which both charmed and moved all his audience. The great actor stands for the aesthetic component in public speaking: for beauty (*venustas*) and consummate gesture, achieved by practice until something is impeccable.[17] Roscius is made the embodiment of *decere*, grace and elegance. For Roscius, grace was the essence of art, and the one thing that could not be created by art itself: *caput esse artis decere, quod tamen unum id esse quod tradi arte non possit* (1.132).

The stress placed by Cicero on skill in performance—*actio*, which will not be discussed until the very end of the dialogue—is something unparalleled in the Greek rhetorical tradition until after Demosthenes, whom later theorists credited with being trained in his delivery by Satyrus or another actor.[18] But this is not just a didactic innovation; it tells us something about Roman society. Crassus and Antonius were older than Roscius and probably confined their acquaintance with him to his stage performances. Cicero puts Roscius' sayings into the mouth of Crassus, but he is surely drawing on his own acquaintance with the actor. Even in the *Brutus* Cicero does not speak of his early training in deportment and elocution, but gives more attention, as we shall see, to a later phase in which he acquired a less physically demanding style of speaking. On the other hand we know from Quintilian that future orators were trained in elocution as boys by *comoedi*,[19] and it seems quite likely that Cicero had studied privately with Roscius in one phase of his training.

Antonius was famous as a courtroom tactician, far more distinguished in the versatility of his techniques than Crassus, and it is probably for this reason that Cicero puts into his mouth the resumptive comparison of the orator's skills with those of other arts. More is expected of the orator than of any other single artist: he must match the dialecticians in sharpness of argument, the moral philosophers in impressive moral judgements (*sententiae*),

[16] Macrobius, *Sat.* 3.14.12.

[17] Here I am extracting the force of Cicero's adverb *perfecte*, on which cf. *TLL* 10.1, s.v. *perfectus* subheading. I *statum quam maxime excultum, consummatum.*

[18] On Roman ideas about Demosthenes' training see Fantham, 'Quintilian on Performance,' *Phoenix*, 36 (1982), 243–63, esp. the table on 263.

[19] Quintilian 1.11. He makes further detailed comparisons with stage performance in the chapter on the young adult speaker's delivery, 11.3.

poets in his vocabulary, and legal experts in his memory. But he must also match the vocal richness of tragic actors and the gesture of the best performers of comedy.[20]

There is no compact Ciceronian formula for the circumstances and behaviour necessary to ensure that a talented young man would develop his potential to the full. But in his personal introduction to the dialogue Cicero outlines a historical account of rhetorical development at Rome, a pattern he almost certainly found in Isocrates. At the end of his extended defence of his teaching in *Antidosis*, Isocrates observes (*Antidosis* 296) that the excellence of Athenian oratory comes from the prizes (*athla*) offered by the city, the range of exercises for competition provided (*gumnasia pleista . . . tois agonizesthai boulomenois*), the experience available (*empeirian*), and the merits of Attic speech. A little later he will (realistically) add the requirement of financial means and leisure (304). Cicero seems to be matching this account when he adds to the description of young Romans with which this chapter began (1.14–15), their benefit from the stimulus of Greek teachers and their writings, the experience (*usus frequens*) offered by the variety of cases, the incentives (*maxima . . . praemia vel ad gratiam vel ad opes vel ad dignitatem*). He does not add leisure or opportunity, but when Crassus and Antonius envisage the great orator of the future, these too are added (1.95, *et otio ac facultate discendi maiore et maturiore*). This is the leisure for education which Crassus regrets he never enjoyed (3.74–5). But Crassus adds something else—the application to training which must come from the student: *diligentia* (129, cf. 2.99 and 147–9) and *studium* (131).[21]

Since the young men listening attentively to Crassus and Antonius are of course naturally gifted, and have benefited from

[20] *De Or*. 1.128, *in oratore autem acumen dialecticorum, sententiae philosophorum, verba prope <iam> poetarum, memoria iuris consultorum, vox tragoedorum, gestus paene summorum actorum est requirendus*. Note that actors like Roscius are here called *actores*, not *comoedi*, probably because Cicero had in mind not Roscius' more extravagant comic roles, but his performance in the normalizing roles of citizens.

[21] Together with the concrete *exercitatio* these educational virtues match Isocrates' stress on epimeleia in *Against the Sophists* 14–18, and his fuller treatment in *Antidosis;* first in the key comparison between physical and rhetorical training (*Antid.* 181–9), which he follows by analysis of the respective contributions of nature, theory and training, and again in the effect of training in 207–8. In Cicero *exercitatio* itself is closer to *askesis*, (*Antid.* 209), *diligentia* to *akribeia* (*Sophists* 17), and *studium* to *philoponia* (209) or *zelos*.

training by Crassus and Antonius themselves, it remains for Crassus to reassure them and exhort them to continued devotion (134, *studium et ardorem*) in pursuing their art. He gives a rapid, almost dismissive, survey of the standard rhetorical catechism in 1.137–46, before recalling the exercises that are required of the aspiring orator (147–59). Courtesy makes him assume that Cotta and Sulpicius have already passed this stage in their education, whereas the imaginary young trainee will need such exercises as if he were practising a sport or athletic skill.

The first form of exercise mentioned is described as routine current practice. Students are given the outline of a typical case (*causa aliqua posita*, 149) and encouraged to plead in realistic terms. But it seems they were usually encouraged to do so more or less impromptu, since Crassus criticizes the practice because most students speak without consideration, exercising only their voice and energy and fluency of tongue. They have heard that one learns to speak by speaking and do not stop to think that by speaking badly they will only develop bad habits. Improvisation may be useful but it is far more rewarding to take time and speak more carefully and precisely. On the issue of improvisation versus preparation by writing, Cicero follows Isocrates' stress on the merits of written eloquence rather than Alcidamas' exaltation of the ability to talk on one's hind legs. Writing is the best teacher and creator of speech (1.150, *dicendi effector et magister*) because it gives time to think of all the arguments inherent in the case, to choose the right language and sentiments, and to achieve the best shaping and composition of one's words according to the standards of prose rhythm. This kind of training will carry the speaker through, so that if he comes to a passage which he has not prepared he will be kept moving forward by the impetus of his prepared text.[22]

The reader of, say, the elder Seneca, may wonder how these model cases differed from the staple *controversiae* of the imperial declamatory schools. Two factors seem to be crucial: first the stress on ordinary cases and everyday life. Crassus is not speaking of the fantastic and complex family crimes or the tyrants and pirates of

---

[22] *De Or*. 1.152, *parem tamen obtinet oratio reliqua cursum scriptorum similitudine et vi concitata.* Cicero's analogy is to a boat which continues forward motion after the oarsmen have shipped their oars.

the declamatory schools, but of routine lawsuits over property and contracts. The second factor is the context in which the pupil trains; in Crassus' day there were not yet whole classes studying in schools, or teachers using their schools to put on displays for the public; rather the student was probably one of at most two or three working with the *rhetor* and did not have to compete in novelty and paradox with those who had spoken before him.

It may seem strange that this obvious exercise does not occur either in the lists of Quintilian (2.4), who seems to substitute *narrationes*, or in the *Progymnasmata* of the Greek rhetoricians.[23] Despite some divergences between these manuals from the second to fifth centuries of our era they share a common sequence of exercises against which we can measure the exercises mentioned more briefly by Crassus in 1.154–8. The early exercises of the standard Greek sequence were usually handled in Rome by *grammatici*: *chreia, gnome, mythos*, and *diegema*, in which the students worked up an anecdote climaxing in a pithy saying, elaborated a proverb or apophthegm, and composed a fable and a simple narrative.[24] Studies with the *rhetor* began again with narrative, followed by the systematic supporting or refutation of an argument (*anaskeue, kataskeue*), then the development of a commonplace (*koinos topos*), composing a formal description (*ekphrasis*), then a speech in character (*prosopopoiia, ethopoiia*), and exercises in praising or condemning (*enkomion kai psogos*), in comparison (*synkrisis*), in arguing for or against a hypothesis (*thesis*), and in criticizing a law (*nomos*). To these Theon added the interpretation of a historical or oratorical text (*anagnosis, anagnosma*), memorizing and summarizing it (*akroasis*) and presenting it in the student's own words (*paraphrasis*).

The last three exercises resemble the training in comprehension which Crassus reports was adopted by his older contemporary (and enemy) Carbo: he would read a passage of verse (probably of epic or drama) or part of a speech, and then set about presenting it from memory (1.154, *ad eum finem quam memoria possem*

---

[23] For the exercises recommended by Quintilian and a comparison with the *Progymnasmata* see Rossella Granatelli, 'M. Fabio Quintiliano *Institutio Oratoria* II 1–10: La struttura e problemi interpretativi,' *Rhetorica*, 13 (1995), 137–60. The Greeks, Theon, Hermogenes, and Aphthonius (all from the imperial period), have *Diegemata* (narratives) at the corresponding point in the sequence of their exercises.

[24] Compare the elementary instruction listed in Quintilian 1.9.2–6.

*comprehendere*) in different words. But as he explains, the problem was that the poet or orator he had read had pre-empted the best language, so that he had to choose between repeating it and gaining nothing or resorting to words that did not fit the situation so well. So as a young man Crassus changed his practice (1.155) so as to read and then interpret the best Greek speeches. Not only could he now claim the use of the best words in Latin but, in addition to that, modelling his speech on the Greek enabled him to coin phrases that were both new and appropriate. Quite apart from this new element of translation, not available to Greek students working only in Greek, the exercise as described does not correspond exactly either to *paraphrasis* (reproducing one's own version of a text) or *akroasis* (composing a version from memory), the last two operations of the Greek sequence, nor to any one exercise in Quintilian, who postpones discussion of memorization until 2.7, after the exercises listed and discussed in 2.4–6.

The subject of model texts leads Crassus naturally to his last major caution, about choosing one's models for both style and delivery. Since it requires so much effort to exercise voice, tongue, breath, and body, it is essential not to choose a bad model which will lead to faults and mannerisms. The student will need to develop his memory by memorizing both his own and other men's writing, and finally to step outside this housebound exercise (*domestica exercitatio*) into the arena of the forum, testing his intellectual powers and facing the harsh light of real life.

But this is not the limit of the recommendations Cicero puts into Crassus' mouth. Like the future ideal orator described by Antonius in 1.95 who will apply himself to listening, reading, and writing, Crassus would have the student educate himself more generally by reading and rereading (*legendi et pervolutandi,* 1.158)[25] poets and historical writers and all the teachers and writers of serious subjects—surely moral philosophers are meant here. Then, once he has read his texts from beginning to end, he must practise the procedures I listed among the *Progymnasmata,*

---

[25] The brevity of this recommendation should not deceive the modern reader: reading itself (or hearing a reader), the non-technical reading of poetry, philosophy, and history, is the single most important stipulation added by Cicero to inherited rhetorical training. (However disingenuously) Cicero attributes cultured reading as much to Antonius as to Crassus; cf. 1.95, 2.59 and 60, 160, 341. (It is more to be expected of Crassus; cf. 3.15 and 42.)

praising and explaining their arguments, correcting and criticizing them, and even refuting them.[26]

To these rhetorical exercises Cicero adds a form of training not taught by the rhetoricians or even Quintilian: the Peripatetic and neo-Academic practice of learning to argue both sides of an issue and bring out the merits of each case. And even that is not enough: the student must have a broader general education in history and political theory and practice. He needs to learn the civil law, to understand statute laws, to take in all of Roman institutions and senatorial custom, together with the rights and treaties and agreements that bind Rome's allies and the *causa imperii*. Cicero is concerned to train future statesmen, and the stress laid by Crassus on senatorial custom and political procedure (*senatoria consuetudo, disciplina rei publicae*) and Rome's legal relationships with her subject states aims at the future senator and magistrate, not primarily at the court orator. With the statesman in mind we should probably translate Cicero's *causa imperii* as 'the justification of empire.'[27] As an afterthought Crassus returns at the end to a more ephemeral element: the need for wit and humour to season the orator's speeches. Perhaps what relates this element to the previous demands is the assumption that such wit will be derived from the student's reading, rather than created from his own resources.

These requirements have moved far beyond a rhetorical education, and Crassus' claim for the relative importance of legal knowledge from 1.166–200 will be answered by Antonius at matching length. I will follow Cicero's own lead in giving this aspect of the orator's world its own separate discussion in the next chapter.

However, it is a reduction of educational requirements, Antonius' counter-arguments to Crassus' model of a broad general education, that rounds off the first book (1.209–62). He brings the audience back to the orator's immediate functions in daily

---

[26] Concentrated in this sentence are several Greek exercises: in order, Crassus' gerundives correspond to *encomion, exegesis, anaskeue* and *kataskeue, psogos,* discussed by Quintilian in 4.18–19, 20–1, and 5.1.

[27] Leeman–Pinkster ad loc. translate as *Aussenpolitik*, foreign policy; May and Wisse translate 'effective foreign policy.' But Cicero knew and later followed Panaetius' concern with the justification of Roman power over her subjects and allies, and I would understand *causa* here in terms of a (confident) defending brief.

public life. These, he claims, are so demanding that the young speaker will have no time for a wider education if he is to develop the control of his voice and mastery of delivery which made Demosthenes into a great speaker. Was this the main message of Antonius' pamphlet on rhetoric? Little as we know about it, this was more likely to be an unsystematic collection of useful recommendations based on Antonius' own wide experience in the criminal courts.[28] Quintilian, who knew the work, calls it unfinished, and says that it was only after Antonius that orators found Latin names for the different *stasis* categories of Hermagoras.[29]

Luckily we have two external documents by which to control Cicero's outlines of practice and relate them to a more general pattern of training for oratory in the years of his youth. The first is the decree issued by Crassus and his fellow censor Domitius Ahenobarbus, when Cicero was in his fourteenth year in 92 BC, aiming to prohibit or at least discourage a new form of training. Crassus' own account in the third book of *De Oratore* is the earliest but perhaps most tendentious of the three witnesses to this moment of educational reaction. He approaches this decree through a renewed appeal against letting a technical specialist training hamper a broader education in philosophy, literature, and history (3.82–90), another version of his recommendations in book 1. Unfortunately the immensity of this cultural material meant that the Greek rhetorical instructors were no longer able to control it, and were failing to teach the young Romans.[30]

As a result the last two years have seen a crop of Latin teachers. I had banned them as censor by my edict because I did not want the young men's minds blunted and their shameless lack of respect increased. For I saw in the Greeks, whatever their limitations, more than mere exercising

---

[28] For this *libellus* cf. *De Or.* 1.94, where Cicero quotes Antonius' claim that he had known quite a few good speakers, but so far no one truly eloquent. What follows, defining the truly eloquent as 'the man able to expand marvellously and impressively whatever he wanted and in control of all the resources for public speaking,' sounds more like Cicero's gloss than Antonius' own practice or values. See also Rawson, *Intellectual Life*, 146, 'not organized as an *ars* in the systematic fashion we have met.'

[29] Quint. 3.1.19, *incohavit . . . opus . . . imperfectum*.

[30] *De Or.* 3.93. When Crassus declares that the young men were almost unlearning in the process of learning (*dediscerent paene dicendo*), is he implying that they were bored into indifference, or simply that they were learning bad methodology?

the tongue; there was theory and a culture worth knowing,[31] whereas I saw these new teachers offered nothing except brashness.[32]

But Suetonius knows of a different assessment offered by Cicero in a fragment of a private letter to Titinius. There, referring to the first known Latin *rhetor* Plotius,[33] Cicero says that Plotius taught in Latin, and all the most enthusiastic students were flocking to him. Cicero chafed at not being allowed to do the same, but was restrained by the authority of his learned patrons who believed that intelligence could be better developed by Greek systems of exercise. This puts a more strictly educational slant on the dispute.

As for the censorial decree, Suetonius and Gellius[34] have preserved its actual words, which lay stress on the sound form of training determined by our ancestors, and denounce the new state of affairs, in which young men 'sit idly in schools all day long' (*totos dies desidere*). Kaster is surely right to see in this language a contrast with the traditional Roman method of apprenticeship in the active forum, and a stress on young men being held back from actual experience of public life. It is more than likely that the young men who had flocked to Plotius were already of age and had passed through the formal system offered by Greek *rhetors*. At the same time, as Kaster notes, this shows that Greek rhetorical training was firmly established as compatible with, if not part of, the *mos maiorum*.

Crassus' authority held back Cicero, but did the censors' decree have a general effect? Again Kaster points to the actual timing (in the last two years) and tense (pluperfect, so prior to the perfect describing the rise of these schools) with which Crassus notes his

[31] See the brief earlier discussion in Ch. 2. The whole passage is nuanced and admits of more than one translation, but there is also a key textual issue; whether to read—with Kumaniecki and Leeman–Pinkster–Wisse—*humanitatem dignam scientia*, where *scientia* has the unusual sense of 'coming to know' or adopt Lambinus' conjecture *humanitate dignam scientiam*, 'a field of knowledge worthy of culture, gentlemanly values'?

[32] 'Brashness' is my attempt to represent *audacia*, which often has a more political meaning (radicals, revolutionaries, etc.). Crassus' other phrase, *ludus impudentiae*, is stronger, and its negative force implies, I believe, lack of respect for the views of their elders and betters.

[33] On Plotius see Suetonius, *De Gramm*. 26, with Kaster's commentary. Both the elder Seneca (*Contr*. 2. Pr. 5) and Quintilian (2.4.2) call him the first to teach in Latin.

[34] Suetonius, *De Gramm*. 25.2; Gellius 15.11.2. Tac. *Dial*. 35.1 depends on *De Or*. 3.93, from which he cites *ludus impudentiae*.

prohibition in *De Or.* 3.93 as evidence that the schools survived and persisted. Confirmation is offered by Plotius' known survival as a professional *rhetor*, and by the other important teaching manual of the 80s, the anonymous *Rhetorica ad Herennium,* named from its dedication to an unidentified Herennius. The first two books of this manual overlap considerably with Cicero's student work, but also show differences even in their common material. It is forcefully written, and although the author does not prescribe any particular exercises, some of the rhetorical figures and stylistic models of development in the fourth book would be natural exercises. Two aspects of his vivid samples of oratory have suggested the author's sympathy with the *Rhetores Latini*: his formal rejection of the practice of using Greek examples,[35] and the political colour of his more extended samples, which reflect interest and sympathy with the Gracchi. The clarity and vigour of the work suggest an effective teacher and I would endorse Rawson's description of the *Rhetorica* as 'competent and intelligent.'[36] Could such a good writer have abstained from the actual composition or delivery of courtroom or political speeches?

I have raised the separate issue of composition because Cicero himself attests that during the period of the Social War and Cicero's youth up to the mid-80s, one distinguished scholar, Aelius Stilo, wrote speeches for a number of political figures, and did so anonymously. Aelius Stilo remains offstage in *De Oratore*, as the host whom Mucius Scaevola leaves to visit at the end of book 1, but in *Brutus* 205 Cicero speaks from personal experience of study with Stilo.[37] He reports visiting Stilo while he was composing some of these 'ghosted' speeches, including a defence speech for Cotta—our Cotta, the formal source for the whole series of discussions in *De Oratore*.[38] Cotta was put on trial in 90 under the investigations of the Varian commission accusing the circle of Antonius and Livius Drusus of provoking the Social War, and apparently did not trust his own powers of self-defence, but Stilo's

---

[35] He does in fact borrow quite a few Greek examples, and it is possible that he rejects the practice in general because of a relatively poor command of Greek.

[36] Rawson, *Intellectual Life in the Late Roman Republic* (Baltimore, 1988), 149, for her discussion of this work, which she assesses as 'strictly under the spell of Greek theory,' see pp. 147–51.

[37] *Cum essem apud Aelium adulescens eumque audire perstudiose solerem.*

[38] For what is known of his trial see M. Alexander, *Trials in the Late Roman Republic, 149 BC to 50 BC* (Toronto 1990), no. 105, p. 55.

speech (which Cicero describes as *levis*) could not overcome political prejudice and he was exiled.[39] It is worth considering whether the phenomenon of Aelius Stilo's 'ghost writing' was peculiar to him, or represented an abortive direction in the development of Roman oratory. Most of the distinguished Athenian orators made their name as 'ghost' writers, *logographoi*,[40] but the social importance of patronage at Rome probably made it expedient even for trained orators to use socially prominent figures as defence counsel: hence the secondary sense of *patronus* in lawsuits and trials. Cotta probably had the same Stoic distaste as his uncle Rutilius Rufus for sheltering behind other professional pleaders,[41] but went beyond him in delivering the sober Stoic defence he had commissioned as if it were his own. In contrast there is very little evidence of ghost writing after this period. Certainly in the 50s young Caelius, an orator ready and willing to speak in his own defence along with Cicero and Crassus, aimed to humiliate his young prosecutor Sempronius Atratinus by claiming that the *rhetor* Plotius had composed his speech for him

In the *Orator* Cicero stresses that he had always gone to extraordinary lengths to train as a speaker, leaving home to study in Crassus' house while still a lad, and travelling overseas, then filling his house with learned men (146). He provides a full account of what we may see as three phases of his education in *Brutus* 305–16, starting with his year of *tirocinium fori* (internship or apprenticeship). During this year (90–89 BC) Cicero listened to all the leading speakers; but with the death of Crassus, the absence and subsequent murder of Antonius, and Cotta's exile, the list of survivors in 88 was not encouraging. Scribonius Curio, Metellus Celer, the radical tribune Varius, Papirius Carbo, Pomponius, and our participant in the dialogue, Julius Caesar Strabo (*Brutus* 305) were none of them names to conjure with, as Cicero's detailed

[39] On Aelius Stilo see Kaster on Suet. *De Gramm.* 3. Kaster notes Cicero's comments on Aelius' speech-writing for Cotta and others in *Brutus* 205–7. On Cotta's failure to be elected tribune and subsequent exile see also *De Or.* 1.25 and 3.11.

[40] See Ch. 3 on Plato's comments in the *Phaedrus* on Lysias and *logographoi*.

[41] See Ch. 2 above for Rutilius, and compare Antonius' account of his refusal of emotional appeal at 1.229. Instead Rutilius relied on the Stoic restraint of Cotta and Q. Mucius Scaevola (Crassus' consular colleague, the Pontifex). Was his condemnation the reason that Cotta did not trust his own ability to write a convincing defence speech?

description of Curio or Varius reveals. At the same time Cicero
describes himself as doing rhetorical exercises (*oratoriae exercita-
tiones*), writing, reading, and practising delivery (*commentans*).
Even in this year of renewed crisis, when he listened to all Sulpi-
cius' inflammatory *contiones* and studied his style, Cicero found
time to listen to the consultations of Scaevola the Augur, no doubt
with an eye to providing a second choice of career if public speak-
ing remained as dangerous as it must have been in 88. Simultan-
eously, it seems, he was studying rhetoric with the visiting
Rhodian envoy and teacher Apollonius Molon and philosophy
with the Academic Philo: but we should not assume that Cicero
studied only philosophy with Philo, since he tells us in *Tusculans*
2.9 that Philo used to lecture on philosophy in the morning and
then teach oratory in the afternoon.

It seems the division between rhetoric and philosophy, the two
approaches to teaching *logos*, was still blurred, as it had been with
the first sophists and would be again in the second sophistic.[42] The
political hazards of the Marian and Cinnan years left a virtually
empty forum, as Cicero tells us,[43] and kept him occupied instead
with 'every kind of learned study' (*Brutus* 309, *omnium doctrinarum
meditatione*), reading with the Stoic Diodotus, who became a
member of Cicero's household, and practising rhetoric by 'de-
claiming' in both Greek and Latin, but more often in Greek,
with friends of his own age like Q. Pompeius and M. Calpurnius
Piso. Since Cicero had not yet made his debut in the courts, this
can only mean that he exercised by composing and delivering
speeches on imaginary, if perhaps standardized, cases. Cicero's
rider on this practice is important. If he did this more often in
Greek, so that his teachers could correct him, this also confirms
that these 'declamations' were not improvised but carefully written
and prepared in detail.[44] According to Suetonius, Cicero would
continue to 'declaim' privately or at the school of the combined
*grammaticus* and rhetorician Antonius Gnipho until the year of his

---

[42] This may be the reason why the decree of 161 expelled both *rhetors* and
philosophers, and why when Gellius (15.11) moves from this decree to the censors'
decree of 92 against *rhetors* alone, he introduces it with the words *de eisdem*. See
Kaster, *Suetonins* (Oxford, 1991), 272–3.

[43] *Brutus* 306–7, *sublata iam esse in perpetuum ratio iudiciorum videbatur*. By then
Sulpicius, Antonius, Caesar Strabo, and Catulus had also met violent deaths.

[44] See *Brutus* 310, restated at 315.

praetorship, when he was 40.[45] It was a form of exercise he returned to in retirement under the dictatorship of Caesar, composing and delivering fictitious cases, or more generalized philosophical debates (*theses*) at his villa, when he had as his guests younger politicians like Dolabella and Hirtius, whom he was helping to train.[46]

These two phases, the actual foreshortened time of apprenticeship and the years of wider education during the unwanted postponement of his career in the forum, carried Cicero to the years of his first court cases. These were the lawsuit *Pro Quinctio* and the criminal defence *Pro Roscio Amerino* of 81 and 80 BC, speeches which Cicero himself thought worth editing and preserving. We may think it unusual that he did not make his debut with a prosecution, but given the political tensions of the Sullan dictatorships, Cicero's defence of Roscius was probably as near to a prosecution of his conspiring cousins and the scheming of Chrysogonus behind them as any Roman would dare. As he reports it, these cases brought him many demands, but soon after Cicero was turned away by physical problems for the unexpected final phase of his training.

It should be stressed, before we follow Cicero on his study trip to the Greek world, how unusual was the many-sided education that this son of the municipal aristocracy had received at the cost of a proud father. What father has not become worried when his son postpones a public career to enter graduate school, especially if he changes his field of study? Yet before he was 25 and entered the forum Cicero had enjoyed the costly individual teaching of several distinguished Greeks: two to three years later, when the 28 year old is suffering under the vocal strain of his profession, his father is now financing more than a year of travel and training in Athens, Rhodes, and Asia Minor. Nor does it seem that Cicero's travels were planned only as therapy and retraining. If Cicero returned with a new style of speech that would not strain his physique, he was

---

[45] See Suet. *De Gramm.* 7.2, with Kaster's commentary, on Gnipho's role in teaching grammar and rhetoric. Gnipho was the tutor of Julius Caesar in the early 80s.

[46] On the changing meaning of *declam(it)are* see Douglas on *Brutus* 310, also Seneca, *Contr.* 1. *Praef.* 11, with Bonner, *Roman Declamation* (Liverpool, 1949), and *Education in Ancient Rome* (London, 1977), 82, and Kaster on Suet. *De Gramm.* 4.

nonetheless happy to spend six months at Athens studying the new answer to Philo's sceptic epistemology with Antiochus, his successor as head of the Academic school (*Brutus* 313–14). In contrast with his enthusiastic praise of Antiochus, the reference to exercises in rhetoric with the veteran teacher Demetrius seems decidedly secondary. Perhaps this was primarily a period of convalescence, postponing actual vocal training until Cicero had been restored with systematic diet and exercise under Greek doctors. After the six months, Cicero moved on to Asia, working with Menippus of Stratonicea and accompanied by three other teachers as he moved around, Xenocles of Adramyttium (who had been an envoy for the province of Asia early in the Mithridatic War),[47] and the otherwise unknown Dionysius of Magnesia and Aeschylus of Cnidos.

Geographically it was natural that Cicero should travel southwards through Asia before coming to Rhodes, but since he was going there to work with Apollonius Molon, whom Cicero had already known at Rome, we may see this as the real destination of Cicero's travels. Cicero is keen to stress Molon's three skills as pleader, writer, and personal coach (*Brutus* 316). From Molon he finally learnt a new and more measured style of composition and delivery, returning with a less exuberant and calmer style, and new strength in his lungs. Cicero was now around 30, and would soon hold his first public office as quaestor in western Sicily.

How typical was Cicero's experience of young men in this generation? Oddly the nearest comparison would be with someone Cicero had reason not to discuss at length in the *Brutus*, with Julius Caesar. Caesar, born in 100, conducted his first case—the prosecution of Dolabella for provincial extortion—in 77 BC (aged 23, and so much younger than Cicero at his debut), and took on another prosecution the following year.[48] Like Cicero Caesar soon after went east to work with Molon.[49] A generation later, study in Athens

[47] On the rhetor Menippus, see Strabo 14.2.25; on Xenocles, Strabo 13.1.66.

[48] See Suet. *DJ* 4. Tac. *Dial*. 34 underestimates Caesar's age, as he does that of Crassus at his first prosecution.

[49] Probably in 75, see Suet. *DJ* 4. His journey was to some extent a political withdrawal (note *Rhodum secedere, ad declinandam invidiam et ut per otium ac requiem Apolloni Moloni clarissimo tunc dicendi magistro operam daret*). It was on this outward journey that Caesar was captured and ransomed by the pirates, and diverted by an outbreak of trouble in Asia from his rhetorical studies. As an active officer he intervened in restoring calm in some of the Asian communities near Rhodes. (Plut. *Caesar* 2 offers an earlier but mistaken chronology.)

would be expected of aristocrats like young Manlius Torquatus and Messala Corvinus, and pursued by Cicero's son and nephew, and even the ambitious son of a wealthy freedman, Q. Horatius Flaccus.

Of course, there is only the most general of correspondences between Cicero's actual experience and the programme of education which had been intended for him, or which was followed by his near-contemporaries like Hortensius. Since the genre and purpose of the *Brutus* limited the detail in which Cicero could describe his actual training in rhetoric, we can try to fill in the outline of his reported exercises by illustrating from Suetonius' introduction to rhetoric in *De Grammaticis et Rhetoribus* some other types of exercise available in the days of Cicero's youth. Some belonged properly to the *grammaticus*, as training for the pre-teenager before he moved to study with the teacher of rhetoric. Thus in 25.4 Suetonius lists first the elementary *chreiae* (syntactical variations on the same proposition), *apologi* (fables), and *narrationes* (mythical narratives) which could be practised in summary or expanded versions.[50]

Then follow the more sophisticated exercises; translating from the Greek, composing speeches of praise or blame of famous men, and of customs and traditions, then the confirmation or refutation of *fabulae*—(*anaskeuai* and *kataskeuai*). All these, Suetonius reports, came to be abandoned and replaced by the fictitious *controversiae* of the imperial schools. In a further reference Suetonius separates as later innovations at Rome exercises on set themes (*problemata*), paraphrases, addresses (*adlocutiones*), and explanations or attributions of causes (*aetiologiae*). These useful lists bring us back to the more detailed account given by Crassus in *De Or.* 1.147–55, and confirm that, whether or not Crassus himself was trained with these Greek exercises, they had become the norm at Rome by Cicero's own time.

Such exercises, like the comprehensions and summaries of political or moral prose passages which were imposed on British teenagers in my youth, were simultaneously training of the mind, in grasping arguments, and of the pen and tongue in re-presenting them effectively. There is perhaps one difference springing from circumstance. Unlike the ancient or renaissance student[51] the

---

[50] On these and other *progymnasmata* see Kaster on *De Gramm.* 25.4, pp. 281–2.
[51] Thus works such as Erasmus' *De Copia* and *De Epistulis Conscribendis* treat variety and fullness as a virtue, and teach the art of variation.

modern student is not taught how to elaborate and develop a
theme. One could devote some pages to considering why this
skill is no longer taught, but the single most important reason
would seem to be the transition from a primarily oral culture in
which the listener needs to hear important points repeated, to a
written culture in which the reader may return to the text and take
his time to understand each argument. Our age is once again more
oral, but visual images, tables, flow-charts, and diagrams now
compete with language for attention. Broadcasters, politicians,
and lecturers still need the art of varied repetition, and it is a pity
that it is not included at any stage of our education.

But for at least one of Cicero's two great forerunners in *De Oratore*,
and for Cicero himself, the Platonic triad of nature, theory, and
exercise did not complete the prerequisites for the mature orator.
Arguing from the model of craftsmen and apprentices in the visual
arts, Isocrates had assigned an important role to stylistic imitation
in his outline of training methods.[52] Indeed he saw it as the key to
artistic inheritance from the teacher-model to the pupil, who by
applying his own natural idiom to replicating that of his teacher
would develop something new in his turn.[53] As Cicero himself
repeats more than once, the teacher too plays a role by determining
what aspects of his pupil's nature need to be reinforced, or con-
trolled, and will build up the pupil's potential by slowing down the
feverish and exuberant, or spurring on the lethargic: Isocrates'
own metaphors implied the relationship of horse and rider.[54] The
author of the *Rhetorica* composed for Herennius was probably
following Isocrates when he included *imitatio* as a requirement
on equal terms with theory and practical exercises.[55]

   In *De Oratore* the practice of *imitatio* is introduced late, and
when Antonius comes to discuss it, it takes a form modified from

---

[52] Cf. Isocrates, *Against the Sophists* 18; *Antidosis* 205–6.

[53] Outlined in *De Or*. 2.93–7; see Leeman–Pinkster–Nelson, ii. 284–8, and
Fantham, 'Imitation and Evolution,' *CP* 74 (1978), 1–16.

[54] Compare *De Or*. 3.36 with Leeman–Pinkster–Wisse, iv. 173, for Isocrates'
claim that Ephorus needed the spurs but Theopompus the bridle. The tale is
repeated at *Brutus* 204, *Att*. *i6.1.12, Quint*. 2.8.11 and 10.1.74, but is also told of
other contrasting pairs of writers.

[55] *Rhet. Her*. 1.3 *haec omnia tribus rebus adsequi poterimus, arte, imitatione, exer-
citatione*. We shall be able to achieve these goals through three things: the art,
imitation, and exercise.

the Isocratean model which Antonius himself cites. Cicero hands over control of the argument to Antonius for the discussion of *inventio* in book 2, and allows him a fairly wide-ranging discussion of genres of prose discourse, including reading genres such as historiography. Like Crassus in the first book, Antonius rapidly reviews the standard rhetorician's recommendations for invention (2.78–84) before bringing his imaginary pupil to enter the real combat of public speaking (*pugna et acies*, 2.84, cf. 1.157): like Crassus he briefly recalls the requirements of natural ability and training, and eliminates both the bad and the mediocre students from consideration before moving to the next stage in the preparation of the truly talented speaker.

Antonius uses Sulpicius as an example of such talent. It seems that Sulpicius had initially intended to undergo his apprenticeship under Antonius, but the older man had seen that this was not in his best interest. Through his case study of Sulpicius, confirmed by the young man himself, Antonius demonstrates the role and benefits of well-directed imitation in shaping a speaker's personal style. He sketches in Sulpicius' exuberant and grandiose tendencies as a speaker, which led him to advise Sulpicius to put himself under Crassus' guidance. 'I urged him to think of the forum as his training ground for learning, and choose the teacher he wanted; but if he marked my words he would choose Crassus.'[56] Sulpicius must have intended originally to model himself on Antonius, but his natural talent destined him for the grand style of Crassus, which he would only be able to achieve by attentive and habitual imitation of Crassus himself.[57] For Antonius this choice of a teacher as model, with the specification of the aspects of the teacher's skills to be copied, is a key decision to be followed by exercises directed not to the easily copied mannerisms of the model but to his excellences.

The difference between Antonius' recommendations and those of Isocrates lies in this recognition of a valid choice between teachers with different styles. Where Isocrates had seen the single

---

[56] *De Or*. 2.89, *ut forum sibi ludum putaret esse ad discendum, magistrum autem quem vellet eligeret; me quidem si audiret, L. Crassum.*

[57] *De Or*. 2.89 continued: *in illud genus eum Crassi magnificum atque praeclarum natura ipsa ducebat, sed ea non satis proficere posset nisi eodem* (adverbial, 'in that direction') *studio atque imitatione intendisset atque ita dicere consuesset, ut tota mente Crassum atque omni animo intueretur.*

incomparable teacher (himself) deciding on a stylistic direction to suit each of his pupils, Antonius—or Cicero—presents the option between differing but equal models of different stylistic merits. There is, thus, a slight discrepancy between Antonius' historical illustration from Athenian oratory (with Isocrates at its centre) and his Roman illustration of the extraordinary benefits acquired by Sulpicius within a year from his choice of Crassus as model.

Yet there is a further element of option in Antonius' account. Those who wish to achieve a likeness to their teachers through imitation should pursue this course by constant exercise and above all by writing (2.97: something Sulpicius has apparently been reluctant to do). But he acknowledges that there are many orators like Cotta and Caesar Strabo among his immediate audience, who do not wish to imitate anyone, but develop their idiom from their own innate talents, honing their own particular virtues of style.

Cicero never suggests in *De Oratore* that either Antonius or Crassus had modelled their style on a teacher, but he may, however discreetly, incorporate this element into his own self-portrait in the *Brutus*. We have seen that he went through prolonged rhetorical training and general education, before and after his first years in the forum. Nonetheless after the brief but emphatic account of Molon's redirection of Cicero's technique of delivery in *Brutus* 313–14, Cicero notes that he was concerned on his return to shape his own style by imitation of a model. Of the two leading orators in the 70s, however, he recognized that he had far more affinities with the rich gesture and abundant style of Hortensius than the plain argumentation of Cotta: 'I thought I should concern myself more with Hortensius, because I was closer to him in spirit and age.' It is amazing that so long past his *tirocinium*, and after so broad a range of preparation, Cicero should still have considered, not the question whether he should imitate any model, but the decision which current speaker to emulate. Clearly he believed that observation, even competitive and critical observation,[58] of a living model provided the orator with skills of presentation and performance that could not be obtained from theory, literary study, or exercising. Cicero was now over 30, but still saw selective imitation of a chosen model as essential to his progress.

---

[58] Cicero's analysis of the reasons for Hortensius' decline in later years (*Brutus* 319–20 and 323) is as acute as his initial rhetorical portrait.

It seems, then, that allowing for a greater flexibility in choice of model and selection of stylistic features, Cicero himself accepted Isocrates' prescription of imitation as a necessary component in the orator's training. It is evidence of the development in thinking since the fourth century that what Isocrates assumed as part of the young orator's basic training has come to be a delayed but deliberate decision by or for the mature orator, who being mature has also the judgement to focus his choice where his natural talents lead him: with these modifications stylistic imitation should certainly be included in our account of the rhetorical training practised by Cicero's teachers and contemporaries at Rome.

# 5

# The Orator and the Law

Perdiscendum ius civile, cognoscendae leges.    (*De Or*. 1.159)

He must learn the civil law thoroughly and know the statutes.

Ius civile teneat, quo egent causae forenses cotidie; quid est enim turpius quam legitimarum et civilium controversiarum patrocinia suscipere, cum sis legum et civilis iuris ignarus.    (*Orator* 120)

Let him be in command of the civil law, which court cases need every day; for what is more disgraceful than to profess advocacy in legal and civil disputes, although you are ignorant of the statutes and civil law?

Most of us approach the relationship between Roman politics and Roman law through our perceptions of our own legal institutions, and of the regular overlap between the communities of lawyers and politicians. In the United States attorneys can become mayor of New York or governor of Arkansas and the nation's president; more commonly they are elected as congressmen or state legislators. In Britain many members of parliament are lawyers, or started their career with a law degree. It could be argued that they are particularly well qualified to hold public office. Their training has given them an understanding of the law at different levels of government, and their responsibilities in office constantly renew their expertise in, for example, property and banking laws, or specialized laws governing cartels or tariffs or zoning. Serving as a lawyer (as opposed to a public prosecutor) wins personal and corporate support; it is also a lucrative profession that provides the candidate for office with personal funds for his/her election, and may even offer supplementary income from legal consultancy while in office; it certainly offers prospects of renewed employment, if and when the representative loses his or her seat. It is far more difficult for representatives of other professions to return to employment after ten or more years of public service.

In democratic Athens, the city-state best known to the Romans, political leaders might be elected repeatedly as one of the ten

annual strategoi, who were expected to guide both political and military action. But often the most influential politicians were simply wealthy gentlemen with sufficient concern or ambition to attend the assemblies and the charisma to influence the democratic vote.[1] These men seldom functioned as representatives in the courts: instead they acted as character witnesses for their friends in private lawsuits, and often launched or instigated politically motivated prosecutions, whether for private offences against individuals, such as embezzlement or fraud, or for public offences against the state such as bribery during office, corrupting a jury, or vexatious prosecution. But Athenians traditionally spoke in court on their own behalf: Demosthenes or Andocides could defend himself or speak for a political ally, but an untrained defendant would commission his defence plea from a logographos, a professional ghost writer of speeches for other men in private lawsuits. Plato might regard a speech-writer like Lysias as to some extent a hack, and we should perhaps think of such men as something like documentary script-writers: they wrote speeches 'in character' for their clients, but they were not legal experts. For expertise in law itself the client or ghost writer resorted to pragmatici.[2]

The elite society of Rome was different in several ways. Indeed it will be simpler to start from the social role of the *patronus* outside the courts before turning to the political world. From the earliest times Rome had practised a model of social protectionism under which humble citizens looked to more wealthy or established ones as *patroni*, for informal arbitration or actual representation in court.[3]

---

[1] The fullest picture is given by J. Ober, *Mass and Elite in Democratic Athens: Rhetoric, Ideology and the Power of the People* (Princeton, 1989).

[2] At 1.198 Crassus mentions the Greek use of pragmatici who take a fee to act as assistants (*ministri*) to speakers. Antonius, whose point of view reflects his own limited interest in jurisprudence, claims at 1.253 that 'the application of the law to each case can be produced instantly either from experts or from books; so eloquent speakers, being quite ignorant themselves, have these legal experts (*iurisperiti*) called *pragmatici* as their assistants . . . they realized that the Greeks would not have given the speaker a *pragmaticus* as a support if they had thought it necessary to educate the speaker in civil law.' But he recognizes the difference of the Roman situation.

[3] For an expert brief account of the development of civil law at Rome see J. A. Crook, ch. 14 (pp. 531–63) in *CAH* ix, J. A. Crook, Andrew Lintott, and Elizabeth Rawson (eds.), *The Last Age of the Roman Republic, 146–43 BC* (Cambridge, 1994). On *patroni* see J.-M. David, *Le Patronât judiciaire en dernier siècle de la république romaine* (Rome, 1992).

Plebeians may at one time have been ineligible, like women, for-
eigners, and freedmen, to present their private grievances in court,
but even when eligible, freedmen and humble farmers or shop-
keepers would have learnt that they got better treatment in private
lawsuits if their former masters or landlords or other men of influ-
ence spoke on their behalf. In Plautus' play *Menaechmi,* written
early in the second century, a well-off citizen (supposedly Greek)
complains in very Roman terms (*Men.* 573–95) about having to
waste his time speaking on behalf of a client who was both ill-
prepared and dishonest, in the face of three strong witnesses
against his case.

   Thus Roman legal representation was hierarchical: you needed a
respected person to speak for you, whether or not he knew your
character or the facts of your lawsuit, because of the social author-
ity he commanded. And his success in winning your lawsuit or
your acquittal in a criminal case, while earning him no money,
added to his authority and brought him more important cases.[4] As
Cicero explains, young men can make their names by a successful
prosecution, but if you are pursuing political office it is better to
act as a defending counsel, not an accuser, so as to make, rather
than lose, influential friends; similarly, in civil cases, speaking for a
plaintiff against an important man may offend someone you need
as a political ally.[5] In the year running up to his candidacy for the
consulship Cicero asked his best friend Atticus to excuse him to his
uncle Caecilius, who wanted Cicero to act for him in a civil case,
because Cicero felt he could not afford to offend the defendant in
the lawsuit.[6] Conversely, according to his brother Quintus'
pamphlet on electioneering, Cicero could rely on the societies of
*publicani* (tax collectors) and other important clients whose interest
he had acted for to give him their votes and gather those of others.
Cicero only twice prosecuted a criminal case: first in 70 BC against
Verres, acting for the people of Sicily, the province where he

---

   [4]  The Lex Cincia of 204 BC forbade remuneration for conducting a legal case. It
could of course be got round by gifts or loans without interest, and it is clear that this
happened frequently in Cicero's time and in Cicero's own affairs.
   [5]  See *De Off.* 2.50, *id cum periculosum ipsi est, tum etiam sordidum ad famam,
committere ut accusator nominere*. From the beginning *De Oratore* praises eloquence
in terms of its defensive power: cf. 1.32, where Crassus makes the power to save
others (*dare salutem*) the climax of his praise of eloquence.
   [6]  *Att*. 1.1. (= SB 10) 3–4.

himself had been quaestor,[7] and much later on, in 52, when he prosecuted the tribune Munatius Plancus on a criminal charge out of sheer hatred, and in revenge for Plancus' role in the condemnation of Milo. Civil cases won friends, but as we will see, offered little scope for grandstanding. This is why only four of Cicero's speeches in civil lawsuits have come down to us; an early brief for Quinctius (81), a speech for the great comic actor Roscius, who was being sued by his partner for a share in the proceeds from sale of a slave he had trained as an actor, the speech for Caecina, wrongly expelled from a farm which had been bequeathed to him, and the speech for Tullius.

How would influence won by success in the courts relate to political success? It was far less usual for a newcomer to win his way to a political career through successful advocacy than for men born in political families to win success in the courts before going on to a political career. Most was expected of the sons of *nobiles*, men whose fathers or at least grandfathers had held the office of praetor or consul: their family name would lend lustre to their clients. While the evidence for several famous contemporaries of Cicero is contradictory, most elite young men made their first appearance in the forum at the age of an undergraduate. Crassus himself describes his youthful stage-fright as a prosecutor at *De Or*. 1.121, when he was only 21 years old.

What was the young man's legal training? He would either have observed his own father or more likely, been entrusted by his family to study and observe a distinguished speaker at work, as Cicero was taken on by L. Crassus to learn from his practice in the forum, and as Cicero himself would oversee the training of M.Caelius Rufus and P. Crassus, son of the triumvir. The young aristocrat or son of an influential municipal family was supposed to do a year of military campaigning, often as an aide-de-camp to one of his father's friends, before making himself known in the *forum* through pleading private cases, then holding office as one of the board of twenty junior magistrates.[8] By the time he stood for his first significant political office, as quaestor, around 30, he would

---

[7] He seems also to have been acting on behalf of the Claudii Marcelli, noble patrons of the Sicilians. His taking on this prosecution contributed to his successful election as aedile for 69: by the time he delivered the first *actio*, he looked forward to exercising the magistracy. (*Verr*. 1.24–6)

[8] Only some of these positions were actually judicial. Most were administrative.

have had almost ten years of service to family friends and clients in the forum, and once elected quaestor, even if he pursued or obtained no higher office, he was a senator for life. But this was quite compatible with continued activity in the courts, as we shall see. While holding magistracies men could not serve as single judges, or members of a jury, but even when in the highest political office, they were expected to oblige their friends by speaking on their behalf, as Cicero's slightly older rival, Hortensius, spoke for Verres when consul designate.

We know from Cicero's autobiographical narrative in *Brutus* that after his introduction to the forum was cut short by Crassus' death in 91, and by the political turmoil associated with the Social War, Cicero studied civil law by observing Q. Mucius Scaevola, who is first to champion the importance of civil law in this very dialogue.[9] Cicero cannot have been more than 17 or 18, and his study may have been a response to circumstances. The political climate of 89 was dangerous to the circle of Cicero's protector Crassus, and inimical to beginning an oratorical career. Again, his training with the jurisconsult may have been a form of insurance, a second string: perhaps as a man from outside Rome, a *homo municipalis*, Cicero was not expected to make a success as an orator, but may have seen a respectable future as a jurisconsult.[10]

Whatever the young Cicero's expectations at this time, his years of attendance on Mucius Scaevola clearly convinced him of the importance for the orator advocate of controlling the still disorganized field of civil law: the arguments put into Crassus' mouth do not seem particularly close to Crassus' practice, and the strongest evidence that they represent Cicero's own conviction is his concern, expressed here and in later writings, to see the law systematized into a scientific discipline.[11]

---

[9] Brutus 306, on 89 BC: 'because of my enthusiasm for civil law I devoted a lot of attention to Q. Scaevola, son of Publius. He did not offer formal teaching to anyone, but instructed students (*studiosos audiendi*) by his responses to those who consulted him.'

[10] Cf. *Brutus* 152–3 with Douglas's notes. According to Aulus Gellius 1.22.7 Cicero actually wrote a work *De Iure Civili in Artem Redigendo*, but it has not survived.

[11] This seems to have been the career followed by Cicero's aunt's husband Visellius Aculeo (cf. 2.2, 1.191) although Antonius' statement that Aculeo 'lives with me and has always done so' raises the possibility that this expert in civil law although of equestrian status, was more of a client and personal resource.

Let us see how the civil law is introduced into the dialogue. After Cicero's own preface, which introduces knowledge of law somewhat modestly after the knowledge of Roman history and institutions,[12] it is Scaevola who insists 'Consider our ancient laws and the customs of our ancestor, the auspices over which you and I preside, Crassus, religious prohibitions and rituals, the civil laws which have been handed down for so long in my family without any claim to eloquence,[13]—were these things discovered or known or handled by the tribe of orators?' Anticipating what Crassus will turn into a major theme, he cites the lack of legal knowledge of Cn. Carbo in the older generation and of Crassus' own peers: 'apart from you yourself, who learnt civil law from me, your generation is quite ignorant of The Law.' Then Scaevola adapts the traditional formulaic language of the lawsuit to make a counter-claim on behalf of all the schools of philosophy: the claims made by Crassus for eloquence are trespassing on their property, and if the dialogue were not taking placing place on Crassus' domain, the schools would serve an injunction upon him (1.41, *interdicto tecum contenderent*) or summon him before the praetor (*te ex iure manum consertum vocarent*) for rashly trespassing on other men's property. They would sue him (*agerent enim tecum lege*) and he would have no right to countersue them under the proper oath of a lawsuit (*iusto sacramento contendere non liceret*).[14]

Although Crassus immediately puts up a dazzlingly flexible answer to Scaevola's challenge of the orator's omnicompetence, Cicero delays the issue of knowledge of the civil law—and it is the civil and not the criminal law which is at issue—until after he has reviewed the disputed status of oratory as an art, and described the requirements of natural grace, intelligence, basic theory, and exercises in composition. Only then does he return to his requirement of encyclopedic education, and the need for the orator to know the administration of the state and the civil law (1.165).

What was there to know at this stage in the evolution of Roman law? Scholars generally believe that property and succession law

---

[12] *De Or.* 1.18, *tenenda praeterea est omnis antiquitas exemplorumque vis, neque legum ac iuris scientia neglegenda est*. Cf. also *Orator* 120, quoted at the head of this chapter.

[13] *De Or.* 1.39, *leges veteres mosque maiorum . . . auspicia, quibus ego et tu, Crasse, cum magna rei publicae salute praesumus, . . . religiones et caerimoniae . . . haec iura civilia quae iam pridem in nostra familia sine ulla eloquentiae laude versantur*.

[14] On these terms of civil law see Leeman–Pinkster, 122–4.

and the law of persons had originally been under the control of the pontiffs. In 451 BC, after two generations of the republic, a board of commissioners was set up to put the accumulated laws into writing, and they produced the so-called Twelve Tables, a code largely dealing with civil rather than criminal law. This has come down to us only in quotations from Cicero and later authors, including the first great imperial lawyer, Gaius, writing in the age of Trajan. At least eight of these tablets seem to prescribe civil procedure, and it is difficult to share Crassus' enthusiasm for them, even as a mirror of antiquity (1.193). Yet Crassus boosts them as the sources of all the philosophers' moral disputations. At his most enthusiastic he even claims that the single volume (*libellus*) of these laws 'outstrips all the libraries of philosophers in both the weightiness of their authority and the wealth of their usefulness'.[15] When he adds that all other civil codes are primitive and absurd compared with that of Rome, one can only question whether Cicero had actually read whatever purported to be the code of Draco or Solon.

To understand the criticisms of contemporary orators ignorant of civil law which Crassus puts forward, we first need an outline of the civil procedures available in the time of Cicero's dialogue—procedures which had not changed significantly in Cicero's own day. It will also be helpful to follow this outline with a discussion of the legal experts (*iuris periti*) and the state of legal literature prior to Cicero's day, before examining his presentation of actual cases.

## Civil Procedure and the Beginning of Jurisprudence

From 367 BC jurisdiction over civil suits was transferred to the new civil magistrate, the praetor (later *praetor urbanus*), who extended the law in two ways; through the edict issued on entry into office which constituted the inherited laws he would observe, and through his decisions when reviewing individual civil actions. But his role in this procedure was only a preliminary. In the earliest form of action before the praetor, the plaintiff had to affirm his grievance and the defendant his counter-claim in the

---

[15]  *De Or.* 1.195, *bibliothecas mehercule philosophorum unus mihi videtur XII tabularum libellus . . . et auctoritatis pondere et utilitatis ubertate superare.*

exact formal language of one of the recorded types of *legis actio sacramenti*. It was the praetor's job to verify that each party was entitled to dispute over the issue, and obtain from them a state-ment of each man's formal claims, so as to produce an agreed formulation on the basis of which a judge (acceptable to both him and the opposing parties) was then required to reach a decision. It was the function of the judge to hear the evidence and if necessary consult with advisers (the *consilium*), but by accepting the praetor's formulation the parties had bound themselves to accept the judge's decision, and could not appeal against it. The *legis actio* was a rigid and awkward procedure, and at some time in the second century a Lex Aebutia had allowed parties the option of the more freely worded 'formulary' process. In this procedure, it is the praetor (or in some cases aedile) who creates the formulation that is then handed to the *iudex* for his assessment.[16]

Any respected citizen might be such a private *iudex*, or again he might serve as an advocate for his friend or client in the first phase before the magistrate, helping him to put his case more clearly. And if the lawsuit raised unprecedented or unfamiliar complex-ities, either party or their advocates or even the magistrate would turn to legal experts to provide a ruling based on interpreting existing law or invoking apparent precedents. Much of what we know about the operation of these *iuris periti* comes from *De Oratore* and from material interwoven into Cicero's history of Roman eloquence, the *Brutus*.

Cicero's own old teacher, Scaevola the Augur, was a member of the pre-eminent family in both religious and civil law, the Mucii Scaevolae. Of the five best known members of this clan across three generations two brothers, P. Mucius Scaevola (Cos. 133), and P. Licinius Crassus Mucianus (Cos. 131),[17] had been succes-sively *pontifices maximi*, as had the son of P. Mucius, Q. Mucius Scaevola (Cos. 95). Born halfway between these generations, their cousin, the Q. Scaevola of our dialogue, had been consul in 117 and was augur until his death in 87. But Cicero himself lists several important writers on civil law prior to this generation, starting

---

[16] For brief accounts of these procedures see W. Kunkel, *An Introduction to Roman Legal and Constitutional History*, tr. J. M. Kelly (Oxford, 1966); O. Tellegen Couperus, *A Short History of Roman Law* (London, 1993), 17–27, 48–62.

[17] The younger brother had been adopted into the family of the Licinii Crassi.

with the consul of 198 BC, Sextus Aelius Paetus, author of the *Tripertita*. This was a (modernized) text of the original Twelve Tables, followed by his own interpretive commentary, and, as third part, by a list of formulae for conducting lawsuits.[18] Crassus quotes the praise of Aelius by his contemporary Ennius as *egregie cordatus homo, catus Aelius Sextus* (*De Or.* 1 198, cf. *Brutus* 78) and Antonius, for all his deprecation of the importance of civil law, cites Aelius first in his examples of great civil-law experts.

If the question was who should properly be called a juriconsult, I would say 'the man who was expert in the laws and custom used by private citizens in our state, for the purpose of giving replies and conducting lawsuits and establishing forms of cautionary language' (*et ad respondendum et ad agendum et ad cavendum*), and I would name Sex. Aelius, M' Manilius and P. Mucius.   (*De Or.* 1.212)

As Kunkel explains, not only private litigants but jurisdictional magistrates went to these experts for advice: the same experts composed new forms for legal transactions and procedures, and trained the next generation.[19] Towards the end of the dialogue the fullest list of jurisconsults from the second century is reviewed by Crassus in his claims for Roman learning at *De Or.* 3.133–5: again Sextus Aelius heads the list, followed by Manius Manilius, the consul of 149, whom Crassus describes as making himself freely available to all his fellow citizens, then P. Crassus Mucianus, Ti. Coruncanius, Scipio Nasica Corculum, 'all of them *pontifices maximi*,' and M. Porcius Cato Licinianus, the late-born son of Cato the censor. Of those listed by Cicero elsewhere only M. Iunius Brutus, the author of the three books of dialogue of civil law, and P. Scaevola, the consul of 131, are absent. The imperial jurist Pomponius treats Aelius as preliminary: in his introduction to the literature of jurisprudence he claims that P. Scaevola, Brutus, and Manius Manilius founded the civil law, and lists ten

---

[18] On this see Nelson in Leeman–Pinkster–Nelson, ii. 1.166–2.98 (Heidelberg, 1985), 99. Nelson's commentary should be consulted for details of all legal material arising in 1.166–200. Our knowledge of the *Tripertita* is derived from the jurist Pomponius' introduction, Dig. 1.2.2.38. It is not clear whether the collection of formulae referred to as ius *Aelianum* at Dig. 1.2.2.7 refers to the third part of this work. Given the proximity of the reference to Crassus' praise of the Twelve Tables, the *Aeliana studia* of *De Or.* 1.193 surely refer to the *commentarii* (*De Or.* 1.240) of Aelius Paetus rather than any work of the later Aelius Stilo Praeconinus.

[19] Kunkel, *Introduction to Legal History*, 92–5.

*libelli* as Scaevola's writings on civil law, while he attributes seven books to Brutus and three to Manilius.[20]

But Pomponius moves on to the next generation to select the real founding father of civil law. This is the consul of 95 and Pontifex Maximus, Q. Mucius Scaevola, whom Pomponius hails as the pioneer who set up the civil law, by editing it *generatim* (by categories) in eighteen books. The adverb *generatim* is of interest for two reasons. Antonius mentions in *De Or.* 2.142 that Cato Licinianus and Brutus itemized their responses by the names of the consultants, and thus made it exhausting work for those searching for precedents for their own cases.[21] It might seem that it would be much easier for students to find relevant precedents once Scaevola had classified them, but it looks as though by *generatim* Pomponius means only that Scaevola listed, for example, five kinds of guardianship and three kinds of possession.[22] This Scaevola was Crassus' friend and colleague in the consulship, and a protagonist in some important court episodes featured in *De Oratore* that I will be discussing. But for all their friendship and collaboration, his work on civil law still did not satisfy Crassus, or rather Cicero, speaking through Crassus' great speech urging the importance of civil law. Certainly when Cicero composed his own work *De Legibus* he blamed Scaevola for using the new science of civil jurisprudence to subvert his inherited discipline of pontifical law.[23]

There Crassus laments that no one has yet applied dialectical analysis to the shapeless corpus of civil law. We must however take into account that Q. Mucius Scaevola lived almost ten years beyond the dramatic date of *De Oratore* until 82 BC, and probably drafted his own work on civil law after the death of Crassus. Yet if this had satisfied Cicero he would not have made the claim in *Brutus* 152 that Scaevola and many others had great expertise (*usus*) in civil law, but only Servius Sulpicius could command it as an art.

---

[20] Pomponius, Dig. 1.2.2.39–42, cited by R. A. Bauman, *Lawyers in Roman Republican Politics*: see also Bauman's 'Roman Legal Writing', *Acta Classica*, 16 (1973), 135–46. We know from *De Or.* 2.222–4 discussed in Ch. 2 above that Cicero regarded only three of Brutus' alleged books as genuine.

[21] *Video enim in Catonis et in Bruti libris nominatim fere referri, quid alicui de iure viro aut mulieri responderint . . . ut quod homines essent innumerabiles, debilitati iure cognoscendo voluntatem discendi simul cum spe discendi abiceremus.*

[22] Kunkel, *Introduction to Legal History*, 96, citing Gaius (Inst. 1.188) and Paulus (*D*. 41.2.2.23)

[23] *De Leg.* 2.49–53.

In the most significant passage of Crassus' main discussion of
civil law at *De Or.* 1.187–90, he defines an art as applying philo-
sophical method to assemble and organize accumulated material.
As an example of constituting an art he defines civil law by its aim:
'to preserve the traditional impartiality according to the law in the
affairs and cases of citizens'.[24] Still speaking of arts in general, he
requires the categories of any art to be marked off and reduced to a
limited number. He then defines a category as whatever comprises
two or more parts (subgroups—we would say species) like them-
selves in some common feature, but different in form: these parts
are then identified as subordinated to the categories from which
they derive, and finally all the names of both categories and parts
(our *genera* and *species*) must be interpreted by definition. Arguing
from this general description Crassus urges that someone should
take on the task he has long contemplated, and divide the civil law
into its few categories, then assign the parts to each category and
clarify the peculiar meaning (*propria vis*, 1.190) of each part. Then
by analysis and definition there will be a perfect art of civil law.

Cicero himself certainly still felt the need to systematize civil law
and planned to write a treatise *de iure civili in artem redigendo*.[25]
But by the time he composed the *Brutus* in 46 BC his contemporary
Servius Sulpicius, who had been trained by two pupils of the
consul of 95, had begun this enterprise, and Cicero devotes one
of the rare discussions of living persons in that work to comparing
the contrasted pair of L. Crassus and his colleague Q. Scaevola,
'most expert in law of orators, and most eloquent of legal experts'
with the equally contrasted Cicero and Servius (*Brutus* 150–6).

As a peer of Cicero, and a conservative from an eclipsed
patrician family, Servius Sulpicius deserves attention in his own

---

[24] *De Or.* 1.188, *legitimae atque usitatae in rebus causisque civium aequabilitatis
conservatio*. Compare the later definition of *Topica* 28 as *quod in legibus, senatus
consultis, rebus iudicatis. Iuris peritorum auctoritate, edictis magistratuum, more,
aequitate consistat* (whatever is comprised by the laws, decrees of the senate, judge-
ments, the authority of jurisconsults, the edicts of magistrates, custom, and equity).

[25] He seems to have been still hoping to do this at the time of *De Legibus*
(cf. 1.12–13, 17) in or soon after 50 BC. But scholars have sometimes failed to notice
the implications of the title. As *De Leg.* 1.14 and 17 confirm, Cicero was not
interested for himself in the details of civil law: they might be necessary for young
advocates building a career, but from his mature point of view the features of civil
law which Crassus will stress were trivialities. His treatise was to be about the
principles on which the civil law should be organized, not a systematic discussion
of each individual category.

right. Readers of Cicero's defence of Murena in 63 on charges of electoral bribery against the accusations of Servius, his defeated competitor, and M. Porcius Cato will remember how Cicero used Servius' expertise in the law to make gentle fun of the old-fashioned legal procedure, *actio legis sacramento*, and to represent jurisconsults as deliberate obscurantists protecting professional turf.[26] Servius had a slow political career, not reaching the consulship until 51 BC, but continued a trusted friend of Cicero, and we have a series of personal letters from him, of which his consolation to Cicero on the death of his beloved daughter is justifiably admired.[27] The two men had been students together: discussing Servius in *Brutus* 151, Cicero recalls their shared study of oratory under Apollonius Molon at Rhodes, and Servius' subsequent decision to choose 'the lesser art' and become its leading exponent.

In Cicero's view Servius would never have succeeded through expertise in civil law alone if he had not learnt the art of dialectic: it was this which enabled him to reveal hidden assumptions through definition and clarify obscure concepts by interpretation, through recognizing and distinguishing ambiguities, and applying a rule (Greek canon) to distinguish true statements from false and which propositions did or did not follow from others (*Brutus* 152). Cicero rates Servius as superior even to Q. Scaevola, because he applied dialectic, but also had a knowledge of literature and refinement of speech, 'as can be easily seen from his writings, which have no equal'. And Brutus himself attests in reply (156) that he had recently spent time in Samos studying both civil and pontifical law under the guidance of Servius. Among his writings we know of special studies of the problems of dowry, and an organized commentary on the law established by the praetorian edict, but also of a work criticizing at least some elements in Scaevola's written legacy: *Reprehensa Scaevolae Capita*.[28] This may not have been the main positive work in which Servius laid out the systematic account of civil law which is honoured by Pomponius.

[26] Cic. *Mur*. 26–30.
[27] *Fam*. 4.3, 4, and 6 (SB 203, 249) from Cicero: from Sulpicius the letter of consolation on Tullia's death, 4.5 (SB 248), and 4.12 (SB 253) informing Cicero of Marcellus' murder.
[28] Servius' writings are quoted by Gellius 4.1.20, and 4.2, 4.3. See also Bauman, 'Roman Legal Writing' (above n.19) n14.

We have then a succession of practitioners, teachers, and writers on civil law, from the older statesmen of Crassus' boyhood, P. Crassus Mucianus and his brother P. Mucius, to their cousin Q. Mucius the Augur, who stimulated the discussion of law in *De Oratore*, to Crassus' consular colleague Q. Mucius the pontifex, and then to Servius Sulpicius and others like Aquilius Gallus in Cicero's generation. But in Cicero's lifetime the civil law was still being gathered and organized into the shape which would be inherited by the imperial lawyers. It may be a useful indication of the turning point in the development of jurisprudence that both Pomponius and his contemporary Laelius Felix wrote multivolume commentaries *ad Q. Mucium*.

## The Hazards and Complexities of Civil Litigation

With this outline of the civil-law procedure and the development of its literature we will be in a better position to understand and even enjoy the anecdotes with which Crassus and Antonius illustrate the role played by civil law in the courts. What Cicero is arguing, through Crassus, is the omnipresence of civil law in determining men's property, fortunes, and even civil status. To sympathize more with the problems of these landowners and businessmen, we must remember that for the Roman governing class virtually all wealth was inherited, and inherited in the form of property. Senators had even been restricted from wholesale commerce,[29] and it was still customary for them to conduct usury and other business dealings through freedmen and other front men. There was of course great scope for magistrates to enrich themselves even within the law, by exploiting the provinces that they were sent to govern, but many Roman aristocrats will have been more anxious to avoid impoverishment than eager to get rich: the essence was not to diminish the patrimony inherited from one's father.

Crassus' impassioned advocacy of legal education begins by stressing its importance and the serious losses that can result from ignorance of both the formulae in use before the praetor *in iure* and the case law applicable in the second phase *apud iudicem*,

---

[29] The Lex Claudia of 218 BC. (Livy 21.63.3; Cic. *Verr.* 2.5.45) restricted their trading by limiting the size of their ships for sea and river traffic.

especially for the major suits under inheritance law, which went before the multiple *iudices* of the centumviral court. He opens fire with two examples of blunders committed by incompetent advocates, of which the first goes back over thirty years before the dramatic date of the dialogue. According to Crassus (1.166), both advocates in a lawsuit for abuse of guardianship which took place some twenty-five years earlier petitioned the praetor M. Crassus to formulate the action in a way which would have resulted in their client losing his case. These were senior figures in political life, Hypsaeus a candidate for the consulship, and Octavius already an ex-consul, yet Octavius was seeking a greater sum than was permitted to his client according to the Twelve Tables—which would result in the *iudex* of the second phase having to reject his claim— and Hypsaeus was protesting against Octavius' demand for more than was named in the suit, without realizing that if the action went forward in this form his opponent would lose his suit.

How did Cicero know this story? He was not yet born at the time, and it hardly merited becoming oral history. He cites P. Scaevola as present, and impatient to leave for recreation on the Campus Martius. This must have been P. Scaevola the jurist, known for his love of ball games,[30] and the simplest explanation is that he had mentioned the episode to illustrate a point about *plus petitio* in his *libelli de iure civili*.

The other anecdote is similar but recent, and its blunderer is kept anonymous. Crassus and his interlocutors were on the benches at the tribunal of the praetor Q. Pompeius, perhaps serving as his *consilium*,[31] when the advocate for a defendant sought a formal *exceptio* limiting recovery to money owed up to a certain date. But the purpose of this *exceptio* was to benefit plaintiffs so that they retained the right to a later suit over monies due and outstanding at a later date. If the limitation had been included in the praetor's judgement the defendant need only have proved that some of the money sought was not yet due, and the plaintiff would

---

[30] The evidence for his love of ball games and board games is *De Or.* 1. 217.

[31] *De Or.* 1.168. *Nobis . . . sedentibus* seems to be a real (not a royal) plural. We know that praetors were supported by a *consilium* in criminal cases, as were provincial governors, but Olga Tellegen Couperus has recently revived doubts that a *consilium* was used by the praetor in civil lawsuits. She claims that *De Or.* 1.166 and 168 are the only passages cited as evidence besides a passage in *Pro Flacco* which clearly refers to the provincial *consilium* of Flaccus as governor of Asia.

have lost both his case and the right to return to the court. Cicero attributes these blunders to the ambition of men seeking to win popularity by taking more cases than they could handle and neglecting the legal background.

Many of these *iudicia privata* depended not on matters of fact but points of law or equity, and the major cases before the centumviral court were even more complex. These probably arose from the law of succession and problems of intestacy,[32] but as Cicero shows, they could involve issues of ownership by possession, nexus, or sale,[33] of guardianship and membership of a clan or direct male kinship, acquisition of property through change in the location of watercourses, disputes over common walls, access to light, and damage from overhanging eavestroughs, and the invalidating or validating of wills. In broader terms these cases required understanding of laws of property and status, distinguishing the rights of citizen and foreigner, free man or slave.

Two of the lawsuits outlined (178–9) concern property rights. Our friends Crassus and Antonius had spoken on opposite sides in the dispute between Marius Gratidianus and Sergius Orata. Gratidianus had sold his house and land to Orata without mentioning in the terms of sale that part of the property was subject to a servitude. Crassus acted for Orata as plaintiff, on the legal grounds that whatever defects the seller had known but not declared to the buyer he was obliged to make good. Crassus does not reveal the other side of the case in *De Oratore*, but from Cicero's discussion of good faith in *De Off*. 3.68–70 we learn that Antonius defended his friend Gratidianus on the grounds that he had originally bought the house from Orata, and so Orata as previous owner must have known these defects. In a much more frivolous dispute, L. Fufius had sued a man from whom he had bought a house 'with the

[32] The jurisdiction of the centumviral court has been subject to continued dispute, but most legal scholars believe that the specific issues mentioned arose in this court only as part of testamentary disputes. See J. M. Kelly, *Studies in the Civil Judicature of the Roman Republic* (Oxford, 1976), 9–10, 16, and A. Watson, *The Law of Succession in the Roman Republic* (Oxford, 1971).

[33] *Usucapio* derived the right of ownership from possession of movable property for one year or estate for two. *Nexus* was a primitive form of transfer of ownership by seizure, largely replaced by *mancipium*. *Usucapio* is still the law in Britain. Newspapers of 21 July 1999 reported that a squatter had become legal owner of a house in Brixton because its former owners, the council, had allowed him to occupy it for more than twelve years.

existing access to light', as soon as he could see buildings being constructed in the distance that could be claimed to change his access.

Three of the cases mentioned arose from problems of identity: the first mentioned (1.175) is the Martin Guerre type problem of the soldier falsely reported dead, who returns to find his father has died after leaving his property elsewhere. Under Roman law a father's property went to his son unless he specifically disinherited him; in this tricky case the deceased father had neither named his son as heir nor expressly disinherited him. In another case (1.183) a Roman living in Spain had left his wife pregnant, then set up house at Rome with a new wife. Both women had borne him sons and when he died intestate the determination of his heirs hung on the continued validity of his first marriage. Did a divorce require an explicit statement, or was it implied by his remarriage? Which son was his legitimate heir?

The third case, of a certain M. Coponius who had written a will leaving his friend Curius as heir 'if a son shall be born to me and die before reaching adulthood', was argued between Crassus himself and his colleague Q. Scaevola and became a cause célèbre: Cicero keeps returning to it, and so shall we. One problem raised by such a case was the claim of the next of kin in the male line, *agnatus proximus*, comparable to the wider issue of *gentilitas* (clan membership) involved in the competing claims of two branches of the Claudii to inheritance from the son of a freedman of the Claudii Marcelli. In Roman law a *patronus,* or former owner, had first claim on the property of a former slave who died childless, or of his childless descendants. The Marcelli themselves laid claim to this inheritance on the grounds of *stirps*, membership by descent of the family who were patrons of the freedman. But the patrician Claudii counter-claimed as being higher status clan-members (*gentiles*) than the plebeian Marcelli. The rights of patrons explain another dispute in which a man claimed the inheritance of a deceased foreigner who had sought his protection as patron before dying intestate (1.171).

But consideration of this foreigner's change of domicile raises the wider Roman problem of *postliminium*. In Roman law a citizen who went to live abroad regained his citizenship on return, unless he had been deprived of his citizenship by an act of his father or the state—such as being exiled. On this principle Roman lawyers

debated whether a citizen of an allied state who had been captured and freed lost his Roman citizenship and returned to that of his original community if he went home (*De Or.* 1.182). We might compare the hazards of eastern Europeans who returned as visitors from the United States and were seized by communist regimes as being still citizens of their original country. This issue had arisen in the previous century when the Greek interpreter Menander was to be sent on an embassy to his home state, and appealed for a ruling that he could retain his Roman citizenship.

However, the most significant affair was a highly political case on which leading Roman jurists had taken opposing sides. In 136 BC the Roman ex-consul and commander Hostilius Mancinus had surrendered to Rome's Numantine enemies in Spain on terms which the Roman senate then repudiated. They sent him back to be surrendered to the enemy, but the Numantines refused him, and the wretched man was challenged when he next tried to enter the senate house. The tribune Rutilius[34] ordered him to be led out, claiming that there was no right of *postliminium* for any citizen sold by his father or the state, or surrendered by the chief fetial, the *Pater Patratus*. Mucius Scaevola (the future consul of 133) gave his opinion that Mancinus had no right of return, against the jurist Brutus, who supported Mancinus. Antonius suggests later (*De Or.* 2.137) that the case was best argued in the most generalized form (*quaestio infinita*), and we know from other texts that the case was decided against Mancinus.[35] In the end it was agreed that he had lost *postliminium* and he had to be reinstated by a special *lex*.[36] This case had a special importance for Cicero himself, because of his situation after he had gone into exile and been named by Clodius in a *privilegium* forbidding him access to all shelter (*interdictum aqua et igni*). In his consultations from exile with the political leaders eager to restore him he insisted that he would have to be reinstated by a comparable law, one passed by the people, and so the bill was presented by the consul Lentulus Spinther to the more

---

[34]   This cannot have been Rutilius Rufus, Cos. 105.

[35]   Cf. Antonius at *De Or.* 1.238 and 2.137; Cic. *Caec*. 98, *Top*. 37; *Dig*. 50.7.18 (17) and 49.15.4 cited by Bauman, *Lawyers*, 238 and n. 97. Brutus' argument was that Mancinus had not been surrendered, since the Numantines had not accepted him: *neque deditionem neque donationem sine acceptione intelligi posse*.

[36]   Such laws passed on behalf of an individual were called *privilegia*, and were intermittently declared improper; but they continued on demand.

conservative assembly, the Comitia Centuriata, which voted his restoration.[37]

Let us return now to the inheritance case of Manius Curius, which meant so much to Cicero, because he saw it as a watershed in the development of rhetoric at Rome. We are back to mere disputes over property, but in this case a dispute between the letter of the law and two increasingly important principles, intention (*voluntas*) and fairness or equity (*aequitas*). It was indeed this case which prompted Stroux's enormously influential study on the injustice of strict law, *Summum ius, summum iniuria*.[38] The problem with M. Coponius' will was that he had named Curius as heir only if the posthumous son he hoped for (and we do not know what gave him this hope) did not live to reach independence: his will left no instruction about the inheritance if—as was the case—no son was born. Crassus introduces the case at 1.180 by describing his colleague Q. Mucius Scaevola's arguments for invalidating the will and letting the inheritance revert to the next of kin in the male line and the probable plaintiff, Coponius.

As Crassus reports it, his own argument was that the late M. Coponius had intended Curius to be his heir if there was no son. And he maintains that on both sides the argument was based on the authority of jurisconsults, on precedents, and on the formulae of wills. But when Antonius sets out to answer Crassus by belittling the importance of legal expertise he does so (1.237, 242–5) by stressing that even experts faced real controversy over this case, as over Mancinus and the marital status of the lady from Spain. Crassus did not have to rely on Scaevola's *libelli*, but seized on the issue of fairness and defending the intention of the dead. Antonius stresses how Crassus won over the judges' votes not by learning but by wit, imagining the consequences if only Scaevola was capable of drafting a correct will,[39] and by demonstrating other potentially absurd consequences of literal obedience to laws and decrees. Scaevola, on the other hand, for all that he championed his father's authority, cited no laws and used no subtleties

[37] In the *Comitia centuriata* if the 18 voting units of the small wealthy equestrian class and the 70 units of the first census class combined with even a few units from the second class, they could completely outvote the immense majority of lower economic voters.

[38] For an accessible recent study of this case and its problems, see J. Vaughn, 'Law and Rhetoric in the *Causa Curiana*', *CA* 4 (1985), 208–22.

[39] Antonius quotes a verbal extract from Crassus on this theme at *De Or*. 2.24.

of civil law, but kept hammering away at the need for the written text to prevail like a schoolboy at his exercises.[40]

Cicero gives the fullest and most systematic account of this case, speaking apparently as an eyewitness, in the *Brutus*.[41] There he first uses the case to illustrate his comparison of Crassus and Scaevola, noting the good qualities but limitations of Scaevola's shrewd and concise speech, as against the wit and sheer abundance of Crassus' argument, though each was defending the law (144–6). But this case also serves as his best illustration of two wider issues: the difference between the good and the excellent in oratory, and the superior judgement of the expert over the crowd. Again speaking as a witness, Cicero describes how Scaevola spoke first and spoke well, about testamentary law, about the formulae, and what the testator should have written to determine an heir if he had no son. He used scare tactics, evoking the dangers of letting men override the text and use the opinion of experts to distort the words of ordinary folk. Indeed he spoke so clearly and elegantly about following his father's authority in protecting the law that any of the general audience would have thought there could be nothing better. But then Crassus began to speak. At first, he beguiled and charmed them by his jokes against Scaevola—the first of an orator's three functions. Then he convinced them—the orator's second function—by declaring that the dead man had wanted Curius to be his heir so long as he had no son to inherit, and finally he moved them— the third and most powerful function—by defending equity and the dangers of ignoring men's intentions, and making a bogey of the power that would fall into Scaevola's hands if no one dared henceforth to write a will except according to his judgement. Crassus' sheer variety and wit won agreement from all, so that the ordinary listener realized what the expert had always known: that there was real eloquence far superior to that of Scaevola.

Bauman has argued that Crassus must have lost his goodwill towards Scaevola after his proconsulate in 94, when the latter opposed his request for a triumph in the senate.[42] Here we have a political pattern familiar from Cicero's own later experience as

---

[40] *De Or*. 2.244 shows that schoolboys were expected to argue on opposing sides, for the letter or spirit of the law as a basic exercise.

[41] He would have been 15 or 16 years old.

[42] Compare P. Brunt, 'Factions', 469–70, in *The Fall of the Roman Republic* (Oxford, 1988).

provincial governor in 51–50. Scaevola, like Cato the younger, followed Stoic moral principles and no doubt argued against the triumph, as Cato did to the senate and to Cicero himself[43] by applying strict terms to the granting of this honour. Bauman's study of lawyers in Roman republican politics tends to give high priority to factionally motivated decisions, and we cannot doubt that a case like that of Mancinus, though a matter of civil law, was as much determined by political attitudes as the overtly political *iudicia publica*. In general though, even showcase hearings like that of Coponius against Manius Curius before the *Centumviri* had little political resonance.

And this may be the reason why Cicero himself does not seem to have pleaded any centumviral cases. According to Tacitus (*Dialogus* 38.2) none of the major orators of the late republic actually pleaded before the *Centumviri,* except Pollio, who lived on for thirty years under Augustus.

## The *Iudicia Publica* and the *Quaestiones Perpetuae*

So how did the republic handle the prosecution of politicians for crimes committed in office? We must turn to the *ius publicum*, what we would call the criminal law, and the *iudicia publica* of the standing *quaestiones perpetuae*.[44] Until about 150 BC it seems that such investigations were responses to individual crises, put before the Roman people or perhaps special courts, by politically active tribunes. But just after this time a tribune, L. Scribonius, proposed a popular trial of a particularly influential ex-consul and orator, Ser. Sulpicius Galba, for abuse of his power and atrocities committed while governor in Spain. The tribune had the backing of the elder Cato, who made a powerful speech and even included it in his own history, the *Origines*. But Galba used pathetic eloquence and not only escaped being condemned, but seems to have forestalled the potential popular trial by securing rejection of the bill. Antonius recalls both Galba's histrionics and Cato's denunciation in terms which Cicero repeats in the *Brutus*.[45]

[43] Cf. Cic. *Fam*. 15. 4, 5 and 6 (SB 110–12).

[44] See E. S. Gruen, *Roman Politics and the Criminal Courts 149–78 BC,* (Berkeley, Calif., 1968), and on Cicero's own political defences, A. M. Riggsby, *Crime and Community in Ciceronian Rome* (Austin, Tex., 1999).

[45] *De Or*. 1.227–8 and *Brutus* 89–90 (cf. also Gellius 13.25.15). On Galba's emotional and effective oratory see 86–90, 92–4. We should note that Cicero must

Almost certainly as a result of this, another tribune, C. Calpurnius Piso Frugi, proposed to the senate and people a new procedure for trying provincial governors *de rebus repetundis*, for restitution of damage done to provincials: there would be a permanent court of senatorial judges to hear these increasingly vexatious cases. This was the first of the so-called *quaestiones perpetuae* or standing courts. Over the next seventy years new legislation would repeatedly change the membership of this and subsequent *quaestiones*. So when Antonius discusses defence against criminal charges (*causae quae quidem sunt criminum*) in 2.105 he argues that they must be defended by pleading not guilty, and reviews the five main charges. 'For virtually all charges of provincial extortion (*rebus repetundis*) which are the most serious, should be denied, and in cases of bribery (*de ambitu*) there is rarely the chance to distinguish generosity and kindness from bribery and corruption, while in cases of murder, poisoning and embezzlement it is absolutely necessary to deny them.'

Standing tribunals may have long dealt with the largely private and non-political crimes of murder (*de sicariis et veneficiis*) and embezzlement; others followed: the *quaestio de ambitu* to investigate charges of electoral bribery is found operating soon after the death of Gaius Gracchus;[46] then another far more controversial *quaestio* was set up by the *Lex Appuleia* of the tribune Saturninus in 103 to try magistrates guilty of diminishing the greatness of the Roman people (*maiestatem populi Romani minuere*)—a deliberately ill-defined offence.[47] After the date of our dialogue and soon after the death of Sulla another politically oriented *quaestio* was established to try acts of public violence (*vis*). Cicero would prosecute Verres and defend Fonteius, Flaccus, and Scaurus on charges of *repetundae;* he would successfully defend Murena on the charge

have depended on written sources for this trial forty years before his birth. One would be Cato's histories, the other the memoirs of Rutilius Rufus, whose disapproval of both Galba's behaviour and Crassus' great *contio* for the *Lex Servilia Caepionis* is reported as an oral reminiscence by Cicero in *Brutus* 85–8.

[46] The earliest attested cases all date from 116, when Scaurus and Rutilius Rufus, competing candidates for the consulship, sued each other, and Marius too was prosecuted. None of them was found guilty. See *Brutus* 113; E. Badian, *Studies in Greek and Roman History* (Oxford, 1964), 106–8; and E. S. Gruen, *Roman Politics and the Criminal Courts*, 122 and app. E, p. 306.

[47] When Antonius discusses the issue of definition in 2.107, he notes that the application of the Lex Appuleia depends entirely on defining the concept of *maiestas*.

of *ambitus*, Roscius of Ameria and Cluentius against charges of murder, and M. Caelius Rufus on charges of public violence. Only his defence of Milo *de vi* failed.

In *Brutus* 106 Cicero singles out the creation of these standing courts as a major factor in the increasing importance of forensic rhetoric, and notes that the legislation of 137 BC providing for the secret ballot in the *iudicia publica* gave rhetoric much greater influence.[48] Romans need no longer fear that their political patrons and allies would penalize them for their vote. So if the speakers in *De Oratore* make relatively little of these standing courts, it can only be because there were relatively few showcase trials in the 90s.

But in fact *De Oratore* gives a full discussion of two such politically motivated trials: that of P. Rutilius Rufus, the innocent provincial legate of Q. Mucius Scaevola Pontifex, *de rebus repetundis*, and that of the ex-tribune Norbanus for *maiestas* in raising a riot to protest the culpable defeat of Q. Servilius Caepio: both trials were very recent but the latter seems to have occurred long after the 'offence,' whereas the trial of Rutilius probably came within a year of his return from Asia to Rome.

The first of these I have already briefly discussed for its place in Antonius' career (Chapter 2) but the motivation of the trial itself opens up a whole world of politics starting a decade earlier. The second trial was far more important in its consequences, and will be the perfect example for Antonius' counter-argument against Crassus, playing down the value of knowledge of the law as opposed to sheer persuasion.

The prosecution of Norbanus, which was Sulpicius' debut in the courts, was for actions taken some eight years earlier. But its causes can be said to go back even earlier, to the disgrace of the elder Q. Servilius Caepio. Ernst Badian[49] has traced the complex connections between the politics of the two decades. As consul in 106 the elder Caepio had passed a law transferring the right to serve as jurors in the *quaestiones* from the equestrians installed by the Gracchan law of 123 to members of the senate. This was fiercely

---

[48] *Plura fieri iudicia coeperunt. Nam et quaestiones perpetuae . . . constitutae sunt quae antea nullae fuerunt . . . et iudicia populi . . . iam magis patronum desiderabant tabella data.*

[49] On this saga see E. Badian, 'Caepio and Norbanus', in *Studies in Greek and Roman History*, 34–53. For Caepio's fate and Reginus see Val. Max. 4.7.3, but note that elsewhere at 6. 9.13 Valerius seems to have Caepio die in prison.

resented, and replaced after only two years by the Lex Servilia of the tribune Servilius Glaucia returning the juries to the equestrians. But before that Caepio had capped his political unpopularity with a military disaster. As proconsul in southern France, Caepio overrode his fellow commander, Cn. Mallius (Cos. 105), in campaigning against the Cimbri and Teutoni, and so provoked the serious defeat at Arausio (Orange). Caepio's command was abrogated and he was prosecuted and condemned on a charge of *perduellio*, which we might translate as 'high treason'. He was thrown into prison, but released by a friendly tribune, Reginus, who accompanied Caepio into exile.

However, Caepio's son was apparently a key figure in factional politics, probably already married at this time to Livia, sister of Livius Drusus, the future reformist tribune of 91. This was a double family alliance, for young Livius Drusus had also married Caepio's sister Servilia. After his father's disgrace, young Caepio's future faced ruin. So when the tribune Saturninus prepared the ground for his new law creating the offence of *maiestas*, by first promulgating a popular bill to provide subsidized corn rations, young Caepio seized the opportunity for political heroics and resorted to violence to obstruct the voting on the corn bill.[50] But both Saturninus' corn bill and his law promoting the new standing court *de maiestate minuta* passed, and young Caepio was eventually prosecuted in this court around 95 BC.

It is not clear why so many years passed before his prosecution, but it may well have been because he was protected by powerful friends. This ended some time between 98 and 95 BC, when Caepio divorced Drusus' sister Livia, and Drusus divorced Caepio's sister for adultery, triggering the well-attested quarrel with Drusus, and isolating Caepio. Whatever the reason, the prosecution of Caepio revived the scandal of his father's defeat. It was in retaliation that Sulpicius now accused Norbanus in the same court, for the rioting which he had provoked so many years before against the elder Caepio.

---

[50] We know these details from *Rhet. Her.* 1.12.17, according to which Caepio as quaestor of the treasury informed the senate that the treasury could not carry the cost of Saturninus' cheap corn dole. The senate decreed that such a law would be contrary to the interests of the state. When Saturninus overrode the vetoes of his fellow tribunes to put this bill to the vote, Caepio mounted an attack with a gang of *viri boni*, broke the gangways, and overturned the voting urns, preventing the continuation of the vote. He was then prosecuted on the charge of *maiestas*.

Both the rhetorical texts of the 80s, *Rhetorica ad Herennium* and Cicero's *De Inventione*, show that Caepio's trial and this charge raised important new legal issues. The *Rhetorica* not only uses the younger Caepio's actions in book 1 to illustrate the issue of definition at law (*constitutio legitima ex definitione*,1.12.21); it provides competing definitions of *maiestatem minuere* for prosecutor and defending counsel at 2.12.17. The prosecutor argues that a man diminishes the greatness of the Roman people when as Caepio did, he removes their votes and the power of their magistrates: the defence redefines the crime as damaging the power or dignity (*amplitudinem*) of the state; Caepio claims that he actually prevented such damage by protecting the treasury and resisting the passion of the mob. We know from Cicero that after a relatively low-key defence from L. Crassus,[51] young Caepio was acquitted. We may wonder why there is no mention of Caepio in *De Oratore*; but this is a matter of social tact. Young Caepio was the brother-in-law of Q. Catulus, who is present throughout books 2 and 3 of *De Oratore*. Instead, the dialogue focuses on the more recent trial of C. Norbanus on the same charge of *maiestas*, in which two of our interlocutors had been the stars.

Cicero's textbook of argumentation, *De Inventione*, does not name Caepio, but discusses at length first a prosecutor's definition of the *maiestas* charge as 'reducing in some way the dignity or wealth or power of the people or those to whom the people has granted power' (2.17.53), then a defender's version: in this it is 'to administer a part of the state when you do not have that power.'

It is not surprising then that in our dialogue Antonius uses this very charge to illustrate the hazards of providing a definition (*De Or*. 1.107–9). As he points out, when he defended Norbanus, the tribune who had stirred up public riots against the elder Caepio in 104, neither Antonius nor the prosecutor, his former pupil Sulpicius, relied on a definition, because it could be twisted against the speaker, and smelled of pedantry.[52] Instead, the two speakers'

---

[51] Cf. *Brutus* 162, *Est etiam L. Crassi in consulatu pro Q. Caepione defensiuncula non brevis, ut laudatio, ut oratio autem brevis*. In 169 Cicero adds that Caepio was prosecuted by T. Betucius Barrus of Asculum and made his own defence in a speech written for him by Aelius Stilo.

[52] *De Or*. 2.107, 109. Both speakers provided rich expansive surveys (*omni copia dilatavit*) of the meaning of the charge, because a definition would have suggested *doctrina* or childish exercises, and would pass by without penetrating the minds of the jury.

rich elaborations are illustrated on either side at 2.199 and 201 in the full account of the Norbanus trial. As we saw in Chapter 3 Antonius was able to use the popular hatred of the elder Caepio to justify Norbanus' encouragement of violence and rioting: some *seditiones*, Antonius proclaimed, are fully justified and for the good of the state. Like young Caepio, Norbanus was acquitted, as was everyone else recorded from the 90s, with the sole exception of P. Rutilius Rufus.

And this is the man and the trial which shocked reformist conservatives like Crassus who supported Livius Drusus' hoped-for reforms. I have already noted in Chapter 2 Antonius' extensive comments on Rutilius' condemnation (*De Or*. 1.227–33). But Cicero supplies a fuller picture in *De Re Publica* and *Brutus*. Like Cicero himself, Rutilius was a 'new man', born around 155 BC and absorbed as a young man into the circle of Scipio Aemilianus. He studied with the Stoic Panaetius, and served as a volunteer officer under Scipio at Numantia in 134. After Scipio's death he stood for the consulship of 115, probably with the backing of the Metelli, but was defeated, and did not reach the consulship for another ten years. During this time he served as legate with Metellus Numidicus against Jugurtha in 109, but seems to have made an enemy of Marius by his success, particularly when as consul in 105 he trained in hand-to-hand combat the new professional army for which Marius took the credit.[53] He had also married the sister of the elder Livius Drusus, thus becoming uncle of the young reformer Drusus. Cicero provides an unusually full rhetorical portrait in *Brutus* 113–14.

Rutilius practised a rather grim and severe style of speech . . . he was a man of hard work and service to others (*opera*) all the more appreciated because he maintained the heavy service of giving legal responses. (114) His speeches are dry, and contain a lot of legal information. He was a learned man, well-read in Greek literature. As a student of Panaetius, he was a virtual expert in Stoic theory: you know how barren and ill adapted to winning popular approval is their sharp and technically skilful style of speaking. So the self-judgement of philosophers peculiar to this sect is found in a fixed and stable version in this man.

So Rutilius was a jurist, and a conscientious one. He was about 60 when he was sent by the senate as legate to Q. Mucius Scaevola

---

[53] See Val. Max. 2.3.2.

(the pontifex and consul of 95) to govern the province of Asia and reform its administration. Two different motives have been advanced for this special mission. They may both have been felt. First, the *publicani* who contracted for the Asian taxes at Rome had exploited the province and bled it dry: it was feared that their oppression would drive the province into the arms of Rome's enemy, Mithridates of Pontus. Secondly, it was believed that Marius wanted war with Mithridates to win more victories, more spoils, and more glory. It will never be known whether the senate took action out of compassion or fear, whether fear of Mithridates or of Marius. But Scaevola and Rutilius, who continued as legate three months after Scaevola's return, carried through a number of reforms. Badian reports that Scaevola recognized the use of Greek judges and Greek law in cases between Greeks. He reconciled two feuding cities, and drafted a provincial edict so fair and thorough that Cicero took it as his model more than forty years later. And above all Scaevola implemented in Asia the clause he had composed for his praetor's edict, annulling all contracts, including tax contracts, which were made contrary to good faith. The tax collectors and their equestrian friends were enraged; and the courts now had equestrian juries. So we find that in 92 a certain Apicius prosecuted, not Scaevola, who was Pontifex Maximus and untouchable, but his legate Rutilius.

Badian calls him 'an uncompromising man disliked by many . . . likely to invite martyrdom'. As a sample of his awkwardness we might quote the tale reported by Valerius Maximus 6.4.4, of the man who asked him to endorse an unfair bill; when he refused, the man protested that Rutilius' friendship was no use to him. Rutilius retorted 'why do I need your friendship if I must do something dishonourable on your account?'

This high moral tone matches Antonius' portrait of Rutilius in book 1. First, he reports Rutilius' criticism of Galba's histrionics, when he used pathetic appeals to escape prosecution in 149 (when Rutilius was not yet adult, so the criticism was made long after the event),[54] next, his disapproval of Crassus in 106 for undignified flattery of the assembled Roman people in order to get Caepio's

---

[54] No doubt this, like Rutilius' report of the triple embassy of 155 found in Gellius 6.14, is something that Rutilius had read in Polybius or Cato and repeated in his memoirs.

judiciary law passed. We move from this to Rutilius' trial. He had
told Crassus that exile or death was preferable to such humiliation;
so though a very model of integrity (*exemplum innocentiae*, *De Or*.
1.229) he refused to supplicate the jurors or go beyond statements
of the truth; he let his sister's son Cotta speak for him, and
Q. Mucius Scaevola, the governor under whom he had been legate,
who gave a plain clear speech without any adornment. Antonius
adds that if Rutilius had let Crassus or Antonius speak for him they
could have swayed the vengeful equestrian jurors.[55] But he allowed
no histrionics—no appeals to the Republic herself, no stamping or
lamenting—and so this Roman consul met the fate of Socrates
because he insisted on behaving like him. Cicero has probably
stretched the facts to make Rutilius a better parallel to Socrates,
but the fact of his innocence and his condemnation—the first of the
decade—is beyond doubt. And both the prosecution and the ver-
dict must have seemed to Crassus and the other supporters of
Drusus like a declaration of war. Historians agree that this unjust
condemnation drove Drusus to rush on with his plan to modify the
juries, and so indirectly brought on his death and the Social War.
As for Rutilius, he went into exile at Smyrna, welcomed and loved
by the province he was accused of defrauding, and refused to
return to Rome when invited back by Sulla.

It is said that, as he travelled to Asia, all the communities of the
province sent envoys to await where he would settle—that is,
inviting him to their cities (2.10.5). And this is borne out by Dio
(28. Fr. 97) who says that he 'received many gifts from Mucius and
a vast number from all the peoples and kings as well who had ever
had dealings with him, until he possessed far more than his original
wealth'. The stories probably originate with Rutilius, who took his
revenge by writing his memoirs, one of Cicero's main sources for
*De Oratore*.[56] But Cicero might have found him as difficult an ally
as he found Rutilius' descendant Cato the younger.[57] Stoics were
not politically easy to handle.

[55] Cf. *Brutus* 115, *eorum adhibere neutrum voluit.*
[56] Cf. G. L. Hendrickson, 'The Memoirs of Rutilius Rufus', *CP* 28 (1933),
153–75.
[57] The relationship is complex; Cato was son of Rutilius' niece Livia's second
husband, M. Porcius Cato, which made Rutilius a kind of great-uncle. This is
why Cicero moves by association from discussing Rutilius (*Brutus* 113–16) to
Cato (119).

But this man was not the last victim of the equestrian jurors. The dramatic date of *De Oratore* prevents more than a brief allusion in the personal preface to book 3[58] to the exploitation of the *quaestio maiestatis* that would endanger several of the participants in our dialogue. But Cicero supplies an outline of the narrative in *Brutus*. Once Livius Drusus had been murdered and his laws annulled before the end of his year of office 91 BC, there was a suspension of legal business except for one court—a new one established to deal with a new charge. A fellow tribune of Drusus, Q. Varius Hybrida, introduced a special bill to try, under the terms of Saturninus' *maiestas* law, 'all those by whose deceitful counsel the Italian allies had been driven to take up arms.'[59]

While Crassus refers once to this man as a wild and repellent fellow (*vastum hominem atque foedum*, 1.117), Cicero, who watched all the proceedings of the Quaestio Varia as a boy (*Brutus* 304–5) gives a surprisingly positive account of Varius' oratory, praising his skill in argumentation, and calling him a strong and passionate prosecutor (*fortis vero actor et vehemens*, *Brutus* 221).

Of the participants in our dialogue Antonius was charged in this *quaestio* but seems to have stayed out of reach. Cotta was charged and defended himself, but anticipating that he would be condemned took himself abroad. In any case the nightmare was short-lived, for after a new jury bill, the Lex Plautia of 89, transferred this court to a mixed jury including senators, Varius himself was brought into court and condemned under his own law.[60] The new version of the charge of *maiestas* had been painful but brief. Yet even these vindictive courts would very soon be replaced by the murders authorized by Marius, notably the assassination of Antonius himself.

So *De Oratore* is far more systematic in parading the importance of civil law, and gives it far more prominence, than it grants to the

[58] Cf. *De Or.* 3.11. *C. Cotta . . . paucis diebus post mortem L. Crassi depulsus per invidiam tribunatu non multis ab eo tempore mensibus eiectus est e civitate.*

[59] This is the definition of the charge in Val. Max. 8.6.4, *quorum dolo malo socii ad arma ire coacti essent.* But Appian (BC 1.37) presents the object of the inquiry as 'those who openly or secretly had helped the Italians towards sharing in the state' (*epi ta koina*). Appian adds that the equestrian order used force to push Varius' bill through the assembly.

[60] Cf. *Brutus* 304, *Scaur.* 5, quoted at Asconius 79C, *memoria teneo cum primum senatores cum equitibus Romanis lege Plotia iudicarent, hominem dis ac nobilitati perinvisum M. Pomponium causa lege Varia de maiestate dixisse.* See also P. Brunt, *The Fall of the Roman Republic* (Oxford, 1988), 139, 156, 199, and 206.

highly politicized criminal law. Why was this? Perhaps Cicero is trying to represent fairly the relative importance of these two different aspects of the law during the 90s, rather than in his own time. Perhaps while composing the first book of the dialogue he is concentrating his attention on the way in which younger men rise to public renown through the law—for the criminal law was invoked chiefly against men who had already held public office: the more important they were, the more likely to be prosecuted, if not actually condemned. For above all we should see the attitude of Cicero and his peers as focused on defending criminal cases and acting for their friends on either side in civil lawsuits. Even in civil lawsuits there is evidence that the skilled orator would decline to act for a plaintiff if it would offend another friend or acquaintance with political influence.

I have paid considerable attention in the last few pages to several politically motivated criminal trials: there can be little doubt that their charges were laid for political purposes, but we should distinguish between the motives of prosecutors and of defending *patroni*. Rather than using orators' participation in trials to elaborate complex and contradictory political factions,[61] we should see most skilled speakers as acting wherever possible for their friends and allies, but as no less ready to act for their political antagonists, when such men were at risk: they saw it as their function to preserve established and respectable citizens as members of Roman society and would take any sufficiently plausible argument or pretext to ensure their acquittal.

[61] On the impermanence of factions and the individualism of Roman politicians see Brunt, *Fall*, ch. 9, 'Factions'.

# 6

# Oratory and Literature: The Spoken and the Written Word

Neque repugnabo quominus, id quod modo hortatus es, omnia legant, omnia audiant, in omni recto studio atque humanitate versentur. (*De Or*. 1.256)

And I won't oppose the students doing as you have urged, reading everything, listening to everything, and occupying themselves with every good pursuit and form of culture.

As we saw in Chapter 4, reading the orators and poets, like listening to speeches and recitations or composing one's own *litterae*, was undoubtedly the best and richest preparation for the would-be orator.[1] But surely Cicero recognized other reasons for seeking out both polished oratory and other, less practical forms of literature? Are we perhaps looking for the kind of aesthetic response to literature—for pleasure (cf. 2.341, *delectationis causa*), for solace, for inspiration, for stimulus to heroic action[2]—that an educated modern critic would suggest? Since Roman elder statesmen tended to be rather shamefaced at recommending anything because it gave pleasure, and our dialogue is concerned with education for *negotia* not *otium*, public service rather than leisure,

---

[1] There is some ambiguity in Cicero's allusions to *litterae*, which can refer not only to (reading) existing texts, but to composing a written text. Thus 2.85, on the *subactio* (preparation) of the young orator, is probably narrower in its recommendation of learning from *usus, auditio, lectio, litterae*: experience (of the forum), listening (to speeches), reading (speeches again?), and composing, than such phrases as 3.39, *legendis oratoribus atque poetis*, 'by reading orators and poets', or 3.48, *libri confirmant et lectio veterum oratorum aut poetarum,* 'he will be strengthened by books and the reading of ancient [classical!] orators and poets'.

[2] Such are the benefits of reading poetry praised by Cicero when he speaks of the value of *litterae* in *Pro Archia* 3 and 12–14.

it would be a mistake to argue *ex silentio* that Crassus and his colleagues did not put a high value on literature in its own right.

There are also systemic discrepancies between the categories in which we might place different kinds of artistic texts intended for reading, reciting, or staging, and the categories of Roman cultural experience. It is not just a matter of the genres actually practised by Greek or Roman poets and prose writers, but of recognizing works like poems about astronomy or physics as constituting a genre—as being didactic poetry—and not just hexameter poems like those of Homer and Hesiod. We might start, then with the simpler categories of oratory and poetry.

Oratory at least seems unambiguous: derived from *orare*, to plead, *oratio* broadened its reference to denote any formal public speech. Often the *orator* speaks as delegate or advocate or mediator for one who is absent or unqualified to speak in public, and in early Latin at least there is usually some nuance of the original notion of pleading or begging.[3]

The orator might improvise his speech (*oratio*), as was usual in the Athenian assembly, but all Athenian court pleas and most political speeches from the fourth century BC were delivered on the basis of written preparation. Cicero followed Isocrates in seeing writing as a prerequisite for artistic, well-designed, speech, but apart from any question of merit, we must deal only with oratory as written, since all our evidence of surviving Greek and Roman political or forensic oratory has survived because it was written. While most speeches were fully written in preparation for oral delivery, what has survived is usually a revised version, preserved as a record after the performance.

'Rhetoric', so often misused, can be a synonym for this formal oratory, but when the term is combined with oratory it is used to denote either the art of speaking, or works offering systematic instruction in speaking. (In this book, at least, 'Rhetoric' will not be used for the disingenuous and deceitful manipulation of language.) While manuals of rhetoric were often called *technai/artes*, Cicero most often refers to such rhetorical teaching as *doctrina*.[4]

---

[3] Compare *orator* in the sense of intercessor in Plaut. *Mo. 1126, nunc ego . . . solus sum orator datus*, and Ter. *HT* 11, *oratorem me voluit esse, non prologum*. See now this author's 'Orator *and/et Actor*', in P. J. Easterling and E. Hall (eds.), *Greek and Roman Actors* (Cambridge, 2002), 362–76.

[4] *Doctrina* is the equivalent of didaskalia as an alternative formulation for episteme in the Greek triad: physis, melete, episteme discussed in Ch. 4 above.

Thus when he opens the second book of *De Oratore* by contesting the common belief that Crassus and Antonius lacked *doctrina*, he is thinking of rhetorical theory as provided by advanced formal instruction.[5]

Roman thinking usually divided artistic formal texts along the fault line between the *orator* and the *poeta*. For Cicero and his contemporaries literature (*litterae, bonae litterae*) still meant primarily poetry, and for Romans as for Greeks the most important forms of poetry were epic and tragedy.[6] Apart from, say, the dialogues of Plato or histories of Thucydides, almost any work—Greek or Roman—that Cicero, or Crassus and his circle, recognized as literature would have been in verse. But how can we compare the range of ancient poetic genres with the very different works covered by the modern concept of literature? Bookstores, for example, use 'Literature' to denote a subclass of fiction, established works of high artistic standing, reserving 'Fiction' for contemporary work of low or undetermined status. In the trade 'Non-fiction' has many subcategories, but essays and criticism, literary in form or subject matter, may constitute one of these classifications. With the mass production of fiction for entertainment, literature has become a privileged and exclusive term, so that there will always be disagreements about its limits.

Again Cicero's contemporaries, educated on Homer, would think first and foremost of Greek (rather than Roman) poetry: they might have read or heard samples of Greek epic, tragedy, and comedy, as well as some lyric poetry, elegy, and epigrams: Cicero himself had tried his hand at various hexameter poems,[7] and now in the 50s Catullus was adding epigram, lyric, and

---

[5] Cf. *De Or*. 2.1, where their *doctrina* is seen as limited to *puerilis instructio*; 2.2, *studio doctrinae* (associated with following discussion of *doctores*); cf. 2.5, *dicendi doctrina*. In 2.11, *summis ingeniis, acerrimis studiis, optima doctrina, maximo usu*, the Greek triad is expanded by dividing the concept of melete (practice) into the psychological component of devotion and practical component of experience.

[6] Compare the view expressed by A. J. Woodman, *Rhetoric in Classical Historiography* (London, 1988), 100: 'Though we today see poetry, oratory and historiography as three separate genres, the ancients saw them as three separate species of the same genus—rhetoric.'

[7] Cicero's youthful compositions were Hellenistic in subject matter: *Glaucus* (a mythological poem probably in the form of a neoteric Epyllion), and the *Aratea*, a hexameter translation/adaptation of the astronomical and meteorological poems of Aratus. His later *De Consulatu* was more traditionally epic, a misconceived account of his own consulship in three books.

rudimentary elegy, so that all these genres were represented by
Latin poets, who had added the new genre of satire.[8] But Romans
also recognized that epic and tragic verse included powerful
and persuasive speeches, like those given by Homer to Nestor or
Odysseus. Did this qualify the poet as an orator? Given the pri-
macy of oratory at Rome it was a compliment to suggest this.
Quintilian would constantly cite Virgil for examples of rhetorical
pathos and stylistic figures; he also specifically recommended
Lucan to his students as 'more to be imitated by orators than
poets' (10.1.90). In the time of Hadrian, Publius Annius Florus
composed a dialogue on Virgil's merits as an orator entitled 'Was
Virgil an orator or a poet?' (*Vergilius orator an poeta?*)

Cicero himself was concerned not only to understand the simi-
larities and differences between the work of orators and poets, but
to mark the less clear-cut differences between various kinds of
non-oratorical prose. These forms had existed in Greek since the
time of Plato and Gorgias, but consciously artistic forms of Latin
prose (other than public oratory) were much slower to evolve at
Rome: Latin poetry developed more than a century ahead of artis-
tic Latin prose.[9] For a start, there was no imaginative Latin prose
fiction, as far as our evidence goes, until a century after Cicero's
death. Even when Roman readers were able to enjoy Petronius'
*Satyrica*, and later the *Metamorphoses* of Apuleius, Roman
critics—some of whom no doubt read Greek fictional narratives
and romances—did not consider the novel as a literary genre. For
Cicero, then, imaginative prose writing was not an issue. He
was, however, becoming aware when he composed *De Oratore* of
the ill-defined boundaries between oratory itself and other still
undeveloped formal uses of prose.

---

[8]  These distinctions held for Latin poetry as well as Greek; but Cicero does not
use the terms *elegia*/*elegi*, *lyrica,* or *satira*, although he cites Lucilian satire, and lyric
monody from Roman tragedy. Satire was essentially *sermo*, even in and after
Horace. While Cicero refers to inscribed elegiac distichs as epigrammata (*Pro
Arch*. 25; *Att*.1.16) he has no name for poems in that metre, and it is Seneca, not
Cicero, who reports (*Ep*. *Mor*. 49.5) that Cicero claimed he would never have time
*quo legat lyricos*.
[9]  While Cato the censor deserves to be considered Rome's first Latin prose
writer, the fragments of his speeches show a much higher level of sophistication
than those of his *Origines* (composed after 170 BC?) and his *De Agricultura* only
employs deliberate artistic structure in its preface.

Even oratory was seen in narrower terms at Rome than in fourth-century Greece. When Crassus briefly lists in *De Or.* 1.141 the traditional post-Aristotelian division of rhetoric into the three genres, judicial, deliberative, and epideictic or 'display' speaking, the last category is clearly very much an afterthought. Unlike the other genres he describes these speeches by their content of praise and blame rather than by function or context, saying simply 'there is also a third kind, that is conceived for praising and blaming people'.[10] Similarly when Antonius moves in book 2 from deliberative and judicial oratory (2.42, *quae in foro atque in civium causis disceptationibusque versantur*)[11] to this third type, he immediately narrows it down by identifying it with the traditional funeral *laudatio*, partly no doubt as a compliment to Catulus, who had won distinction by being first to give a *laudatio* to a woman—his mother Popilia (2.44). Yet Antonius acknowledges that many other types of speech are required of the orator in different circumstances, and avoids discussing them simply because he claims there is no need to provide separate recommendations for formal testimony (2.48), or speeches of reproach or exhortation or consolation (2.50).[12]

Thus Cicero's Antonius excludes from consideration the kind of prose spoken or written by philosophers or sophists. He is depicted as a pragmatist, focused on the political and career-related uses of oratory and even when he gives some detailed attention to the third ('epideictic') genre from 2.341–8, he explicitly passes over the 'many kinds of speech more weighty and rich in scope'. These

[10] *De Or.* 1.141, *esse etiam genus tertium, quod in laudandis aut vituperandis hominibus poneretur.* On Cicero's contrast between Greek epideictic and the traditional form of Roman public *laudatio*, see now J. Dugan, 'How to Make (and Break) a Cicero: *Epideixis,* Textuality and Self-Fashioning in the *Pro Archia* and *In Pisonem*', *CA* 20 (2001), 35–79. Despite its unpromising title, the article offers a helpful discussion (37) of 'Roman rhetoric's problematic reception of the Greek rhetorical type' in this section of *De Oratore,* finding the key in 'Cicero's projection of the literary into the political domain'.

[11] Oratory was often classified by the circumstances of its delivery: see Fantham, 'Occasions and Contexts of Roman Public Oratory', in W. J. Dominik (ed.), *Roman Eloquence* (London, 1997).

[12] Leeman–Pinkster–Nelson, ii. 235–40, on *De Or.* 2.41–50, discuss Antonius' exclusion of expository and philosophical writing from epideictic, and reject the argument of K. Barwick, *Das rednerische Bildungsideal Ciceros* (Abhandl. d. Sächs. Ak. d.Wiss. zu Leipzig, Phil-Hist. Klasse, 543; Berlin, 1963) that as forms of *sermo* (cf. Crassus at 1.32) they belong with the subsidiary types of oratory grouped by Antonius with epideictic *vituperare* and *laudare* in 2.35.

he omits from discussion, because no one had given recommendations for composing them, whereas he scants discussion of epideictic for a different reason: even conventional speeches of praise and blame were chiefly composed by the Greeks for reading and for pleasure (*delectationis*, 'entertainment'?) or to honour an individual rather than for public utility.[13]

Knowledge of Cicero's later work might suggest that this point in the argument of *De Oratore* 2 was an opportunity for his speakers to introduce the informal *sermo* of philosophical discussion, or other kinds of expository writing. But at the dramatic date of *De Oratore* there were not yet any Latin equivalents of Greek sophistic or theoretical discussions, neither as an oral phenomenon, nor circulated in writing. Nor was there yet anything significant in 55 BC. It would be Cicero himself who created this category of writing for Latin literature in the years under Caesar's domination, from 46 until his death. If we look ahead to the *Orator*, written in 46, Cicero clearly sees the relationship between Isocratean epideictic and the writings of philosophers and sophists: his stylistic recommendations deal with the two forms separately and bring sophistic into close connection with history.[14]

For historical writing clearly was related to oratory, and was also the nearest genre to imaginative fiction. It had features in common with both formal oratory and tragedy, combining oratory's use of argumentation and critical assessment akin to epideictic (*epainos, psogos*) with features of tragic narrative such as action, character, and reversal (Aristotle's *praxis* or *muthos*, *ethos* and *peripeteia*). Since the time of Herodotus and Thucydides, historical writing had also incorporated deliberative and judicial oratory in the form

---

[13] *quia multa sunt orationum genera et graviora et maioris copiae, de quibus nemo fere praeciperet . . . totum hunc segregabam locum. ipsi enim Graeci magis legendi et delectationis aut hominis alicuius ornandi quam utilitatis huius forensis causa laudationes scriptitaverunt.*

[14] Cf. *Orator* 37, grouping *laudationes* with historical writing and the *suasiones* written by Isocrates; on philosophical style, *Orator* 62–3, presumably with the Platonic (and Aristotelian?) dialogues in mind, then *Orator* 64 on the style of sophists, ending *huic generi historia finitima est*. As Dugan, 'How to Make', remarks, Quintilian acknowledges the existence of many kinds of speech that could be grouped with *laudationes* and *vituperationes* under the rubric of 'epideictic': Among those relevant to expository writing his list (3.4.4) includes 'we give instructions, explain obscure phrases, narrate . . . and describe': *praecipimus, obscure dicta interpretamur, narramus . . . describimus.* But he resists attempts to extend epideictic to include such forms, treating them as independent categories.

of situationally defined speeches, but speeches invented, not reported. And in the age of Alexander and his successors it had also felt free to adopt the inventiveness and sensationalist features of narrative that we associate with popular fiction. Besides Greek historical writing, to which *De Oratore* gives separate consideration, the most common forms of Greek prose were probably technical writing (on for example, medicine, geometry or natural history) and philosophical argument, whether couched in dialogues, treatises, or sophistic display speech. But at Rome in Cicero's day technical writing on agriculture and law had no literary pretensions, nor were there any philosophical treatises and dialogues before those of Cicero himself.[15]

These absences imply a further complexity in talking about 'literature' from Cicero's vantage point. The lack of developed Roman prose writing was both a cause and a consequence of the cultural bias that directed educated Romans to Greek poetry and prose for their instruction and enjoyment: we constantly meet the phrase *litterae Graecae*, as in 'having heard the Greek orators and come to know their writings', or Antonius' s modest disclaimer, 'I, who only met with Greek writings late and superficially'.[16] Antonius is clearly joking when he calls himself 'a man from the school, taught by an instructor and Greek writings' (2.28), but in Cicero's later history of Roman oratory, the *Brutus*, many Roman orators are praised as 'educated in Greek writings/literature'.[17] Others, like the gentleman *grammaticus* Aelius Stilo, are praised as educated in both Latin and Greek literature (*Brut.* 205, cf. 107).[18] But when Cicero speaks of *studium litterarum* (*De Or.* 1.10) or demands that the budding

[15] Cicero speaks slightingly of certain Latin treatises by the Epicurean Amafinius, but since he is our only source for these texts we have no evidence of their positive influence. Varro's discussion with Cicero in the introduction to the *Academica* shows that Romans interested in philosophy would read it in Greek. In fact, with the single exception of Seneca, they continued to write their own works in Greek, despite the example set by Cicero: compare the writings of Seneca's teachers Sextus and Papirius, his contemporary Musonius, and Marcus Aurelius in the following century.

[16] *De Or.* 1.14, *auditis oratoribus Graecis cognitisque eorum litteris*; 1.82, *egomet qui sero ac leviter Graecas litteras attigissem*.

[17] *De Or.* 2.28, *homini de schola atque a magistro e Graecis litteris erudito*: on this passage see A. Leeman, *Form und Sinn* (Frankfurt, 1985), 39–47, here 44, and cf. *Brutus* 78, 104, 107, 114, 205.

[18] On Aelius Stilo and other literary scholars of the late republic, see Elizabeth Rawson's comprehensive *Intellectual Life in the Late Roman Republic* (London and Baltimore, Md., 1985), to whose discussions this chapter is greatly indebted.

orator be steeped in literature (*tinctus litteris*) and receive the inten-
sive cultivation (*subactio*) of experience, attending speeches or
lectures and reading written texts (*usus, auditio, lectio, litterae*,
2.85, cf. 2.131), only *litteris* definitely extends his recommendation
beyond oratory and implicitly to both Greek and Latin literature.

Again although oratory is essentially a spoken genre, it would be
a mistake to see the division between oratory and (other) literature
as that between the spoken and written word. Listening—*auditio*—
was as much the norm for poetry as for oratory. Greek and Roman
poetry, whether epic, or dramatic, or symposiastic lyric, was writ-
ten to be spoken or intoned, not read in silence. Writing originated
as a record of events and formal utterances, and twice in book 2 of
*De Oratore* Cicero speaks in this way of writing in the service of
making a record: first of his own act in recording the conversation
of his elders (*ut eum sermonem, quem illi quondam inter se de his rebus
habuissent, mandarem litteris*, 2.7) and again of the Roman chief
priest recording the events of each year as a kind of primitive
history (*res omnes singulorum annorum mandabat litteris pontifex
maximus*, 2.52).

Poetry was an art-form that made itself known either by theatrical
performance or by public recitation, though it would then be dif-
fused in written copies. Historical writing too had become an art-
form in Greece, but as a vehicle of information: it was designed to be
read, rather than heard. The written word protected its accuracy, as
it did that of scientific treatises. But our ability to measure the
availability of works of information to Cicero or to the interlocutors
in his dialogue is affected by the decorum of the dialogue, in which
literature mimics orality. Thus Cicero prefers his speakers to cite
information from older contemporaries as though they received it
orally, when in fact the material was preserved in writing such as the
memoirs of Rutilius Rufus. At the same time Cicero's conversa-
tionalists name both Greek and Roman works and cite at least some
Latin texts in support of their arguments. Ever careful to avoid
anachronism, he only allows his interlocutors to quote the relatively
few Latin poets and orators up to their own time.

## The Use of Poetry in Rhetorical Teaching

Although my main theme in this chapter is the extent to which
Cicero is concerned with non-rhetorical literature in the second

and third books of *De Oratore*, I cannot proceed to this question without considering the relationship of this dialogue to the traditional rhetorical treatise.

As a student Cicero had compiled a rhetorical treatise, his *De Inventione*, to which he refers slightingly at the beginning of *De Oratore* as 'raw unfinished material that slipped from my youthful notebooks'.[19] But the mature and experienced orator intended his new dialogue to be far superior to such a collection of precepts, and in the introduction to book 2 he insists to Quintus that he is not aiming to educate him with books of rhetoric, a category Quintus thinks crude and clumsy.[20]

Yet on the other hand Cicero knew he had technical material to convey and make palatable through the gentlemanly conversations of Crassus and Antonius: when he wrote to Atticus about the departure of Scaevola at the end of book 1 he claims 'the other books contain *technologia*' (*Att*. 4.16.3). This Greek word—a word which would have been inadmissible in the dialogue itself—conveys both Cicero's concern not to omit the teachings of Greek rhetoric, and his sense of its un-Roman nature.

The core of book 2 is to be Aristotle's system of the three 'proofs' or 'sources of conviction' as we know it from his books of rhetoric (Rhetorica). But Cicero was convinced of the wider importance of rhetorical artistry, and wanted to combine his narrow focus on deliberative and judicial public speaking with arguments for the relevance of rhetorical skill to other kinds of speaking and writing. He had set himself to write, not just for students like Lentulus Spinther's son,[21] but for a wide group of educated men, and he wanted to hold their interest. This was as good a reason as any for tempering the technical Aristotelian material with more literary allusions and discussions. It is surely for this purpose that he introduces on the morning of the second day Q. Lutatius Catulus, a man of *multae litterae*, and his young half-brother, the noted wit, Caesar Strabo.[22] Strabo will diversify the second book with his

[19] *De Or*. 1.5, *quae pueris aut adulescentulis nobis ex commentariolis nostris inchoata et rudia exciderunt.*

[20] *De Or*. 2.10, *nec vero te rhetoricis nunc quibusdam libris, quos tu agrestis putas, insequar ut erudiam.*

[21] In the letter to Lentulus Spinther (*Fam*. 1.9.23) Cicero expresses confidence that the dialogue will be quite useful to young Lentulus.

[22] For the elder Catulus, see *Brutus* 132 and *De Off*. 1.133, where he is also praised for his *sermo*, conversation, and beautiful spoken Latin. Strabo too is praised

illustrated dissertation on wit and witticisms, while Catulus will season the third book with comments from a literary point of view.

In his tactful response to Catulus' polite apologies for intruding, Crassus appeals to the precedent of the first Roman writer of personal poetry, Lucilius, for aiming at leisured gentlemanly discussion:

> As C. Lucilius, that learned and very witty man, used to say, he wanted what he wrote to be read neither by the most ignorant nor the very learned, because one group would understand nothing, whereas the others might understand more than he did himself: Indeed he even wrote about this: 'I don't care about Persius as a reader, but I want Laelius Decimus'—a good man as we know, and not uneducated, but no match for Persius.   (2.25)

Here we have a feint characteristic of the dialogue genre: Cicero has read the *Satires* of Lucilius, who died before he was born, but makes this an oral reminiscence by Crassus, who could have heard him, reinforcing the claim by quotation. But this allusion has another interest. As we shall see, other early Roman writers were traditionally mined by teachers of rhetoric to illustrate aspects or faults of oratory, but Lucilius—who himself discussed rhetorical topics—criticized the teachers. His writings, a cross between tabletalk and letters which he more or less invented himself, come as near to gentlemanly *sermo* (conversation) as any texts before Cicero's dialogues, and Cicero refers to or quotes Lucilius five times in *De Oratore*.[23]

Crassus told his listeners in book 1 that he exercised himself as a child on paraphrasing Ennius or the speeches of Gaius Gracchus (*De Or.* 1.154, see Ch. 4). To what extent then did teachers and writers on rhetoric at Rome before *De Oratore* use Latin texts, that is chiefly poetry? Was Cicero simply continuing the rhetorical tradition? We know that such teachers were usually Greek. Certainly the teachers provided by Crassus for Cicero and his young cousins were Greeks, and he apparently debated with them in Greek (*De Or.* 2.2, cf. *Brutus* 305). Indeed, as he reminds his interlocutors in *De Or.* 3.93, Crassus issued a celebrated censorial

for his wit in both of these later works: cf. *De Off.* 1.133, *sale vero et facetiis Caesar, Catuli patris frater, vicit omnes, ut in illo ipso forensi genere dicendi contentiones aliorum sermone vinceret.*

[23] We should not forget the almost completely lost *Saturae* and *Varia* of Ennius, which Lucilius may have taken as a model. Other references to Lucilius occur at 1.72, 2.253, 3.86, and 171.

edict against the new Latin teachers of rhetoric (*Latini magistri*) about the time that Cicero was beginning to study rhetoric under his guidance. A later source[24] reports that Cicero himself regretted that he had been prevented from studying with these teachers. So how does it come about that not only the unidentified author of the *Rhetoric for Herennius* but Cicero himself in *De Inventione* uses illustrations from Roman poetry, and to some extent the same illustrations? These works are usually assigned to the 80 after Crassus' death, but their shared examples imply either a common teacher or written source.

Since the anonymous writer *Ad Herennium* has many more such quotations, let us take him first. There are two sections in which he alludes to the poets: first to illustrate examples of bad argumentation—*vitiosae argumentationes*. Starting in 2.20.31–2, he quotes the famous speech of the nurse in Ennius' *Medea*, itself adapting Euripides, in which she blames the felling of the trees that built Argo for Medea's present betrayal by Jason, an incomparable example of carrying causality too far, but one in proper character for the nurse herself. Ennius is also cited in several excerpts from his tragedy *Cresphontes* (2.24–5.38–9), where first Merope, wife of the elder Cresphontes, speaks to her father in his defence, then he defends himself. The author quotes other examples of invalid argument from the first scene of Plautus' *Trinummus*, and from an analysis in Pacuvian tragedy of why philosophers call Fortune blind (2.22.36). Two further examples, clearly spoken by Medea and Ajax, have been assigned to Pacuvius' *Medus* and *Armorum iudicium*. The author also uses passages from Ennius to illustrate excessive alliteration or awkward diction at 4.12.18, but in the preface to this fourth book, on style, he refers contemptuously to others who think themselves highly educated for citing Ennian *sententiae* or Pacuvian messenger speeches.[25] It would seem then that he had at least one predecessor who had regularly used examples from the poets. We note that there are no examples from the younger poets, Terence or Accius,[26] not to mention Lucilius.

---

[24] Suet. *De Gramm*. 26, with Kaster's notes ad loc.

[25] Cf. *Rhet*. *Her*. 4.1.2 and 7. On the *Cresphontes* excerpts see H. D. Jocelyn, *The Tragedies of Q. Ennius* (Cambridge, 1969), 270–1 and the following note.

[26] It would be more precise to say 'no certain examples from Accius', as Ajax's protest from the *Armorum iudicium* may belong to the Accian rather than Pacuvian adaptation of the play.

In comparison, the young Cicero of *De Inventione* turns to the poets to provide models of narration and partition, citing Ennius' *Annals* (216, Sk.) for the prosaic 'Appius declared war on the Carthaginians' and Micio's soliloquy from the opening scene of Terence's *Adelphoe* (60–3) at 1.19.27: he will cite Terence again at 1.23.33, for the opening partition of Simo's famous narrative from *Andria* 48–50. The mature Cicero uses the same lines in Antonius' discussion of narration in *De Or.* 2.326. Naturally, the young Cicero resorts to tragedy to illustrate how the fantastic narrative of *fabula* differs from the realism of comedy or factual narrative of prose: his poetic example is again Roman, the description of Medea's winged chariot from Pacuvius' *Medus*.

In listing invalid arguments the young Cicero cites five dramatic examples in common with the writer *Ad Herennium*: the opening speech of Medea's nurse (*De Inv.* 1.49.91), the beginning of Plautus' *Trinummus* (1.50.95), Medea's reproaches from Pacuvius' *Medus*, and two passages probably taken from Ennius' *Cresphontes* at 1.45.80 and 1.49.91. Finally both *Ad Herennium* (2.28.43) and *De Inventione* (1.50.94) refer without citation to Amphion's irrelevant defence of philosophy in support of his claims for music in *Antiope*, but while *Ad Herennium* cites Pacuvius, Cicero's text quotes the example as coming from Amphion in Euripides' *Antiope*.[27] It is quite unlikely that our two rhetorical manuals were independently using these Latin versions of what were probably traditional Greek examples from tragedy and comedy.[28] But whatever their model, both young Cicero and his anonymous contemporary relied on examples from the Roman stage to reinforce their instruction in rhetoric.

How, then, does Cicero use Latin poetry in the freer, less pedagogic *De Oratore*? Some of the allusions must have been the traditional currency of any Latin rhetorical teaching: for example, Catulus teases Antonius for his supposed philistine indifference to philosophy by alluding to two mythical men of action from tragedy: Zethus the hunter and critic of culture in Pacuvius'

---

[27] The additional reference to Pacuvius in the MSS is regularly bracketed as a reader's interpolation.

[28] Jocelyn (*Tragedies*, 270) notes the nature of this overlap between the manuals, and adds 'there can be no reasonable doubt that behind the two treatises, here as elsewhere, lies a common Latin source, and behind this source a Greek treatise which drew examples from the theatre as well as the assembly and the law courts'.

scene with his brother Amphion, and Neoptolemus in Ennius'
*Andromacha*, who decided to practise philosophy 'on a small
scale, for I don't approve of studying it comprehensively'.[29] And
surely the praise of eloquence as 'speech, the swayer of hearts
and queen of all things'[30] was part of the classic protreptic of
rhetoricians, since it is repeated in Quintilian's introductory
book: Antonius does not even cite the author (Pacuvius again) or
the play from which he quotes. But the term 'swayer of hearts' is
particularly relevant to his concern with the orator's power to
move his audience. Naturally Cicero's gentlemen will not spoil
the easy flow of their leisured talk by citing examples of bad
argumentation, from drama or elsewhere. But Antonius does in-
clude a familiar passage from Terence's *Andria* in his swift survey
of types of effective argument.[31]

The theatre offered both the earliest genres of poetry at Rome,
and the most widely known. Romans not disposed to read epic
texts were collectively exposed to tragedy and comedy at the public
*Ludi scaenici*, and Cicero sees the stage poet and the stage actor as
together performing the corresponding functions of the orator as
composer and the orator as performer. Both in his own preface
to the dialogue and Crassus' first extended argument, Cicero
approaches consideration of the orator through judgements on
poets and poetry. Compare 1.11:

I think I can truly say that of all these specialists who have occupied
themselves in the gentlemanly studies and theories of these arts, the
smallest group has been that of distinguished poets. And in this select
company which so rarely produces anyone truly excellent, if you carefully
compare the numbers of both our people and Greeks, you will find far
fewer good orators than good poets.

Again in 1.69–70. Cicero argues from the skill of poets to that of
orators. To prove the versatility of both orators and poets, he cites

---

[29] Ennius *Tr*. fr. 95 Jocelyn. Cf. *De Or*. 2.155, *'minime' inquit Antonius, 'ac sic
decrevi philosophari potius, ut Neoptolemus apud Ennium ''paucis, nam omnino hau
placet.''* ' Both references are favourites with Cicero, combined again at *De Re
P*. 1.30, which attributes the quotation to Sex. Aelius. In *Tusc*. 2.1 Cicero
paraphrases Neoptolemus' views as *philosophari sibi necesse esse, sed paucis, nam
omnino hau placere*.

[30] *De Or*. 1.187, *flexanima atque omnium regina rerum oratio,* also quoted at
Quintilian 1.12.18.

[31] *De Or*. 2.172, citing Ter. *Andr*. 110–12. This comes from the same scene as his
illustration of skilful narrative at 2.326.

the Alexandrian metaphrastic poets Nicander and Aratus who used their poetic skill to adapt works on astronomy and agriculture in 'most elegant and superior verses'. Why then could not the orator too speak most eloquently on matters he had learnt for the occasion?

For the poet is close to the orator, a little more restricted in rhythm, but freer in his choice of diction, sharing almost equally in many kinds of ornamentation: certainly he is his equal in not fencing off by any boundaries his right to cover whatever material he chose with the same kind of fluency and skill.[32]

When Crassus first discussed the physical requirements for an orator's success as performer, he compared the needs of the orator to those of the actor (1.118, 124–30). Both need the same natural gifts and instinctive grace to excel. So when Antonius in book 2 discusses the orator's need to move his audience by his diction and delivery, he turns to the theatre, and to Telamon's great denunciation from Pacuvius' *Teucer* for his model:

What could be so artificial as verse, as the stage, as plays? But I have often seen . . . how the eyes of the actor seemed to burn through the mask as he uttered these words: 'Did you dare to send him from you or return to Salamis without him? Did you not dread to look your father in the face?'   (2.193)

Antonius quotes the famous words to argue from actor to poet: if the actor who regularly performed this scene could not perform it properly without feeling real grief, how could the poet have been mild and relaxed in composing it? Again Cicero uses the superiority of real life over fiction to argue a fortiori from actor to orator. The orator is not just imitating the long-past misfortunes of heroes

---

[32]   *De Or*. 1.70. I have translated *vagari* rather freely to convey Cicero's point (in which he is following Gorgias) that the orator's command of language, like that of the poet, enables him to hold forth magnificently on any topic without having specialist knowledge. Note that when Cicero considers the form of poetry as distinct from oratory in *Orator* 66–7 he qualifies the comparison: poets are more restricted by rhythm but freer in diction; the poet is *eo laudabilior quod virtutes oratoris persequitur cum versu sit astrictior*. He adds that 'Even if the diction of some poets is lofty and ornate, although I judge they have greater licence than us in coining and compounding words, it must be admitted that some of them seek to give pleasure more by diction than by meaning': *ego autem, etiam si quorundam grandis et ornata vox est poetarum, tamen in ea cum licentiam statuo maiorem esse quam in nobis faciendorum iungendorumque verborum, tamen non nulli eorum voluptati* (Madvig, *voluntati,* codd.) *vocibus magis quam rebus inserviunt*.

and fictitious grief; he is not the performer of an assumed role, but arbiter of his own behaviour.[33] Here, then both poet and actor are treated as analogues of the orator and precedents for the level of passion he must feel as well as express in order to sway his audience.

The third book focuses on *elocutio*, and so on style and diction. And here Crassus uses both poetic genres and oratory to illustrate the variety of individual styles, though he leads into his comments by pointing to the more obvious visual idiosyncrasies of Greek sculptors and painters. Then he turns to poets, 'closest kin to orators',[34] citing the quite different styles of the Roman tragic poets Ennius, Pacuvius, and Accius, and the three canonical Greek tragedians, as a transition to his more detailed enumeration of orators both Greek and Roman.

Cicero loved Ennius' tragedies, so he makes repeated use in this book of Ennius' great monody for Andromache, adapted from Euripides' *Andromache*: he quotes it at 3.102 to describe Roscius' variation of tone; he quotes the same famous lines (*quid petam praesidi*...) in 3.184 to illustrate the use of cretic rhythm in prose, and at 3.217 uses the monody to comment on the proper tone for lament. But when he quotes Andromache's lament a decade later in *Tusculans* 3.44, he has to admit that, despite the beauty of Ennius' thought, form, and rhythm (or music), the poet is now rejected as old-fashioned by the new generation of poets.[35]

Tragic poetry has a much more integral role to play when Cicero—or rather Crassus—comes to the orator's fifth and final task: delivery or performance (*actio*). Delivery was incidental in 2.193–4 to Antonius' theme of the need for sincere emotion. But Crassus needs the best known excerpts from tragedy to illustrate the relationship between voice and emotion in his review from 3.213–27 of the range of tone and gesture available to the orator as to the actor. After using Ennius' *Andromacha* to demonstrate the tone of lament, he evokes hallucination and terror from Ennius' *Alcmeo*, anger and violence from Accius' *Atreus* (3.217, 219), and

---

[33] Cf. 2.194, *neque actor sum alienae personae sed actor meae*.

[34] Cf. 3.27, *id primum in poetis cerni licet quorum est proxima cognatio cum oratoribus*.

[35] Cf. his comments at *Tusc*. 3.45, *o poetam egregium! quamquam ab his cantoribus Euphorionis contemnitur*, and (after citing *haec omnia vidi inflammari* etc), *est enim et rebus et verbis et modis lugubre*.

distress from Pacuvius' *Iliona*. Against these famous tragic moments (and most of these examples are tragic monody, that is, lyric song), Crassus can set only one example of emotion from oratory proper, Gaius Gracchus' cry of doubt and despair when he saw himself as target of the conservatives' vengeance. Jocelyn is confident that Gracchus consciously imitated the same lines from Ennius' *Medea* which Crassus includes in his tragic excerpts.[36] In fact dramatic poetry would continue to be as dear to Cicero for its own sake as for its power as a model of the passion (*vis*) which he demanded from great oratory.

It is worth noting that although Cicero admired Ennius' *Annales* and cites them on many occasions, even opening his history of Roman oratory with a description of a wise statesman from the *Annales*,[37] he barely draws on the epic in *De Oratore*, because his focus is on speech, and on imparting to political and judicial situations an impressiveness worthy of tragic drama. But all kinds of comic drama, from the classic Palliata to popular forms like Atellanes and mime, provide illustrations for Caesar Strabo's survey of types of wit, along with the oratorical wit of the politician Cato.[38] The best Latin models for humour, as for pathos, were supplied by the Roman stage.

## Antonius' Conception of the Orator's Generic Range

It may seem to the reader embarking on book 2 that Antonius' praise of oratory and the orator in 28–38 is simply a recycling of Crassus' eulogy at 1.30–4. But as Leeman–Pinkster note, it has some dramatic justification in serving to familiarize Catulus and Strabo with the theme of debate. And as they also make clear, Antonius' encomium deliberately extends the scope of the orator. We have seen already that, while he excludes expository writing, he is nonetheless laying the groundwork for his discussion of historical writing, a form of discourse outside the judicial and political arenas.[39] Indeed comparison with poetry, both as song

---

[36] Compare Jocelyn on Enn. *Tr*. 227–8, *Quo nunc me vortam? quod iter incipiam ingredi? | domum paternamne, anne ad Peliae filias?* cited at 3.217, and Ch. 12 below.

[37] *Brutus* 57–9 = Ennius, *Ann*. 300–4, Sk. on Cornelius Cethegus.

[38] Cicero does not seem to quote from the Italian *togata* comedies of Afranius. See Ch. 9 below for Strabo's use of comedy: Cato's speeches are cited in 2.256 and 271.

[39] Leeman–Pinkster–Nelson, ii. 220–2.

and as drama, is a significant part of this expanded aesthetic appraisal: 'What song can be found sweeter than disciplined speech? What poem more neat in its artistic rounding and shaping? What actor is more pleasing in his imitation of real life than the orator in his championing of it?'[40] R. G. Coleman actually cites this passage in the introduction to his recent study of poetic diction[41] as evidence for the shared elements in 'high literary prose' and the poetic register, and illustrates his point from ancient stylistic comment on historiography (to which I will return). But we should pay attention to a different aspect of Antonius' claims: here oratory is seen as competing successfully with both poetic text and poetic performer; here the separate participants in drama which we have noted as terms of comparison in different phases of the discussion are combined.

The next focus of Antonius' comparisons is the fullness of oratory, enriched as it is with every kind of subject matter from the obviously public material of the senatorial *sententia* and popular *contio*, and the prosecution of dishonesty and defence of human goodness in the courtroom (2.35). But he extends the comparison to more general occasions for moral exhortation; when the speaker must urge men to virtuous behaviour or deters them from offences, or speaks in praise of good men and condemnation of lust, or offers mitigation of bereavement. In extending the range of speech acts, if we may borrow a modern idiom, Antonius is extending the contexts and genres of formal speaking. While the last few speech types can still be assigned formal rhetorical labels, such as protreptic, eulogy, invective, and consolation, he approaches his discussion of historical writing by acknowledging the nameless forms of discourse beyond public occasions.

In the most radical examination to date of Antonius' arguments, Tony Woodman has set out a new reading of the critique of historical writing which Cicero assigns to him in 2.51–64. This entails a new interpretation of the passage we have been considering.[42]

---

[40] *De Or*. 2.34, *qui enim cantus moderata oratione dulcior inveniri potest? quod carmen artificiosa verborum conclusione aptius? qui actor imitanda quam orator suscipienda veritate iucundior?*

[41] 'Poetic Diction, Poetic Discourse, and the Poetic Register', in J. M. Adams and R. G. Mayer (eds.), *Aspects of the Language of Latin Poetry* (Oxford, 1999). The reference is to p. 23.

[42] A. J. Woodman, *Rhetoric in Classical Historiography: Four Studies* (London, 1988), ch. 2. The quotation is from p. 96.

Woodman first divides Antonius' speech into three sections, 30–50, 51–64 (on historiography), and 65–73, then argues his reading of the central section before returning to the opening *encomium* of the orator.

Woodman has made a valuable contribution to the understanding of historiography, which we must examine below. But he has slanted his reading of the first phase by taking it out of sequence. He argues that 'in 30–50 Antonius' argument is essentially reductive. The rhetorical modes at 35–6 almost beg to be divided into deliberative, judicial and epideictic, yet Antonius himself prefers the alternative classification as open-ended or specific.' Hence he suggests that Antonius first dismisses *laudationes* in 43–7 as not needing special rules, then tries in 65–73 to dismiss open-ended topics because their treatment can be subsumed under specific, that is judicial, oratory.

I believe that following Cicero's text sequentially provides a different, more generous, interpretation of Cicero's underlying purpose. His aim is to be as inclusive of the recognized literary forms, both spoken and written, as possible. Here he can leave behind the affinity of oratory with poetry—though he will make a new use of this issue in his later *Orator*. But in 2.36 Antonius moves from the various types of moral discourse to the form of written prose best established in Greek literature—history, or as we would say historiography. The genre is characterized as 'witness to the ages, the light of truth, the life of memory and teacher of life, the messenger of antiquity, which demands the voice of the orator'. Antonius' justification is partly stylistic, in terms of *elocutio*: only oratory practices the art of choosing words, and varying and highlighting them with ornaments of word of thought. But he also argues in terms of *inventio* (and here Woodman and I would agree) that 'it is oratory or rhetoric that provides argumentation and propositions and descriptive material and sequence'. This follows the claim in 2.37–8 that only rhetoric has the method and theory to provide the best presentation of any art: 'if any farmer or doctor or painter *has written or spoken eloquently* about any art, it does not mean that eloquence is part of that art'.

I want to draw attention to two reciprocal features of this apparently subordinate comment. Just as Antonius in 2.36 compared historical writing to three types of speaker—the witness, the teacher, and the messenger—so in 2.38 he is allowing for

the written eloquence of technical writing. When he resumes in 2.41 after Catulus' encouragement, he rewords his theme: 'let us see what business we should give [our orator], and what service we should put into his charge'. It is here that Antonius sidelines (but still surveys) the third, epideictic, genre of praise and blame.

Now when Antonius and his interlocutors agree that the other forms of eloquence do not need separate instruction, his point is that they are the product of the same rhetorical training as the usual forensic speeches; they too are forms of rhetoric. It is less significant that Antonius refuses to give them special attention than that Cicero himself has chosen to include these forms of narrative in his conspectus of prose: like history, these tend to be written modes. He is not trying to squeeze them into the narrow definition of epideictic, but he wants them on board. They have no place, as Antonius remarks, among *causae* (specific issues), nor do other forms of speech like reprimands and exhortation and consolation, although they still need oratorical adornment.

We come at last to historical writing. Having established that this is a task requiring oratorical skill, Antonius asks only what kind of orator will be most successful. As Woodman has said, the discussion of historiography divides into a retrospective outline of Greek and Roman historians (51–61) and three dense prescriptive sections on both the obvious 'laws' and the less obvious virtues of historical writing. But why does he put the surveys first? And what is the spin on his surveys? The early Roman historians Cato, Pictor, and Piso 'only left us the bald records (*monumenta*) of dates, persons, places, and events *sine ullis ornamentis*', like the whitened tablets set up in front of the house of the Pontifex Maximus to record the events of each year. Like the Greeks Pherecydes, Hellanicus, and Acusilas, these Roman historians had no idea how to enrich *oratio*, but thought brevity the only virtue of speaking (note that Cicero uses the quasi-oral terms *oratio, dicendi laudem*). As Woodman has shown, Coelius is praised, not for his superior style, but for 'giving history a larger resonance' (2.54, *addidit maiorem historiae sonum vocis*) unlike the others, who were mere reporters (*narratores*), not enhancers (*exornatores*) of events. The eloquence of history depended, as Woodman has brought out, on the superstructure or *aedificatio*, not the basic *fundamenta*.

But let us follow Cicero's argument in this section before rejoining Woodman's reading of 62–4. Antonius is arguing that

Romans only devoted themselves to rhetoric (*eloquentia*) in order
to take part in public life, whereas in Greece men of the greatest
rhetorical skill held aloof from public issues (*causis forensibus*) and
devoted themselves to history. This is reiterated for each historian
listed from 55–9. Herodotus took no part in public life and, if
Thucydides was involved in politics, he did not plead, and wrote
his work in exile. Philistus wrote in the political void of Syracuse, a
city under a tyrant, and Theopompus and Ephorus were spurred to
history by the rhetorician Isocrates, while Xenophon and Cal-
listhenes came to historical writing from philosophy. Callisthenes
is described as writing *rhetorico paene more* and the last historian
named, the scholarly Timaeus, showed great eloquence in his
richness of content and variety of ideas and elegant composition;
but he too had no experience of public life.

I had always wondered at the omission of Polybius, the great
Greek historian of Rome whom Cicero treats with respect as a
model in his letter to Lucceius, and as a historical source in *De Re
Publica*.[43] I used to account for this in terms of Cicero's distaste for
Polybius' clumsy bureaucratic style, but renewed consideration of
this whole survey has offered a competing explanation. For Polyb-
ius could hardly be included in a list of historians who did not apply
their eloquence to public life (2.55, *remoti a causis forensibus*): he was
a political leader in the Achaean league until he was taken hostage,
and later an envoy for Rome. However de Vivo is probably right
that Cicero chose to end with Timaeus because he had carried the
rhetorical development of historical writing to its highest level.[44]

So what is the direction of Antonius' argument? This is the first
part of his reply to the question 'what kind of orator do you think
should write history?' He answers that the Greek historians ex-
celled because they were steeped in rhetoric and used their skill in
history instead of public life. Antonius claims to read Greek his-
torians in his leisure away from Rome, but to be frustrated by the
disputatious works of the philosophers despite their appealing
moral titles, and to find no use for the alien[45] language of Greek

[43]  *Ad Fam*. 5.12.2; *De Re P*. 2.27.
[44]  A. de Vivo, '*Le leggi e l'uso della storia nella riflessione di Cicerone*', *Paideia*, 55
(2000), 187.
[45]  In view of what Cicero says in *Orator* about Roman poets (see below) I would
like to suggest that *aliena lingua* refers not to Greek itself but to the non-Attic
dialects of Greek epic, lyric, and e.g. tragic choruses.

poets. Again Cicero is reminding his readers to consider other genres of literature than public speaking. History, philosophy, and poetry are all open as sources of enrichment for the man ready to broaden his education.

The surveys are not a distraction, but essential background preparation for returning to Antonius' theme of historiography as the service (*munus*) of an orator. Rhetorical teachers do not include the flowing and varied style[46] of history in their precepts but parade the obvious 'laws'—not to utter anything false or suppress anything true or show any favour or prejudice in writing.

As Woodman has shown, this single law concerns not the issue of fact, the verifiable truth of what is written, but the problem of false interpretation arising from bias. *Falsum* does not reject invention (*fingere*) but deception, and the historian needs to go beyond this foundation to construct his edifice (*exaedificatio*). This calls for content as well as language, that is, all the enhancements of narrative. Cicero spells out the *res* of content in more detail than the *verba* of diction and style. He lists the presentation of time and place (*ordinem temporum, regionum descriptionem,* as in 2.36 above), and the proper treatment of policies, events, and consequences. The historian should declare which policies he approves or disapproves, how actions and speeches occurred, and the role of chance or skill as factors in the outcome. (All these aspects relate to epideictic praise and blame of individuals.) Similarly the historian must report the life and character of leading men as well as their actions. All these ingredients would be expected in a good modern historical narrative, but only if the evidence was available.

Surely Woodman is right to insist that Cicero and his peers would require the historian to apply the same inventive powers in fleshing out a historical narrative as in defending a client or denouncing a political rival. If Antonius does not say so, Cicero certainly expects the enrichment of other kinds of rhetorical narrative with plausible detail; the core needs to be verifiable, but not the supporting material. But note that when Antonius returns to his grievances against the teachers of rhetoric he counts recom-

---

[46] Here I take *orationis* rather than *historia* as antecedent of *eam* in 62, since history is subject to the obvious laws against falsification.

mendations on both style and content in the material neglected by *rhetorum praecepta* (2.64–5). Ten years later Cicero will elaborate on the proper style of history:

History is close to this genre, for often a narrative is enriched and a region or a battle is described; there also political speeches and military addresses, but in these a smooth and flowing style is to be desired, not the fierce speech we wield [sc. in public oratory]. The eloquence we are looking for must be distinguished from these [sophists?] just as from the poets. For poets too raised the question how they differed from orators; it used to seem that they differed chiefly in rhythm and metre, but now rhythm itself has grown more common in the orators.    (*Orator* 66)

As in *De Oratore*, Cicero pays more attention in characterizing history to its richer and more varied content than to its style. At the same time *Orator* keeps the panorama of high literary discourse before his readers, and as we saw in *De Or*. 2.35–6, sets public oratory between the contrasted forms of poetry and history. He needs both genres and their kinds of discourse[47] to reveal by contrast the special nature of public speaking, but he is also clearly interested in theorizing about history, as about poetry, as forms of literature in their own right which he himself either had practised or wished to practise.

### The Uses of Poetry and History: Self-Celebration and Self-Defence

For the class that provided Rome's military leaders, praise of the nation's victories and conquests was also celebration of their own achievements. This may be why Ennius was taken on campaign by Cato the elder; it was certainly why he was patronized by Scipio Africanus and his family, and after Scipio's retirement by Fulvius Nobilior. When Ennius, whose *Annales* began with Romulus, continued his narrative into contemporary history, his praise of Rome was praise of her commanders and his patrons; he also composed a separate poem called *Scipio*, perhaps in mixed metres,

[47] R. G. Mayer, writing on Grecism in Adams and Mayer (eds.), *Aspects* (p. 161) cites Fortunatus 3, 4–5, 'exotic vocabulary is better suited to the orator, but to the historian and poet' and sees 'the more highly wrought literary forms, history and poetry' as 'implicitly ranged together against the norm established for formal oratorical Latin'.

and some honorific epigrams,[48] and he may have composed a historical play on Fulvius Nobilior's conquest of Ambracia. Accius too enjoyed the patronage of a military leader, D. Brutus Callaicus, and composed verses in his honour to dedicate the temple he had vowed for his victories in Spain. But a new trend began while Accius was still alive: figures more political than military turned to writing their memoirs, no doubt as much in self-defence as for a basic record.

And Cicero himself is the earliest source for three of these works composed by near-contemporaries of Crassus and Antonius. First is the Latin autobiography (*De Vita Sua*) of Aemilius Scaurus, consul 115, dedicated to his friend L. Fufidius. Cicero speaks with faint praise of Scaurus as a speaker, but his Latin text survived to be quoted by Valerius Maximus and Pliny the elder in the first century AD and by the grammarians.[49] While Scaurus probably began his memoirs after his consulship, more than twenty years before the date of *De Oratore*, he is also the only writer of this group whose work could have been read by the members of our dialogue. Writing *Brutus*, his history of Roman orators, Cicero was able to see Scaurus in context, and group him with his contemporary and less successful political rival, Rutilius Rufus. Besides the Latin memoirs composed during his many years of exile in Asia Minor Rutilius seems to have written a separate *Historia Romana* in Greek.[50]

---

[48] For the *Scipio* and *Epigrammata* see Vahlen, *Ennianae Poesis Reliquiae*, 213–14: several fragments seem to be hexameters, but three are trochaic septenarii (cf. Gellius, citing Probus on the metre of fr. 7). It is not clear whether the poem was narrative in form. Epigrams 3 and 4 (partly cited by Cicero at *Tusc.* 5.49) also celebrate Scipio. On the broader question of Ennius' relations with the nobility, see S. Goldberg, *Epic in Republican Rome* (Berkeley, Calif., 1995), ch. 5, and E. Badian, 'Ennius and his Friends' in O. Skutsch (ed.), *Ennius* (Entretiens de la Fondation Hardt, 17; (Geneva, 1972), 149–208. Both scholars agree that Ennius was himself a leading man in his own community and a friend rather than dependant of the Roman elite.

[49] On Scaurus see *Brutus* 112: Cicero compares his biography (*tres ad L. Fufidium libri de vita ipsius acta*) presumably on stylistic grounds, to Xenophon's *Cyropaedia*. For testimonia to the biography, Val. Max. 4.4.11 and Pliny, *NH* 33.21, cited by H. Peter, *Historicorum Romanorum reliquiae* (Stuttgart, 1914, repr. 1967), i, p. cclviii.

[50] On Rutilius see Ch. 5. Cicero does not report the memoirs along with Rutilius' speeches and legal writings in his sketch of Rutilius at *Brutus* 114, but at *De Or.* 1.227–8 and *Brutus* 85–9 he seems to cite materials from his biography and histories. The explicit testimonia are almost all Greek: Peter cites fragments on events of the 2nd cent. from Gellius 6.14 (who cites him alongside Polybius, whom he must have

Even Catulus, the cultured participant in the second and third books of *De Oratore*, wrote a work on his consulship and campaign against the Cimbri, which will probably have predated Rutilius' memoirs, since Catulus would be at leisure after his consulship of 102 BC. Cicero describes his work as written in a smooth style like that of Xenophon: more significantly he reports that Catulus sent it to the poet Furius (Antias).[51] Did Catulus intend Furius to put his deeds into epic dress? Sulla too, who had attached himself to Catulus in his early career, composed extensive memoirs—but in Greek. Indeed Plutarch, who relies on them for much of his biography, says Sulla only finished his twenty-second book two days before his death. Different traditions report that Sulla entrusted the correcting of his memoirs to Lucullus, or to his freedman Epicadus.[52]

In considering these four men, then, we have passed beyond historical writing as known to Crassus and Antonius, to work—whether in Latin or Greek—that would have been known to the young Cicero in the generation before the death of Sulla in 78 BC. But the elder Catulus was also linked with Lucullus in the next generation, because both acted as patrons to the poet Archias, who flourished at Rome from his arrival as a young boy in 102 to at least 62 BC, when Cicero had to defend him against a politically motivated charge of fraudulently claiming citizenship. Cicero's speech *Pro Archia* provides both a résumé of Archias' career to date and an insight into the aristocratic circle that protected him. According to Cicero the Italian townships and Rome itself were full of Greek *artes ac disciplinae* when the young Archias from Antioch was welcomed to Rome in 102 by the Luculli. These two brothers, consuls in the 70s, must have been slightly younger than Archias, and were presumably his pupils. Cicero also mentions our L. Crassus, Catulus, and his son (*vivebat cum Catulis patre et filio*), as well as Catulus' son-in-law, Hortensius, and Livius Drusus among his aristocratic protectors. But it was Lucius

read in Greek), Posidonius ap. Athenaeus IV, p. 168e, and Plutarch's lives of Marius and of Pompey. See also Suet. *De Gramm*. 8 (with Kaster ad loc.) on Aurelius Opilius, who followed Rutilius into exile and probably helped to prepare his work.

[51] *Brutus* 132, *eo libro quem de consulato et rebus gestis suis molli et Xenophonteo genere conscriptum misit ad A. Furium poetam, familiarem suum.*

[52] Plut. *Sulla* 28, *Lucullus* 1; Suetonius, *De Gramm*. 12, with Kaster's note.

Lucullus who continued as Archias' patron: he seems to have taken the poet with him on a tour of duty in Sicily before the Social War[53] and again on his proconsular command against Mithridates in the later 70s.

We think of Lucullus as a superannuated general turned fish-fancier, but there is other evidence for his interest in Greek literature, and in contemporary history. Plutarch (*Lucullus* 2) illustrates his *philologia* with the lighthearted challenge he accepted from his friends Hortensius and Sisenna to draw lots to decide whether he should write a history of the Marsic War in verse or prose, in Greek or in Latin: in fact Sisenna himself wrote a Latin history of this period. Lucullus actually composed his history in Greek prose, and Cicero comments scornfully in a letter to Atticus on Lucullus' introductory comment that he had left some solecisms in the Greek to prove that he, a Roman, had written it himself.[54]

Let us return to Lucullus' client and probable former tutor, Archias. What sort of poetry did Archias write? There is evidence for both epic and epigram. His early poem on the Cimbrian campaigns of Catulus (*Pro Archia* 19) and his versification of Lucullus' Mithridatic Wars (*pro Archia* 21) must have been in epic form, but his improvisations (18) were surely epigrams; some of these epigrams survive. Although Cicero may have spoken for Archias in court to oblige Lucullus, by 62 BC the consul and saviour of the state had his own ambitions to be celebrated. Indeed Cicero mentions in the speech that Archias had touched on his own achievements (28: this sounds like epigrams), but had not completed a longer work.

Archias wrote in Greek, but as we have seen, so did Rutilius, Sulla, and Lucullus. This generation was still undecided whether to write its contemporary history in Greek or Latin. When Cicero defends his choice to be honoured in Greek verses, he argues that Greek was read almost everywhere in the world (*in omnibus fere gentibus*, 23), whereas Latin writing was restricted to the narrow boundaries of Latinity. And this at a time when Rome ruled Spain, Africa and southern Gaul, as well as Greece and Asia Minor with

---

[53] Was this in Lucullus' quaestorship? Or simply a cultural excursion? It can be given *a terminus ante quem* because Archias was given citizenship of Heraclea in Magna Graecia on his return from Sicily and subsequently registered as a Roman citizen when Heracleans became eligible under the Lex Plautia Papiria of 89 BC.

[54] Plut. *Lucullus* 1.6; Cicero, *Att*. 1.19.10.

an increasingly vast hinterland! Greek was still the language of
culture, and this helps to explain Cicero's behaviour when he came
to arrange for the celebration of his own achievements.

We first become aware of Cicero's post-consular preoccupations
in the spring of 60 BC, when he writes to Atticus that he has sent
him a *commentarius* or memoir of his consulship in Greek. He adds:
'If I do a Latin version I shall send it to you. As a third item you
may expect a poem, not to leave any form of singing my own
praises unattempted . . . though these compositions of mine are
not encomiastic but historical.'[55] The next letter to Atticus reports
that Cicero has now read the memoir Atticus wrote for him in
Greek, and finds it rather rough and plain, whereas '*My* book has
used up Isocrates' entire perfume cabinet along with all the little
scent boxes of his pupils and some of Aristotle's rouge as well.'[56]
Scholars have laughed at Cicero, and all the more at his next
comment in the letter. He had sent his own Greek memoir to the
great Posidonius at Rhodes, asking him to write 'more richly about
the same topic,' but Posidonius had demurred, saying Cicero's
*hypomnema,* far from encouraging him to write, had deterred
him. So will Atticus please see to it that Cicero's own Greek text
is copied and made available in the other cities of Greece? Cicero
was eager for glory, but surely his letter suggests he could make fun
of his own vanity at the same time.

So prose history and poetry—Latin poetry—serve the same
personal goals. Some of Cicero's three-volume epic *De Consulatu
Suo* survives, but only because he himself quoted from it in his
later work *De Divinatione*. For this he adopted all the trappings of
heroic epic: thus in the second book the Muse Urania addresses
him, warning him of the evil threats of Catiline and urging him to
continue both his virtuous service of the state and his pursuit of the
work of the Muses.[57] And if he was motivated by vainglory in 60,

---

[55] *Att*. 1.19.10 = SB 19: *Latinum si perfecero ad te mittam. tertium poema exspec-*
*tato, ne quod genus a me ipso laudis meae praetermittatur . . . quanquam non sunt*
encomiastica *haec sed historica*.

[56] *Att*. 2.1.3 = SB 21: *meus autem liber totum Isocratis myrothecium atque omnis*
*eius discipulorum arculas ac non nihil etiam Aristotelis pigmenta consumpsit*.

[57] On *De Consulatu Suo* see Soubiran, *Cicero: Aratea: Fragments Poétiques* (Paris,
1972), 28–33. Cicero quotes Urania's address to himself in *Att*. 2.3, *interea cursus,*
*quos prima a parte iuventae | quosque adeo consul virtute animoque petisti | hos retine*
*atque auge famam laudesque bonorum* (meanwhile maintain the course which you have
aspired to with courage and spirit from your earliest youth and again as consul, and
increase your fame and the praises of good citizens), cf. fr. 2. 77–8: *tu tamen anxiferas*

the humiliation of exile in 58 and the excessive reaction to his restoration in 57 help to explain why Cicero again turned to epic to commemorate his vicissitudes. He actually composed the three books *De Temporibus Suis* in the same period as *De Oratore*. In these Cicero had himself summoned by Jupiter to a council of the gods, and he adds details in two letters to Quintus; not only was there a speech for Jupiter at the end of the work, but Cicero later conceived the idea of inserting as a digression a prophetic speech by Apollo about the pathetic return to Rome of the consuls Piso and Gabinius after one had lost his army and the other sold his as mercenaries.[58]

Let us pause briefly over the prose memoir, for which, as we saw, Cicero claimed to have used all the embellishments of the two major Greek rhetorical traditions: from Isocrates and his pupils Ephorus and Theopompus, as well as from Aristotle. This comment reflects the same approach to Greek historical writing which comes through in Antonius' survey of *De Or.* 2.55–9. If Cicero can protest that his own prose memoir is not encomiastic but historical, he is probably distinguishing some aspects of the form of his work; for example, that it is couched as chronological narrative, rather than as a catalogue of his virtues. We might compare the two typical components of Plutarchian biography, which first enumerates the hero's achievements, then resumes with a portrait based on the different virtues and aspects of his personality.

It is important, I think, to be fully aware of these works as well as *De Oratore*, in order to look more impartially on what is usually the chief exhibit in any study of Cicero's views on historical writing, the notorious letter to Lucceius, written in April 55, and forwarded to Atticus as a *tour de force* for him to have copied.[59] Woodman was

curas requiete relaxans | quod patria vacat, id studiis nobisque sacrasti (you however, relieving your anguished cares in repose, have dedicated to us and to your studies what leisure is left from your country's needs). His desire for fame is foreshadowed in *Pro Archia* 23, *nec enim quisquam est tam aversus a Musis qui non mandari versibus aeternum suorum laborum praeconium patiatur* (And no man is so hostile to the Muses that he does not want the undying report of his toils to be committed to verse).

[58] On the *De Temporibus Suis* see Soubiran, *Cicero*, introduction, 33–6, and for the council of the gods, Quint. 11.1.24. The letters to Quintus are. *Q.Fr.* 2.8(7).1 (SB 13, Feb. 55), and 3.1.24 (SB 21, Sept. 54). The same letter to Lentulus Spinther (*Fam.* 1.9.23) that announces completion of *De Oratore* also reports the completion of *De Temporibus Suis*.

[59] On the dating of this letter, see L. R. Taylor, *CP* 44 (1949), 217–21, and Shackleton Bailey, *Ad Atticum*, ii, app. 2.

right to detach the recommendations of Antonius from those made by Cicero in this letter, but it certainly was an important part in Cicero's attempts to gain vindication for his acts as consul and ensuing misfortunes.

Lucceius was apparently writing a continuous history of Roman *res gestae,* perhaps taking up the narrative where Sisenna had broken off in the 70s, and certainly focused on the achievements of his friend, the commander Pompey. But Cicero is not asking Lucceius to incorporate a laudatory account of his achievements in this work. It would probably have meant waiting for Lucceius (who may never have reached publication) to work his way through a decade of Mithridatic campaigns, and so he excuses himself for impatience. He may even have come to realize how incongruous it would be to heap praise upon a civilian leader for suppressing a domestic conspiracy in the same volumes that narrated Pompey's sweeping campaigns of conquest.[60] But there are more important literary reasons why Cicero spelt out a quite different proposal.

Cicero is asking Lucceius to create a self-contained monograph around his consular glory in 63, his downfall and his restoration, and the analogies he selects are (lost) monographs about Philopoemen and Scipio Aemilianus.[61] These monographs are centred on a heroic leader and, as Cicero describes them, have the structural features and emotional impact of a tragedy, contrasting triumph with downfall to provide a dramatic reversal that will provoke the reader, if not to pity and fear, at least to extreme emotional participation. The later Hellenistic period had seen a whole tradition of tragic historical writing, full of pathos and blood and thunder, from such as Douris and Phylarchus, but Cicero does not invoke either man here, nor does Antonius in his survey in *De Oratore*. This contains one significant verbal coincidence with the letter,

[60] On the evidence of this letter for Hellenistic attitudes to historical writing, see B. L. Ullman, 'History and Tragedy', *TAPA* 73 (1942), 25–53, and F. W. Walbank, 'Tragic History: A Reconsideration', *BICS* 2 (1955), 4–14; 'History and Tragedy', *Historia*, 9 (1960), 216–34 (= *Selected Papers: Studies in Greek and Roman Historiography* (Cambridge, 1985), 224–41). On the personal aspects of Cicero's request, cf. J. Hall, 'Cicero to Lucceius (*Fam.* 5.12) in its Social Context. *Valde Bella?*', *CP* 93 (1998), 308–21. Despite the tact and self-deprecation of Cicero's letter, he can hardly have expected Lucceius to feel much enthusiasm for the task.

[61] Antonius himself refers to such monographs when he returns to the *genus tertium* at 2.341, citing books in praise of Themistocles, Aristides, Sgesilaus, Epaminondas, Philip, and Alexander. Only Xenophon's *Agesilaus* survives as a model for Cicero's personal expectations.

and that is in Cicero's request to Lucceius to override the laws of historical writing (*ut leges historiae neglegas*) and to lavish more praise on Cicero than he perhaps feels Cicero deserves.

Now while we have seen that Cicero is only asking Lucceius to cover his deeds in a monograph, not in the course of a continuous (and military) history, we should not, I think, deduce that he thinks this genre is not historical writing. He wants to be praised, but in *historica* not *encomiastica*.

At any rate, I hope the panorama of first person memoirs and third person epics reviewed above has made it clear that Cicero's contemporaries were open to many modes of turning themselves into history. While the historian proper was a writer of continuous artistically constructed and enriched narrative, the material of current history was equally open to celebration in poetry and prose. The boundary between such celebratory prose and epideic-tic *laudationes* may be thin, but the epideictic form was far more limited, as we can see from Antonius' sketch in *De Oratore* 2.43–7. Instead, as Cicero knew from Greek models like Xenophon's *Age-silaus*, laudatory material could easily be worked into the narrative of a history or historical monograph. His Antonius is not exactly moving the goal posts, but what he establishes in the shifting panorama of possibilities open to eloquence is that the forms of oratory and written narrative, including historical writing, were far more flexible than the rules of any rhetorician could encompass.

And we should not forget what was happening in Roman poetry at the same time as Cicero's own purely commemorative and encomiastic works from the early 50s. The two greatest poets of the republic were already writing and, it would seem, died within a year of the publication of *De Oratore*. For in 54 Cicero writes answering his brother's critical evaluation of Lucretius—probably a posthumous publication: 'the poems of Lucretius are all that you say, with many flashes of inspiration but also a work of much artistry. But more of that when you arrive.'[62] As for Catullus, critics still debate the implications of the few hendecasyllables he addressed to Cicero: it is a great pity we do not have Cicero's own reaction to the young poet's modest 'Thanks from Catullus, as much the worst of all poets as you are indeed the best—patron of

---

[62] *Q.Fr.* 2.10.3, *Lucreti poemata ut scribis ita sunt; multis luminibus ingenii, multae tamen artis. sed cum veneris.*

all men.' If Douglas Thomson is right, the poem made its point by
thanking Cicero (perhaps for the text of one of Cicero's poems)
with a compliment to his skill (and lack of discrimination?) as an
advocate that implicitly denied his status as a poet.[63]

---

[63] Catullus 49: *gratias tibi maximas Catullus | agit pessumus omnium poeta | tanto
pessumus omnium poeta, quanto tu optimus omnium patronus*. Cf. D. F. S. Thomson,
'Catullus and Cicero: Poetry and the Criticism of Poetry', *CW* 60 (1967), 225–30,
and *Catullus* (Toronto, 1997), 323–4.

# 7
# Rediscovering Aristotelian Invention

Erat enim [Critolaus] ab isto Aristotele, a cuius inventis tibi ego videor non longe errare   (2.160)

For Critolaus was a follower of that great man Aristotle, whose discoveries you believe I adhere to quite closely.

As we saw in the opening chapter, Cicero makes his earliest comment on the completed *De Oratore* in his carefully written political apologia to Lentulus Spinther, the consul of 57 who had been his benefactor in securing his recall from exile. Once Cicero had got through the embarrassing task of explaining his enforced renunciation of independent policy, he turns thankfully to his new activity, of composing, not speeches, but the blend of rhetorical and political theory that was *De Oratore*.

I have also composed . . . three volumes in the form of a discussion and dialogue 'On the orator' in the manner of Aristotle, which I think will be of use to your son Lentulus. They do not deal with the standard rules, but embrace the whole theory of oratory as the ancients knew it, both Aristotelian and Isocratic.[1]

So Cicero perceived his new work as echoing both the form and the content of Aristotle's teaching on rhetoric. What he meant by 'in the manner of Aristotle' has to be deduced from a letter to Atticus written a decade later: somewhat contradictorily, he claims that his later dialogues 'adopt the Aristotelian fashion' in that he himself has the principal role, in contrast to *De Oratore* and *De Re Publica* in which he does not appear. Alas, Aristotle's own dialogues were lost in antiquity, but the contradiction can be reconciled if we

---

[1] *Fam.* 1.9.23, *scripsi igitur Aristotelio more . . . tris libros in disputatione ac dialogo 'de oratore' quos arbitror Lentuluo tuo fore non inutiles. abhorrent enim a communibus praeceptis atque omnem antiquorum et Aristoteliam et Isocratiam rationem oratoriam complectuntur.*

assume that the dominant mode of continuous exposition by the two elder statesmen, Crassus and Antonius, makes the dialogue more akin to Aristotle's popular writings than to the fierce interrogation and refutation of the Platonic dialogue. But what about the rhetorical theories themselves? How far are they Aristotelian, and from what source could Cicero have taken them?

It is at the heart of Antonius' extended discourse on *inventio* that Cicero twice acknowledges his source in Aristotle. First, Catulus comments to Antonius:

Aristotle, whom I greatly admire, set out certain forms from which to discover every method of argument not only for the disputations of philosophers but for the kind of discourse that we use in civil issues and cases; and your presentation does not deviate much from his, whether because you are following in the same tracks, guided by your affinity with his divine intellect, or because you have read and learned that material, as I think more likely.[2]

Antonius replies with a general acknowledgement of the influence on Greek thinkers on Romans, then after referring to the visit to Rome of Critolaus with the heads of the other philosophical schools in 155 BC (before his own birth) he praises the contribution of Critolaus to rhetoric, because he was a follower of Aristotle. Implicitly answering Catulus he notes:

The difference between Aristotle (and I have read both the book in which he set out the systems (*artes*) of all his predecessors, and those books in which he presented his own views on the same discipline), and these routine teachers of the discipline, is that he saw what was required for the art of speaking with the same acuteness of intellect which enabled him to see the nature and power (*vim naturamque*) of the whole world.[3]

According to Antonius, then, Aristotle surpassed the regular teachers because he applied to the art of speaking his own expertise

---

[2] *De Or.* 2.152, *Sed Aristoteles, is quem ego maxime admiror, posuit quosdam locos* [the topoi] *ex quibus omnis argumentatio non modo ad philosophorum disputationem, sed etiam ad hanc orationem, qua in causis utimur, inveniretur; a quo quidem homine iamdudum, Antoni, non aberrat oratio tua, sive tu similitudine illius divini ingeni in eadem incurris vestigia, sive etiam illa ipsa legisti atque didicisti, quod quidem mihi magis veri simile videtur.*

[3] 2.160, *Atque inter hunc Aristotelen cuius et illum legi librum, in quo exposuit dicendi artes omnium superiorum et illos, in quibus ipse sua quaedam de eadem arte dixit, et hos germanos huius artis magistros hoc mihi visum est interesse, quod ille eadem acie mentis, qua rerum omnium vim naturamque viderat, haec quoque aspexit quae ad dicendi artem . . . pertinebant.*

in logic and classification. Now Antonius is clearly expressing Cicero's judgement but is he also, as the preface to book 2 might suggest, speaking for Cicero's knowledge of Aristotle's work? Twice we have been told that Antonius' views were influenced by reading Aristotle's *Rhetoric*: could either Cicero or Antonius have read this work?

I shall consider the internal similarities later; but first I have to bring up to date a continuing scholarly dispute over the availability in Rome of Aristotle's esoteric, that is scholarly, writings. The problem is that a strong tradition, reported by Strabo and Plutarch,[4] claimed these esoteric works had been lost to the world for two centuries after Aristotle and his school evacuated to the Troad, and were only recovered when the private library of the collector Apellicon was appropriated by Cornelius Sulla on his military occupation of Athens in the late 80s BC. Now Cicero was friendly enough with Sulla's son Faustus to have access to his library while he was composing *De Oratore*, and letters show that he both used the library and borrowed the services of the scholar Tyrannio, who was setting it in order, to arrange his own collection. Cicero certainly consulted learned *commentarii* by Aristotle in Lucullus' library in the same decade,[5] and actually translates a whole sentence from the *Rhetoric* in the *Orator* of 46 BC. But there is no evidence that the rediscovered Aristotelian texts were published in the legendary edition of Andronicus before the time of Strabo in the principate of Augustus. Indeed, scholars have argued against Cicero's access, and most recently William Fortenbaugh[6] has examined *De Oratore* for divergences of detail from the precepts of Aristotle's *Rhetoric* to argue for Cicero's relative ignorance or indirect and approximate knowledge of Aristotle's teaching, as if Cicero were incapable of making any choices or modifications on his own account. The Greek tradition about the adventures of this

---

[4] Strabo 13.1.54 (608–9) and Plutarch, *Sulla* 26. Both passages are translated in J. Barnes, 'Roman Aristotle', in Barnes and M. Griffin (eds.), *Philosophia togata*, ii. *Plato and Aristotle at Rome* (Oxford, 1997), 1–70, here 3–4. Barnes (6–7) also cites and discusses the more summary account in Athen. 3a–b.

[5] For his use of Faustus' library, cf. *Att.* 4.10.1 (SB 84, Apr. 55): for the *commentarii* in Lucullus' library, *De Finibus* 3.11 (cf. also 5.12).

[6] 'Cicero's Knowledge of the Rhetorical Treatises of Aristotle and Theophrastus,' in W. W. Fortenbaugh and P. Steinmetz (eds.), *Cicero's Knowledge of the Peripatos* (Rutgers University Studies in Classical Humanities, 4; (New Brunswick, NJ, 1989), 39–60.

'edition' seemed so circumstantial that there obviously had to be some hesitation in assuming that Cicero could know the text of the *Rhetoric*. Now, however, Jonathan Barnes[7] has argued convincingly that the whole tradition about the esoteric works was warped by the assumption that the texts acquired by Apellicon were unique: they may perhaps have been credited as Aristotle's own handwriting or treated as unique to enhance their value and that of Andronicus' undatable edition. Barnes believes without hesitation that Cicero not only knew of the three-volume *Rhetoric*, but consulted it, and that it could have been available before Cicero's time. Bearing in mind the generic tradition of attributing material in a dialogue drawn from a written source to oral sources, often stretching chronology, it is a priori likely that Cicero twice made Antonius stress the availability of this written source because he himself had found it valuable and was proud of reviving this more sophisticated approach to public oratory.

So when Catulus compliments Antonius' account of *inventio* on its Aristotelianism, let us believe him. Time spent in reading either the Greek post-Aristotelian *Rhetoric for Alexander* or Cicero's own youthful résumé of his teacher's precepts on *inventio* quickly demonstrates the unsystematic nature of routine teaching focused on judicial oratory, and the rigid literalism of pre- and post-Aristotelian manuals based on separate instructions for each successive part of the speech. From Cicero's *De Inventione*, for example, we might note techniques for finding arguments from either persons or events, running through a checklist of circumstantial material for demolishing the adversary's argument and then constructing one's own; or the fourteen themes used in the closing *peroratio* to provoke indignation and sixteen to generate pity. Only the elaborate second-century Hermagorean procedure for determining the issue on which to construct a case was both new and systematic.

## The *Rhetoric*

Aristotle's *Rhetoric* is so innovative and rich in ideas that it will be best to provide an outline before returning to Antonius and Cicero. Political and judicial rhetoric at Athens had lent itself to every kind

---

[7] 'Roman Aristotle,' 16–17.

of abuse before Aristotle decided to add this field of study to his previous more scientific disciplines. As a young man he had won approval by composing a dialogue 'Gryllus,' provoked by the hackneyed eulogies written on the early death of Xenophon's son Gryllus. This apparently attacked Isocratean rhetoric and won Aristotle approval in the Academy.[8] Apocryphal legends had him declare that it was wrong to stay silent when Isocrates was spreading his teachings; so when he came to formulate his own methodology, he began by justifying it on the grounds that since the truth was superior, it would be wrong to let it be overcome by the trickery of unscrupulous speakers or the stupidity (or greed) of the audience. As Solmsen demonstrated in his epoch-making article 'The Aristotelian Tradition in Ancient Rhetoric',[9] Aristotle's *Rhetoric* is unique because it 'organizes the whole material under categories representing essential qualities or functions of any public speech.'

Aristotle transfers his method from dialectic—the exercise of logical argument—and sets out in the opening chapter of book 1 the relationship of rhetorical argument, based on probable or approximate facts, as a counterpart to the absolute truth of dialectic: rhetoric too proceeds by arguing from signs and proofs, and its argument is either deductive, working with syllogistic forms based on generally received beliefs, which he calls enthymemes, or inductive, arguing from examples.

Next he sets out the three traditional categories of oratory, defining each type by its aims, audience, and temporal reference (1.3, 1358b7–20). Thus deliberative oratory (*sumbouleutikon*) is concerned with what is good policy, making recommendations about the future before listeners who must make a decision:[10]

---

[8] See A. H. Chroust, 'Aristotle's First Literary Effort: The *Gryllus*, a Lost Dialogue on the Nature of Rhetoric', tr. from *Revue des Études Grecques*, 78 (1965), 576–91, in K. Erickson (ed.), *Aristotle: The Classical Heritage of Rhetoric* (Metuchen, 1974).

[9] Originally published in *AJP* 62 (1941), 35–50 and 169–90, the article is reprinted in Erickson, *Aristotle*, 278–309, and R. Starh (ed.), *Rhetorika: Schriften zur aristotelischen und hellenistischen Rhetorik* (Hildesheim, 1968), 312–49. Both collections contain valuable studies of specific aspects of Aristotle's *Rhetoric*. For a more compact analysis, readers should consult George Kennedy, *The Art of Persuasion in Greece* (Princeton, 1963), 82–113 (87–103 on *inventio*).

[10] Deliberative oratory is discussed by Aristotle in four chapters (1.4–8), and his main points summarized in 1.8, 1366ª20. It concerns what future or present things should be the aim of those who recommend a certain course; from what topics to derive pisteis about expediency, and methods of dealing with persons and practices. For Roman deliberative oratory see Ch. 9.

judicial oratory (*dikanikon*) also addresses listeners who must make a judgement, but this is concerned with what was just or unjust in past actions and motives. Finally the ceremonial oratory of praise and blame (*epideiktikon*) deals with timeless (or present) truths about things good and noble (or their opposite) before a (passive) audience of spectators. As he notes, the political orator can only advise about issues which are within the control of himself and his audience, and he will need a body of informed knowledge about his city's resources in order to advise. Four centuries later Quintilian will note that this tripartite system of *genera* had been adopted and prevailed under Aristotle's influence.

But Aristotle's most important contribution to rhetorical theory was surely his system of proofs, or rather, methods of supplying conviction (*pisteis*, 1.2, 1355$^b$35–1356$^a$27). For both political and judicial oratory he divides the material of proof into two categories, which he calls 'inartistic' and 'artificial' or 'artful.' Objective external facts include laws, witnesses, contracts, slave evidence given under torture and affidavits, and art enters into dealing with them only by using the best arguments to credit or discount them according to the speaker's interests.

However, what ancient orators valued most, what impressed or dazzled their audience, were the arguments from probability, from character, opportunity, and motive, which depended much more on the inventive and persuasive power of the orator. These relied on popular beliefs and prejudices, and so almost all of the first book is spent in enumerating received ideas (*idioi topoi*[11]) that can be used as premises for argument—for example, the kinds of men who commit crimes and their choice of victims and motives for action. Two or three elements are worth singling out from his extensive survey for comparison with later systems: in chapter 10 Aristotle discusses the nature of an action, which would become one of the three major Hermagorean types of issue, that of moral quality (*status qualitatis*), posing the question *quale sit*.[12] Aristotle

---

[11] The name *idioi topoi*, 'particular ideas,' distinguishes the precepts or beliefs that provide the premises in a special subject or field from the koinoi topoi, which are forms of argumentation that can be applied universally.

[12] Cf. Antonius' summary in *De Or.* 2.104, *aut quid factum sit aut fiat futurumve sit quaeratur, aut quale sit aut quid vocetur,* and his variation in 2.113, '*quid fiat factum futurumve sit,' aut quale sit' aut 'quomodo nominetur'*. *Quale sit* is discussed in 2.106–10.

classifies actions as voluntary or involuntary. Every action must spring from one of seven causes ($1368^b34$–$1369^a2$) chance, nature, compulsion, habit, reasoning, anger, or appetite. What determines the wrongness of an action is the state of mind of the doer, with or without malice (1.12, $1372^a3$–$1373^b24$), and equity will judge most fairly errors of judgement or human weakness. But a man who admits an action may also deny that it is covered by the charge laid against him, corresponding to the later, Hermagorean, issue of definition, *quid sit*.

But to operate with the many received opinions and manipulate them in his argument, the orator also needed to master the forms of argumentation (*koinoi topoi* or *eide*) such as inference from causality or relative size, and Aristotle provides an outline of these forms in book 1 to be developed further in his second book (*Rhet.* 2.23–5). Thus he aimed to provide both the premises for argument and the patterns which could be used to argue with them. Unlike most manuals of rhetoric before and after, Aristotle's *Rhetoric* gave priority of discussion to political, that is, deliberative, rhetoric, and Chapter 9 will contrast his full treatment with Antonius' brevity.

What was quite new, apart from some foreshadowing in the ideal rhetoric of Plato's *Phaedrus,* were the two psychological components of Aristotelian persuasion. Given that less scrupulous speakers often overwhelmed the facts and logical analysis of an issue by emotional techniques, Aristotle could not limit himself to the methods of logical argument. So he opens book 2 by introducing psychological sources of conviction, through the speaker's own character, and through his ability to move the emotions of his hearers to sympathy for his policy or situation (if he is a defendant in court) or anger against his opponent(s).

Aristotle is brief and businesslike in outlining how the orator will win the goodwill of his hearers by presenting himself as good, sensible (*phronimos*), and well disposed towards them (2.1, $1378^a6$–19, but spends more than ten chapters on analysing the major emotions, and the kind of reasoning on which they are based. He presents the emotions as results of cognition, showing what provokes each emotion in an audience, how different kinds of person react, and on what grounds. Prominent are pairs of opposing reactions expressed by verbs: 'to get angry' and 'to be soothed' (*orgizesthai*, *praunesthai*, 2.2–3, $1378^a30$–$1380^b34$), to hate and to

love (*misein, philein*, 2.3.1380$^{b}$35–1381$^{b}$33), and the sources of enmity and jealousy.[13] But this analysis is not enough: in what seems like a second start, five chapters follow exploring the prejudices or tendencies of different social groups in the audience, the young, the ageing, and the mature, as well as the rich and the poor.

## From the *Rhetoric* to *De Oratore*

These two kinds of persuasive technique had not been recognized between the time of Aristotle and of Cicero himself, and their presence in *De Oratore* is one of its most Aristotelian features. While Cicero echoes many precepts from the third book of the *Rhetoric* on style, rhythm, and organization in his discussion of *elocutio* in book 3, it is in the theory of *inventio* in book 2 that he comes closest to Aristotle.

But Antonius' discourse is simpler, shorter, and more repetitive than the first two books of the *Rhetoric*. After discussing imitation as a formative technique for the young pupil, he marks the new phase that brings the young man into action in the forum (2.99). By 2.216 he is ready to invite Caesar Strabo to offer his lecture on wit, which will be two-thirds as long as Antonius' discussion of the three pisteis.

Cicero shapes the first instalment to blend general practical precepts with a summary presentation of the three Aristotelian techniques. This occupies over fifty sections, framing Antonius' discourse with ring composition marked by stressing the need for carefulness and precision (*diligentia,* 2.99 and 147–51). Then follows a freer exchange (2.152–60, sampled at the opening of this chapter), before Antonius' second extended discourse on forms of logical argument (160–75), on self-presentation (176, 179, 182–5) and on swaying the emotions of the audience (186–216). In this longest subsection he reinforces his precepts with detailed examples from his own law-court career (197–204).

The relative length of the first cycle is largely caused by the need to include as a preliminary the only significant post-Aristotelian technique, Hermagorean *stasis* theory, used to determine the issue

[13] 2.10, 1387$^{b}$22–88$^{a}$30. See the discussion of W. W. Fortenbaugh, 'Aristotle's Rhetoric of the Emotions', in Erickson, *Aristotle*, 205–35, tr. into English from *Archiv für die Geschichte der Philosophie*, 52 (1970), 40–70.

or *causa ambigendi* that should decide the speaker's arguments (2.104). But it also takes into account, as Aristotle had done, the non-artistic, factual, and external material that must be handled. These are itemized in 2.100 as: accounts, depositions of witnesses, contracts, oral commitments, kinship by blood or marriage,[14] the decrees of magistrates, and replies of jurisconsults. When he returns to the list of external material in 2.115, Antonius adds *quaestiones* (the interrogation of slaves under torture),[15] laws, senate decrees, and previous judgements. If we compare the Aristotelian list, it is clear that Cicero has added other sources of the law besides statutes, just as he has subdivided the category of contracts.

Antonius was a brilliant courtroom lawyer and he speaks practically of the need to interrogate the client and play out the reactions of adversary and jury alongside planning his own role. It is this procedure that introduces the next step, determining the issue (2.104), for he insists that any subject, whether it is a matter of civil dispute, criminal law, encomium, or public policy, will necessarily involve either determining what actually occurred or will occur, or the moral status of the event or action, or its formal definition.

This tripartite classification of the material of speeches was predominantly judicial in application, and a major Hellenistic innovation, established in the second century. Two earlier Latin versions of this theory survive, in the *Rhetorica ad Herennium* and in Cicero's own student work, *De Inventione*. As Hubbell has shown from Cicero's text, his teacher apparently tried unsuccessfully to reconcile the subject-based theory of Hermagoras with Aristotle's occasion-based system of three *genera*, and produced confusion.[16] So it will be wise to put ourselves in the position of Herennius, whose instructor offers a simple division: if fact was disputed, the class of issue was conjectural (*coniecturalis*, 1.18); if there was a dispute about the law, the issue was legal (*legitima*,

---

[14] It is not clear why kinship features in this list, except that a number of cases involving e.g. the law of succession, involved degrees of kinship within the clan (cf. 1.173, 176, and Ch. 5 above).

[15] *Quaestiones* could refer to Rome's standing courts, whose verdicts presumably provided legal precedent; but it is more likely that this corresponds to *basanoi* in Aristotle's list.

[16] See H. M. Hubbell, *Cicero: De Inventione* (LCL; Cambridge, Mass., 1949), excursus p. 364.

1.19); but if the dispute was rather about the quality of the action (*iuridicalis*) there were further choices to be made. The orator could claim the action was morally right, or instead exculpate the agent on grounds of ignorance, accident, or necessity, or yet again shift responsibility, whether onto another agent or out of the jurisdiction of the court (1.20–5). He would then derive the issue itself from pitting the accuser's claim (*firmamentum*) against the defender's justification (*ratio*): what Antonius calls the *causa ambigendi* is simply this issue to be investigated (*quaestio*) or adjudicated (*iudicatio*).

Antonius speaks as a counsel famed for his defence of politically problematic actions, such as the rioting and abuse of magistrates provoked by Norbanus, and for this reason he virtually excludes the first category, admission of guilt: he also warns (2.108–9) against the hazards of using precise definitions—the raw material of the second category—in matters concerning the rights claimed by senate or people. Still within the framework of the Hermagorean *stasis*-theory he moves on to the remaining approach to issues, the third category, which proceeded by determining the meaning of the written law or text and exploiting ambiguities and internal contradictions.

Only when he has decided on the focus of his defence (a topic not explicitly handled by Aristotle) does Antonius return (114–15) to the tripartite Aristotelian system, briefly recalling the second and third forms of persuasion through self-commendation and emotional manipulation of the audience, before reviewing the external and factual evidence that has to be included in his argumentation: like Aristotle in *Rhet.* 1.15, he gives a short survey of how to reinforce or refute this kind of material as it favours or harms one's case, because the Aristotelian tripartite scheme of *pisteis* was unfamiliar to his readers. Cicero encapsulates the three techniques in three verbs: the three functions of proving, conciliating and swaying to emotion (*probare, conciliare, movere*, or *ad motum vocare*, 2.116) become a refrain framing his account: after 114–15 he returns to the three functions in 121 and 129, before Antonius explains the sources or springs of argumentation—Aristotle's koinoi topoi or forms of argument.

Here Cicero is negotiating two rather more abstract elements of his Aristotelian method. The first (2.133–42) criticizes teachers who separate and exclude general philosophical questions from

specific cases, because every specific case can be reduced to a generalized equivalent which can be more effectively argued. Antonius offers two examples, citing first the civil status of the commander Mancinus, who had been formally surrendered to the Numantines.[17] We must remove the personality from the dispute and consider instead whether any man surrendered to the enemy, and rejected by them, has the right of restoration to citizenship on return. The second example is the notorious case of M. Coponius' disputed will, and this too is already familiar to the readers of *De Oratore*.[18] But perhaps the most interesting point comes at the end of this discussion: it is, he argues, because the jurisconsults always give their responses by naming the persons involved that teachers have not been able to abstract the issue from its case law.

Cicero no doubt felt he might be taxing his readers, and so relaxes them before resuming with the Aristotelian sources of argumentation: it is here that Catulus introduces the exchange of compliments and the first acknowledgement of Aristotle (2.152).

When Antonius resumes (2.157) it is to recognize the Stoic contribution of dialectic[19] and its limitations before turning back to Aristotle. Deploying a powerful extended image, he presents Aristotle's teaching as the source from which all the lesser streams of method flow. All argument about anything must either derive from its own nature and significance, or from outside it. The source of argument from the subject itself is a collection of topics close to that offered by Aristotle in the *Rhetoric*. In a recent discussion[20] Pamela Huby has shown that the list of topics which first occurs in *De Oratore* 2.163–73 is virtually identical with that used by Cicero in his *Topica* (8–24) and found again in the *Partitiones* (7). Indeed Cicero identifies *ars inveniendi* in *Topica* 6 with the Greek *Topike*. Thus one can give three kinds of definition of any concept: (1) by genus and differentia (163, *res quae sit tota quaeratur aut pars eius*); or (2) by either a logical division or an enumeration (*partitio*) of its

17 This was one of the legal puzzles discussed in 1.181–2. (see Ch. 5)

18 *De Or.* 1.180, discussed in Ch. 5.

19 This is represented by Diogenes of Babylon, who served as envoy from Athens along with Carneades, the founder of the New Academic school and the Peripatetic Critolaus.

20 'Cicero's *Topics* and its Peripatetic Sources', in W. W. Fortenbaugh (ed.), *Cicero's Knowledge of the Peripatos* (New Brunswick, NJ, 1989), 61–76.

parts; or (3) by etymologizing its name (165, *si consul est qui consulit patriae*). Or one can argue (166–7) from the simultaneous truth of propositions (*coniuncta*), or relations between whole and part, part and whole, from like and unlike and opposites, from effect to cause, from things compatible, or preceding or incompatible (which Antonius opportunely illustrates from Crassus' own youthful prosecution of Carbo), or arguments from lesser, from equal, or a fortiori from greater things.

Antonius' real-life illustrations of these forms of inference do not follow Aristotle consistently, providing a fuller illustration of fewer relationships, since Cicero was drawing on available courtroom material, and his readers would depend on such examples to follow his argument.[21] But he pauses to reinforce his teaching, replacing the earlier images of the *universum flumen* (source of the streams of knowledge), and the *sedes ac domicilia argumentorum* (the site or abodes of arguments, 2.162), with the new image of a map leading to buried treasure (174).[22] The Aristotelian koinoi topoi or modes of argumentation have been a rough ride and it is time to flatter and encourage his hearers as *doctissimi homines* before returning to his argument.

Traditional rhetoric would have followed this account of invention by arrangement, the second of the orator's five functions: *inventio* was followed by *dispositio*. So Catulus is made to request a discussion of arrangement, and Antonius to withhold it because he has still to deal with the second and third Aristotelian means of persuasion. These two means of persuasion, by the speaker presenting himself as the kind of character he wishes, and controlling the emotions of his audience as he wishes, are more important (cf. *illa maiora*, 2.176): for men pass judgement more often out of love or hatred or misunderstanding or some mental disturbance than because of the truth or any kind of legal ruling. And Antonius, himself a master strategist, warns his audience that they must know how to vary and disguise technical argumentation

[21] Cf. Solmsen in Erickson, *Aristotle*, 289, 'Cicero keeps very close to what he, with perfect right as it seems to me at least, considers Aristotle's idea,' and n. 74, reporting the arguments of e.g Kroll, 'Studien über Ciceros de Oratore', *Rh.M.* 58 (1903), 590, that Cicero borrowed the *loci* of *De Or.* 2.163–73 from a contemporary Academic system showing some Stoic influence.

[22] Cf. 2.163, 174, *si aurum cui, quod esset multifarium defossum commonstrare vellem,* with *Topica* 6, *earum rerum quae absconditae sunt demonstrato et notato loco facilis inventio est.*

by skilled handling (177, *tractatio*) to keep the audience trusting and attentive.

We come now to the speaker as advocate, a figure absent from the Athenian courts: thus when Aristotle speaks of winning public approval for ourselves as speakers, he is thinking of both politicians and civil or criminal defendants like Socrates.

But Cicero made his name as advocate, not composing speeches to be performed by the defendant like Lysias, but preparing speeches he would deliver on the defendant's behalf. Hence in 2.182–5 he must modify Aristotle's concept of the single speaker, to allow for winning approval for both those who plead cases and their clients, and discrediting their adversaries.[23] His focus is the orator advocate: this speaker can win goodwill by his prestige and achievements, if he has such, but he can also have the same effect through positive qualities such as mildness of manner, affability, gratitude rather than greed: and by showing every sign of decency and modesty, while avoiding the appearance of aggression, bitterness, obstinacy, or litigiousness.

Most of these recommendations employ an impersonal or passive form equally applicable to the presentation of speaker and client. At the same time Cicero has to distinguish the qualities (such as decency, scrupulousness, and patience) that win goodwill towards *rei*, that is, not only those accused in court but also any party involved in court business.[24] There is an added subtlety here, for while orators can only convey the character of clients explicitly, they show their own character both by explicit statement and implicitly through gesture and language. Speech has the power to model (*effingere*) the speaker's character, making us (Antonius is speaking as one advocate to others) seem virtuous, of good character, and good men (*probi, bene morati, boni viri,* 2.184).

[23] Both the ethical proof and the cultural divergence between Athens and Rome have been much discussed, starting with G.A. Kennedy, 'The Rhetoric of Advocacy in Greece and Rome', *AJP* 89 (1968), 419–36. See also E. Fantham, 'Ciceronian *Conciliare* and Aristotelian *Ethos*', *Phoenix*, 27 (1973), 262–73; J. Wisse, *Ethos und Pathos from Aristotle to Cicero* (Amsterdam, 1989); W.W. Fortenbaugh, 'Some Remarks on Cicero *De Oratore* 2.178–216', *Rhetorica*, 6 (1988), 259–74.

[24] After the second person addressed to the imagined orator (*si quid persequare acrius*, 2.182) Antonius employs impersonal verbs and gerundives up to the relative clause *quae maxime commendat reos* in 183. But after discussing the qualities the advocate should attribute to his client in the single sentence *horum igitur exprimere mores*, Cicero returns to the advocate himself in 2.184, *tantum autem efficitur . . . ut quasi mores oratoris effingat oratio.*

What is going on here? What happened to Aristotle's three requirements of *ethos*, that the speaker should seem good, sensible, and well disposed to the audience? It seems that virtue is enough without mentioning either the speaker's good judgement or goodwill. This may find its answer in considering not the speaker himself, but the audience, whether the courtroom audience of jurors or the political public. It is important to recognize the profound difference between the audiences of fourth-century Athens and of republican Rome.

The Athenian politician normally had to present any proposal to an assembly of several thousand drawn from all classes; and any substantial trial would be heard and voted on by a similar number of judges: hence the complex negotiation of elites with the ideology of the masses as illuminated by Josiah Ober's detailed study.[25] Consider instead the pattern of legislation at Rome. Much of it would originate as proposals to the senate and be referred to the assembly with the authority of that body. Major political charges, and trials of ex-magistrates or prominent persons, for example, for murder or public violence, were also heard by a highly select body. After the Lex Aurelia of 70 BC this would be drawn from an annual panel and consist of one-third senators and two-thirds members of the top property classes. Certainly trials were in the open forum, and jurors could be affected by the reactions of the interested general public, but the audiences of oratory were much more homogeneous than at Athens.[26] Perhaps members of the senate presumed each other's intelligence, and had more common interests that would make it less necessary to prove one's goodwill.

There will be another divergence from Aristotle's procedure in considering the art of swaying various emotions. Cicero's audience is not divided into young men and old, rich and poor, each group with separate prejudices, but treated as homogeneously mature and respectable. Antonius sees this from the forensic orator's point of view: he must observe the jurors' predisposition and sense whether they are already inclined in his favour, or will need to be worked on. But no orator can affect the audience in any case unless he himself seems carried away by all the emotions he wishes

[25] *Mass and Elite in Democratic Athens: Rhetoric, Politics and the Power of the People* (Princeton, 1989).
[26] See E. Fantham, 'Occasions and Contexts of Roman Public Oratory', in W. J. Dominik (ed.), *Roman Eloquence* (London, 1997).

to generate in them. He must feel the anger or grief himself, and paradoxically his own words will fuel his own feelings (188–93): if this seems difficult, how much easier it is when one's own honour and reputation and obligations to friends are at stake in a real issue, than in the fictions of the theatre. None of this is to be found in Aristotle's treatment, which depends heavily on a painstaking analysis of the psychology of the audience. Where Aristotle examines each emotion, starting from anger, then love, and hatred, in turn, where he considers in abstract what kind of behaviour provokes such emotion and from what kind of person, Cicero allows Antonius to illustrate his techniques from two major defence speeches: his plea for the former general Aquilius accused of provincial extortion, and for his own former quaestor Norbanus accused on political violence. The first depended on a build-up of pathos, as he demonstrated how Aquilius had risen to greatness and was now cast down, then made a grand rhetorical gesture, tearing aside his client's tunic to display his honourable wounds suffered for Rome. In reviewing the case of Norbanus (discussed in Chapters 2 and 5), Antonius and his pupil Sulpicius together outlined the slow transition from self-commendation to emotional manipulation, from ostensible apologies for defending his former subordinate to denunciation of the defeated general Caepio against whom Norbanus had roused up popular violence.

Two emotions had always dominated Roman rhetorical teaching and practice: it was the function of the *peroratio*, the final phase of any speech, to stir up indignation and *invidia*, envy and hatred, towards the antagonist, and provoke pity for the speaker's client. These techniques were so common they had their own names as parts of the speech; the *indignatio* and the *conquestio*. *De Inventione*, as we noted, offers fourteen themes to generate indignation and sixteen to foster pity. But each emotion cuts both ways. So Antonius, speaking of how to generate love for one's client, earnestly warns against generating *invidia* against him by excessive praise. In this highly political world, *invidia* is far more prominent than in Aristotle's careful scrutiny of anger and successive emotions. From the nine assorted emotions listed in 178 and again at 206, let us turn the focus on the traditional effects: first on *invidia*, then on *misericordia*.

These emotions were of course mentioned before this section of *inventio* theory. Mancinus, whose civil rights were challenged, was the victim of *invidia Numantini foederis* (1.181) not 'envy' in this

case, but 'illwill' or 'unpopularity'. Sulpicius Galba was equally
the object of public loathing (*et invidia et odio populi . . . premeretur*,
1.228). And Antonius, on Sulpicius' account, achieved more for
Norbanus by first exploiting the public hatred of Caepio (2.201)
then mixing in pity for his victims, *ut . . . omnia odio, invidia, mis-
ericordia miscuisti* (2.203). Most of this was mere envy, like the later
example of resentment at Scaurus' wealth (2.283), and Cicero
repeatedly warns against causing such envy against the man one
is praising by dwelling on aspects of his life that provoke illwill.[27]
But from a defendant's point of view *invidia* is the equivalent of
Greek diabole, prejudice, misrepresentation, even slander, to
which Aristotle will give special attention in book 3. Again envy
or illwill are among the chief hazards that must be faced by the
speaker addressing a popular assembly, which may often have to be
talked out of injustice, hatred, and cruelty (2.337, cf. 339). If
Cicero spends such a large part of his discussion (2.207–10) on
protecting one's client from *invidia*, it is because he believes that
'most men are envious, and this is the most widespread and lasting
fault' (210). The solution is to show that the achievements of one's
client have been won by or mixed with hardship and suffering
(*miseriis*). This term for suffering is the etymological cue for con-
sidering *misericordia*, the opposing emotion of pity, and portraying
the client as a virtuous hero laid low.

Cicero was conscious that the Roman practice of entrusting
one's defence to an advocate muddied the distinction between the
favourable self-presentation of the defendant or litigant that was
Aristotle's ethos, and the rousing of benevolent emotions (pathe)
in the audience. Although he was careful in introducing the former
(182–5) to stress its descriptive role, he was led, after surveying the
emotions, to recognize that the two forms of persuasion might
converge along a gradation from mild to passionate diction and
demeanour. This is why Antonius devotes the last part of his
disquisition to acknowledging the blurring of lines, the 'affinity
between these two kinds of speaking, of which we want one to be
mild and the other passionate' (212). But as he argues, the speaker
himself must glide from one tone into the other, and allow for a
certain slowness in both building up and then diminishing these

---

[27] *De Or*. 2.304, *si quae sunt in iis invidiosa, non mitigant extenuando sed laudando
et efferendo invidiosiora faciunt*.

vocal colours: 'you cannot stir up pity or hatred or anger as soon as you have introduced it, like making and dropping an argument' (214). As arguments are opposed by refutation, so emotions too must be countered by building up opposite emotions, so that goodwill is removed by hatred and illwill by pity—*ut odio benevolentia ita misericordia invidia tollatur*.[28] Or is it pity (*misericordia*, abl.) that is countered by illwill? Both seem possible, but surely it is the contrasted dispositions of *benevolentia* and *invidia* that have to be cancelled out by prosecutor or defending counsel.

## Disposing of *Dispositio*

When Antonius deferred Catulus' request[29] that he deal next with *dispositio* or arrangement, it was to cover first the all-important ethical and emotional means of persuasion available to the orator. But even when he has covered the Aristotelian psychological means of persuasion, *dispositio* does not follow. Instead Antonius turns to Julius Caesar Strabo, known for his wit, to confirm the importance of jokes and humour in lowering rhetorical tension, and offers him the chance of instructing them all in whatever degree of art it may require. Strabo's reply is marked as a resting place before renewing intellectual progress, and he prefaces and concludes his survey by treating it as a kind of travelling lodge (*deversorium*, 234 and 290), for Antonius to rest after his efforts. It is part of his witty persona that he jokingly deprecates his own hospitality as 'like a stopover in the unpleasant and unhealthy Pomptine marshes.' Now Antonius is rested, he can complete his journey. But the modern critic and reader will prefer to leap across Strabo's diversion, postponing it for the next chapter, in order to see first how Aristotle, then Antonius in his turn, handles the whole question of arrangement. First, then, we will return to the organization of Aristotle's *Rhetoric* after his sociological illustrations of the audience's emotional reactions.

  What follows Aristotle's account of the two kinds of psychological persuasion in *Rhet*. 2.1–17 is further discussion of the logical types of proof, topics common to all argument. He starts with

---

[28]  See Leeman–Pinkster, iii. 171 *ad loc*.

[29]  *De Or*. 2.179, *qui ordo tibi placeat . . . et quae dispositio argumentorum*. He replies (2.180) that it would be appropriate to move on to *dispositio* if he put all his faith in argumentation, but he still has to deal with the two other means of persuasion.

themes like the possible and the expedient (2.18, 19) then reviews forms of logical proof, such as examples (*paradeigmata*, 2.20), apophthegms (*gnomai*, 2.21), and enthumemes, 2.22): this is where Aristotle introduces the twenty-eight different forms of argument (*koinoi topoi*), warns against related fallacies (2.24), and discusses refutation.

The third book focuses on style, but briefly acknowledges the importance of performance (*hypokrisis*, 3.1) before devoting eleven chapters to diction (*lexis*), stylistic devices, rhythm, and the period. The next chapter, 3.12, on the difference between written and spoken styles, is to some extent transitional. But Aristotle's transition is blunt and minimal: 'This ends what we had to say about style, of all the three kinds of rhetoric in general and of each in particular. It only remains to speak of arrangement' (3.12, 1414$^a$29–31). The new section of seven ill-assorted chapters beginning in 3.13 has been identified as belonging to a later phase than the main body of the *Rhetoric*. They are certainly concerned with arrangement, but considered in terms of the old pre-Aristotelian parts of the speech (*moria tou logou*, cf. *tou logou duo mere*, 3.13, 1414$^a$31). A reader might well object that discussing the contents of each identified part of a speech is not the same thing as a discussion of arrangement, but this is as near as the text of the *Rhetoric* comes to the topic. The ordering of the parts is accepted as given.

To a large extent these chapters suffer from having been assembled to negotiate between Aristotle's own system and one of which he disapproves. This is made clear in 3.13 (1414$^a$31–7) with the claim that any speech requires only a statement of its subject (*prothesis* = Latin *propositio*), then the setting forth of the arguments (*pisteis*) to prove it. There is no need, he declares, for the other parts; narration, for example, is required only in judicial, not in deliberative or ceremonial speeches; similarly an exordium is unnecessary, and the comparison and recapitulation of the speaker's arguments with those of his adversary will arise only if there is a difference of opinion. Even in forensic speeches epilogues are not always necessary. As a concession he will admit at most four parts, and like Socrates in the *Phaedrus* he cautions against ending up with the finicky classifications of Theodorus or Licymnius.[30]

---

[30] *Phaedrus* 267b–c. On these chapters I have used E. M. Cope's old but rhetorically expert *The Rhetoric of Aristotle with a Commentary*, revised by J. E. Sandys (Cambridge, 1877). Cope–Sandys introduce 3.13–19 on pp. 156–7.

What follows is an attempt to consider the role of each of these four parts in each of the three *genera dicendi*, and Aristotle's reluctance to let the teaching of rhetoric be dominated by the needs of judicial speeches is only too clear; indeed he had already complained in his prefatory chapter (1.1, 1354$^a$22–9) that political oratory was far more important, but received less attention.

But these chapters vary greatly in length and quality of argument: some, like 3.16 and 17, have become receptacles for miscellaneous recommendations and all of them are enriched by examples. These are drawn from Isocrates and Gorgias and Socrates' speeches in Plato's dialogues, from tragedy, and to a lesser extent from other genres of poetry and fourth-century orators.

After introducing the parts, Aristotle gives 14 and 15 to the *exordium,* glancing briefly at epideictic (3.14, 1414$^b$22, 1415$^a$ 5–11), but lingering over forensic oratory (3.14, 1414$^a$37–$^b$18). Cicero's equivalent discussion will spend most time on judicial speaking, but like Aristotle, Antonius advises the speaker to base proems on arguments from the speaker, his adversary, the audience, and the subject matter.[31] The difference is that Aristotle, as in *Rhet.* 1.1, (1354$^b$4–15), sees this as mere catering to the weakness of the audience. In 3.14, as again in 16 and 17, there is explicit discussion of the ethical and emotional means of persuasion. After a postscript on epideictic (3.14, 1415$^b$28–32), a passing comment linking deliberative exordia to forensic leads to the purpose of *exordia*—to remove distortion and prejudice (*diaballein*, 3.14, 1415$^b$35–40).

With the theme of prejudice the focus has returned to forensic speaking and 3.15, on how to dispel *diabole* (like Latin *invidia* this covers the general prejudice used to back up the formal accusations) assumes the point of view of the defendant. It is worth noting that this chapter introduces a foreshadowing of the later Hermagorean *stasis* theory. Three times, at 3.15.2 (1416$^a$10), 3.16.6 (1417$^a$11) and 3.17.1–2 (1417$^b$21), Aristotle lists four points to be disputed (*amphisbeteseis*):[32] the issue is either whether the

---

[31] Rhet. 3.14, 1415$^a$26–8 = *De Or.* 2.321 cited by Cope–Sandys. They note that Cicero, 'who is certainly following Aristotle', seems to translate tou legontos (the Greek speaker who is also the defendant or litigant) by reus at 2.321, *ex reo . . . reos appello, quorum res est*. This is consistent with the distinction he introduced in 2.183, but passes over the possibility that the advocate will base arguments on his own role, as Cicero so often does.

[32] See Cope–Sandys ad loc., and compare Antonius' language in 2.104.

deed took place, or if so, whether it was actually harmful, or not so serious (*ou tosouton*), or not contrary to the law (*adikon*).

Next, 3.16 concerns itself with the *narratio* (the first word is diegesis), and like 3.15 gives attention to making the narrative both full of character (*ethikon*) and emotionally affecting (*pathetikon*).

But the most important section is naturally 3.17, on the proofs. After noting the limited use of proofs in epideictic, Aristotle turns to the types of supporting argument: examples and enthymemes (3.17.5 and 6, returning in 17.11 and 12), and *gnomai*, or moral maxims (17.9). Again Aristotle brings in the two psychological forms of persuasion. Warning against the overuse of enthymemes he makes the shrewd comment that these factual and formal arguments should not be used when one is aiming to persuade through either character or emotion, because they counteract the other kinds of persuasion. This will not appear in Cicero, but the related advice to avoid seeming to argue from intellectual calculation (dianoia), rather than moral conviction (*prohaeresis*) is most important. It is better to win approval as a good man (*epieikḗs*) than for a precisely argued (*akribes*) speech. This is implied by Antonius' seemingly repetitious *probi, bene morati*, and *boni viri* in 2.184, and features in the self-presentation of Cicero's own interlocutors.[33] But in some respects chapters 17 and 18 have the appearance of being catch-alls for advice that has not fitted into other sections.

One of the items in 3.18 is the use of the laughable, which is virtually passed over, apart from a warning against vulgarity, because Aristotle claims to have discussed humour systematically in the *Poetics*.[34] If however we anticipate the next chapter and glance momentarily at Strabo's lecture on humour, it is plausible to infer the Peripatetic origin of Cicero's material from its systematic classification: after a formal division between extended humour (*facetiae, cavillatio*) and concise wit (*dicacitas*, 216–17), Strabo (2.235) enumerates and answers five questions, recalling a

---

[33] e.g. *De Or.* 1.111, where Crassus wishes to speak like a good citizen (*unus e togatorum numero*), not a teacher.

[34] *Rhet.* 3.18, 1419$^b$6–8. 'We have stated in the Poetics how many kinds of jest there are, some of them becoming a gentleman, some not.' This must have occurred in the lost second book of the *Poetics*; there is no hint of it in book 1.

similar set shaping the account of rhythm in *Orator*,[35] and moves on to his main division, between humour derived from language and that based in circumstance. This leads to the extended enumeration of types (which he himself admits defy systematic division), first of verbal then of situational humour, from 240–90. But as the next chapter will argue, we have no earlier evidence for Aristotle's approach to humour to escape the risk of circularity in analysing Cicero's discussion.

In the relatively perfunctory treatment of the epilogue in 3.19 (1419$^b$10–1420$^a$8) Aristotle's recommendations are for the law-courts: he does not consider either deliberative or epideictic (cf. 3.13). He presents the purposes of the judicial epilogue as fourfold: to dispose the hearers favorably towards the speaker, or make them unfavourable to his adversary by showing the speaker to be a good man; to amplify or belittle the issue, to rouse the hearers' emotions to pity, indignation (*deinosis*), or other negative passions, and to recapitulate.

Overall, this survey seems to lack Aristotle's usual acumen, and is poorly organized to instruct the student orator. How far, then, does Cicero's treatment of *dispositio*, again handled by Antonius, show direct or indirect influence from Aristotle?

## Marshalling One's Arguments: The Three *Genera*

Antonius leads into his main recommendations with two shorter comments. In 2.291–5 he advises examining the case to detect its strengths and weaknesses; then suppressing any weak points. When a case depends on factual proof he will put the most cogent arguments first; if it depends on generating goodwill and playing on the emotions he will give prominence to the most emotional elements in his brief. But his most important advice (295) is negative: leave difficult questions unanswered, and avoid anything that could harm the case. Strabo reinforces this by quoting Crassus' comment that injuring a client by a careless brief was culpable negligence, the treachery of an unscrupulous person (*improbus*, 297). This is twice echoed by Antonius (298, 303) in his more

---

[35] At *Orator* 174, Cicero introduces rhythm by setting out his agenda: *primus ergo origo, deinde causa, post natura, tum ad extremum usus ipse explicetur orationis aptae atque numerosae* (first the inventor, then the purpose, then the form and finally the application of harmonious and rhythmic speech).

specific warning against creating offence or disbelief that could damage one's case (298–306).[36] It returns for the last time to round off discussion of *narratio* in judicial oratory, which dominates his presentation from 307 to 332.

For in formal terms Antonius gives most attention to the organizing of the forensic speech, (2.315–25), and the greater part of this deals with the opening *exordium*: he spends little time on either deliberative speeches (333–40) or encomia (341–50).[37] While this can be blamed on the interest of both pupils and teachers in proliferating rules and techniques for private lawsuits and cases, it is also rooted in Antonius' own considerable court experience, and for that reason what he actually says has little overlap with Aristotle's precepts.

The organization of one's plea, he declares, depends partly on the nature of cases, and partly on the orator's own judgement. Like Crassus in 1.143, he treats it as natural that a case should have a proem (*aliquid ante rem*), then a statement of the issue (*ut rem exponamus*, 2.307), and the proofs provided by confirming one's own arguments and refuting the adversary's case, before the conclusion. But he insists that arrangement requires the orator's judgement, and involves weighing and often discarding arguments. Thus at 311 he silently corrects tradition by suggesting digression for emotional effect, not just in the *exordium* and peroration, but after either the narration or the proofs. Listeners are impatient (313), so we should satisfy them immediately with some strong arguments but also reserve the most powerful for the peroration. His specific suggestions for the opening (*principia*) begin in 315: they should offer an attractive foretaste, based on material drawn from the heart of the case, *ex ipsis visceribus causae* (318). But the speaker will be best able to judge how to open when he has organized all his main body of argument. He can begin with an indication of the whole case (320), or simply provide a lead in or forestall attack (here *munitio*, usually *praemunitio*) or give it interest and dignity: but his preamble must stay in proportion to the case

[36]  In fact his allusion to Themistocles' good judgement, and rejection of formal training in memory (299–300) is a foreshadowing of the brief treatment of memory, the fourth function of the orator, that will end book 2.

[37]  This is made clear by Cicero's repeated allusion to *causae* in 301, 305, 307, 309, 312, 318, 331, etc. Since deliberative oratory was so important in actual political practice I shall pass over Antonius' precepts here and reserve them for Ch.9 on political persuasion.

itself. From 321 to 325 Antonius is reviewing traditional advice; to draw arguments from one's client, one's opponent, the audience, and the issue itself (as in Aristotle, *Rhet*. 3.14.7). One should make the jurors well-disposed, attentive, and ready to learn, 'as the Greeks advise,' but this ought to be maintained throughout the speech. The transition to the main speech should be smooth, the narration concise rather than short, and clear, based on ordinary language, and told in uninterrupted order. Here too discretion is recommended: it may be better to omit all or part of the narrative.[38] In a sudden accelerando Antonius gives a bare summary of the remaining parts—setting out the issue, establishing the speaker's arguments, and refuting those of his opponent, since they are mutually dependent, then rounding off with the conclusion. As in Aristotle, *Rhet*. 3.19, this is seen as usually offering an *amplificatio*, building up on a theme, either to rouse or soothe the jurors' anger, and providing an efficient recapitulation: if Cicero represents as two processes what Aristotle itemizes as four, the ingredients are still the same.

The hurried survey of precepts for the two remaining *genera*, deliberative and epideictic, is justified because the recommendations are seen as common to all three types of speech:[39] but it is worth notice that Antonius' precepts deal, not with ordering the arguments, but selecting them. Since deliberative speaking was so important to Cicero's career, Antonius' recommendations will be reserved for separate treatment in comparison with his actual practice in senatorial and assembly speeches in Chapter 9. As for the *tertium laudationum genus* (2.341), Antonius both recognizes that this kind of speech plays a minor role in Roman practice and offers a systematic analysis of its usual form (342–8), dismissing the methods of invective as simply the inversion of encomium.[40]

This balance of praise and blame can be examined in the encomiastic sections and inserted invectives of Cicero's political speeches from this period, like *De Provinciis Consularibus*, where

[38] This may be Cicero's modification of Aristotle's advice in 3.14, 1415ª35–8, that it is not always expedient to command the jurors' attention. If any element in the circumstances at issue could act against one's client, Antonius suggests omitting rather than simply de-emphasizing it.

[39] Or possibly as hackneyed, like the professional teachers' material belittled at 1.137 as *ista omnium communia et contrita praecepta*.

[40] See Ch. 6 n. 9, for Dugan's article on Cicero's handling of epideictic in the dialogue.

Caesar is praised to the skies and Piso and Gabinius damned. Cicero's only undiluted invective, the speech *In Pisonem*, was actually worked up from a senatorial intervention.

What Antonius offers here, though, is simply a division of those things for which men are praised, and directions for treating both external assets like birth and beauty, and moral excellences. Nothing is particularly close to the Aristotelian account, or particularly distinctive: we might simply conclude that, apart from the warnings about preparation and discretion, the views of Antonius (and of Cicero himself) on *dispositio*[41] were largely traditional. But selection and arrangement of arguments was by its nature so specific to each case that Cicero may well have felt few general precepts could offer any guidance.

On the whole, it is discouraging to review Aristotle's and Cicero's treatment of arrangement: neither does justice to their author's logical or tactical skill. Although this material coheres closely with *inventio* it does not offer the same scope for original thinking. It is in the heuristics of *inventio* that the Greek philosopher finds a peer in the Roman orator. The difference between Attic and Roman political life, and between the nature and scale of their trials, makes it all the more to Cicero's credit that he saw the essentials of Aristotle's rhetorical system and modelled his account—directly as I believe, rather than indirectly—upon them. When Solmsen, in the seminal article mentioned earlier in this chapter,[42] completes his account of the survival of Aristotle's major contributions to rhetoric in classical oratory, he concludes:

If it is asked who did most to keep alive or revive Aristotelian ideas and concepts, the answer can hardly be doubtful. I should not stress the fact that the quinquepartite system underlies *De Oratore*, but rather draw attention to the inclusion in this work of *ethos* and *pathos*, the revival of Aristotle's conception of the *loci argumentorum* . . . and the insistence on the old boundary between *inventio* and *dispositio*. And we may add . . . that Cicero regards a wide range of knowledge and philosophical speculation as

[41] It is very likely he included such discussion in the pamphlet he published, mentioned at 1.94 and 2.8, which seems to have been his only written work (cf. Quint. 3.1.29).
[42] See n. 9 above.

a prior condition for successful oratory. These facts lend substance to the claim that in *De Oratore* he renewed the *ratio Aristotelia . . .* and I cannot help wondering why the tendency of some scholars has been either to ignore or to minimize the importance of this testimony.

Could this tendency be sheer prejudice against the Roman Cicero?

# 8

# Wit and Humour as the Orator's Combat Weapons

Nemo [sc. erat] qui breviter arguteque inluso adversario laxaret iudicum animos, atque a severitate paulisper ad hilaritatem risumque traduceret   (*Brutus* 322)

There was no one in those days able to relax the spirits of the jury by quick witty mockery of his opponent and lead them briefly away from severity to gaiety and laughter.

Why does Cicero interrupt and extend his study of *inventio* in the second book of *De Oratore* when it is already rather long, and why does he separate it from the related theme of *dispositio*? Partly, as the quotation above implies, for necessary relaxation. As humour brings a relief from tension in oratory, so we may expect discussion of humour to provide some relaxation of tone in the dialogue. But clearly Cicero must regard the deployment of humour as something more than a digression, a tool scarcely less important than the exploitation of the audience's emotions with which it is linked in 2.216.[1] So Caesar Strabo presents his mini-treatise as a point of repose during a long and strenuous journey.

   Although *Brutus* 322 deplores the lack of skill of this generation in manipulating humour in the courts, Cicero would recall Strabo as a noted wit even in 44 BC, years after Strabo's early death.[2]

---

[1] Antonius has already stressed this power of humour to relax and charm in the civil *causa Curiana*: note the language used at 1.243, *multo maiorem partem sententiarum sale tuo et lepore et politissimis facetiis pellexisti* (you beguiled a far greater share of the jury votes by your wit and charm and elegant humour). Again, in discussing the challenge of handling a popular audience (2.340), Antonius emphasizes as his final recommendation the power of *facetiae . . . et breve aloquid dictum* (for nothing is so easy as turning a crowd from grimness and even bitter hostility than by some apposite brief witty comment).

[2] Cf. *De Off*. 1.108, *Erat in L. Crasso, in L. Philippo, multus lepos, maior etiam magisque de industria in C. Caesare L. f.* (There was much wit in L. Crassus and L. Philippus but even greater and more calculated wit in C. Caesar (Strabo)).

But it is possible that he had not originally assigned the discussion of humour in *De Oratore* to Strabo. Only six years after writing *De Oratore* he refers to this survey as *in secundo libro de oratore per Antoni personam disputata de ridiculis*.[3] Had he begun by assigning the topic to Antonius, before he thought of introducing Caesar Strabo along with his stepbrother to vary the dramatis personae? It is after all Antonius who first mentions humour. He has two reasons for inviting Strabo to speak: besides the utility and appeal of jokes and humour (*iocus et facetiae*, 2.216) there is his more general concern to affirm the dominant role of nature and experience rather than technical training even in this aspect of oratory. We might add his known talent at instant tactical reaction in court, which is the context of so much verbal *dicacitas*.

Cicero himself had affirmed in his personal proem to the entire work that humour, like literary culture, was as essential as emotion to the orator's art, and he implies the division between extended humour and instant witticisms in the coordinate clauses of this opening reference:

To emotional power we should add charm and humour and culture worthy of a gentleman, and quick concise wit in retort and provocation, combined with grace and sophistication.

accedat eodem oportet lepos quidam facetiaeque et eruditio libero digna, celeritasque et brevitas et respondendi et lacessendi subtili venustate atque urbanitate coniuncta.   (1.17)

This chapter, then, may seem an excursus, but a sample of the role played by humour in Cicero's own success will confirm its continuing importance in the courts and politics of Rome beyond the generation of Antonius and Caesar Strabo.

But first I need to analyse and interpret Strabo's formal presentation: this discussion will deal only briefly with the vexed problem of possible Greek and Roman sources, which has recently been

---

[3] Cf. *Fam.* 7.32 (= 113 SB, in 50 BC) to the wit Volumnius: 'if there be no pungent *double entendre*, no hyperbole, no pretty pun, no comical surprise, if the other varieties which I discussed through Antonius' mouth in the second volume of my treatise *On the Orator* shall not appear neatly pointed and *secundum artem*: why you may go bail that the thing is not mine' (tr. Shackleton Bailey). The generic decorum of dialogue means that Cicero discusses the figures of speech *De Oratore* without using the Greek terms (*amphibolia, huperbole, paragramma, paraprosdokian*, and *entechna*) found in the letter.

dealt with at length by Rabbie.[4] Then (building on Rabbie 6.E 200–4), I will turn to Strabo's Roman examples to single out their different social and political circumstances. After that I will be better equipped to assess the importance of wit and humour in Cicero's own performance as a speaker, and in its written record. For more than any other verbal category, humour was the weapon of choice in personal antagonism, and in the duelling of elite political life.

A recent treatment of Roman wit[5] has spent some helpful pages on Cicero's discussion, but the author's focus is primarily on abusive wit in invective. As Corbeill notes and will illustrate, 'properly employed invective disables its target, marking him as unfit for human society'. He has singled out four techniques: the exploitation of physical deformity, of meaningful names and nick-names, of the antagonist's mouth and face as index of viciousness, and of his debauched deportment and behaviour. But useful as these categories are, they are far more in evidence in the invective speeches of Cicero analysed by Corbeill than in our dialogue, where a more gentlemanly restraint seems to prevail.

Ever the voice of experience, Antonius turns at 2.216 to Caesar Strabo either to bear witness that the command of humour is a natural talent, or if there is any formal art, to instruct them in it. And when Strabo belittles existing Greek treatises on jokes (*de ridiculis*) it is surely Cicero's own dissatisfaction that he is voicing. He dismisses these treatises as simply collections of witticisms, which failed whenever they tried to construct a system (*ratio*). Did Cicero have another, more systematic source? Given the analytical basis adopted by Strabo, scholars have looked to Aristotle, but Corbeill, like Janko and Rabbie before him, is justifiably dissatisfied with the parallels that have been suggested.[6]

---

[4] E. Rabbie's introduction to this section (Leeman–Pinkster–Rabbie, iii (1989), 172–212), moves from (1) general comment and (2) analysis of the dialogue (172–7), to (3) the structure of the oral treatise (177–83), (4) Cicero's terminology for the laughable (183–8), (5) the Roman origin of the distinction *cavillatio/dicacitas* (188–9), then (6) an exhaustive reconsideration of possible sources (190–204), followed by a separate treatment of Quintilian 6.3, on humour, (7) a discussion on the ethical approach of the theory of wit (206–10), and (8) the coherence between the theory of wit and that of the emotions (210–12).

[5] A. Corbeill, *Controlling Laughter* (Princeton, 1996).

[6] Ibid. 21 nn. 13–14 on possible sources. Richard Janko, *Aristotle on Comedy* (London, 1984), reviews possibilities, and the evidence of the medieval treatise known as *Tractatus Coislinianus*, for an Aristotelian approach to types of humour.

As Rabbie shows, Strabo's first division in 218 between extended humour (*cavillatio*) and immediate witticisms (*dicacitas*) uses an old-fashioned Roman term to make a Roman distinction, which is somewhat at variance with the apparently subordinate division made at 239–40 between humour *re* and *dicto*.[7] To simplify on the basis of Rabbie's painstaking argument, the second division is not subordinate to the first but replaces it. Extended *cavillatio* has two main forms, the humorous narrative (242) and the distorted imitation (243), both of which depend on *res* in the sense of *pragma* (action). On the other hand, witticisms (humour *in dicto*, 244) include some jokes based on *res* (content or reference, 248, 252) but consist largely of figures of speech (*in verbo*, 248–52). Rabbie argues convincingly that Cicero shares with the brief account in the earlier *Rhetorica ad Herennium* (1.10) Roman elements quite distinct from anything found in the Greek rhetorical tradition, suggested by the remarks in Aristotle's *Rhetoric* on *geloia* (cf. 3.18.7, referring the reader to the *Poetics*), or the traces of his treatment of humour in comedy in the lost second book of the *Poetics*. Hence Rabbie concludes (p. 200) that Cicero used a Greek source based on figures (cf. 2.217 and 288) and a Latin source, either oral or written, going back to Peripatetic theory of comedy.[8]

Let us start then from Strabo's first division between the two types of humour (*facetiae*): one spread through the texture of the speech, and the other, sharp and instant wit. He sees the first as based on men's natural talent and physical gifts for both narrative and imitation.[9] Humorous narrative, Strabo claims in 219, needs

---

[7] Rabbie 188–9 notes from *TLL* the use of the root *cavill-* in Cato and Plautus, and Cicero's replacement of the term by *facetiae* in *Orator* 87: *sales, qui in dicendo nimium quantum valent; quorum duo genera sunt, unum facetiarum, alterum dicacitatis.* One reason for Cicero's change in terminology was probably the shift in meaning of the root *cavill-* from wit to sophistical quibbling already attested in Livy. On the terms themselves see n. 15.

[8] Thus it is possible that the rhetorical theory comes down from Aristotle through Theophrastus, *Peri geloiou*, or Demetrius of Phaleron's *Peri charitos*, or the lost treatise *peri charitos* cited by Demetrius, *On Style* 128, but there is no evidence beyond the coincidence with Aristotle in distinguishing the wit proper to a well-bred person from what is unsuitable.

[9] This is surely Aristotelian mimesis, and could ultimately derive from the treatment of the laughable in the lost second book of the *Poetics*. The division between witty remarks and humorous narrative seems to be formalized by the time of Quintilian, who tells us in his own discussion of humour (6.3.41) that his teacher Domitius Afer left behind both humorous *narrationes* and a book of his own witty *dicta*.

no particular art, but then witticisms have to be so quick in hitting their target (*emissum haerere*) that there too the speaker has no time to apply any calculation or art.

Since it would strain the conversational form of the dialogue, as Cicero surely recognized, to illustrate extended humour at any length, the bulk of both Strabo's argument and his interlocutors' qualifications is concerned less with the continuous humour of narrative than with concise witticisms such as his very first sample. This is taken from an abusive exchange in the senate (*altercatio*, cf. 2.255) between Catulus and his enemy Marcius Philippus. When Catulus ('Puppy,' or 'Barker') was asked by Philippus 'why are you yapping?' his answer was 'because I can see a thief!'[10] From this neat tribute to his half-brother, Strabo leads into an extended compliment to Crassus by alluding to two of his famous cases. At this point both Crassus and Antonius have already mentioned his success in the civil *causa Curiana* in book 1, Crassus to claim (1.180) that he won by defending the intent of the testator against the literal interpretation of the will, Antonius (1.243) to describe more fully how it was the wit and refined irony (*sal, lepos, politissimae facetiae*) of Crassus, rather than his command of jurisprudence, that made the lawsuit so entertaining and won the majority of the judges' votes. This was gentle humour used against an esteemed friend, whereas when Crassus was defending Plancus he had to crush the professional accuser Brutus 'whom he loathed and thought worthy of insult'. Here, no holds were barred, the more so as Brutus had put him in a tight spot by calling on two readers to quote contradictory claims from Crassus' youthful speech on founding the colony at Narbo in Gaul (118 BC) and his more recent defence of Servilius Caepio's law restoring senatorial membership of the jury panels in political trials.[11] As Strabo notes, Crassus opens with an instant retort to Brutus' claim of sweating over the case: 'of course you're sweating, you've just taken leave of your baths' then retaliates more expansively. He produces readers to cite the openings of the three dialogues in jurisprudence addressed to Brutus by his father, and each time

---

[10] This example of wit drawn from a cognomen (Corbeill, *Controlling Laughter*, 89–90) is made more acceptable because Catulus is depicted as retaliating, not originating the abuse. It won Quintilian's approval in his chapter on wit (6.3.81).

[11] On the place of these speeches in Crassus' political career see Ch. 2.

challenges him to explain how he had lost each of the paternal properties mentioned (2.223–4).

Just as Strabo cites Crassus' retort verbatim, so now he repeats the words of his three mocking challenges, and praises their humour as no less effective than Crassus' later adoption of a highly tragic motif: wit and pathos are alternative routes to the same effect. While Crassus was speaking he noticed the funeral procession of an old relative of Brutus passing through the forum, and with urgent severity demanded of his accuser what he wanted the corpse to tell his dead father and ancestors: here too Cicero seems to have had a written source, from which he quotes word for word a passionate harangue culminating in the claim that Brutus' profligacy and loss of family properties had left him not only no chance of imitating his ancestors but not even a place to lodge their tombs (2.225–6). But the source can hardly have been the speech itself, given the detailed account of Brutus' behaviour during the trial.

I have followed each move in this introductory exchange to stress two features. Through Strabo Cicero demonstrates that humour could be used both without offence towards one's respected peers, and as a powerful form of invective and ridicule: this is a foretaste of the decorum of humour outlined more fully in 237–8. Later I will show how Cicero himself tempered his humour in cases like *Pro Murena* and sharpened it in political invectives against Piso and Antony. The second feature is that ancient and modern concepts of legal relevance differ radically. In the face-to-face duels of Roman politics and courts alike, personal attacks were just as powerful when they had absolutely nothing to do with the case or with the senatorial debate. It was enough to discredit the man himself.

Strabo's preliminary comments provoke general reactions (229–35): from the ever-practical Antonius a warning to bear in mind three aspects of the circumstances, the persons involved, the issue and the occasion itself (229);[12] from the young enthusiast Sulpicius a renewed invitation to set out his outline (231); and (surprisingly) from Crassus a denial that humour is produced by art, rather than by experienced observation. The chief use of such recommendations (*praecepta*), he declares, is not to give speakers a system of invention, but to provide criteria for judging the

---

[12] Cf. Antonius' preliminary cautions in his lead up to *dispositio* at 2.301–5, on refraining from attacks that might offend one's opposing counsel, witnesses, jurors, etc.

rightness or wrongness of what they have invented. Here perhaps I need to emphasize that *recta* and *prava* are terms not of moral praise and blame (the morality of our speakers is taken for granted), but of professional assessment.

It is part of Strabo's persona that his consent to handle the topic is cushioned by a humorous exchange of analogies from the gentleman's world of hospitality, but now when the interlocutors' and readers' impatience has been whetted, he finally sets out a formal 'table of contents' for his lecture. In this respect Cicero evokes two Roman inheritances from Aristotelian thinking: first, the concern with definition, especially defining a *techne*. We met this in Crassus' description of how to establish jurisprudence as a *techne* (whether we call this art or science) in book 1, where he requires first an account of the proper material of the art, then a classification by categories (*genera*) and subcategories (*partes*, later s*pecies*, 1.188–9). There were other questions that Aristotle asked about an object of study: its four kinds of cause, that is, its purpose, origin or source, raw material, and structure. Cicero uses a related approach to define both humour here, and rhythm in his later rhetorical work *Orator*. As he asks a set of four questions about rhythm: its material, origin (*unde*), application (*usus*) and limits (*Orator* 174, cf. 209–11), so Strabo at *De Oratore* 2.231 seeks first to define the *genus* and raw material (*unde ducatur*) of humour. He converts this at 235 into five questions *de risu: quid sit, unde sit, sitne oratoris velle risum movere, quatenus*, and finally *quae sint genera*. The first, the nature of laughter, he instantly dismisses as a question for Democritus. His second question also receives a quick answer. What is the source or raw material of laughter? It is ugliness of body or character (*turpitudo et deformitas*).[13] The third and fourth questions both concern application (*usus*): is it appropriate to the orator to seek to provoke laughter, and if so to what extent (*quatenus*, 237, 239)? The question of limit is important, and after a brief reply here will recur twice more explicitly. For now he sees humour as a proper tool of orators, provided they do not use it on either the weak or the wicked, or again on men dear to the audience (a point implied by Antonius in 229). Physical deformity is seen as fair

---

[13]  Compare the material of comedy as stated in Arist. *Poetics* 5. 1449ᵃ 33 'mimesis of baser but not wholly vicious characters; rather the laughable (*to geloion*) is one category of the shameful. For the laughable comprises any fault or mark of shame which involves no pain or destruction' (tr. Halliwell, 1995).

game for mockery (which would nowadays cause some offence), as are moral flaws in contexts which are not a matter of life and death (238): again the orator must spare his own dignity as he spares that of his peers, and avoid behaving like a hired jester (*scurra*) or mime actor.

Now at last Strabo seems ready to set out his classification of types of continuous humour, *facetiae*. Instead, when he stresses the *duo . . . genera facetiarum* he makes a new antithesis between humour produced from content (*re*) and from language (*dicto*, 239). As May and Wisse, following Rabbie, have argued, the original division between continuous humour and instant wit will only appear intermittently after this reformulation.[14] This is surely because Cicero has subordinated it to the distinction between humour of content and of form, corresponding to the rhetoricians' classification of figures into figures of speech and of thought.

Thus extended humour is considered at 240, but under the rubric of content (*re*). Strabo illustrates techniques of humorous anecdote and narrative, either based on fact improved by a smattering of fibs (*mendaciunculis aspergendum*) or entirely fictitious: the orator can exploit all the habits and speech and expressions of the subject. This is where the art of oratory converges with the still undeveloped art of fiction writing.

Writing at the time of Cicero's youth, the author of the manual *Ad Herennium* allots little room for explicit recommendations about humour. Like Cicero he recognizes that a little mockery (*inrisio*, 1.10) is one good way of conciliating juries wearied by the preceding speech. Again at 3.23 he will divide *sermo*, 'talk', into four categories, of which the fourth is jesting (*iocatio*) defined as speech which can produce respectful and gentlemanly laughter (*risum pudentem et liberalem*). But his fullest treatment of humorous or satiric narrative does not stress the humour which it nonetheless demonstrates in two vivid extended examples of 'character delineation' (Caplan's translation of *notatio*, introducing the sample at 4.63–4) and 'fictitious dialogue' (*sermocinatio*, 4.65–6). These passages correspond perfectly with Cicero's reference at 2.241 to *mores eius de quo narres, ut sermo, ut voltus omnes exprimantur*. And it is here that the author offers his last, most highly wrought, demonstration of the stylistic figures: only his account of

---

[14] May and Wisse ad loc., p.187, n. 207.

visualization (Greek *enargeia, hypotyposis*) follows. His sample
texts could well have been excerpted from a novel—if the Latin
novel had been invented—or a comedy, if they had been in dra-
matic metre instead of prose. What is excluded from *De Oratore* by
its genre as dialogue is done full justice here. To measure Cicero's
own skill in such social satire we shall need to turn to his speeches,
in the last section of this chapter.

These skills are essentially dramatic, derived from Graeco-
Roman comedy, with an element of fine-tuned mimicry, as in
Crassus' mockery of the family pride of his censorial colleague
Domitius Ahenobarbus at 2.243, 'in the name of your nobility,
your family—your statues', or the unidentified passage from
comedy where a young man mocks the old man's moral sermons.
He sees these as two kinds of the laughable based on content,
appropriate to continuous humour (*perpetuae facetiae*, 243) and
focusing on some conspicuous and absurd fault, whether they are
wholly narrative or partly mimetic (*imitatione breviter iniecta*). To
this he contrasts in 244 what is laughable in a saying (*dicto*, 244),
which must arise from some point (like a rhetorical figure) of
speech or thought. But in both impersonation and witticism vulgar
wisecracking (*scurrilis dicacitas*) is to be avoided, and Strabo
lingers over examples of the inopportune wit of boon companions
like Granius and Vargulla.[15]

In 248, then, Strabo seems to have left behind the old division
between extended humour and immediate wit. Now, before
setting out his varieties of humour under headings (*summatim*),
he gives explicit priority to the distinction between humour
drawn from facts (content) and from language (form): *haec igitur sit*

---

[15]   *Dicacitas* first appears in Cicero's letters (*Att.* 1.13.2 = SB 13), and is listed by
Quintilian before his survey of wit and humour (6.3.21). But Quintilian actually
uses a different range of terminology, as Rabbie (188) points out. Quintilian cites
Cicero twice in his sample list (6.3.17–21) of *urbanitas, venustus, salsum, sales,
facetum* (20, where he points to a change in meaning), *iocum*, and *dicacitas*. But in
his own comments he avoids *dicacitas*: after the definition in 6.3.21, it is found only
in the negative *dicacitas scurrilis* at 29, perhaps quoted from *De Or.* 2.244, and the
quotation from *Orator* 87 at 42 (which also includes his only instance of *facetiae*). He
barely uses *dicax, sal, festivitas*, and *hilaritas*. We saw in n. 7 that *cavillatio* was
Plautine (cf. *Stichus.* 228, for the professional jokes of the parasite), and came in
Cicero's time to suggest hostile or picayune criticism. In keeping with this Strabo
himself, after his early distinction between what older writers (*veteres*) called *cavil-
latio* and *dicacitas* (2.218) avoids using either term for the kind of wit he recom-
mends to the orator. Vargulla is unknown outside this passage.

*prima partitio: quod facete dicatur, id alias in re habere, alias in verbo facetias*. To this he adds two new claims, that the best humour will draw on both form and content: and further, that in all his examples the same forms of argument (*loca*) can be used for both humour and serious criticism. The difference is that serious treatment is given to important and earnest matters, but jokes are made about something discreditable. After a number of examples that are formally jokes but serious in content, he returns to his fourth problem, of the limits of humour for the orator, developing in 251–2 what he said in 244, and isolating several comic modes as inappropriate: the behaviour associated with a clown (*sannio*), taking on the personality of a sourpuss (*morosus*), or any superstitious or mistrustful or boastful fool.[16] This is a role we can only play briefly: the same applies to comic imitation, to distorting our mouth or speech (*oris depravatio*, 252)[17] and to obscenity 'barely acceptable at a gentleman's dinner party'. All that is left for the orator's role is proper humour, of either content or wording. If the humour persists regardless of the words you use, then it comes from content, but if it loses its wit (*sal*) when you change the words, then it depends on words for its appeal.

At this point Cicero's readers may begin to agree with Strabo's initial criticism of theorizing about humour. More than half of his presentation is past and we are still waiting for a clear account of the two main categories he has set up, based on words and on content. From the discussion of double meanings in 253 through various other figures of speech, such as the reply contrary to expectation,[18] the misunderstanding, and the use of tropes like

[16] Compare *Orator* 88, *illud admonemus tamen, ridiculo sic usurum oratorem, ut nec nimis frequenti, ne scurrile sit, nec subobscoeno, ne mimicum, nec petulanti, ne improbum, . . . neque aut sua persona aut iudicum sut tempore alienum*. (We add the warning that the orator will not use the laughable too incessantly, to avoid scurrility, nor crudely, like a mime actor, nor aggressively, like a rude fellow, and avoid anything inappropriate for his own dignity or that of the judges or the occasion).

[17] Is it possible to be more precise about the reference of *oris depravatio* here? M. Bettini, *Le Orecchie di Hermes* (Turin, 2000) notes that *os* was the neutral or natural face: *vultus*, the expression, could denote anything from dignified emotional effect to making faces (*vultus ducere*).

[18] Double meaning (*ex ambiguo*, 250, *ambigua*, 253) and contrary to expectation (*cum aliud expectamus, aliud dicitur*, 256) are two of the forms of verbal wit mentioned by Cicero in *Fam.* 7.32 (= 113 SB, 452–3 ad loc). The others are hyperbole (illustrated by Quint. 6.3.67 from *De Or.* 2.267 *quae . . . augendi causa ad incredibilem admirationem efferuntur* and a type of punning mentioned at 256 (*alterum genus, quod habet verbi immutationem*).

metaphor and antithesis to point a retort, Strabo finally reaches the greater range of witty figures based on content in 264. As examples he cites and classifies retorts based on allusion and inference from the first speaker's words (265–6), on innuendo (*significatio*, 268), on irony (*dissimulatio*) like that of Aemilianus or Socrates (269–70), or on ironic euphemism. But as with all discussion of figures, individually neat witticisms are wearying in a catalogue, and Strabo's catalogue of humorous species extends for several pages to 288, when he acknowledges that he feels he has made too many subclassifications.

Only one of Strabo's examples is taken from comedy, probably because wit in comedy is almost a monopoly of slaves. Rather his speakers are citizens, and mostly elder statesmen at that. Let me single out three which use the speaker's authority to condemn his rhetorical antagonist as a public figure. Two are famous retorts: one by Fabius Maximus in the Second Punic War, when Livius Salinator claimed credit for Fabius' success in recovering Tarentum from Hannibal. Fabius retorted 'how could I forget; I could never have recovered the city if you hadn't lost it!' (273). Another comment is ascribed to Catulus but obviously transferable; when an unidentified orator thought he had moved the judges to pity for his client in his peroration and asked Catulus whether he seemed to have stirred up pity, Catulus confirmed it: 'great pity, certainly; I doubt if any man is so hard-hearted that he did not think your speech pitiful' (278). Perhaps the best, because most concentrated, put-down is an exquisitely simple one-liner: In the category of incongruity (*discrepantia*, 281) comes the unascribed: *quid huic abest nisi res et virtus?* (What does he lack except cash and honour?) When we consider Cicero's own use of humour it will be to emphasize its power as a weapon in judicial or political combat.

To provide Strabo with his range of examples, Cicero had to exclude any witticisms from texts he knew to be later than the dramatic date of the dialogue. For these he would have two, or perhaps three types of material; first, theatrical texts, such as Roseus' mimicry of an absent old man in comedy (242), lines from the Atellane writer Novius (255, 279, 285), and the mime *Tutor* (259), then the satires of Lucilius (253, but also perhaps the tales about Albucius and Granius). There is also one quotation from a lost history, Fannius' *Annales*, for Aemilianus' assumed modesty as an *eiron*. A second source might be Cicero's youthful

records of his teacher's bons mots, such as 2.220 from the defence of *Plancus*. But given Cicero's youth when Crassus died he must have learnt these at second hand. Again some jokes are purely social repartee, such as Licinius Varus' jesting tribute to Africanus at a private banquet (250), or domestic humour, like the encouragement given to the war-wounded Spurius Carvilius by his mother, or Nasica's retort when Ennius returned his call (276). Anecdotes attached themselves to the Scipionic family and could have had either a private or published source.[19]

There is another type of political anecdote, arising in an informal context open to the inquisitive public. This is associated with elections: Vargulla's reaction to the canvassing of Sempronius (247), or that of Terentius Vespa when his friend Titius was absent from voting at the election (253), or Fabricius' reply to P. Cornelius' thanks for electing him consul (268). In a more formal context, when Scipio Maluginensis was reporting the votes of his tribe for Manlius Acidinus, his deliberate misunderstanding (260) of the herald's request 'report on M. Manlius' would have been public knowledge. Other semi-public contexts for personal political jokes were the military levy, when, for example, Strabo sought to excuse himself from the draft on grounds of short sight and answered the consul Metellus' disbelief with a snide comment on the high visibility of his enormous villa (276). It is not clear to what extent the Roman censors' rejection or demotion of individuals was a public occasion, but there are also a number of witty retorts to or by various censors: Nasica's misogynistic distortion of the formulaic 'do you have a wife according to your will and pleasure?' to the censor Cato in 260, Lepidus' comment when he deprived the fat knight Antistius Pyrgo of his public horse (287) and two retorts by Africanus—first when Asellus criticized his official *lustrum* (268, which could have occurred in a public meeting) and later in demoting the 'too diligent' centurion (287) who had missed battle in order to guard the camp.

The courts were an obvious site for verbal duels, whether we consider civil lawsuits, where lack of audience might damp down

---

[19] Strabo's excursus includes six witty sayings of Aemilianus, who may well have had his witticisms collected by pious friends (see 249, 253, 258, 267, 268, and 270, taken from Fannius' written history); two anecdotes about Africanus identified as *maior* or *superior*, 250, 262, and one each from three other members of the family at 260, 276, and 285.

potential wit, or the criminal courts, which were often politics conducted by other means. In what seems to be a civil case Strabo proudly quotes his own insult to Helvius Mancia, comparing the distorted features of a barbarian Gaul visible on one of Marius' trophies (266); this leads to a similar jibe by Crassus as counsel for Aculeo when he insulted the opponent's rather ugly counsel, Aelius Lamia: 'let's hear the pretty boy!' and its follow-up when Lamia retorted that he could not help his own looks but he could shape his intelligence. Crassus then shifted his mockery, 'let's hear the pretty speaker' (268). When witnesses were likely to damage the pleader's case, it was useful to discredit them or disarm them by abusive attacks: Antonius' attack on Coelius is one instance (257), or when Crassus used an escalating set of leading questions to demolish the credit of the witness Silus (285).

But while arbitration of a lawsuit with witnesses and documents *apud iudicem* (before the *iudex*) might seem the more urgent phase, there was always a preliminary meeting *in iure* (before the praetor) for the parties to agree on the disputed issue and find a mutually acceptable *iudex*. Thus when Servius Galba was negotiating *in iure* with his adversary Scribonius Libo, and suggested various friends as *iudices*, Libo opened himself to attack by asking when Galba would stop calling on his own boon companions, and got the reply 'when you stop calling on other men's bed-mates' (263): the remark would not have been witty if it had not been *ad hominem*. It was more to the point when Scipio as praetor offered a noble friend as counsel to a Sicilian litigant, and the Sicilian begged Scipio to leave him undefended and assign the counsel to his antagonist instead (280). Bad lawyers were easy game, hence the exchange between Granius and the incompetent pleader: Granius urged him to go home and drink iced wine: 'but then I would ruin my voice!' 'Better that than ruining your client!' (281).

The major criminal courts saw more important defendants facing extreme penalties before larger juries and audiences: these were opportunities for the orator to display his talent by humiliating his antagonist. We have reported at length Crassus' attacks on his client's prosecutor Brutus. Other incidental jokes had more political depth. At 280 Strabo recalls Aemilius Scaurus' charge of electoral bribery against his defeated competitor Rutilius more than twenty years back—perhaps another tale from Rutilius' memoirs. Scaurus interpreted an abbreviation AFPR in

Rutilius' account books as an entry for money paid out in bribes: Rutilius corrected him; it meant 'paid out earlier and entered after the event' (*Ante Factum Post Relatum*), but Rutilius' counsel proposed a more pointed reading: 'Aemilius did it, but Rutilius pays for it,' (*Aemilius Fecit, Plectitur Rutilius*). The accusation was turned back on the prosecutor.

Fewer jokes are taken from senatorial debates and addresses to a public assembly. Many of Cicero's own demonstrations of wit were in the club atmosphere of the senate, but few of Strabo's anecdotes can be assigned to a session, apart from the elder Appius Claudius' ostensible defence of Lucullus (284), accused by his enemies in a debate on the Lex Thoria of pasturing his flock on public land. 'No, that can't be Lucullus' flock: it must be free of an owner, for it grazes where it chooses!' This is immediately followed by Scipio Nasica's retort (after the death of Ti. Gracchus) when M. Fulvius Flaccus first abused him, then offered Gracchus' ally, the jurist and pontifex Mucius Scaevola as judge. 'I am crying off', said Nasica, 'he is unfair!' There was an outcry, and Nasica explained himself: 'fellow senators, I am not rejecting him because he's unfair to me, but to everyone' (285).

The real fireworks came in the *contiones*, whether, for example, the public dispute between Crassus and his fellow censor Domitius (227, 230) or his public attack on the popular tribune C. Memmius, mocking Memmius' violent sexual rivalries (240 and 264) and vanity (267). What we do notice is that wit is not directed at the real political issue, Memmius' attack on the corrupt and incompetent administration of the war against Jugurtha, but his purely personal faults. And in so directing his wit Crassus was not only following the guidelines for the proper subjects of humour, but diverting his audience away from the serious charges which Memmius had made.

How does this prolonged hors d'oeuvre of bons mots compare with Cicero's own deployment of wit? He was notorious for wit, and even criticized for being a *disertus consul*. His sarcastic jokes infuriated the nobles in Pompey's camp, but under Caesar his witticisms were actually collected by Trebonius.[20] Cicero was proud of his

quick wit, and reports some of his one-liners in the senate in letters to Atticus, but our fullest evidence comes from his own revised courtroom and senatorial speeches. We must not expect to find wit in his addresses to the assembly; these occasions were generally too urgent for humour to be a useful tool.[21]

First we can take Cicero's own sample of *altercatio*, an exchange of retorts, from the context where it was most at home, a senatorial debate. Clodius, not yet Cicero's determined foe, had recently been caught disguised as a flute-girl at the private women's festival of the Bona Dea held in Caesar's house. He had provided himself with a friend to give him an alibi far from Rome on the crucial day, but Cicero destroyed this alibi by confirming that he had seen Clodius in Rome: yet, by bribery or whatever means Clodius was acquitted. Cicero had rallied the senate with a rousing speech condemning immorality in high places, and attacked Clodius both in an earnest set speech (*oratione perpetua plenissima gravitatis*) and in a set of exchanges from which he reports five to Atticus (*Att.* 1.16=SB 16). As he notes, this kind of thing loses effect and appeal away from the live combat (he uses the Greek word *agon*). In each exchange Clodius attacks and Cicero takes up his key phrase, to twist it back against him.[22] First, 'You were at Baiae', says Clodius. 'Is that like saying I was in disguise?' Next, 'what interest has a fellow from Arpinum in hot baths?' 'Tell that to your patron, who coveted the baths of a fellow from Arpinum' (and as Cicero explains to Atticus, Crassus had put in a bid for the Marian baths). Changing his ground, Clodius asked, using Cicero's notorious opening to the first speech against Catiline

'how long shall we put up with this man as King?' 'Funny you should mention a king, when the King (Marcius Rex) didn't mention you at all' (he had already spent Rex's legacy in anticipation). 'And you've just bought a house', he said. I replied, 'You would think I was saying ''you've just bought a jury.'' ' 'Well, the jury didn't trust you on oath.'

being attributed to Cicero in 50 BC, and *Fam.* 5.21.2 from Cicero himself thanks Trebonius for his collection of Cicero's *dicta*. Many of Cicero's other witticisms are quoted by Plutarch, *Cicero* 26–7 and in Macrobius, *Saturnalia*.

[21] Note however that Antonius strongly recommends the use of humour in the *contio* at 2.340–1, discussed in the next chapter.

[22] For the exploitation of key words in retort compare Strabo's description in 255; *in altercatione adripitur ab adversario verbum et ex eo . . . in eum ipsum aliquid adfligitur*.

'On the contrary, twenty-five jurors trusted me, but the thirty-one who acquitted you didn't trust you at all; they took their bribes in advance.'

The goal of this kind of exchange was to keep volleying retorts until the other man collapsed as, according to Cicero's report to Atticus, Clodius did, overwhelmed by senatorial protest. We have seen such scenes in televised parliamentary debate, and from time to time when counsel is cross-examining a witness in court.[23] But we would not expect them in a counsel's formal plea, or a politician's public address.

Cicero only prosecuted twice in his career, and his first prosecution, of the corrupt governor Verres, was edited for readers, rather than a live audience; there was thus less scope for witticisms, and rather more for humorous narrative. The indictment of the governor's offences moved from the less atrocious charges of corrupt dealing in the grain supply to theft of works of art, then to the more serious charges of military incompetence and finally the most appalling abuse of civil rights, first of provincials then of Roman citizens. Thus the humorous narratives generally find a place early in each speech, at a certain distance from the major themes: Verres' sleazy *cohors* composed of household parasites,[24] or the scene where the pirate raid sailed through the harbour of Syracuse past the governor's party tent on the beach, as he gaped, leaning on his girlfriend, dressed in party slippers and Greek leisure wear (*Verr*. 2.5.31)

As consul and elder statesman, Cicero had to maintain dignity and preserve goodwill: he needed to treat other statesmen with tact, even when they opposed him in the courtroom. And this is the context of his defence of the newly elected consul for 62, Licinius Murena, against charges of *ambitus* (electoral bribery) by a defeated candidate, the jurisconsult Servius Sulpicius, supported by the conservative and Stoic Cato. Murena was a successful young general who had served under Pompey and no doubt enjoyed his backing; what is more, he had returned from campaign

---

[23] There are traces in *In Pisonem* (47, 92) that Torquatus had earlier attacked Piso in an *altercatio*.

[24] On Cicero's extended representation of Verres' friends as comic parasites, see Cynthia Damon, *The Mask of the Parasite: A Pathology of Roman Patronage* (Ann Arbor, 1997), 208–22: for his *cohors*, see 211–12, and references in n. 6, also *Verr*. 2.3.51 on Apronius.

loaded with money to spend on securing election. Then, as now, rules about election funding existed to be bent by the rich, and few of us can really provide a morally consistent analysis of what is, or was, legally permitted. But Cicero was hampered in his defence because he himself had just passed as consul a law tightening the code defining bribery. The Catilinarian uprising had not yet been crushed in Etruria, and he argued from expediency that Murena had to be acquitted to avoid the disturbances inherent on a supplementary election: on this occasion he did not have the option of attacking either Servius, a serious legal expert not much younger than himself, or the zealous conservative Cato. And so Cicero resorts to humour and irony, not against the men themselves but against Servius' profession and Cato's philosophical sect. There was probably no one in the jury who had not been troubled by the legal requirements of some lawsuit or other, and so Cicero's brilliant parody (*Mur.* 21–6) of how lawyers elaborated their formulae so as to retain control over legal business was calculated to appeal to the jurors, just as the relative lack of glamour of lawyers as opposed to army commanders would naturally strike a welcome chord. They would enjoy his biased analogy in 29 between music, in which only those who cannot succeed as lyre-players take up the lesser art of piping, and the courts, in which only those who do not succeed as pleaders fall back on being legal advisers. Murena's success could be easily justified by the popularity of his role in a victorious war and the public expectation of lavish games at his expense. Against Cato, Cicero launched an extreme version of the so-called Stoic paradoxes (58–61) whereby a man who strangled a barnyard rooster without need was no less a wrongdoer than one who strangled his own father. Not without malice he then adds the insult of condescension to that of misrepresentation: 'I too sought the support of philosophical doctrine as a youth, when I did not have enough confidence in my own intellect . . . you are still zealous with your new instruction, but experience, time, and age will soften you.'[25]

There might be less need for tact towards prosecutors, or those promoting a prosecution, in other cases, and every reason for open

---

[25]   *Mur.* 61, *non minus delinquere eum qui gallum gallinaceum, cum opus non fuerit, quam qui patrem suffocaverit,* and 65, *me quoque in adulescentia diffisum ingenio meo quaesisse adiumenta doctrinae . . . te . . . recentioribus praeceptorum studiis flagrantem iam usus flectet, dies leniet, aetas mitigabit.*

malice. One of Cicero's most entertaining briefs, his speech as third and last advocate for his pupil Caelius Rufus, gave him the opportunity to conciliate the jury towards his client and retaliate against the house of the Claudii in the person of Publius Clodius' sister, the merry widow of Metellus Celer. Those of us who have read Metellus' pompous letter of rebuke to Cicero in 62 can feel ironic amusement at Cicero's poignant account of how the dying Metellus entrusted the safety of the republic into his hands, but this was undoubtedly delivered with the pious grief which Crassus calls *Tragoediae*.[26] However, from the beginning Cicero invoked the holiday atmosphere of the Megalensian games, taking place while the jury was forced to serve on this supposedly urgent case, to endow his brief with the indulgent atmosphere of comedy.[27] Crassus and Caelius himself had already spoken and dealt with the substantive charges: now Cicero disposes gently of two of the accusers, young Atratinus, loyally but naively defending the honour of his father Bestia whom Caelius had accused, and Herennius Balbus (could he have been the addressee of the treatise from the 80s?) whose moral strictures against Caelius Cicero treats as hackneyed generalities.[28] Cicero is saving his firepower for Clodia and the *subscriptor*, P. Clodius (not Cicero's *bête noire*, but an unidentified kinsman of the same name) whom he describes as a clumsy amateur, throwing himself around and shouting exaggerated abuse: 'I wasn't much afraid of him: I had seen him haranguing to no effect in quite a number of cases.' From here on his defence of Caelius is that both the serious charges—of bribery and poisoning—come from one suspect source, Clodia, 'a woman not just *no*-ble but *no*-torious' and he will be merciless. To handle the recriminations between Clodia and his client Caelius Cicero provides alternative surrogates; would Clodia prefer that Cicero deal with her severely? Or indulgently? His humour comes through *prosopopoeia* and *sermocinatio* as he first calls up Clodia's dead ancestor Appius to rebuke her ('So much the better for him that he is blind and will not have to see her!', 34), then her much-loved,

[26] *Fam.* 5.1, with Cicero's reply 5.2. For Crassus' mocking use of *tragoediae*, cf. 1.219, 228.

[27] This is the subject of Katherine Geffcken's excellent monograph *Comedy in the Pro Caelio* (*Mnemosyne* Suppl. 30; Leiden, 1973).

[28] *Cael.* 29, *uno reo proposito de multorum vitiis cogitabamus. facile est accusare luxuriem. dies iam me deficiat si quae dici in eam sententiam possunt coner expromere.*

intimate, brother Clodius. The impersonation of Clodius wipes the floor with Clodia as he applies the sexual code of a rake:

what are you raging about, sister? Why make a mountain out of a molehill? [a quotation from comedy]. You saw the young man next door [a situation from comedy] you fancied him and wanted to keep him tied by your financial support; but you can't. He is jibbing and pushing you away . . . so take yourself off elsewhere. You have those gardens right by the Tiber where the young men come to swim; you can choose your rendezvous for the day every day, why make yourself a nuisance to this fellow who has rejected you?   (36)

Cicero's alternative treatments for Caelius are likewise offered from contrasted points of view, from the stern and the indulgent fathers of two popular comedies (a lost comedy by Caecilius, 37, and Micio from Terence's *Adelphoe* in 38), and provoke in the jurors the easygoing amusement appropriate to comedy.

Later in the speech Cicero adapts the other kind of humour to provide an absurd narrative of the supposed ambush of Caelius' servant, when he was about to hand over a compromising oint-ment-box in the baths. This he represents as a pure fiction, a mime-scenario composed by Clodia, that skilled librettist (did she perhaps actually write?) and ending as lamely and inconse-quentially as any mime.

The defence of Caelius comes from spring 56 BC. Even closer in time to *De Oratore* Cicero published a brilliant invective against the ex-consul Calpurnius Piso, whom he held responsible for allowing Clodius to drive Cicero into exile. Invectives are a great context for humour, and this is only rivalled by the invective of the Second Philippic oration, published, not delivered, against Mark Antony in 44 after Caesar's death. But neither of these speeches is a court prosecution. The attack on Piso is Cicero's expansion of an attack in the senate delivered between July and September 55, after Piso returned from what seems to have been a disastrous tour of duty as governor of Macedonia. The beginning is lost and so we cannot know what provoked Cicero's reply. The Philippic on the other hand is Cicero's escalating retaliation to Antony's speech in reply to Cicero's first and much shorter attack on Antony in the senate. Both speeches use the same techniques of invective as far as context permits, and the themes exploited in such invectives are given a superb analysis in an appendix to Nisbet's commentary on

the speech.[29] Piso's branch of the Calpurnii was relatively obscure and Cicero's attack is unfettered by concern for truth, running the gamut of slander on the ex-consul's hometown of Placentia and his only half-urbanized Gallic father (*semiplacentinus*). This feels uncomfortably like the world of small town scandal in Catullus 27 or 67. But Antonius was more of a problem: he was grandson of the great lawyer of *De Oratore*, and came from one of Rome's pre-eminent families, so Cicero had no scope to invent slanders about parents' ancestry or profession.

Piso also offered Cicero another handle; his Epicureanism and patronage of the Greek poet Philodemus. So the body of the speech has two main sources of humour. Besides Piso's supposed origins, Cicero exploits and lingers over his philosophical studies, in contrast with his alleged debauchery in private life.

Comic narrative is not applied to Piso's role as commander, which Cicero denounces for his alleged losses and the hardships inflicted on Rome's allies: these are, or are presented as, serious failures. Cicero holds back the satire for his return from duty and rendering of accounts at Rome. But he does employ blistering sarcasm to mock Piso's alleged claim that he had not asked for a triumph after his campaigning because he was above the petty business of triumph hunting. What a shame that Pompey and Caesar cannot recall their mistakes:

Cnaeus Pompey is not in a position to take your advice; he blundered because he had not tasted your philosophy, and the silly fellow has already triumphed three times. Caesar, I am ashamed of you: now that you have just put an end to a terrifying war, why are you so eager to have that laurel crown voted to you by the senate? Caesar didn't learn the same way of life as you: just send him a treatise, and if you can meet him face to face, rehearse the language in which to restrain and quench his burning desire.[30]

Piso's imaginary lecture to his father-in-law Caesar about winning divine favour is followed by suggestions for trying another lecture: *verte te ad alteram scholam*. Whatever Cicero's private love of

---

[29] R. G. M. Nisbet, *Cicero: In Pisonem* (Oxford, 1961): see also Corbeill, *Controlling Laughter*, 170–3.

[30] *Pis.* 58, *non est integrum Cn. Pompeio consilio iam uti tuo: erravit enim, non gustarat istam tuam philosophiam, ter iam homo stultus triumphavit. Caesar, pudet me tui! quid est quod confecto per te formidulosissimo bello coronam illam lauream tibi tanto opere decerni volueris a senatu?* (59) *non dicit eadem ista quae tu, mitte ad eum libellum, et si iam ipse coram congredi poteris, meditare quibus verbis incensam illius cupiditatem comprimas atque restinguas.*

philosophy, he knew his senatorial audience would roar with laughter at the idea of a mature Roman statesman giving lectures like some idle and mercenary Greek.

When Cicero moves beyond his feigned indignation at the tragedies of Piso's incompetent generalship to the commander's plans for leaving the province, the *mendaciuncula* recommended by Strabo are very evident, as Piso is alleged to have been besieged by angry soldiers cheated of their pay in Dyrrachium, before slinking back into town by a side gate to lurk overnight in an apartment rented by his freedman. Dress is another source of satire: as with Verres and his slippers, so Piso is visualized as a general in open toed sandals (*imperator crepidatus*, 93). So too Vatinius was mocked for being *pullatus* (wearing a dark funeral toga) at a feast, and Mark Antony for returning to Rome with his face enveloped in a cloak—but more of that later. Cicero's *tour de force* is the scene as Piso hands in his accounts and the accountant scratches his head, and mutters a famous punchline from Plautus: 'yes, the sums are clear enough, it's the cash that has disappeared.'[31]

Only after a satirical account of Piso's sordid hospitality in 67, with bread and wine bought in from cookshops and Greeks crowded five or six to a couch, is the philosopher poet Philodemus introduced. On the whole he is spared Cicero's wit, but given some overtones of the parasite[32] who spots a likely young patron and milks him: Piso, on the other hand, is ironized in terms of his crude response to Epicureanism: Cicero refers to him as a stallion who whinnies with lust (*admissarius . . . adhinnivit*) at his understanding of pleasure as carnal, and exploits the discrepancy between his beetling brows and severe Stoic frown.[33] Poor Piso fails to grasp the Greek philosopher's fine distinctions, just as Cicero will later reproach him for being too crude a literary critic, a Phalaris, not an Aristarchus, pursuing the poet (Cicero himself) with violence instead of applying critical methods to his verse. As with his demolition of Clodia, Cicero scores on both sides, with the moralists who disapprove of other men's pleasures, and with the sophisticates who mock sordid or shabby hospitality.

This is also the pattern of the second speech denouncing Mark Antony, which rises from personal mockery to the more serious

---

[31] *Pis.* 61, *Ratio quidem hercle apparet: argentum oichetai*. Plautus, *Trin.* 419.

[32] On Philodemus as a typical Greek parasite see Damon, *Mask*, 238–46.

[33] Cf. 68, *distracta fronte*, and 70, *deceptus supercilio*.

political charges at the end. Stung by Antony's criticism of Cicero's poetry, Cicero takes off from the notion of Antony rehearsing his new speech with his crony the Greek Hippias, 'declaiming his great speech in another man's country house.' A thumbnail sketch of Antony's youth (*Phil*. 2. 44–5) has him begin as an adolescent hustler, until he was rescued by Curio making an honest woman of him—the gender mix is pointed: *tamquam stolam dedisset in matrimonio stabili et certo conlocavit.* Curio cannot defend himself: he died five years before this, so Cicero is free to embroider the scene of Curio's angry father demanding that his son separate from Antony, and Curio threatening to go into exile like an *adulescens* in comedy, while Antony escaped over the roof (44–5). Much is made of Antony's drunken parties with friends in the entertainment world, especially his girlfriend, the mime actress Volumnia Cytheris: two vignettes will illustrate the humorous narrative: the first pictures Antony's journey through Italy as Caesar's deputy (*magister equitum*) in 45 BC, with his girlfriend ensconced in a chariot and his poor mother trailing behind her like a dowager following her daughter-in-law: the second is another of Cicero's 'return of the wastrel' episodes.

How did Antony make his official return from governing Narbonese Gaul? He reached the suburbs of Rome in early evening and stopped over in a low dive to drink all night, then rushed into town in a pony trap to impersonate his own messenger muffled in a hood (*capite involuto*) and deliver a love letter to his beloved (*eam . . . cuius causa venerat*, 77), saying he had finished with the actress.[34] Why, Cicero asks, did he cause such an uproar and panic in the city just to play this sentimental trick? Well, it is true he had a business emergency and needed to stop Plancus selling up his securities (76–8). Two episodes in this speech perhaps illustrate just how different the Roman sense of propriety was from our own. One of Cicero's most quoted purple passages is his denunciation of Antony for throwing up in public while administering justice in the forum after a night of heavy drinking at Hippias' wedding.[35] Would any modern speaker linger over this

[34] Was the unnamed lady his wife Fulvia? Very likely, but by leaving her anonymous Cicero manages to imply yet another liaison of his licentious enemy.

[35] *Phil*. 2.63, quoted and praised by Quintilian at 5.10.99, and in eleven other places, esp. Quintilian's discussion of *elocutio* and *actio*. It must have been a model passage assigned for memorization to students.

disgusting scene? The other usually goes unnoticed. At 111 Cicero mocks Antony's informal dress when addressing a public meeting, perhaps to propose the extra day of public games to honour Caesar's memory (cf. 110) with a pair of double meanings: 'Yes, Antony, you could be called more open (*apertiorem*) in your speaking than your great ancestor; he certainly never made a public speech stripped for action, but on that occasion we really saw the heart of this simple fellow (*hominis simplicis pectus vidimus*)': a trivial example of the passing jibe one meets in the satirists. But in fact Cicero reveals himself a brilliant satirist in the fictionalized narratives and exchanges of these speeches. As he himself prescribed through Antonius' ancestor and through Caesar Strabo, the context of the speech should not be urgent or dealing with real evil, and within any speech the proper material for laughter is trivial absurdities of dress or social foibles: it is safe, as Juvenal found, to mock women, or low-class men, profiteers and foreigners, or practitioners of frivolous activities like music and theatre, or pretentious forms of philosophy.

Did Cicero's wit actually triumph over his political adversaries? Or did it make him enemies? Probably the hostility was equal to the power of his wit, and the price he paid in politics. But, as he affirms in *Brutus*,[36] it was his own special contribution to the all-round brilliance of Roman oratory: much of his power must have derived from his skilful delivery and appearance of spontaneity, but his wit has survived even in written form, and its effectiveness is attested by the combination of Strabo's lecture and Cicero's own practice in Quintilian's analysis more than a century after his death.

---

[36] *Brutus* 322, following the quotation at the head of this chapter.

# 9
# Political Persuasion: Senate and *Contio*

Fit autem ut, quia maxima quasi oratoris scaena videatur contionis, natura ipsa ad ornatius dicendi genus excitemur. habet enim multitudo vim quandam talem ut. quemadmodum tibicen sine tibiis canere, sic orator nisi multitudine audiente eloquens esse non possit.   (*De Or.* 2.338)

So because the public assembly seems to be like the orator's grandest stage we are stirred up by nature herself to a richer style of speaking. For such is the power of a crowd that just as a piper cannot play without his pipes, an orator cannot be eloquent without a crowd to hear him.

As I noted in Chapter 7, discussing Cicero's adaptation of Aristotle's *Rhetoric*, Aristotle gave much more prominence than previous rhetorical *technai* to deliberative, that is, political, oratory. Not only does he outline the aim and context of deliberation (*symbouleutikon*) in 1.3 (1358$^b$21–25), but he devotes the latter half of 1.4 (1359$^a$10–1360$^b$4) to defining the different kinds of good things that are the aims of deliberative speaking, 1.6 to the nature of self-interest (*to sympheron*), and 1.7 to methods of evaluating competing aims or advantages. But despite the paramount importance Cicero assigned to political oratory, which is prominent in the encomia of both Crassus and Antonius,[1] he does not incorporate

---

[1] Cf. Crassus at 1.31, *[quid] tam potens tamque magnificum quam populi motus iudicum religiones, senatus gravitatem unius oratione converti*; 34, *perfecti oratoris moderatione et sapientia...universae rei publicae salutem contineri*. Although Antonius assumes his ideal trainee orator will begin his career with court cases, he too sets oratory in its full political context; cf. 2.33, *in omni pacata ac libera civitate...*(35) *huius est in dando consilio de maximis rebus cum dignitate explicata sententia* (in the senate) *eiusdem et languentis populi incitatio et effrenati moderatio* (thus foreshadowing his emphasis on controlling the assemblies in 2.334–40). Even when Antonius refers to the third, demonstrative, genus of praise and blame, he does so in terms that Cicero's readers would take politically: (35) *vituperare improbos...laudare bonos* implies denouncing radicals and praising conservatives.

anything comparable to these sections of the *Rhetorica* into Antonius' presentation of *inventio*.

Leeman–Pinkster–Wisse, iv. 43, rightly question Cicero's postponement and apparent subordination of deliberative oratory along with epideictic as a mere postscript (*Nachtrag*) after he has allowed judicial oratory to dominate Antonius' handling of both *inventio* and *dispositio* (2.307–32). This might seem simply a reflex of the priority given by rhetorical manuals to judicial pleading, but they show in detail how throughout book 2 sections appropriate to all three genera precede the specific treatment of judicial oratory.[2] Modern readers are more concerned to recover a sense of the political deployment of eloquence at Rome, but even in Antonius' brief treatment Cicero is drawing more on his political experience than on his career as an advocate. In this he is an innovator to the Roman tradition.

When Antonius finally turns to deliberative oratory after discussing *inventio*, both in general terms and more specifically for composing legal pleas, he pays little attention to senatorial debate. The senate after all is a wise body (*sapiens consilium*, 2.333), and the senator must leave time for many others to contribute to debate, 'so he should speak with less elaboration and avoid any suspicion of displaying his cleverness'. This at least is the way Cicero wants to represent his attitude to his largely senatorial readers and friends. In contrast, Antonius insists, any speech to an assembly (*contio*) will require the orator's full force, authority, and variety of presentation.[3]

As a preamble Antonius recalls the traditional recommendations of Greek theory for deliberative speeches. But although the recommendations were also applied in the Roman manual, the circumstances of deliberative oratory differed in Athens and Rome. In the Athenian democracy such speeches belonged in the popular

---

[2] They note samples of general material at 2.104, 114–15, 131, 145–6, and 147–50, adding that the Aristotelian *topoi* of argument in 162–75 are marked in 175 as necessary for all genres. In Strabo's lecture on humour the political oratory of the *contio* is combined with judicial witticisms and humour from outside all three rhetorical *genera*.

[3] Quintilian's chapter (3.8) on deliberative speeches begins by following Cicero's outline with *dignitas* as the goal of deliberative speeches, and a distinction between addressing a *consilium sapientium* (the senate) and the *imperiti* of the *populus* (3.8.2). There are further references to contiones at 3.8.7, 11, and 14, before the discussion turns to declamatory *suasoriae*.

assembly, and sought to appear natural and unscripted: a Roman senator would more often have to present his proposal to his peers in the senate in the form of his *sententia* (both opinion and vote): if his motion were adopted by the senate as a decree (*senatus consultum*), it would require the presiding consul to present it to Roman people. Besides consuls and praetors, only tribunes had the right to convene the people (*ius agendi cum populo*) and present a bill. First it would be explained in one or more informal meetings (*contiones*), then after the due lapse of three *nundinae*,[4] it would be put to the vote in formal *comitia* which allowed no debate.

As we shall see, these informal explanatory meetings with the people were the most severe challenge to the politician's ability, but in theory the same types of argument would be needed to recommend a proposal to senate or people. The traditional themes of deliberative oratory were the advantages which the proposal would bring, but Aristotle's grouping of both self-interest and honour in the dominant category of advantage (*sympheron*) is more closely represented by the division of advantage (*utile*) between the categories of *tutum* and *honestum* in the *Rhetorica ad Herennium*, than by Antonius' direct opposition in 2.334 between *utilitas*, advantage or self-interest, and *dignitas*, the honour and credit of both proposer and voting body, or *honestas* (335), the morality of the proposal itself.[5] Antonius recommends the speaker (in either senate or *contio*) to argue from the glory and honour that the decision would produce rather than simply from its material advantages:

The man defending concern for self-interest will list the advantages of peace, wealth, power, tax revenues, military manpower, and other things whose benefits are measured in terms of advantage, and the corresponding disadvantages. But the speaker urging the audience towards the pursuit of

---

[4] By the *Lex Caecilia Didia* of 98 BC notice of legislation had to be given by reading out the proposal in a non-voting assembly and waiting a Trinundinum (three market cycles) before an assembly could be called to vote on it. See A. J. Lintott, '*Trinundinum*', *CQ* 15 (1965), 281–5. The three cycles have been reckoned either as sixteen days (counting inclusively) or three full eight-day periods, twenty-four days.

[5] Compare with Ar. *Rhet*. 1.3, 1358b20–5 and 1.4, Cicero's early *De Inv*. 2.157–75, which opens by subdividing *honestas* among the cardinal virtues, compares *utilitas*, then introduces the preconditions of possibility and necessity (169–73) before a calculus of *honestum* versus *utile*. Cf. also *Rhet. Her*. 3.2.3, and Cicero's later Stoic argumentation in *De Officiis* based on balancing *honestum* against *utile*.

honour will heap up the examples of our ancestors that earned glory even at great risk and enlarge upon the undying memory of posterity; he will claim in defence that advantage arises from glory and glory is always bound up with honour.     (2.335)

But even before raising the issues of public honour and advantage, deliberative speakers must consider whether their proposals were possible or necessary.[6] As Antonius notes, there could be no deliberation if a course of action was either imposed by necessity or understood to be impossible, and the shrewdest politician would be the man who could demonstrate this in situations where others did not realize it (2.336). Antonius does not say so, but this man would presumably be best equipped to argue as *dissuasor* against the proposal. We have here perhaps the same Roman preference for avoiding innovation that underlay the principles of collegiality and the veto.

As I implied above, it is probably tact that inspires Cicero's brevity in discussing how to speak persuasively (*probabiliter*) in sessions of the senate, rather than a profound conviction of that body's good judgement and impartiality. Since Antonius is so discreet we must turn to Cicero's own practice and the evidence of his letters and other contemporary sources to illustrate the procedures and problems of senatorial debate.

Any major senate proposal naturally involved preparation before it was formally presented: the right people, with most authority and influence, had to be persuaded either to sponsor it or to give their support. Senators with a common interest would be invited to the town house of some leading figure to work out a mutually acceptable proposal. Four examples are reported verbatim by Caelius to Cicero in 51 BC (*Fam*. 8.8 = SB 84, 4–8): designed to ensure prompt debate on allocating the provinces, including those under Caesar's command, these were drafted and subscribed by leading conservatives like the consular Domitius Ahenobarbus and supporters of Pompey like Lucilius Hirrus. The first of these directed the incoming consuls C. Marcellus and L. Aemilius Paullus to open debate on the consular provinces on 1 March of the following year. This issue was to be debated before and apart from all others;

---

[6] Leeman–Pinkster–Wisse, iv. 52 compare Antonius' list of public assets to Ar. *Rhet*. 1.4, 1359b21–3, and Antonius' concern with possibility and necessity to Ar. *Rhet*. 1359a30–4. But where Aristotle puts the logically prior first in his account, *De Oratore* echoes *De Inventione* in postponing the logical issue after that of morality.

the motion also directed the current consuls to see the senate's decree was brought to the popular assembly. This proposal was not perceived as any threat to Caesar and so was passed as a s*enatus consultum*.[7] But the three further motions designed to prevent a pro-Caesarian veto were themselves vetoed, the first by four tribunes and the others by two of them; thus the motions had no standing and were merely recorded as *senatus auctoritates* (*Fam.* 8.8, 6–8).

Sessions of the senate did not have to take place in the actual senate house, and in the turbulent year of Cicero's consulship several meetings were held in temples, and at short notice. The two consuls usually alternated presiding from month to month, and the presiding consul was entitled to put forward his own proposals. But there was a rigorous procedure determining the order of speakers. Ex-consuls had priority, but in each year the first consul to preside would mark the senior consular as first speaker (*princeps senatus*). Caesar himself as consul exceptionally chose his friend and son-in-law Pompey as first speaker, ahead of men who had been consuls before him.[8] Our most detailed report of a senatorial debate is Sallust's account of the session on 5 Dec. 63 when the senate acted as a court and voted the execution of the five chief supporters of Catiline, including three of its own members (Sall. *Cat*. 48–52). Sallust's narrative illustrates a further refinement in the order of debate which applied once the results of the elections for the following year were known. The elected magistrates of each rank, such as D. Silanus, one of the consuls designate for 62, and Caesar, as a praetor designate for 62, spoke before ex-magistrates and current magistrates of their rank. Thus when Silanus voted for the death penalty, he was followed (and supported) by all the ex-consuls, before debate passed to the incoming praetors: Caesar may have spoken first of this group, and his counterproposal led even those who had spoken before, like Silanus, to change their vote. It was only when the turn of the tribunes came, and the incoming tribune M. Porcius Cato rallied the conservatives, that his fierce advocacy of the death penalty led a majority of senators to vote for the conspirators' execution.

[7] Shackleton Bailey's translation of *Fam*. 8.8 misleadingly translates the accepted *senatus consulta* as 'resolutions', and the vetoed *auctoritates* as 'decrees'.

[8] Caesar seems to have made this change only in May 59 when he gave Pompey his daughter Julia in marriage (Suet. *DJ* 21).

Cicero's Fourth Catilinarian, the revised version of the speech he
made as presiding consul, does not narrate the discussion but sum
up its outcome: in the end it was Cicero, not Cato, who carried the
responsibility for this unprecedented act.

## Cicero's *De Provinciis Consularibus*: A *Tour de Force* and a Volte-Face

Nearer to the time of *De Oratore*, Cicero's senatorial speech *De
Provinciis Consularibus* represents his formal vote at a session of the
senate held in early summer 56 to decide on the allocation of
provinces for the consuls of the following year. The political situ-
ation required skilful selection of Cicero's arguments to manipu-
late different partisan groups in his senatorial audience. Caesar had
obtained a commitment from Pompey and Crassus to back legisla-
tion for the renewal of his five-year command over the two Gauls
and Illyricum, but many conservative senators wanted him
recalled, either to prevent further increase in his wealth and
power or even to subject him to prosecution for his actions as
consul in 59. Cicero himself had been back from exile for less
than a year and had been checked by Pompey in his attempts to
follow an independent policy. It seems that Pompey had bound
him not only to cease attacking Caesar's Campanian land law but to
give active support to Caesar's political needs. Cicero's speech
much have created a sensation, for this senatorial debate over the
consular provinces was the first occasion on which he openly gave
Caesar his support.[9] And Cicero had a personal score to settle with
Calpurnius Piso and Gabinius, the consuls of 58, now serving as
governors of Macedonia and Syria respectively. From Caesar's
point of view, if two provinces had to be found for the outgoing
consuls of 56, someone would have to propose alternative prov-
inces to the two Gauls, provinces that would offer the profits and
triumphs of war. It was probably agreed with Caesar's representa-
tives in Rome that Cicero could combine his support for Caesar's
continuation in his command with demanding the recall of Piso
(Caesar's father-in-law) and Gabinius. But when Cicero bases his
own proposal on the premiss that only these four provinces were

---

[9] It is generally thought that this speech was the *Palinodia* explained by Cicero in
his letter to Atticus (4.5) of April or May 56.

available for the outgoing consuls, this may not have been true; we know in fact that in 58 Gabinius had initially been assigned Cilicia, but had obtained the substitution of Syria by a tribunician bill of Clodius. Cilicia was now governed by Lentulus Spinther, who presumably did not want to be recalled.

What we can tell from Cicero's speech is that the presiding consul had already proposed to allocate Cisalpine Gaul along with Syria to the outgoing consuls (*Prov. Cos.* 38) while others (36) seem to have proposed reallocating Transalpine Gaul, where Caesar was fighting, or even (17) both Gauls. It was P. Servilius Vatia Isauricus (Cos. 79) who initiated the proposal of Macedonia and Syria which Cicero was now seconding.

Given the hostility towards Caesar of many influential senators who had recently helped to restore Cicero, the situation called for masterly handling. The senate might be a wise body, but it was full of petty loyalties and rivalries, and needed a great deal of diplomacy and many individual compliments to win over its members. The most unexpected part of Cicero's message was going to be his support for Caesar's continued command in the Gauls and this was accordingly something he must reach through careful and unobjectionable argument.

Cicero started, then, by stating his version of the terms of debate: any senator who wondered how he would vote, should ask himself which commanders ought to be withdrawn.[10] Then no one would doubt that what was personally appropriate to Cicero[11] was also what ought to be proposed. Arguing from a hypothetical extreme case, he imagines what would happen if he were the only senator to rise and back the still unspecified proposal. The senate would have accepted his justification even then: how much more should they welcome it, since he is merely supporting what has been proposed by Isauricus. (Now the senators will know what he is supporting, but the readers of Cicero's written speech do not.) In keeping with Roman personal codes, Cicero shows less hesitation in acknowledging his resentment and desire

---

[10] The word he uses, *detrahendi*, is more suggestive of pulling a wild beast off its prey than withdrawing a commander.

[11] Cicero's choice of verb (*conveniat*) clearly refers to the Stoic notion of behaviour varying with the *persona* of the agent: Cicero would be thinking both of his own stature and his personal relationships, since both friendship and enmity were seen as carrying obligations.

for revenge on Piso and Gabinius, although he denies that this is his motive, than in justifying his surprise realignment—as friend of Caesar.

In section 3 he names the two Gauls, Macedonia, and Syria, as the four provinces in debate, and moves immediately into highly emotive language to describe the dreadful consequences of Piso's command in Macedonia. 'Our Roman forces have been pitiably taken prisoner, slaughtered, abandoned and put to rout; they have been exhausted by neglect, starvation, sickness and desolation, so much so that it seems the crime of the general has been visited on his country and its army.'[12] This deliberative speech is already making heavy use of the third genus (i.e. *laudativum*), deploying powerful topoi first of blame, then of praise. Now Cicero evokes equal pity for the tax companies in Syria (not natural objects of sympathy, but many senators had investments in such companies) victimized by Gabinius and 'sold into slavery to Jews and Syrians.' These provinces must be rescued from men who were blots on Roman rule (*maculae imperii*). Indeed he reminds the senate that they had tried the previous year to recall the governors, but had been prevented, 'for you did not have freedom of decision'. We do not know what proportion of the senate had backed such a motion, but the suggestion that they had been overruled (rather than out-voted by a senate majority) would generate resentment against Clodius, or whoever had intervened.

The first rule of deliberative speaking was to focus on the future, hence Cicero's next step: were they to keep Piso and Gabinius as commanders? Any alternative to Servilius' proposal would leave one or other of these men in place. They would never be replaced unless this proposal was carried now, in a form that excluded use of the veto.

One third of the speech is over and Cicero has not mentioned Caesar. He is introduced in 18. Again Cicero is arguing from the weaker to the stronger case: even if the two ex-consuls were mag-nificent governors, Caesar should not be replaced. At this point he evokes the moment in the debate which leads him to discuss his relationship with Caesar. He is going to speak frankly, even if

---

[12] On Piso's governorship of Macedonia, which even had some successes, and on the issues in the *De Provinciis Consularibus*, see now T. Corey Brennan, *The Praetorship in the Roman Republic* (Oxford, 2001), ii. 535–7.

his dear friend (*mei familiarissimus*)[13] has interrupted him with protests that Caesar was the instigator of Cicero's misfortunes. This he answers with lofty altruism: surely the objector will not grudge his approval if Cicero is acting out of concern for the common good?

Thus Cicero is maintaining the essentials of a deliberative proposal, and continues in terms of public advantage and glory, with glowing praise of Caesar's past conquests, and emphasis on the need to let him complete his pacification of Gaul enhanced by an *amplificatio* of Caesar's Gallic conquests that evokes a whole unknown world between mountains and ocean opened up to Roman rule. Ten years previously Cicero had shown himself a master of the *genus laudativum* when he addressed the people in support of giving Pompey his major command against Mithridates. Now he will give as much honour to Caesar's military successes.

But you will remember that in *De Or*. 2.335 Antonius (like Aristotle before him) stressed the importance of using *maiorum exempla* when arguing for the *honestum* in deliberative oratory. So now Cicero offers precedents for his reconciliation with Caesar in the reconciliation of the elder Gracchus and Scipio Africanus, and of the aristocratic Metelli and their allies in support of Marius' command in Gaul. Marius' command leads to a still more powerful precedent (31), since even he, who drove the invading Gauls out of Italy, had not carried the warfare back into their strongholds as Caesar has done. As it is, Cicero ought to be reconciled with Caesar, although he has been a personal enemy, just as L. Aemilius Lepidus was with his fellow censor Fulvius or Marcius Philippus with his enemies.

Now given the dynastic continuity of the Roman senate these statesmen were ancestors of influential members of Cicero's audience. As Cicero praises Philippus he turns to Philippus' son, the presiding consul. The surviving Lucullus too may be in his audience as he cites Lucullus' reconciliation with his enemy Servilius.[14] Cicero can even invoke the senate's own previous votes in support of his proposal for a supplication to the gods in Caesar's honour, and a supplementary budget and ten legates for his forces.

---

[13]  Like *vir optimus* below, this is surely ironic and the speaker is a hostile heckler.
[14]  Of the two brothers M. and L. Lucullus (RE, Licinius 104, 109) Lucius was still active in the senate in 56 BC.

These votes had carried in the senate, so these were its own decisions: one step further and Cicero can claim to be following the senate's own authority (25).

The amplification of Caesar's victories provides a clinching argument against allocating Transalpine Gaul to either of the consuls. As for the alternative of withdrawing Cisalpine Gaul, Cicero advances two arguments against this: first, that it would be procedurally inconsistent to postpone naming Caesar's successor until his command expired on 1 March, thus keeping one consul without a province on leaving office. This would actually honour the law defining the terms of Caesar's command which they held invalid. Secondly, there is a risk that some popular leader might get hold of this province once it was out of Caesar's hands.[15]

It would be interesting to know whether senatorial speeches were always so explicitly personal. Cicero does not limit himself to direct appeal to named colleagues. The most important person present in Rome was Pompey, and praise of Caesar, for all he was Pompey's father-in-law, might well have been tactless. So Cicero leads into his encomium of Caesar by way of lavish praise for Pompey who had pacified the seas from Pontus to the Atlantic Ocean—a double allusion to his pirate command of 67 and his present maritime command supervising Rome's grain supply.

But the last eight sections—one sixth of the speech—relate to Cicero's own person, as he reinterprets his new friendship with Caesar in terms of Caesar's past favours and acts of forbearance, and presents Pompey as guarantor of their mutual goodwill. This is Cicero's retort to the unnamed conservatives who had failed to help him in his time of trouble: men who had protested that Caesar's consular bills were illegal but insisted on the validity of the patrician Clodius' adoption and tribunate, and the bill confirming Cicero's exile. Now he is asking the senate to believe that he never had a grievance against Caesar, and if he had, it would be right for him to sacrifice it for the good of his country. If the conservatives were so easily reconciled with his enemy—Clodius goes unnamed—then he does not care if they object to his own reconciliation with Caesar.

---

[15] This is probably a deliberate misrepresentation of a real fear that Caesar himself might enfranchise the people of Cisalpine Gaul and acquire an enormous clientele.

This is brilliantly calculated, but surely very different from any speech an individual would offer in the British Parliament or US Senate. In one sense it is as though Cicero were justifying his continued membership in a club; in another we have hindsight to see that the military realities vindicated what we know was an enforced declaration by Cicero of support for Caesar. A *sapiens consilium* can be extraordinarily petty, and may need a skilled statesman to persuade it into advantageous policy. We know the attitudes of several aristocratic die-hards like Domitius and Appius Claudius. But who knows what considerations guided the majority that voted to leave Caesar in Gaul and replace the proconsular governors of Macedonia and Syria?

## Facing the People

Up to 2.336 Antonius has covered the basic realities of any deliberative context, but in what follows it becomes apparent that Cicero's speaker is more concerned with the larger audience—the assembled people.[16] Of course, Antonius adds (337), the essential for giving public advice is to know the state and its resources, but if a speaker is to win approval he must also know the moods of his fellow citizens (*nosse mores civitatis*). Knowledge of subject matter is necessary but not sufficient without knowledge of mass psychology. Since the moods of the people change fast and often, he too must constantly vary his tone and approach. In principle the power of eloquence was always the same (337) but there are three reasons why the statesman must apply a more sonorous and brilliant style in addressing a public assembly: the supreme dignity of the people, the extreme importance of state affairs, and the huge passions of the crowd. The speaker must recognize his own limitations in comparison with the size of the issue and demands of the public.

The Roman people might be politically sacred, but the crowd itself was unruly and irrational. Without open criticism Antonius makes it clear that he is instructing aspiring young politicians

---

[16] This discussion of the public *contio* is an adaptation of a talk presented at the Amsterdam meeting of the International Society for the History of Rhetoric and published as 'Meeting the People', in *Papers on Rhetoric*, iii (Bologna, 2000), 95–112.

in something like defensive speaking, the art of handling the many-headed beast. He stresses that an orator must spend the bulk of his speech in rousing men's positive emotions to act in the name of glory, by exhortation or reminder of the past, but he will just as often need to hold them back from acts of rashness, anger, hope, injustice, jealousy, and cruelty.[17] Fortunately, 'because the public meeting is as it were, the orator's biggest stage, speakers are naturally aroused to a grander style; the crowd somehow acts like a musical instrument; a speaker cannot be eloquent without a listening crowd, just as a piper cannot sound a tune without his pipes' (338). The warning is also a promise: great as is the challenge of controlling the mob, the mob itself will spur the speaker to a more intense eloquence. He is responding to them as much as they do to him.

*De Oratore* itself offers as its first direct quotation of political oratory a remarkable piece of popular eloquence from a *contio* of Crassus. In 106, when he was not yet praetor or even aedile, he had made his name with an appeal to the people on behalf of the conservative jury law of Servilius Caepio, the *suasio legis Serviliae*:[18]

Eripite nos ex miseries, eripite ex faucibus eorum, quorum crudelitas nostro sanguine non potest expleri; nolite sinere nos cuiquam servire nisi vobis universis, quibus et possumus et debemus.   (1.225)

Rescue us from this oppression, rescue us from the jaws of those whose cruelty cannot be sated by our blood; do not let us be slaves to anyone except yourselves as a body, to whom we both can and should be slaves.

This is a superb example of the sacrifice of conservative pride and principle to opportunism, and rightly criticized both ironically by Antonius and with moral indignation by the Stoic elder statesman Rutilius (1.226–7). Crassus was young enough at the time to risk such populist sentiments, which are exceptional in their self-abasement before popular sovereignty.

---

[17] Antonius cites hope along with fear, greed, and (desire for) glory as positive emotions to be roused (cf. Quint. 3.8.40, *spes bonorum*, construed with objective gen. of neuter *bona*), but more surprisingly includes hope among dangerous emotions to be repressed.

[18] See Ch. 2 above, and Leeman–Pinkster, i, on 1.225, which does not mention that this speech was already quoted by the author of *Rhetorica ad Herennium* 4.5. There are other samples from Crassus' *contiones* in Strabo's lecture on wit, illustrating Crassus' *faceta et urbana innumerabilia* at 2.227, 230, 242, and 267.

The *contio* has recently been singled out by Fergus Millar[19] as one of the most democratic elements in Roman political life. Certainly conservative senatorial politicians like Crassus could not afford to alienate the meetings of the people which would have the final vote on their legislation. But there was no guarantee that the same audience would attend successive meetings on a single proposal, let alone be the voters who came to the final voting assembly. What were these gatherings like? Antonius follows his general advice with more warnings:

There are many different kinds of blunder in dealing with the people, but the greatest hazard comes from an outcry of protest or hostility. This can either be caused by the orator's own fault, if he seems to have spoken out of harshness or arrogance or a mean or shameful attitude or any moral flaw. Or it could spring from men's alienation or jealousy, whether deserved or the result of slander and rumour; or again the proposal itself could be unwelcome, or the crowd under the sway of passionate desire or fear. (338).

Here the stress is on adjusting to the mood of the mass audience and trying to determine its cause. Yet although Antonius has as many remedies for a hostile reception as he has causes, his suggestions are not geared to each category of error, but move from the strongest reaction to the weakest. If the speaker has enough authority he can control them with a rebuke, or warn them, as a gentler version of a scolding. Again he can promise that if they listen they will approve his recommendation, or he can resort to begging their indulgence, which Antonius admits is a weak response, but often quite helpful (339). Clearly it will be left to the speaker to diagnose the appropriate response.

In a way Antonius has been following the same sequence of recommendations as in the far longer discussion of emotional

---

[19] *The Crowd at Rome in the Late Republic* (Ann Arbor, 1988); see also Millar's articles on politics in the 2nd and 1st cents. now reprinted in H. M. Cotton and G. M. Rogers (eds.), *Rome, the Greek World and the East*, i. *The Roman Republic and the Augustan Revolution* (Chapel Hill, NC, 2002). Millar has argued systematically for a greater element of democracy in the republic than has been traditionally assumed, especially as represented by the legislative powers of the tribal assembly. Given the in many ways unrepresentative nature of these assemblies, however, his assessment seems an overcorrection of the standard view. For his latest and most balanced assessment see ch. 7, 'Cicero's Rome: What Aristotle Might have Thought', of the recent Menahem Stern Jerusalem Lectures, *The Roman Republic in Political Thought* (Hanover and London, 2002).

modes of persuasion (*pisteis*) from 2.185–216, and of humour from 217–90. Just as he first discussed conciliating the jury, then swaying its emotions, then entrusted to Caesar Strabo the equal art of relaxing or conciliating them by humour, so now he moves from serious approaches to the emotions of a crowd to suggest the value of humour. For such audiences he recommends not the slower action of continuous humour but the immediate impact of jokes and witticisms (always keeping them within the bounds of decorum). The easiest way to divert a crowd from a grim or bitter mood is by some neat witticism that is both sharp and entertaining (340).

What were they like, these instant versions of the *populus Romanus*?[20] First we must distinguish between the preliminary coming together (c*ontio* =*con(ven)tio*) of citizens and the official voting assemblies (*comitia*). Official voting assemblies would be scrutinized to exclude those not registered as citizens; and voters would be divided in the (chiefly legislative) *comitia tributa* into the two classes of older and younger men in each tribe. The more elaborate *comitia centuriata* (used for electing the senior magistrates) divided all registered citizens by their census rating into 193 units; in voting order the elite *sex suffragia* of wealthy equestrians and seventy units of well-off citizens in the first class were followed by the remaining twelve units of equestrians, then came the voting units of the second and progressively less propertied lower classes. The number of units was far greater for the much smaller number of wealthy individuals, and voting proceeded only until a majority had been reached. If the elite agreed, the underclasses would have no opportunity to vote. But both kinds of *comitia* were removed from the eloquence of any public speaker. For the statesman it was the informal *contio* that mattered.

There was no right of assembly at Rome and a crowd that formed in protest would simply have been intimidated into

[20] On the Roman voting assemblies see now Andrew Lintott, *The Constitution of the Roman Republic* (Oxford, 1999), ch. 5. More detailed recent discussions are Lily Ross Taylor, *Roman Voting Assemblies* (Ann Arbor, 1966); Alexander Yakobson, *Elections and Electioneering in Rome: A Study in the Political System of the Late Republic* (Historia Einzelschriften, 128; Stuttgart, 1999), ch. 2: On informal assemblies, see K.-J. Hölkeskamp, '*Oratoris maxima scaena*: Reden vor dem Volk in der politischen Kultur der Republik', in M. Jehne (ed.) *Demokratie im Rom, Historia Einzelschriften* (Stuttgart, 1995), 11–49, and Francisco Pina Polo, *Contra Arma Verbis* (Stuttgart, 1996).

dispersing. Yet Roman magistrates had no significant force to police their decisions.[21] If a crowd did not respect the consul's attendant lictors they could and did offer them violence. So it might be highly advisable to use eloquence to placate an unauthorized crowd on the point of rioting. The majority of crowds would gather in response to officially summoned meetings. Any consul or tribune, or in theory other magistrates, could summon a gathering in the forum to explain a new legislative proposal, or argue against it, to address them about general policy, or simply arouse them against his political enemy. But who came?

For an impromptu but official meeting it would be those nearby, whoever heard the announcement and had nothing better to do. This automatically excluded people living outside Rome, and slanted attendance towards men hanging around the forum without work and professional politicians with a vested interest in influencing the mood of the audience. In 91 BC there were about 300,000 registered Roman citizens, and a generation later, with the gradual enfranchisement of the Italians starting in 89, some 900,000, many living more than a day's journey from the city. The most moneyed and leisured of these, with transport and overseers to mind their estates, would make a point of coming to Rome to vote in elections or for some controversial piece of legislation, such as the bill put before the *comitia centuriata* in 57 for Cicero's recall. Most farmers and merchants would be unable or unwilling to leave their homes and business, and this would surely apply to most of the family-run bars and workshops of Rome itself. But the *plebs Romana* was not just the workforce of the city: a dole of wheat and oil had kept a large number of folk in the city with no regular work, some living by day-labour, some carrying out errands for others or functioning as low-level clients of political figures in return for intermittent favours.[22]

---

[21] The traditional hypothesis that public disorder could have been avoided with more adequate measures for policing the city, see Wilfried Nippel, *Aufruhr und Polizei in der römischen Republik* (Stuttgart, 1988), 107–44. He argues that the riots sponsored by Clodius in the 50s reflect a loss of authority by the governing elite (which employed its own irregular forms of force to deal with popular violence), but judges that the creation of a police body imposing order in the city by force would have been seen as a violation of citizen rights.

[22] On this urban proletariat see Nicholas Purcell, 'The City of Rome and the *plebs urbana* in the Late Republic', in *CAH* ix (2nd edn. Cambridge, 1994), 944–88, and Henrik Mouritsen, *Plebs and Politics in the Late Roman Republic* (Cambridge, 2001).

Cicero talks in his letters and speeches as though this fluctuating number of idlers was a recent development. Certainly the systematic political organization of the underemployed was a new phenomenon of the 60s and 50s that needs to be taken into account if we are to reconstruct the dynamics of such meetings. Cicero lived through a period of radical change, and a society very different from the relative decorum of Antonius' world erupted in the *contiones* of the 60s and 50s BC before Pompey as sole consul in 52 imposed a kind of martial law.

At a more respectable level, politicians had long expected their supporters, both juniors in their own class and humbler folk, to back them up by escorting them in public and enlisting support at times when votes were needed. Thus we could assume that, besides the floating audience of the underemployed, meetings called by a magistrate on the spot would be attended by his own supporters, by other politicians wanting to monitor events, and by their supporters as needed. Given the statutory delay between the notice of any bill and the formal vote, most serious legislative activity would entail several pre-announced meetings for discussion. And while no one could speak uninvited to criticize a bill, magistrates summoning a *contio* recognized the need to give their major opponents a voice. They might reinforce their own presentation with statements of support from popular figures, but they would not normally exclude antagonists. Better to let your adversary speak in a meeting you controlled, where you could answer his objections, than to frustrate him and play into the hands of a hostile figure who would unleash him where you had no right to intervene.

Typically these public assemblies would occur either when the presiding consul of a given month needed to present a *senatus consultum* to the people for ratification, or when another magistrate wished to rouse popular reaction against the conduct of affairs by the senate. Tribunes were members of the senate, and any tribune who saw its deliberations as going against partisan or popular interests would need to make publicity through popular meetings to support his own veto or counter-proposal. It was his responsibility to prevent any violence arising at his meeting and dismiss it if violence threatened. But at what stage was violence significant? Would it not be in his interest to overlook a certain amount of violence if it originated with his own supporters?

There was another way of interfering with the legitimate speech of a meeting. Each of the ten tribunes had the right to veto public procedure, whether actual legislation or simply the disclosures of an authorized speaker. A prime example from the earlier careers of Crassus and Antonius was the meeting summoned by the tribune Memmius in 111 BC, when he had reason to suspect that the Numidian prince Jugurtha had bribed the consul Bestia and other influential senators to make a favourable peace and condone Jugurtha's murder of his stepbrother Adherbal and encroachment on Adherbal's territory. The source is not Cicero but the historian Sallust, writing from a more radical political orientation.

Gaius Memmius summoned an assembly, and although the common people were hostile to the King and some ordered him to be led off in custody, while others thought he should be executed according to ancestral custom, unless he named his accomplices, Memmius put dignity before anger and began to calm their passions and soften their mood. Finally he guaranteed that the official safe conduct would be inviolate. Then when silence set in and Jugurtha was brought forward, Memmius spoke.[23]   (Sall. *Jug.* 33)

Memmius offered Jugurtha a guarantee of pardon from the Roman people if he spoke the truth, whereas if he kept quiet it would not save his associates, but ruin himself and his prospects. But then a tribune, Gaius Baebius, stepped forward and ordered the king to keep silent, and 'although the crowd at the meeting was enraged and intimidated him with shouts and glares and the sort of attacks that anger prompts' Baebius persisted. 'So', says Sallust, 'the people left the meeting, having been made a mockery' (*ita populus ludibrio habitus ex contione discedit, Jug.* 34). In this case a corrupt tribune acting for a group in the senate foiled a legitimate inquiry. Only when he came out of office could the next year's tribunes organize a public commission which found several senators guilty of corruption and renewed the war against Jugurtha. In typical meetings of the 60s, violence broke out in conflict between tribunes, when those acting in the conservative senatorial interest tried

[23] *C. Memmius advocata contione, quamquam regi infesta plebes erat et pars in vincula duci iubebat, pars, nisi socios sceleris sui aperiret, more maiorum de hoste supplicium sumi dignitate magis quam irae consulens sedare motus et animos eorum mollire, postremo confirmare fidem publicam per se inviolatam fore. Post, ubi silentium coepit producto lugurtha verba facit.* This tribune acts as a model of Roman authority—but in vain.

to impose a veto on legislative proposals in Pompey's interest from tribunes like Gabinius or a Manilius. Speaking in defence of the tribune, Sestius, in 56, Cicero sketches a typical scenario for violence:

We have often seen stone throwing; less often, but still too frequently, swords; yet such a slaughter, such piled up heaps of bodies . . . who ever saw this in the forum? From what clash of tempers? For rioting often springs from the obstinacy or perseverance of a vetoer, through the fault and shamelessness of the legislator, or when some profit or bribery has been dangled before the ignorant; it arises from a clash between magistrates, or gradually, at first from shouting, then in an outright split among the assembly; but barely, late, and seldom does it come to blows.   (*Sest*. 77)[24]

Cicero himself had never stood for the tribunate and seems to have been somewhat nervous of the *contio*. This can be illustrated from two of his surviving speeches to the people delivered approximately ten years apart. He gave his first known speech to the people as praetor in 66, but not by summoning his own *contio*. Instead he was invited as a guest speaker by the Pompeian tribune Manilius to speak in support of his bill proposing a major command for Pompey against Mithridates of Pontus.[25]

This law was strongly opposed by leading conservative senators like Catulus and Hortensius, on behalf of Lucullus and others currently commanding forces in the separate provinces which Pompey would absorb into his superior command. They were also naturally motivated by fear of the vast powers which Manilius' bill would confer on Pompey. Manilius had invited these leading senators to make their case against his proposal. According to Cicero, they argued as if out of concern for Pompey, the popular favourite, claiming that he was too precious to be put at risk, and the war too serious to be entrusted to one sole commander. Cicero's speech is significant both in his respectful handling of these aristocratic opponents and his placatory attitude to the

---

[24] *Lapidationes persaepe vidimus; non ita saepe, sed nimium tamen, gladios; caedem vero tantam, tantos acervos corporum exstructos . . . quis unquam in foro vidit? Qua ex concertatione animorum? Nam ex pertinacia aut constantia intercessoris oritur saepe seditio, culpa atque improbitate latoris, commodo imperitis aut largitione proposita; oritur ex concertatione magistratuum; oritur sensim ex clamore primum, deinde aliqua discessione contionis; vix, sero et raro ad manus pervenitur.*

[25] This is the speech variously known as *Pro Lege Manilia* and *De Imperio Gnaei Pompei*.

people. In fact his first task was to explain why he had not previously addressed the people face to face.

Although the sight of your great numbers has always been most welcome to me, just as this platform has seemed the most important place for public business and the most honourable for a public speech, I have so far been kept away from the path to glory, open as it was to all patriots . . .

   Previously I did not dare to claim the authority of this platform, convinced that no speech should be offered here unless it was fully developed and polished. Instead I thought I should commit all my time to the needs of my friends. So while this platform never lacked men to defend your interests, my efforts were spent honestly and scrupulously over the threats to private citizens, but now they have earned a rich reward from your favourable judgement.   (*Imp. Pomp.* 1–2 excerpted)

But now the situation has changed: Cicero's election not only as praetor, but with an overall majority that made him the senior praetor, has given him the confidence to speak to the people. It is now his duty to apply his talent as a speaker to and for the people who elected him, and he has at last a proposal to support worthy of his new departure and this important audience.

   This excerpt reflects some of the anxiety which a career politician, even an experienced court speaker, must have felt in confronting an indiscriminate crowd. And yet Cicero had a popular cause to advocate. But he could not afford to alienate the senatorial establishment. At the same time it would be a mistake to assume his references to the people's generosity in electing him and his respect for their authority were just flattery for the groundlings. The bulk of his speech shows that he was appealing to different elements in his 'popular' audience: his praise of Pompey, the young and successful commander, appealed to the masses, but the advantage of the proposed super-command in restoring Roman control of the wealth of Asia met the interests of the influential tax-farmers and business community. Identifying himself with the prospect of new victorious campaigns and restored revenues in Asia would give Cicero a double basis of support for his approaching consular candidacy

## Thanking the People

Cicero's only address to the people during the decade of *De Oratore* was the short speech of thanks delivered after his recall from exile

by a vote of the special centuriate assembly. While this assembly was organized by property classes and gave majority representation to the elite of voting senators, wealthy *equites*, and the top property classes, we cannot assume that the audience for his speech of thanks would have been slanted towards a comparable subgroup of citizens. The speech we have is a counterpart to Cicero's formal thanks to the senate, and the two can be usefully compared.[26]

Cicero opens by solemnly invoking the gods and recalling his act of self-sacrifice (*devotio*) when he left Rome to avoid harm to his fellow citizens: at that time he had prayed to the gods that any impending harm would fall on his own head rather than on the state and its loyal people. From this he moves to thank them: they have restored to him all he holds dear, family, property, friendships, and honour; they have given him a second life. As in the *De Provinciis Consularibus* he calls on *exempla*—largely the same *exempla*—of men restored from exile, giving most prominence to the popular hero Marius (6, 9, and 11). These lead into his narrative of the senate meeting on 1 January, when the consul Lentulus Spinther, like a father, a god, or his salvation, had announced he would propose Cicero's recall. He sets a lurid picture of his enemies in the heart of the speech, before his report of Pompey's speech to the people on Cicero's behalf—a recent speech which might well have been heard by a quite different cross-section of the people. Cicero's enemies, he declares, were motivated by envy, treachery, fear, and greed, and planned to block his return with the bodies of slaughtered citizens and a river of their blood.[27] He follows this sensational language with a picture of the anarchy at Rome before Lentulus Spinther became consul.[28]

A pathetic appeal to the flight of Marius and his return to power leads into a second expansion on Cicero's enemies. Who were these men? (We are reminded of Aristotle's analysis of hatred and its motivation.)[29] These men hated him because they hated the state;

---

[26] For a comparison between Cicero's speeches of thanks to the senate and to the people see D. Mack, *Senatsreden und Volksreden bei Cicero* (1937, repr. Hildesheim, 1967).

[27] This probably alludes to the murderous violence of Clodius' supporters on 23 Jan.; cf. *Red. Sen.* 5–9, 22; *Pro Sest.* 75–8 partly quoted above.

[28] Cicero does not mention Metellus Nepos, the other consul for 57, and half-brother of Cicero's enemy Clodius, because he was naturally hostile.

[29] Aristotle returns in *Rhetorica* 3.7 to cite his analysis of the causes of emotions from *Rhetorica* 2.12–18 as a source of narrative invention in describing the

they were former friends who had betrayed him, men jealous of his status and glory, and those who sold him and the state itself (Piso and Gabinius, supposedly bribed by Clodius with the lucrative consular provinces). But now he would take revenge upon his enemies, not by doing them harm but by his services to the state. He owed the people a debt of gratitude more important than mere revenge. Cicero's last words are a promise not to fail his fellow citizens or his country.

The speech carefully balances positive self-presentation, evoking sympathy and promising services, with the negative *invidia* he is generating against his enemies. Of course he speaks of their *invidia* against himself, but this does not diminish his own power to foster the other kind of *invidia*—both illwill and the misrepresentation (*diabole*) which produces illwill. And *invidia* is a powerful tool, as we learnt from Antonius, especially in the *contio*.

Ten years earlier Cicero had defended Cluentius Habitus, who was probably guilty of judicial corruption, if not worse, before a conservative jury, and made a powerful argument from associating *invidia* with the *contio*. This enormously long speech both opens and closes by urging the jury to distinguish genuine charges (*crimina*) and the integrity of the courts, from the prejudice and slander (*invidia*) stirred up in ill-informed public meetings.[30] The *invidia* of others dominates Cicero's *exordium* (*Clu*. 1–8) and *peroratio* (200–2), but it is never absent from the speech. Brief excerpts from the last sections of the *peroratio* suffice to show Cicero's skill in discrediting *contiones*:

Now, finally, raise up this man, your suppliant, who has been surrounded for so many years with slander and dangers . . . he begs you not to make him a sacrifice to slander which should have no power in the courts . . . He has suffered enough prejudice for enough years . . . Free him, finally from these afflictions, so that all men may know that there is scope for slander in assemblies, but in the courts only for the truth.[31]

emotional behaviour of others. So e.g. the orator can apply his knowledge of what provokes enmity descriptively to suggest the motives of enemies.

[30] The events narrated go back to the 70s when tribunes were restricted in their powers, but a tribune of 74 BC, L. Quinctius, had seized on the scandalous corruption of the court hearing the cases of Cluentius and his enemies, and roused crowds in incessant protest meetings during the trial. Cicero alleges (*Clu*. 77–95, esp. 93) that these crowds actually invaded the court.

[31] *Clu*. 200, *levate hunc aliquando supplicem vestrum, tot annos in invidia periculisque versatum flens obsecrat ne se invidiae quae in indiciis valere non debet . . .*

As consul, of course, Cicero had to represent the senate's proposals before the people, but his first appearance was defensive, in order to persuade the people to reject the agrarian law of the tribune Rullus. Those two speeches to the people survive, along with one to the senate, because he selected a corpus of consular speeches for publication in 60 BC including the two speeches delivered to the people in the early and final phases of his suppression of the Catilinarian conspiracy.[32] The speeches against Rullus are brilliant misrepresentation. To the people he describes the tribune's proposals as aimed against Pompey, designed to make the tribune and his associates rich while offering the citizens of Rome only marshes and barren plots of lands. It is very likely that Rullus was a front man for Crassus and Caesar, who hoped to corner the public land and use it as a bargaining device to control Pompey's policy through his need of land for settling his troops. In these speeches rival or opposing political groups had to be misrepresented (slandered) as an alien body hostile to the interests of the people, or even as in his denunciation of Catiline, threatening their families and livelihoods. In these speeches Cicero showed himself skilled in handling the crowd, and his eloquence and tactical skills prevailed even on the last day of his consulship, when the new tribune Metellus Nepos forcibly intervened to prevent Cicero reaching the public *rostra* to address the people as he formally laid down office. Cicero was constitutionally required to swear that he had performed his duties according to the law, so having obtained permission to recite this oath, he changed its wording to swear instead that he had saved the state from revolution. If we believe

Cicero himself, the whole crowd joined in and swore the oath along with him.[33]

## Violence Displaces Eloquence:
### *Silet Lingua Inter Arma*

Senatorial sources have habituated us to regard it as normal or even welcome when a consul was able to defeat tribunician opposition. But tribunes were untouchable and inviolate, and it was only the courage of Metellus' colleague Porcius Cato that faced down the riots stirred up by Metellus in hope of legislating a call to Pompey to return to Italy and deal with the Catilinarian forces. Threatened by a fellow tribune, Metellus Nepos gave way, and a crisis was averted. But tribunes also had the power to use force even upon a consul. Two years later the tribune Cn. Flavius held a meeting to raise support for his law providing land for Pompey's demobilized army.[34] When the consul Metellus Celer argued persistently against Flavius' bill, Flavius used his power of arrest (*coercitio*) to have the consul taken to the prison, and set his own tribune's bench across the door so that Celer could not leave. The bench itself had a kind of sacrosanctity from its association with the tribunes, but the consul too had a special authority which the tribune did not want to risk challenging. Finally an impasse which could have led to uncontrollable violence was ended when Pompey—now a private citizen, but the man for whom Flavius was acting—ordered Flavius to release the consul. The bill was abandoned, but its abortion proved the trigger for the formation of the alliance of Pompey, Crassus, and Caesar, which brought Caesar the consulship and got Pompey his land-bill.

With Caesar's consulship, violence came to the legislative *comitia* as well as the informal *contiones*; his fellow consul Bibulus was driven from the field, and other conservatives like Cato were pelted with rotten vegetables and dung. And before he left for Gaul Caesar ratified the adoption of Clodius by a young plebeian

[33] Cic. *Pis*. 6–7, *mihi populus Romanus universus illa in contione . . . aeternitatem immortalitatemque donavit cum meum ius iurandum iuratus ipse una voce et consensu approbavit*. This is a rare (if artificial?) instance of *vox populi*.

[34] The details come from Dio 37.50. Although Metellus Nepos had tied his own career to supporting Pompey's needs, his brother Celer was a conservative acting on behalf of the senatorial occupants of the public land which would be taken from them for allocation to Pompey's veterans.

which enabled him to be elected tribune for the following year. It is not clear when Clodius first professionalized the street gangs which he organized as *collegia*,[35] but the organized violence which seems to have been his invention continued through his year of office and beyond: letters from Cicero after his return in 57 report inflammatory public meetings by Metellus Nepos, Appius Claudius, and Clodius himself, as well as attacks on his brother's house and Cicero's building site,[36] and a phase in which Cicero's supporters, including the tribunes Sestius and Milo, met fire with fire and Clodius' gangs with opposing gangs.

I have already considered a passage from Cicero's defence of Sestius in 56 describing the new level of public disorder. To balance the natural distortion of a defence speech, let us turn to two other examples of violence at public assemblies from 56, the year Cicero began *De Oratore*. The sources are a private letter of Cicero to his brother, (*Q.Fr.* 2.3, SB 7) and the Greek historians Dio and Plutarch, no doubt dependent on Pollio's lost histories of the civil wars. In February 56 Clodius, now aedile, had launched a public trial—*iudicium populi*—of Milo for violence, on the occasion of the gang riots and bloodshed around the temple of Castor the previous year. Cicero describes to Quintus two hearings of Milo's trial; the first orderly, as Marcellus spoke on his behalf, the second turned into a farce. Attempting to speak on Milo's behalf, Pompey was heckled throughout: then Clodius rose to speak and was silenced by *nostri*, that is the gangs raised by and for Milo,[37] singing abusive chants for up to two hours. Clodius in turn coached his gangs in abuse of Pompey until the ninth hour, when they goaded the other side into assault. Clodius was driven from the *rostra* and Cicero fled, though a meeting of the senate was summoned on the next day and the day after which condemned the rioting as

[35] On Clodius and the collegia see A. J. Lintott, *Violence in the Roman Republic* (rev. edn. Oxford, 1998), 77–83; Nippel, (*Aufruhr*), 107–44; J. Tatum, *P. Clodius: The Patrician Tribune* (Chapel Hill, NC, 1998).

[36] Cf. *Att.* 4.3.3–4 (= SB 75, Dec. 57) for the *contiones turbulentae Metelli, temerariae Appii, furiosissimae Publi*. The same letter reports the Clodian attacks and the setting up of rival gang headquarters on the Palatine in P. Sulla's house and that of Milo. Cicero is now being supported by Q. Valerius Flaccus at the head of a band of toughs (*viri acres*) effective enough to have killed a number of Clodians.

[37] A later paragraph of *Q. Fr.* 2.3 reports that Clodius is strengthening his forces and preparing a gang for the next hearing on the Quirinalia (2.3.4). But although 'we' are far superior just with Milo's own forces, a big band of country lads is expected from Picenum (Pompey's home region) and Cisalpine Gaul.

contrary to the interests of the state. This form of trial, used primarily for political grandstanding, was no longer viable: postponed to 6 May, the prosecution was abandoned. Violence spread to the elections later that year, when Pompey and Crassus used both bribery and force to exclude Domitius Ahenobarbus from standing for the consular elections and Cato from the praetorian elections. According to Plutarch, *Cato Minor* 41,[38] a tribune provided a *contio* at which Cato spoke. The following year, when Cato expressed a wish to speak against Trebonius' tribunician bill to extend Caesar's command, he was given permission to make his case against the law for two hours, and his supporter Favonius was allowed a single hour: since neither man was actually a magistrate in office, this concession looks like a voluntary remission of hostilities.

We cannot imagine any modern crowd, let alone one expected to remain standing, enduring two hours of any speaker. Cato in fact wasted his opportunity, turning it into a filibuster protesting his own time limit (Dio 39.34). When ordered to be silent by Trebonius, who was presiding over the *contio*, Cato refused and was removed by an attendant. But he returned, still protesting. This time Trebonius used his power of *coercitio* and had Cato led off to prison. What is most revealing about this episode is Dio's comment that because the tribune had allowed private speakers to precede him, postponing his own speech to last, Cato's filibuster and the ensuing disorder left Trebonius no time to speak before darkness put an end to the meeting. His act of *coercitio* led to further violence. Two fellow tribunes, Aquilius Gallus and Ateius Capito, tried to interpose their veto on Cato's side and were driven out of the assembly. When Ateius returned to display his injuries the assembly began to side with him against Trebonius, until the consuls, Crassus and Pompey, came with their bodyguard to intervene on Caesar's behalf. They then held their own *ekklesia* and put the motion for the renewal of Caesar's command through the voting assembly.[39] In many ways the violence is less extraordinary

---

[38] Plutarch's phrase is *ekklesian paraschomenos*, but neither Plutarch nor Dio, cited below, had vocabulary to distinguish the Roman informal assembly from the voting assembly. Here it is unambiguously a *contio*. Dio's usage in 39.34–5 is more problematic.

[39] How much has Dio (39.34–5) understood the proceedings? What has he compressed or suppressed? Did this all happen on the same day? Did the consuls first hold a *contio*, and move on a later day to the campus for *comitia*? Or did they

than the fact that it could be limited in such circumstances, and its instigators could bring it to a halt. These episodes of public rioting shock us, but they are confined to the most controversial political issues and occur alongside observance of the formal procedures sanctioned by *mos maiorum*.

To some extent political life in the 50s was a game of bluff, in which each side relied on its traditional rights except when some political goal seemed too important to relinquish. Essentially each man used the force he needed as if each occasion was an exception that did not cancel or annul the existing safeguards. As Wilfried Nippel has noted, the irregular use of force was always justified as legitimate because of the opposing group's excesses, and successive displays of violence alternated with rituals of justification after the event.[40] Intimidation was probably far more frequent than outright violence. For every occasion when a politician was driven from the *rostra* there were probably four or five on which the clear demonstration of opposition (whether spontaneous or fostered by a band of hired toughs) led the organizer of a public meeting to abandon his proposal. It was no longer enough to collect a body of his own supporters to influence the reception of his proposal. Yet although each magistrate controlled who spoke at his meetings, he might not be able to control public reaction, and Fergus Millar has argued that we can see evidence of the democratic power of the electorate in the number of proposals which were abandoned after the introductory *contiones*.[41] He has illustrated this from the second century BC, but it can be paralleled by the number of bills to provide public land for Pompey's veterans that were launched and capsized before Caesar overrode senate objections as consul in 59 and played the tribune, ignoring his colleague Bibulus' threat of ritual observance of the skies and pushing his two agrarian bills through the assembly by force.

Conceptually these gatherings, even the impromptu meetings attended only by those involved in politics and free from other responsibilities, were the Roman People. Politicians had to address them with respect. The record of disorder from the 50s makes a

---

simply call for *comitia*, whether or not the bill had completed the three *nundinae* of notice required?

[40]  Nippel, *Aufruhr*, 132, 135, 144.

[41]  In the papers listed in n. 19. Millar covers the Ciceronian period in detail in the Jerome lectures, *The Crowd at Rome in the Late Republic* (Ann Arbor, 1998).

grim contrast with the hopeful ideology of Cicero's formal political statements, as well as the reflection of a more orderly generation in Antonius' rapid survey. Perhaps some comments from one of Cicero's political defences best illustrate the blatant discrepancy between his ideal and the collapse of political practice in the decade of *De Oratore*.

In 59, the year of Caesar's consulship, Cicero defended his old supporter, the ex-praetor Flaccus against the charge of misgoverning the province of Asia. A major category of evidence submitted against him consisted of decrees from various city-states protesting his actions and supporting men he had condemned. Cicero exploited this in a notoriously prejudiced passage contrasting the irresponsible democratic assemblies of the Asian city states with the wise caution governing Roman assemblies:

What a glorious practice and traditional discipline we inherited from our ancestors, if we could only maintain it! Yet it is already slipping from our hands. Those wise and virtuous men wanted the public meeting (*contio*) to have no binding power: it was their will that whatever decrees or laws the people considered should be passed or rejected when the informal assembly had been put aside, when the units were properly separated, the classes, groups, and age groups marked off in tribes or centuries, the advice of authoritative figures had been heard, and the motion for business published and known many days in advance.[42]

It is, Cicero adds, the ex-slaves and immigrants from these regions who have disrupted assemblies at Rome (*Flacc*. 17); yet in contrast with Greek irresponsibility he allows only a muted suggestion of the problems between Rome's ruling class and her citizenry, growing beyond control despite all the constitutional safeguards:

In this serious and moderate community, when the forum is full of courts, of magistrates, of right-thinking citizens, when the senate, skilled in disciplining rash behaviour and controlling correct observance, is watching and keeping guard, what surges of passion do you see in the assemblies—*quantos fluctus excitari contionum videtis*? (*Flacc*. 57)

---

[42] *Flacc*. 15, *O morem praeclarum disciplinamque quam a maioribus accepimus, si quidem teneremus! sed nescio quo pacto iam de manibus elabitur. Nullam enim illi nostri sapientissimi et sanctissimi viri vim contionis esse voluerunt; quae sciceret plebes aut quae populus iuberet, submota contione, distributis partibus, tributim et centuriatim discriptis ordinibus, classibus, aetatibus, auditis auctoribus, re multos dies promulgata et cognita iuberi vetarique voluerunt.* Cicero adds that one thing only has ruined the glory that was Greece, *libertas immoderata et licentia contionum.*

In *De Oratore*, at least, Cicero could take refuge in the less troubled times of Crassus and Antonius before the political crisis brought on by the tribunate of Livius Drusus and the subsequent Italian revolt. In those golden days a statesman's personal authority was enough to convince the crowd: the politician's only task was re-interpretation and persuasion, and eloquence was sufficient to control the *maximi motus multitudinis* (2.337). But now Roman lawyers turned statesmen were on the defensive against the power of generals from their own ruling class, and the loyalty which these generals claimed from their soldiers and bought from civilians of all ranks who had votes in the assemblies or served as senators and magistrates. Their opposition could no longer find new ways of appealing to the crowd's vanity or presenting their own partisan proposals as promoting the interests of the common people. There could hardly be a stronger contrast with Cicero's idealized memories than the breakdown of civil order that was accelerating around him as he wrote.

# 10

# Style and Substance: Cicero's Rethinking of *Elocutio*

Nam cum omnis ex re atque verbis constet oratio, neque verba sedem habere possunt, si rem subtraxeris, neque res lumen, si verba semoveris.   (*De Or.* 3.19)

For since all speech consists of meaning and language, the language cannot have any basis if you take away the meaning, nor can you throw light on the meaning without the language.

At the opening of the third and final book of *De Oratore*, Cicero returns to the personal circumstances with which he began the entire work, to his brother, for whom it was written, and to his own recollections of the teachers and political life of his youth. But this time his recollection is coloured with bitterness because it brings him to Crassus' sudden death ten days after the tranquillity and harmony of the dialogue at Tusculum. In a fast-moving narrative he brings Crassus back to Rome at the news of the public attack on the authority of the senate launched by the consul Marcius Philippus.

Summoned by the tribune Livius Drusus, whose programme of reform the senatorial group around Crassus supported, the full senate met on the Ides of September: when the hostile consul reacted to Crassus' protests by distraining on his property, Crassus made an inspired and powerful speech from which Cicero quotes his heroic words of defiance: 'if you want to coerce Crassus, it is not enough for you to seize this property as forfeit; you must excise this tongue of mine: but even if it is torn out, my liberty will indict your wanton act with its dying breath'.[1] The full senate reiterated

---

[1] *An tu, cum omnem auctoritatem universi ordinis pro pignore putaris eamque in conspectu populi R(omani) concideris, me his existimas pignoribus posse terreri? Non tibi illa sunt caedenda si L. Crassum vis coercere; haec tibi est excidenda lingua, qua vel*

his motion that the senate had never failed the state in either good counsel or loyalty, and he gave his written endorsement to the decree, as Cicero was able to confirm from the recorded decisions.

Cicero follows Crassus through his last illness and death, first to grieve (3.7–8) that Crassus was deprived of the honoured retirement he had earned by his full political career, but then in a counter-movement to find consolation that Crassus escaped the outbreak of war in Italy and of public resentment against the senate, the prosecution of leading citizens on a charge of treason, the expulsion of Marius, and the massacre of his political adversaries on his savage return. The fate of each participant in the dialogue is enumerated: Catulus driven to suicide, Antonius beheaded and his head impaled on the *rostra* where he had defended the inherited constitution as consul and censor, Strabo betrayed by his Etruscan host, like his brother L. Caesar. Crassus did not live to witness the suicide of his own kinsman, P. Crassus, nor the blood of his consular colleague, the Pontifex Maximus, Scaevola, spattering the image of Vesta herself. Of the young men who had taken Crassus as their teacher Cotta was sent into exile, while Sulpicius as tribune turned on his closest friends to strip them of their honours, and met a deservedly violent death (*poena temeritatis*, 3.11) to the state's great loss.

In retrospect Cicero assimilates these misfortunes to his own patriotic sufferings which led his loyal brother to urge him to abandon political life. Yet even beset with present troubles, he finds comfort in recalling and immortalizing the rest of Crassus' last discussion as an act of homage and thanks.

When Cicero enhances his old teacher with tragic colours, he is also acting in emulation of Plato, whose writings he quotes as memorials to his great teacher Socrates. Just as Socrates may have been greater in life than in Plato's record, so Cicero asks future readers to imagine a Crassus greater than Cicero's own portrayal. He is proud to have recreated the very style (*genere orationis*, 3.16) of Crassus and Antonius around the bare themes and arguments of this debate as they were passed on by Cotta.

Why this concern to affirm not just the authentic content but the authentic individuality and difference between the styles of

*evolsa spiritu ipso libidinem tuam libertas mea refutabit* (*De Or*. 3.4). For a fuller account of the context, see Ch. 2 above.

Crassus and Antonius? This distinction is something more than Cicero's personal tribute, it is about to become his theme: he sets out to show how each man achieved perfection in his own idiom, as each excelled in dedication, talent, and learning: *fuit uterque . . . cum studio et ingenio et doctrina praestans omnibus, tum in suo genere perfectus* (3.16).

From his extended outer preface, deliberately recalling that of book 1 and pointing ahead to Crassus' enhancement of *elocutio*, Cicero steps back into the dramatic setting, as the friends wait for Crassus to reach the end of his long and deep deliberation, before gathering in the heart of his shady woodland. And Crassus' opening sentence, recalling the bargain with Antonius, reiterates the inseparability of content and form. All speech is formed from words and matter, but words are unstable if you withdraw their subject matter, and matter is left dark if you take away the words. Crassus will vindicate this insistence by both a physical and an intellectual analogy, citing the cohesion of all physical nature, and the Platonic belief in the association of all disciplines in a nexus of causality. The many terms of cooperation and coherence combine words of human understanding (*complexi*, 3.20; *comprehendi*, 3.21), with parallel compound forms to describe natural phenomena (*consensione naturae constricta . . . constare . . . conservare*), and abstract knowledge itself (*contineri . . . consensus . . . concentusque*). Cumulatively each of these forms reinforces his message.

Before following Crassus any further into the woods, we should stop to ask what we, or better what Romans of Cicero's prime, would expect from an account of *elocutio*. Whether we use the later development of Roman rhetoric as comparative material, or compare the only treatise covering style that survives from before *De Oratore*, the pattern is largely a formless catalogue of tropes and figures. Certainly the author of the *Rhetorica ad Herennium* moves rapidly beyond general principles in his fourth book *De Elocutione* to provide samples of three very specific styles, plain, middling, and grand, and of perversions of these norms which offend by exaggerating their characteristics. But he follows these samples with an illustrated series, first of figures of speech, based on arrangement of words, then of figures of thought, based on alternative formulations of a proposition, leading gradually up to exercises in varying and combining these formulations around a single idea. For most rhetoricians, style was a matter of particulars, either

conforming at the level of composition to one of a limited number of templates, or embellishing single elements of the text with local and detachable ornaments—what the Greek tradition called *epitheta*, 'add-ons' or 'appliqués.'

Instead Crassus has begun in the most general terms, insisting as in book 1 on the indivisibility of speech from its subject matter: but as Cicero himself singled out the particularity of personal idioms in 3.16, so Crassus emphasizes the particular of personal style[2] in each and every art. The same Nature in which everything is inter-connected (3.20–2) is also full of distinct and equally admirable combinations of sounds which delight our ears with their variety,[3] and of sights, and of different kinds of pleasure that delight our other senses, so that it is difficult to judge what is the finest kind of sweetness (*excellentis maxime suavitatis*). This praiseworthy variety is just as true of all the arts, starting with material arts like model-ling and painting, and progressing to the verbal arts:[4] the same thoughts and even words can appear in greatly dissimilar, but equally admirable forms, *sic ut . . . in dispari tamen genere laudentur*, 3.26). As with his earlier comparisons with the sculptures of Poly-clitus and Phidias (2.70–3), Crassus uses analogies from the idioms of visual artists to make similar claims for first Roman, then Greek, dramatic poets (3.27), then for Greek orators, and the few Romans known to Crassus' generation.[5] According to his argument the

---

[2] One of the difficulties of explicating the theory of *elocutio* in this book is the multiple uses of the all-purpose word *genus (dicendi/orationis)*. For an earlier at-tempt to distinguish and classify these uses in Cicero's successive work on rhetoric, see Fantham, 'On the Use of *Genus*-Terminology in Cicero's Rhetorical Works', *Hermes*, 107 (1979), 441–58. This discussion will use the term 'idiom' (bearing in mind the Greek root—*idios, idioma*) to distinguish the style of the individual artist from the different levels and tones associated with e.g. the three styles of the *Rhetorica ad Herennium*.

[3] 3.25, *auribus multa percipimus quae . . . ita sunt varia saepe, ut id quod proximum audias iucundissimum esse videatur*. The theme is renewed at 29, *quid iucundius auribus nostris . . . istum audimus*, and 32, *nulla nostrarum aurium satietate*. It will be argued that Crassus' concern for *suavitas*, first mentioned at the end of 3.25 then developed in 3.91–103, is probably influenced by Theophrastus.

[4] Note Cicero's designation of the non-verbal arts as *quasi mutis artibus*. Visual arts are of course soundless, but as often he uses *mutus* as equivalent of Greek *alogos*, whether his meaning is *sine ratione* or *sine oratione*. It is easier for the uneducated to recognize visibly different artists than identify differences of verbal idiom.

[5] The comparisons are developed in *Brutus*: but *Brutus* 82–3 clearly values the oratory of C. Laelius (Cos. 140), despite its archaism, more highly than that of his friend Scipio. (Scipio's *gravitas* seems to be a moral rather than a rhetorical virtue, and is ascribed even to the elder Scaurus, whose merit lies in *prudentia* rather than

Roman tragic poets were as distinct in their equally skilful styles as their famous Greek predecessors: in the same way the Greek orators all excelled, but with different stylistic qualities; so did the past Roman orators, and so also—here Crassus returns to his interlocutors—do the present company. He illustrates this first from the pure Latinity of Catulus and the wit and literary versatility of his brother Strabo, then from Cotta and Sulpicius, with their opposite characteristics and abilities. Cotta is described as refined and plain, expressing his thought in correct and well-chosen words: he sticks to the issue and notes shrewdly what must be proved to the judge, leaving aside other arguments so as to focus his mind and speech on the essential. Sulpicius has such power of spirit, such fullness of voice, such vigour of body and dignity of movement, and abundance of weighty words that he seems uniquely fitted by nature for public speaking.[6] With this, Crassus returns to Antonius and himself, reformulating at 3.33–4 the opposing oratorical styles outlined by Cicero in person at 3.16 above.

How then could any teacher shape[7] these distinct styles using the same rules and training? Crassus proposes that he should develop each student in the direction of his natural talents, as did Isocrates with his widely different pupils, the historians Ephorus and Theopompus. In book 2, when discussing imitation of a rhetorical model (2.88–98), Antonius explained why he had sent Sulpicius away to work with Crassus, because his style was better suited to Sulpicius' abundant nature,[8] and cited Isocrates as the model teacher. Now Crassus returns to Isocrates and his differential training of his pupils to illustrate how prose writers as distinct as Ephorus and Theopompus could be shaped by a single (if also unique) master. All this, Crassus explains, is to prepare his hearers to understand that if his recommendations do not seem to suit their

eloquence (*De Or*. 1.214; *Brut*.111). With Laelius' *lenitas*, cf. *dulcius, Brut*. 83; with the *asperitas* of Ser. Sulpicius Galba (Cos. 144), cf. *Brut*. 86, *in dicendo atrocior acriorque*, and with the *profluens et canorum* of Ti. Gracchus' contemporary, C. Papirius Carbo (Cos. 120), cf. *canorum et volubilem, Brut*. 106.

[6] With these brief characterizations compare *Brutus* 202–3 on Cotta, 203–4 on Sulpicius, and the comparative assessment: *nihil enim tam dissimile quam Cotta Sulpicio, et uterque aequalibus suis plurimum praestitit*.

[7] Crassus uses terms for verbal style (*formae figuraeque dicendi*, 34) that evoke the analogy of the plastic arts: *formare, fingere*.

[8] Crassus will remind the group of this in his mock modest comments at 3.47.

talents, he is only aiming to describe the style or idiom which he himself most admired.

But is this Cicero's motive for introducing an issue which seems so disconnected from the main body of Crassus' discourse? Surely the strongest motive for Cicero's stress on the diversity of individual styles is to combat existing teaching methods with their rigid delimitation of three styles based on three levels of ornamentation. However, in 3.37, when Crassus abandons the all-purpose term *genus orationis* for a new term, *dicendi modus*,[9] it seems that he is moving away from the issue of individual idiom in order to provide a broad and generally applicable prescription for success: *ut latine, ut plane, ut ornate, ut ad id quodcunque agetur, apte congruenterque dicamus*. Is there a conflict here? I do not think so, because the new formulation is as distant from the system of three (or more) fixed styles as his initial insistence on style as personal idiom.

Readers of Cicero's later *Orator* know that he derived this set of four virtues of style (*aretae lexeos*) from Theophrastus. At *Or*. 79, discussing the plain style, Cicero lists (1) good Latinity—*sermo purus erit et Latinus*—(2) clarity—*dilucide planeque dicetur*—and (3) propriety—*quid deceat circumspiciatur*, but denies the plain orator what he calls the fourth virtue of speech listed by Theophrastus, ornament: *unum aberit, quod quartum numerat Theophrastus in orationis laudibus, ornatum illud, suave et adfluens*. For the moment let us leave the last five words untranslated, reserving discussion for the later section (3.91–103) where Crassus invokes the same aesthetic aspects of the ornate style.

Since Cicero based much of his discussion of individual styles in *Orator* on Theophrastus' treatise 'On Expression' (*Peri Lexeos*)[10] it is natural to assume this work as the basis of Crassus' presentation in *De Oratore*. But as Doreen Innes[11] has shown, the separate Theophrastean virtues are all introduced in the third book of

---

[9] Is this simply chosen for variation on *genus*? The only parallels for *dicendi* or *orationis modus* seem to be in 3.166–7 where *modus* translates Greek *tropos*. In 3.182 *modus* denotes the natural limit on the length of a period.

[10] For the fragments and testimonia of this treatise see *Theophrastus of Eresus: Sources for his Life, Writings, Thought and Influence*, ed. W. W. Fortenbaugh *et al*., ii. *Psychology ... Rhetoric and Poetics* (Leiden, 1992), s.v. 'Expression,' 529–49. Original sources will be cited with the numbering and translation of this edn.

[11] In ch. 12, 'Theophrastus and the Theory of Style', in *Rutgers Studies in Classical Humanities*, ii (New Brunswick, NJ, 1986), 251–69. I follow Innes' interpretation except in one minor respect.

Aristotle's *Rhetoric*, which differs chiefly in subsuming these qualities as elements of a single virtue. It is generally believed that this third book was added to the first two books on invention at a later date; but it is worth our attention, for its recognition of the importance of delivery, its appraisal of stylistic ornament as something originating in poetry and appropriated for oratory by Gorgias (*Rhet.* 3.1 is the first of two back references to Aristotle's *Poetics*), and its isolation of the four stylistic elements explicitly required by Theophrastus. Thus 3.2 sets out as its topic clarity (*saphe einai* 1404^b2), and begins what will be a series of references to propriety (*prepein* 1404^b4, 5, 31); 3.5 opens with the presentation of correct language (*to hellenizein*, 1407^a20), briefly reintroduced at the beginning of 3.12; and 3.7 offers a new formulation of propriety (*to prepon*, 1408^a10), defining it as 'when the speech uses emotion and characterization successfully and maintains proportion (*to analogon* ^a11) to the subject matter.' But while this definition precedes discussion of the uses of emotion and characterization in speech (*to pathetikon, to ethikon*), it comes after extensive illustrations of propriety in other stylistic respects. Finally, at the end of the discussion of variation in style according to genre, Aristotle rejects, not the idea of pleasing style, but any system designed to isolate and label different types of style, such as grand style (*megaloprepes*) from the general requirement that style be pleasant (*hedeia*) (3.12, 1414^a19–28). He then summarizes:

If virtue [singular!] of style has been correctly defined, what we have said will suffice to make it pleasant. For why, if not to please, need it be clear, not mean, but appropriate?...what we have said will make the style pleasant, if it contains a happy mixture of proper and 'foreign' words, of rhythm, and of persuasiveness resulting from propriety. (3.12, 1414^a22–5)

Other Peripatetic contributions to Cicero's ideas on diction and rhythm that arise later in *De Oratore* will be treated in the following chapter. One more point needs to be stressed: throughout his detailed discussion of various tropes and figures in 3.2–7 and 10–11, Aristotle plays down conventional ornament. *Kosmos*, the equivalent of *ornatus*, is mentioned only when Aristotle sets aside the ornate diction (*kekosmemene lexis*) of the poets in 3.2.2 (1404^b7), and at 3.7.2 (1408^a11–14) when he defines proportionality (*to analogon*) as avoiding low diction about exalted matters

and pomp about everyday matters, and not imposing *kosmos* on an everyday word. Thus the direct source of Crassus' impending presentation may well be Theophrastus, 'On Expression', but his values differ from those of Aristotle's third book only in increased concern with aesthetics.

Certainly in looking back to these four virtues of style Crassus, or rather Cicero, is consciously de-emphasizing the ornamentation of the figures, and subordinating it to the essential ingredients of correct and clear language and the equally essential adjustment of speech to its context. So while the art of *ornatus* actually occupies a far greater part of book 3 than the other three virtues combined,[12] this is because Cicero is radically reinterpreting the concept of ornament, to derive it from the inner culture of the speaker expressed simultaneously through his thought and his language. The extended discussion of how Socrates and the philosophers have misrepresented and marginalized the art of oratory (3.56–89, cf. the positive treatment of philosophical themes in 3.107–39) is not a digression from *ornatus*, but lays down its first principles. The conversational exchanges of 144–6 mark a real point of arrival, and the satisfaction of virtually all Crassus' interlocutors. Only Sulpicius is discontented and impatient for a discussion of the more traditional figures. I will limit this chapter to Crassus' main discussion, keeping the impatient Sulpicius waiting to the next.

When Theophrastus elaborated his four virtues of speech (*aretae lexeos*) on an essentially Aristotelian basis, he may well have had other reasons to stress *Hellenismos*, not relevant to Crassus' somewhat dismissive account of *Latinitas*. As Hendrickson has suggested,[13] Cicero may have used Crassus' rapid review of grammatical correctness as something to be learnt at school, to dismiss the claims being made for 'correcting' language by the supporters of regularization (*analogia*): this kind of purism, ruling that orators and writers should avoid strong or irregular forms of

---

[12] The elementary virtues of Latinity and clarity occupy 37–51; appropriateness, 210–12. Cicero is too skilled to leave conspicuous seams exposed in Crassus' various transitions from stylistic to historical and cultural narratives, but he clearly dismisses the first two in 52, and marks the end of his account of *ornatus* at 210. There is however another clear division marked by Sulpicius' demand for the formal sources of *orationis laudem splendoremque* at 147: the Aristotelian theories of diction and tropes, the theory of rhythm, and the post-Aristotelian figures of 149–210 will be treated in the next chapter.

[13] See G. L. Hendrickson, 'Caesar's *de Analogia*', *CP* 1 (1906), 118.

nouns and verbs, was first advocated at Rome in Caesar's *De Analogia*, composed and dedicated to Cicero during the 50s, perhaps as a reply to these comments. Certainly he treats *Latine* [*loqui*] as a minimal prerequisite (3.38, cf. 48) moving quickly on to the command of vocabulary acquired from reading orators and poets, particularly commending the older writers for their unadorned and simple speech (*praeclare locuti*, 3.39).[14]

Anticipating discussion of vocabulary in the later section on verbal ornament, he recommends the older writers, not for language no longer current, but as a source for choice words among those in general use. These must be used correctly, without confusion or contradiction, and spoken without pedantic affectation (*exprimi putidius*) or slurring or mannerisms such as L. Aurelius Cotta's pretence of old-fashioned speech with broad rustic vowels.[15] In contrast Crassus cites Catulus[16] as his ideal of good Latinity, but not because of his education. Catulus is only the first of three instances of perfect and urbane speech produced not by formal education but by environment: indeed the speech of uncultured Romans from the city (3.43, *iis urbanis, in quibus minimum est litterarum*) is superior to even the most cultured Italian like Soranus[17] in what we can only call accent. Similarly he claims that

[14] Is there a reason why Crassus does not recommend reading contemporary poets and orators? If it is true that Cicero cites mostly 2nd-cent. poets both in *De Oratore* and when writing in his own person, we do not know of any serious poets except Accius writing in the 90s BC. It may be the case that Cicero's *veteres* correspond to praise of the classical 5th-cent. Attic poets in the corresponding argument of Theophrastus.

[15] For this Cotta, probably a second cousin of C. Aurelius Cotta in the dialogue, see *Brutus* 139 and 259, with Douglas ad loc. Aurelius' pronunciation receives further comment at 3.46 (to Sulpicius), *cuius tu illa lata . . . imitaris, ut iota litteram tollas et E plenissimum dicas*. Were L. Cotta and Sulpicius pronouncing *milites* as *meilites*, and *idem* as *eidem*? L. Cotta, an optimate tribune who resisted Norbanus unsuccessfully as tribune in 103, was praetor in 95, so perhaps twelve years older than our C. Cotta.

[16] *De Or.* 3.42: cf. 3.29 above and *Brutus* 133, *fuit in Catulo sermo Latinus*. There Cicero singles out his voice and enunciation *sono vocis et suavitate appellandarum litterarum*.

[17] This is Q. Valerius of Sora (*RE*, Valerius, 43), a literary scholar whose works were used by Varro and the elder Pliny (cf. Cic. *Brutus* 169). Although Cicero is talking about the sophistication of *urbani*, he avoids introducing the term *urbanitas* (*De Or.* 1.17 and 159, 2.231, and 3.161; *Brutus* 143, with Douglas's note) because it conveys the more specific sense of wit. See E. S. Ramage, 'Cicero on Extra-Roman Speech', *TAPA* 92 (1961), 481–94 and 'Early Roman Urbanity,' *AJP* 81 (1960), 65–72.

the speech of his mother-in-law Laelia (3.45)[18] has preserved the unaffected pure Latinity of her ancestors because women are not exposed to outsiders. The parallel which Crassus draws with the superiority of Athenian speech, even long after the Athenians have lost interest in culture, recalls an anecdote about Theophrastus (told by Cicero himself at *Brutus* 172) which surely originated in his own account of *Hellenismos*. Coming from Eresos on Lesbos, Theophrastus is supposed to have been saddened when, even after many years of living in Athens, he was asked by an old woman where he came from. This suggests that Cicero had cited the Latin Valerius of Sora to provide a Roman parallel to Theophrastus' personal experience. But it is more than likely that Theophrastus also had to caution his students not only against regional accents but about other failures of *Hellenismos*, such as the many dialects of the Aegean and Asia Minor, or the gradual corruption of Attic forms into what became the *koine* of Alexander's empire.

Crassus disposes more swiftly still of the requirement for clarity, which is based on a foundation (3.49) of the correct Latinity just discussed. We should use the ordinary words that correctly desig-nate[19] what we mean, avoiding too long a periodic sentence or overextended comparisons: we should not interrupt our clauses (*discerptis sententiis*) or reverse time sequence or confuse persons (by careless use of pronouns?) or disturb the order of events. This should be easy, indeed it is observed naturally by most clients when they brief their advocates with absolute clarity: in contrast, it is the professional speakers like Fufius or young Pomponius[20] who produce confused and disordered speech with a clutter of strange language that obscures their argument when it should be

---

[18] For Laelia and her aristocratic ancestry cf. *Brutus* 211.

[19] Again there is some anticipation of what Crassus will say about *ornatus . . . ex singulis verbis* at 3.149–50.

[20] For these figures cf. *Brutus* 221–2: *Cn. Pomponius lateribus pugnans incitans animos, acer, acerbus, criminosus*: [222] *multum ab his aberat L. Fufius, tamen ex accusatione M' Aquili diligentiae fructum ceperat*. Fufius' prosecution of Aquilius in 98 (cf. *De Off*. 2.50, and on Antonius' defence in the same case *De Or*. 2.188, 194) must have been very well prepared (cf. *diligentia*) since Aquilius was felt by Antonius to risk condemnation. Here and in *Brutus* Cicero puts Fufius somewhat above Pomponius, though both seem to have been hostile to the aristocratic group around Crassus, and both are seen in 3.50 as Roman counterparts of Thersites, vulgar and disordered speakers. Throughout this discussion Crassus will keep his audience's interest by referring to their own experience or the examples of their contemporaries.

casting light upon it. They drown their own arguments: *ipsi sibi obstrepere videantur* (3.51).

## The First Challenge to the Greek Philosophical Adversaries of Rhetoric

When Crassus moves on he speaks apologetically of the next phase of his presentation as *aliquanto odiosiora*, more troublesome, not like the tedium of discussing the elementary virtues, but because it will intensify his demands upon the audience. His argument will be demanding because:

the two other virtues are grand and complex and many-sided (*variae*) and weighty, embracing all that is admirable in talent and praiseworthy in eloquence . . . (53) The speaker whom men hold in awe, whom they gaze on in wonder as he speaks, who makes them cry out, and treat him almost as a god among men, speaks with variety and lucidity, with fluency and brilliance of thought and language, achieving a kind of rhythm and verse in their speech—what I am calling speaking *ornate*. And those who actually guide their speech according to the dignity of the situation and personalities, deserve praise for the kind of distinction I would call fitting and appropriate (*aptum et congruens*).   (3.52–3)

Again Crassus reminds his audience that this ideal is hard to realize, citing Antonius' earlier regret (in 1.94) that he had never heard a truly eloquent man. Now he makes his central claim: that eloquence, as so defined and reiterated in 3.55, is a major virtue. But, as Socrates demonstrated to Gorgias,[21] the combination of knowledge and persuasive power without morality is ruinous, so Crassus is quick to add that unless this power (*haec vis* . . . cf. *quo maior est vis*) is combined with honesty and good judgement (*probitate . . . summaque prudentia*), bestowing fluency of speech (*dicendi copiam*) on men without these virtues would not make them into orators, but would be giving a sword to madmen (3.55).

I have provided a virtual translation of this last sentence, because I differ from Leeman–Pinskter–Wisse's subtle interpretation of how Cicero is manipulating Crassus' argument. It is certainly true that stipulating the need for honesty and prudence to be added to eloquence contradicts the freshly made claims that it is a virtue,

---

[21] *Gorgias* 456c6–457c3; see Ch. 3 above.

especially if Cicero has borrowed from the Stoics the concept of every virtue containing all others, or being a different aspect of the same excellence. It is also natural to read 'this power' in 3.55 as having 'eloquence' as its antecedent. But in the key sentence of this controversial argument, when Crassus raises the issue of teaching those without honesty or prudence (morality or judgement), he speaks, not about teaching eloquence, but of a more limited instruction in verbal fluency. Teaching fluency to bad or foolish men is like arming madmen, or, more likely, political radicals as Cicero judged them.[22]

Crassus is leaping across a chasm here, and Cicero knows it: that is why the important moral caveat is slipped in obliquely in 3.55 and never developed or repeated. We might argue that Aristotle, too, does not feel it necessary in his *Rhetoric* to stress that the speaker must be both moral and wise: the point is made once, at the beginning of *Rhet.* 2.1, introducing the form of proof imparted by the orator's ethos: the audience must believe in his wisdom (*phronesis = prudentia*) and his virtue (*arete = probitas*).[23]

Crassus is almost visibly hasty in moving on from this moot point, acting as if he were repeating (*hanc, inquam*!) what he is actually redefining; eloquence is now 'this method of thinking and uttering and power of speech' (*hanc cogitandi pronuntiandique rationem vimque dicendi*) which the ancients called wisdom (*sapientia*) practised by Greek statesmen like Lycurgus, and old Romans like Fabricius, the common art taught in Homeric times, of doing right and speaking well (57, *doctrina eadem et recte faciendi et bene dicendi magistra*).

From now on Crassus will treat eloquence as this double skill of thought and speech, which the early Greeks called wisdom—but *sapientia* is not just *sophia*, it is also the Latin equivalent of the love of wisdom, it is philosophy itself. There follows a more sophisticated version of the Greek cultural history Cicero first offered at the beginning of *De Inventione*. In early Greece there were wise

---

[22] See Leeman–Pinkster–Wisse, iv, D1, *Der Ideale Redner*, 198–201 and 207–8, on the terms of the key sentence. They are surely right that just as *consilia* and *prudentia* evoke deliberative oratory, so *furentes* may refer primarily to literal madmen, but evokes *seditiosi*, as in 2.91, *ille qui ... amissa voce furit in re publica*, or 2.124, *hominem seditiosum furiosumque*.

[23] *Rhet.* 2.1, 1378ᵃ8. Aristotle also mentions *eunoia* (the whole phrase is beautifully translated by Rhys Roberts as 'good sense, good moral character and goodwill'). But goodwill is hardly necessary if the speaker is both virtuous and wise.

lawgivers such as Lycurgus, Pittacus, and Solon, but also a different kind of wise men, who abandoned governing the community for a life spent in intellectual discovery, and then were seduced by its charms into carrying their investigations too far. Instead of the old learning by which Achilles' teacher Phoenix taught him to be both a doer of deeds and a speaker of words, these intellectuals behaved like men on a lifelong holiday, devoting themselves to geometry and music and poetry or inventing dialectic, so that they frittered away their lives in arts that were invented to train young minds to virtue and culture—*in his artibus quae repertae sunt ut puerorum mentes ad humanitatem fingerentur atque virtutem* (3.58).

As he reaches the fifth century, Crassus presents a shift in the cultural pursuits of the Greeks, or rather the Athenians. Now he sees two groups who still combine the arts of action and of speech in the single form of wisdom: practising statesmen like Themistocles, Pericles, and Theramenes, and teachers of political skills, like Gorgias, Thrasymachus, and Isocrates.[24] But there was a schism of intellectuals alienated by the treachery of political life, who decided on principle to hold aloof from politics and repudiate rhetoric—*hanc dicendi exercitationem*. Their leader was Socrates, whom Crassus then describes tendentiously, giving less weight to his intellectual than to his rhetorical talents, offsetting *prudentia* and *acumen* with qualities of style like *venustas*, *subtilitas, eloquentia, varietas*, and *copia*. It was Socrates who in his dialogues appropriated for philosophy the name which had once designated the indivisible knowledge of how to think wisely and speak *ornate*.

The modern reader jibs: we can understand speaking well as speaking wisely and requiring wisdom, but speaking *ornate*? Despite the carefully prepared persuasive definition which Cicero has put into Crassus' mouth, it is difficult to believe he would have persuaded Roman readers that this was wisdom. And we need to recognize that these tendentious claims are Cicero's own: it is most unlikely that Crassus had sufficient interest in or grasp of Greek intellectual history to have formed such views.

But Cicero could also put his finger on the weaknesses of the philosophers. The only evidence for Socrates' thought and

---

[24] The lists are interesting; Theramenes seems to have earned his place by his moderate conservatism, which would appeal to Romans, but Thrasymachus can only be explained if he was, as his fragments may suggest, a much less amoral figure than the antagonist of Plato's *Republic*.

dialogues, after all, came from the writings of Plato and other less influential followers, and Cicero, through Crassus, blames this mediation of Socrates' spoken words, not only for the subsequent schism between the heart and the tongue, but for the scattered broadcasting of the Platonic dialogues which led different men to read different meanings into these texts (3.61, applying to Plato's written texts his own criticism of writing down serious argument).[25] As a result Socrates' succession is presented as a fragmentation of quarrelling households, all claiming to be the true Socratics. In a concise outline of the philosophical succession Cicero traces the separation of the Peripatetics under Aristotle from the Academy under Xenocrates, the development of Cynics and Stoics from Antisthenes, and the Cyrenaeics and Epicureans from Aristippus. To heighten the effect of schism, before continuing with the evolution of the four stable philosophical schools, he lists four other short-lived sects, then picks off the main schools as targets, taking the weakest—from Cicero's activist political point of view—first. The Epicureans advise abstention from public life, so they can be dismissed as irrelevant but harmless; the activist Stoics are disqualified from addressing any kind of public gathering by their contempt for morally imperfect humanity, their austere and unattractive stylistic ideals, and their quixotic and unworldly code of morality.[26] Yet with both schools Crassus admits he is not willing to consider the truth of their claims in view of their political ineffectiveness.

With the Academics too there was a further schism to explain. Crassus notes that while Speusippus and Xenocrates and Polemo and Crantor largely agreed in doctrine with Aristotle, Arcesilaus[27]

---

[25] Compare with *quod ex illius variis et diversis et in omnem partem diffusis disputationibus alius aliud apprehenderat* the argument of Thamus in *Phaedrus* 275c–e. But these criticisms apply particularly to Plato's Socratic dialogues, which often carry an argument far from its starting place, and withhold any positive conclusion.

[26] Cicero's criticism of Stoic speaking includes rejection of their dialectic as thorny and self-defeating (*De Or.* 2.157, cf. *De Fin.* 3.3, 4.6 and 7), and their expository style as undernourished (cf. *Brutus* 114 on Rutilius' *orationes ieiunae*, and Stoic oratory as dry and unfitted to win popular appeal: *orationis genus . . . exile nec satis populari adsensioni accommodatum*). Worse still, their moral absolutism was inadmissible in the forum or senate house (*De Fin.* 4.21). Cicero avoids discussing the truth value of Stoic teachings (3.64, *non quaero quae sit philosophia verissima*, cf. 66 *vere an secus*) since their oratory simply fails to persuade.

[27] For Arcesilaus of Pitane, founder of the Middle Academy, see Diog. Laertius 4.28–45.

derived from the diversity (even discrepancies?) of the Platonic dialogues a new scepticism towards the evidence of the senses, and was first to abandon expounding his own opinions in favour of the negative technique of arguing against whatever another man would propose. Arcesilaus was followed as founder of the new Academy by Carneades, for whose swift and brilliant eloquence Crassus cites the witness of his older contemporaries, Scaevola and Metellus Numidicus.[28] Here Cicero passes over the scepticism of his own early teacher Philo of Larissa,[29] just as the dramatic date of the dialogue to 91 precludes mention of Philo's pupil Antiochus of Ascalon.

Instead Crassus returns cultural history to his hearers' Italian viewpoint by comparing the divergence of philosophy and oratory to the watershed of the Apennines from which Italy's great rivers flowed, with philosophy running eastwards away from Rome into the Ionian,[30] while oratory flowed west into Rome's Tuscan Sea. As he sees it, his auditors have a choice: to keep to the mechanical *status*[31] of court pleading, and exclude themselves from ranging all over the whole field (*ingenti . . . immensoque campo*, 70) in favour of dressage in a puny exercise ring: or to follow in the steps of Pericles or Demosthenes. But to emulate these men they must acquire either the skills of Carneades or the power of Aristotle.

Sections 72–3, like the Apennine analogy, bridge the transition from Greek to Roman cultural history, offering a parallel in Roman religion to Cicero's pattern of Greek fragmentation. Just as the Greeks combined knowledge of ethics and politics with speaking until the teaching of Socrates, after which experts in

[28] This is his father-in-law, present only for the first discussion of *De Oratore*. Leeman–Pinkster–Wisse understand Metellus here as Numidicus (Cos. 109) who would have been able to hear Carneades just before his death in 129/128.

[29] See W. Görler, 'Silencing the Troublemaker: *De Legibus* 1.39', in J. G. F. Powell (ed.), *Cicero the Philosopher* (Oxford, 1995), 83–113, on Cicero's fidelity to Philo's sceptical approach in this extended speech from 3.19–143. At 3.110 Crassus actually mentions as a recent innovation Philo's introduction to the Academy of rhetorical exercises on general questions (*theseis*).

[30] Cicero is probably referring to the Ionian rather than the Adriatic Sea: see Leeman–Pinkster–Wisse, iv. 257.

[31] In 3.70 Crassus slips in a reminder of the branches of *stasis*-theory reviewed by Antonius in 2.104–113. Either (1) we must deny the charge or, if that is not possible, (2) dispute the quality of the accused man's action, showing he acted either rightly, or through another's fault, or unwittingly or of necessity—or again (3) raise the issue of law: that his act should not be listed under that charge, or the procedure is improper.

philosophy and rhetoric each rejected the other discipline, renouncing their old unity (*pristina communione*), so the Roman pontifices under pressure of many public sacrifices abandoned the function of providing the sacred feast for which they had first been appointed. Here is a new version of the argument that the art of speaking had been necessary to the function of philosophers, and by wrongly casting it off, they had diminished their own value.

What follows between 3.74 and 89 is perhaps best seen as Cicero's nod to the biographical reality of Crassus' career. Crassus now admits that he is not preaching what he had practised: he had embarked on the forum early, without any philosophical education, and had learnt all he knew from Roman laws and customs. Instead, he is talking of an eloquence beyond his own achievement, which would include these central elements of Roman culture–customs, laws, and the constitution—along with the ethics and psychology of the Greeks. Yet despite his limited training Crassus claims he can hold his own against lifelong philosophers, such as his Epicurean friend Velleius, or Stoics like the two Balbi, and Vigellius, pupil of Panaetius.[32] Philosophy is different from other arts, and a clever man may defend a thesis simply on the basis of his own powers of argument: but if someone could actually argue both sides of the case like Aristotle, or refute any proposition like Arcesilaus and Carneades, that would be the real, perfect, and unique orator.

Catulus' compliments—themselves a form of thanks—lead Crassus to repeat his distinction between what he himself was able to achieve and the potential perfect speaker whom the dialogue set out to construct. But there is one more adjustment to make, between relying on appropriate early training and persisting as an adult. As actors must have some training in wrestling and dancing (83) so gentlemen whose real life is in the forum should have acquired their experience of fighting or singing (86, 87) as youths. The real politician cannot live like Tubero,[33] who spent his

---

[32] Cicero adopts Velleius and Q. Lucilius Balbus as proponents of the Epicurean and Stoic viewpoints in *De Natura Deorum* 1 and 2 (where Velleius cites L. Crassus as his friend in 1.58). Nothing is known about Vigellius (more likely Visellius), but his teacher Panaetius, the Stoic associate of Aemilianus, is introduced by Crassus in 1.45 and 75.

[33] Q. Aelius Tubero (cf. 2.341) is the Stoic whose austere puritanism cost him a political career according to *Brutus* 117. He was no orator, but his speeches against Ti. Gracchus and Gracchus' reply apparently still survived in 46. He was the

days and nights studying with a philosopher, but should use his skill in argument like Tubero's uncle Africanus, without noticeable effort. For Crassus it is as much a mark of immaturity to linger over philosophy as over ball games or even dice (88).

## The Aesthetics of Style and the Ideals of Theophrastus

It is time to link Crassus' arguments against embracing the current practice of philosophy to the new approach hinted at in his introduction (3.25–37). How does this polemical survey relate to the aesthetics of personal idiom, or to the rhetorical virtues of ornament and appropriateness solemnly announced in 3.52, the complex, powerful, and weighty techniques (*reliquae [partes] magnae, implicatae, variae, graves*), which Crassus has still to explain? His answer is that these virtues use richness and variety of content to embellish and adorn speech (compare *instructa*, 91, leading to *instrumentum* and *apparatus*, 92, equivalent of Greek *kataskeue*) and make it pleasing so that it flows into the sense of the audience.[34] This is what Innes helpfully describes as 'affective audience-oriented prose'.

This content, as Crassus has emphasized, is not the routine toolkit of the rhetorician, but sumptuous furnishings. It is an easy task (93) to choose and arrange and shape one's phrases following rhetorical prescriptions, but beyond that there is a vast forest[35] of material that the Greek instructors of rhetoric at Rome did not control. Because they gave instruction in dealing with the

grandson of Aemilius Paullus hence, as in book 2, 'Africanus' means Scipio Aemilianus, the younger Africanus, last mentioned in 3.28.

[34] *De Or.* 3.91, *quam maxime in sensus eorum qui audiunt influat*, revives the focus on hearing which temporarily lapsed after 32; cf. also 97, *quam maxime teneat eos qui audiant*, and 100 *non aurium solum sed animi iudicio*. Coincidence of language in this section (91–103) with the Theophrastean aesthetic at *Orator* 79, *ornatum illud, suave et adfluens*, supports the argument that Cicero is here building on Theophrastus. But as Innes shows ('Theophrastus', 251–6) the meaning of *suave et adfluens* in *Orator* 79 is much disputed. She takes the participle *affluens* in the sense of *OLD* 5, abundant, rich, and equates it with Greek *perittos*. I would suggest rather that we return to the verb *adfluere* (*OLD* 1b) as a synonym of *influere*, and that Cicero is describing in *Orator* the same power of appeal as in *De Or.* 3.91. Generally Cicero requires an ablative when he describes something as *affluens* in the sense of abundant: cf. *De Or.* 3.57 *ingeniis uberrimis affluentes*.

[35] *Silva* (Greek *hyle*) is repeated at 103 before the classification of philosophical *theses* and again near the end of that list in 118.

particular, instead of extracting categories and applying forms of argumentation, their students seemed to forget whatever they learnt, and the new schools of Latin rhetoricians started up, against which Crassus and his fellow censor issued an edict of condemnation. This edict may in fact have been politically motivated and designed to prevent outsiders from acquiring the persuasive powers of rhetoric. But in Cicero's version its purpose (discussed above in Chs. 2 and 4) was intellectual, not political, nor hostile to teaching in Latin as such: what was needed was the genuine education or culture which the *Latini . . . magistri* lacked.

What, then, are these furnishings that form the real ornament of speech? As we have come to expect, the answer is given on several levels:

(96) First of all, speech receives ornament from its own idiom and colour and vital juices (*quasi colore et suco suo*). Being weighty, pleasant, learned, gentlemanly, provoking admiration, being refined and having as much feeling and emotion as is needed, is not a matter of separate limbs or joints: these beauties are seen in the whole body. If it is to be sprinkled with flowers of language and thought, they should not be spread evenly through the speech, but set apart so that they are like decorations and brilliants distributed as ornament. (97) An idiom must be chosen that holds fast the listeners, which does not simply appeal to them, (*delectet*) but appeals without surfeit . . . [36]

So the first aspect of ornament in speech springs from its own nature: it has its own complexion and vitality. The image is of a healthy body, as is made explicit in the second statement.[37] And Cicero is using other images that occur only rarely in his rhetorical criticism: thus *color*, though quite common in *De Oratore*, is not found without a context to indicate the field of the metaphor: in 3.98 literal colour is cited as a parallel for the tone of language and

---

[36] *Ornatur igitur oratio genere primum et quasi colore quodam et suco suo. Nam ut gravis, ut suavis, ut erudita sit, ut liberalis ut admirabilis, ut polita, ut sensus, ut doloris habeat quantum opus sit, non est* singulorum articulorum; in toto spectantur haec corpore. *Ut porro conspersa sit quasi verborum sententiorumque floribus, id non debet esse fusum aequabiliter per omnem orationem, sed ita distinctum ut sint quasi in ornatu disposita quaedam insignia et lumina.* (97) *genus igitur dicendi est eligendum quod maxime teneat eos qui audiant, et quod non solum delectet, sed etiam sine satietate delectet.*

[37] For speech as a body, cf. Plato, *Phaedrus* 264c and in the Roman tradition *Rhet. Her.* 4.58, *hic locus . . . tamquam sanguis perfusus est per totum corpus orationis*, with discussion in Fantham, *Comparative Studies in Republican Latin Imagery* (Toronto, 1972), 164–70.

at 3.100 Crassus evokes *quamvis claris coloribus picta vel poesis vel oratio*. Later at 3.199, *si habitum orationis et quasi colorem requiritis*, *color* (complexion) is combined with *habitus* (physique) and developed first with epithets and phrases denoting physique (*tenuis, non sine nervis ac viribus*) then with an elaboration[38] on *color*: *quidam venustatis non fuco illitus sed sanguine diffusus color*. In 3.217 the *colores* of an actor's vocal tone are derived from the painter with whom he is compared.[39] The next metaphorical term, *sucus*, literally 'sap' might suggest a plant rather than animal body, but as in the phrase *sucus et sanguis*, its most common reference is to the body. In *De Oratore* it occurs only here and in Antonius' report on the stylistic effect of imitation; first (2.88) to describe the vitality of a youthful speaker (*non potest in eo sucus esse diuturnus*), then noting that Pericles' successors (2.93) maintained his *sucus*, but they were of a slightly richer thread (*uberiore filo*). Metaphors from the fineness of thread or woven cloth are extremely common in Callimachean and post-Callimachean criticism of poetry, and this use of *filum* may draw on a different field of imagery from *sucus*, but it is more ambiguous when it returns at the end of Crassus' account of diffused style: *haec formanda filo ipso et genere orationis* (3.103).[40]

Crassus continues to express inherent ornament through the epithets of the next sentence, all of which are naturally applied to persons as moral or intellectual qualities: in this kind of inherent ornament speech is compared with, and may reflect, either physique or personality. It is only when Crassus moves on to applied adornment that he begins to caution against excess: the flowery

---

[38] For imagery comparing style to physique cf. *Rhet. Her.* 4.10.15, *aut corporis bonam habitudinem tumor imitatur . . .* (16) *dissolutum, quod est sine nervis et articulis . . . aridum et exsangue genus orationis quod non alienum est exile nominari*.

[39] Cf. *Rhet. Her.* 4.11.16 *exornationes . . . si rarae disponentur, distinctam sicuti coloribus . . . reddunt orationem*; *Brutus* 162, 171; Sen. Rhet. *Contr. 10*, pr. 5, *color orationis antiquae*: Quint. 6.3.107, *colore dicendi*, and Fantham, *Comparative Studies*, 168–9. Natural complexion (*color*) is implicitly contrasted with cosmetics in the comparison between speech and a well-groomed woman at *Orator* 79: *fucata vero medicamenta candoris et ruboris omnia repellentur*.

[40] Maurizio Bettini, *Le Orecchie di Hermes* (Turin, 2000), 351–2, has recently illustrated how *filum* may be a technical term of draughtsmanship ('this must be shaped by the very line and character of the speech') referring to a person's lineaments or profile (cf. *TLL* vi 1. 763.66–7). Given the tendency of rhetoric to use analogies from human physique, it is perhaps more likely that Cicero's *filum* draws on this usage than on weaving.

figures of speech and thought must be put in relief, like decorations, by a plain background. This is explained not only by the next section (97) with its insistence on a style that charms without cloying, but by the following chain of analogies (98–101) from the effect of physical appeal to other senses. What most stimulates the senses at first sight (*specie prima*) quickly disgusts them, like the too-brilliant prettiness and variety of colours in the new paintings, or wanton trills and indulgent crooning instead of the fixed and plain notes[41] of older singing. In the scent of unguents, in touch and even in taste, we are quick to reject what is particularly sweet. The lesson is that just as disgust comes close on the greatest pleasures, speech that is too patterned and ornate, without pause or restriction or variation, cannot remain a source of appeal for long. In fact the orator or poet does not simply glut the senses, but offends the judgement as well as the ears. It is not surprising that Crassus also draws on the more obvious metaphors of curls and cosmetics: the flaws of such artificial speech are seen as *infucata* (cf. *fuco inlitus color*, 3.199), smeared on like greasepaint.

But although the imagery is relatively new in Cicero's own text, its presence in a similar context in the *Rhetorica ad Herennium*, associated with warnings against the surfeit generated by over-ornamentation, suggests that it may have become traditional in the lost generations between Aristotle and our Roman sources.[42] For all this synaesthetic language and concern with luxurious perfumes is certainly Greek in origin, going beyond the relatively plain recommendations of Aristotle, but perhaps coming naturally to a polymath like Theophrastus who wrote on both oils and perfumes.[43] But going a step further, the severity of these warnings would seem a reaction to some fashionable weakness in contemporary rhetoric—contemporary, that is, with Theophrastus, since

---

[41] Compare *De Leg.* 2.38 referring explicitly to Plato (*Republic* 4.424d) for the unmanly softness of recent vocal music which corrupts the young (*in animos teneros influere* = 3.91, *in auribus influat*). The melismata and chromaticism of current song was always unfavourably contrasted by Greek philosophers with the simplicity and severity of the old songs. In *De Leg.* 2.39 as in *De Or.* 3.98, what is praised is the *severitas iucunda* of the old poets.

[42] Cf. *Rhet. Her.* 4.11.16, quoted n. 38 above, and 4.23.32 cautioning against the appearance of artifice produced by overusing the Gorgianic symmetrical figures, *quae lepida et concinna* [cf. *De Or.* 3.101] *cito satietate adficiunt aurium sensum fastidiosissimum.*

[43] According to Diogenes Laertius 5.44 Theophrastus also wrote treatises on smell and on wine and oil (presumably concerned with bouquet and taste).

aestheticism was not yet a Roman problem in 91 BC. Cicero uses somewhat similar language to characterize Demetrius of Phaleron, and even Isocrates,[44] but he or Theophrastus may be reacting to fourth-century epideictic oratory which is now lost.

## The Second Challenge to the Greek Philosophical Tradition

Crassus takes a little time to turn away from aesthetics to the realities of the forum: a speech should not win applause as smart and charming (*belle, festive*) but offset its brilliance with shadow (101) as a great actor will vary his vocal tone: the speaker should be ornate and appealing, but with an appeal that is firm and restrained, not sweet and sickly. Dismissing the rhetors' recommendations, he recalls his earlier stress on the material (*silva*, 3.93) which gives the speech substance, as it is given shape by the texture of the speech, made brilliant with language and varied in the formulation of its thought. If *varietas* is deprecated when it evokes *varius*, multicoloured and gaudy display like mixed flowers (98), it is desired when Crassus has in mind *variare*, variation or change (*sine varietate*, 100: cf. *variatur* 102, *varianda* 103). I have argued elsewhere that what Crassus deprecates is sheer *poikilia*, but what he praises is the art of *metabole*.[45]

   Included among the *silva rerum* in 103 are two other kinds of ornament springing from thought rather than diction, which are seen as generalization in the mode of philosophy. The art of building up a theme (*amplificatio*) is recommended as a powerful means of winning belief, but is most important in arousing the hearers' emotions: it will be most effective if it is applied to the epideictic mode of praising and blaming treated by Antonius at the end of the last discussion (2.342–9). This links *amplificatio* to the most common use of *loci communes*, in denouncing or protesting against vicious offenders. But Roman orators were equally familiar with the other kinds of commonplace invoked in seeking

---

[44] Demetrius was *non tam armis institutus quam palaestra*: *Itaque delectabat magis Athenienses quam inflammabat*, *Brutus* 37: cf. *Att.* 2.1 2 (SB 21.2) where Cicero boasts he has tricked out his memoir with the unguents of Isocrates (*totum Isocrati myrothecium*) and paintpots of Aristotle (*etiam Aristotelia pigmenta*).

[45] See Fantham, '*Varietas* and *Satietas*', 277–8, and J. G. A. Ros, *Die Metabole als Stilprinzip des Thukydides* (Nijmegen, 1938).

pity or pardon in the *peroratio* (these are listed among the recom-
mendations of *De Inventione*). What Crassus adds is the philosoph-
ical exercise of arguing both sides of general issues which he had
praised as the contribution of the Peripatetics and New Academy,
but insists that orators too must command. It is the fault of tres-
passing philosophers that orators must now turn to them for in-
struction in general argumentation.

This is Cicero's cue for outlining the so-called *quaestio infinita* or
*thesis*,[46] which he first divides into questions of knowledge (*cog-
noscendi*) and questions of action or decision-making (*agendi*).
Thus (112) the question whether virtue is to be pursued for its
own sake or for its results is theoretical, whereas it is practical or
deliberative to ask 'should a wise man take part in politics?'
Crassus distinguishes three forms of theoretical question which
correspond fairly closely to the three Hermagorean issues (Greek
*staseis*, Latin *status*) of the law-courts: questions of fact, 'does
wisdom exist in men?' or definition, 'what is it?' or of implication
'is it ever the act of a good man to lie?' But there are subdivisions:
four kinds of question of fact, about the nature of an entity, its
origin, its cause or motive, and its potential end: 'can virtue perish
in a man, or be changed into vice?' Three comparable subcategories
of definition involve division into parts or enumeration or listing
signs and qualities. Even the last type of question, dealing with
implication or consequences, is subdivided into questions about a
single entity ('is glory to be desired?') or comparing two terms to
determine how they are different, or which of two choices is super-
ior, as in whether wise men are guided by the opinion of the best
citizens or of the crowd (3.117). This last example suggests some
sterility in the procedure, probably arising from the use of these
*theses* as training exercises. But it also points to the origin of such
famous Ciceronian developments as his totalizing definition of true
optimates in the *Pro Sestio*. The thesis does not really argue equally
acceptable alternatives, but might exercise the young orator in
thinking out every possible argument in support of his case.

Crassus is much more summary in describing the second, delib-
erative, type of *thesis*: either the question is one of duty and right
behaviour, which, as he notes, can draw on the whole raw material

---

[46] For the treatment of *amplificatio* and *loci communes* together, compare *Orator*
125 on *partes duae . . . alteram in universi generis quaestione, quam . . . Graeci appellant
thesin, alteram in augendis amplificandisque rebus, quae ab eisdem auxesis est nominata.*

(*silva*) on virtues and vices. Or the theme aims to arouse or calm men's minds, and includes exhortation, rebuke, consolation, and provoking pity, urging them to every emotion or occasionally (but clearly this is seen as less frequent) soothing them. With these last examples we are only a step away from the regular arousal of emotion for or against the specific defendant or his adversary, and Crassus registers this by noting the fundamental similarity between his own account of these questions and the Aristotelian forms of argument (the *koinoi topoi* of 2.163–73) listed by Antonius in the previous discussion: argument that extends from specific cases to wider general issues expands the listeners' judgement and contributes to the richness of a speech, to *ornate loqui*.

Thus the richest speeches are those which escape the confines of the private dispute and turn to explaining the universal issues involved so that the audience may judge the accused or settle the lawsuit on the basis of understanding the generic nature of the subject. This opens up the whole range and power of speaking, which cannot be taught by a few textbooks (*paucis libellis*), as writers of manuals on rhetoric seem to think. Here we approach Crassus' turning point: Recognition that the rhetoricians' manuals (*paucorum libellorum*), like their own discussion so far, both on the morning's walk (book 2) and while seated this afternoon (book 3 up to this point), do not go deep enough, leads to the cautionary contrast between mere sharpening of the tongue and filling the intellect with the abundance and variety of great topics. The antithesis of *lingua* and *pectus* (121) recalls Crassus' accusation against Socrates of causing the separation of tongue and intellect: *discidium linguae et cordis* (61).

With the allusion to the earlier phases of the dialogue in 121 begins a sequence of markers that indicate the return of Crassus' arguments to their point of departure. And the closest incidence of these markers is of *pauci libelli* from 3.121 to 122, but this time the few textbooks are those which philosophers have condescended to assign to their narrow definition of rhetoric: *aliquid de oratoris arte paucis praecipiunt libellis eosque rhetoricos inscribunt*.

Instead rhetoric can lay claim to all political theory (*civilis scientia*) if only the student will seek out the wellsprings[47] and draw his

---

[47] In 123 the metaphor of forms of argument as sources (*fontes*) from which the orator drinks (*hauriet*), together with the verb *monstratas* (124) recall Antonius' metaphors in 2.163.

argument from them. Once he can wander at will in this vast field (and here *immenso campo* recalls 3.70) he can control his material on any topic with an easy supply of the *apparatus* (cf. 3.92) and adornment of speaking. For abundance of material produces abundance of words, and given a noble topic the natural glory of the subject will infuse the language (reversing the imagery of 3.25 in which content depended on language for its lustre): all this provided that the student has received a good elementary training, and has enthusiasm and talent and practice on these general topics: if he has chosen good writers and orators to imitate, he will have no need of rhetoric teachers to show him how to arrange and display his words.

Crassus' grand conclusion is reinforced first by a substantial speech of Catulus the Philhellene (3.126–31) on the good old teachers, sophists like Hippias, who boasted every cultural art and most crafts (it is symbolic perhaps that Hippias could both speak with fluency—clothing his words—and clothe his body). He adds Prodicus, Thrasymachus (echoing his earlier list in 59), Protagoras, and Gorgias (cf. 59, but also 1.47 and 1.103). Gorgias appears here for the last time in *De Oratore*, and is vindicated as the advocate of rhetoric whom Socrates either did not defeat, or defeated only through his own command of rhetoric. The abundance of all these great teachers of rhetoric (*dicendi doctores*) in one generation leads Catulus to reproach the Greeks for neglecting their patrimony, despite their love of intellectual activities and leisure from serious political life, whereas Crassus has found time from helping Rome govern the world to master an alien culture as well as the knowledge needed by a statesman who derives his power in his community from judgement and eloquence: *qui consilio et oratione in civitate valeat*.

But although Cicero is retracing the steps of his argument, he also reformulates the issue to include a new criticism of what has happened to education (3.132–41). The early Greek experts in medicine and music like Hippocrates, Damon, and Aristoxenos, and the early geometers, did not specialize and limit their knowledge: nor did the early Roman jurisconsults and experts in sacred law. Cato the censor knew civil law and practised oratory; he excelled in addressing the assembly, as a senator statesman, and as a general, investigating, learning, and recording every kind of

knowledge then available in Rome.[48] With such heroic ancestors Crassus contrasts the present generation, too ambitious and eager for office to give time to their education or develop more than one skill such as tactics or jurisprudence or their idea of eloquence, which is little more than shouting.

Crassus returns to the Greeks to honour the Seven Sages of the early city-states (cf. 3.56, Lycurgi, Pittaci, Solones) who were all (except Thales) active political leaders, singling out Pisistratus for his devotion to ordering the texts of Homer as a mark of his literary expertise. Pericles too (3.59) was not trained by some wretched *declamator*[49] to speak against the waterclock, but by the philosopher Anaxagoras. The new list of public men recalls but does not repeat 3.56, and even extends to politicians of doubtful merit like Critias and Alcibiades because of their association with Plato, a connection made explicit for Dion of Syracuse. Other fourth-century statesmen and commanders are listed in association with Lysias and Xenophon, and Archytas, but Cicero makes the focus of Crassus' list Isocrates, cited this time for his statesman pupil Timotheus: Isocrates had already been cited as a teacher in 2.57 and 3.37, but as a teacher first of historical, then of oratorical style. And rhetoric converted a great philosopher, since envy of Isocrates' school prompted Aristotle to change the whole shape of his training (*disciplina*) and enrich and make brilliant the whole theory of eloquence and combine the study of the world with exercise in speaking: *ornavit et illustravit doctrinam omnem, rerumque cognitionem cum orationis exercitatione coniunxit* (3.141). When the philosopher became also a great teacher of rhetoric Philip of Macedon

[48] Apart from Cato's many political speeches, which Cicero came to know better by the time of his *Brutus*, he is known to have written seven books of *Origines*, on the history of Rome and Italy, a manual on agriculture, and an encyclopedia which included medical advice. Opinions differ on how well he knew Greek, but Cicero is probably fair in admitting that Cato did not know *hanc politissimam doctrinam adventiciam et transmarinam*, if by this he means Greek philosophy and rhetorical theory.

[49] *Declamator* is not yet associated with the technique of declamation, but is negatively coloured by the crudity of *latrare*. Compare 1.73, *in hoc declamatorio opere*, 'in this craft of sounding off'. As Bonner (*Roman Declamation*, 20–2) shows, its earliest uses in e.g. *Rhet. Her.* 3.20) are for exercising the voice, or preliminary rehearsal. This technical reference is quite distinct from Cicero's pejorative use of *clamare, clamator*, for the hack orator at 1.202, 2.86 (both noun and verb) and 3.81, *clamatores molesti*.

hired Aristotle to supply his son with instruction in doing and speaking (*agendi praecepta et eloquendi*) like a latter-day Achilles. With 141 Crassus has returned his readers to the Homeric ideal of 3.57, when the same men taught how to live and speak and Phoenix served as companion to Achilles, making him a speaker of words and doer of deeds: *oratorem verborum actoremque rerum* (*Iliad* 9.443).

Crassus triumphantly rounds off his reinterpretation of Greek cultural history with the figure of the philosophic orator, or orator-philosopher: but he awards the prize to the educated orator. If his opponents admit this man is also a philosopher, the original quarrel of book 1[50] will have melted away, but if they dispute it they must admit that the perfect orator will possess philosophic knowledge, whereas a philosopher may lack eloquence.

Besides the careful retracing of steps in his narrative back to the original idealized universal culture of archaic Greece, Cicero has used several other devices to maintain interest and attention to this complex and somewhat elusive argument. The other conversationalists are kept in the picture by Crassus' compliments (3.29–34) and personal references (to Sulpicius' mistaken imitation of Fufius, compensated by favourable comment on Sulpicius' other qualities, 46–7), and by Catulus' courtesies at 82 and 126–31. But Antonius receives special treatment, not just as a courtesy but in a series of purposeful cross-references. He speaks only at 3.51–2 and again at the end of the next section in 189, but Crassus acknowledges his views at 47 (recalling 2.89 on his advice to Sulpicius), at 54 (1.94 where Antonius quoted his own pamphlet on the lack of really eloquent men), at 70 (referring to Antonius' account of *stasis* theory in 2.104–13 and of Aristotle's *koinoi topoi* 2.163–73), at 75, with a gratuitous allusion to Antonius on Metrodorus at 2.360, again at 78, on the Aristotelian *loci* and at 104, recalling Antonius' account of epideictic (2.342–9). Finally in 119 Crassus takes pains to explain the essential identity of his breakdown of the categories of *thesis* with Antonius' catalogue of the Aristotelian *koinoi topoi*, and reminds the young Sulpicius and Cotta of the exercise in arguing both sides which Antonius had urged upon them at 2.133.

---

[50] 1.47, *verbi controversia iamdiu torquet Graeculos homines*, and 1.108. But there the question is strictly whether rhetoric can call itself an art.

Another running element in this lecture has been Crassus' battle on two fronts, against the pedantries of the standard rhetoric teachers and manuals and against the philosophers, themselves divided between those who scorned rhetoric and those who trespassed upon its proper intellectual domain. In a sense the whole narrative is about measuring teachers by their own capacities and the liberal nature of their syllabus. How could the (mostly Greek) teachers available in Rome—men of the wrong race, without the political insights of the governing elite—convey the understanding necessary for effective rhetoric? Phoenix, the sophists, Isocrates, Plato, and ultimately Aristotle are all invoked as *sapientiae doctores* (the right kind of teacher) against the *rhetorum praecepta* (54), *isti scriptores artis* (69), *hos omnes qui artes rhetoricas exponunt perridiculos* (75), the legendary Corax and Tisias (81), in *istis libris et cum istis hominibus* (85), and the recent poor alternatives of Greek instructors without background knowledge and Latin instructors fostering idle and shameless students. Only at 121–2 do rhetoricians and philosophers converge in their culpable relegation of the vast world of eloquence to a few textbooks, the twice repeated *pauci libelli*.

The philosophers are much tougher adversaries, and against them Crassus (or Cicero) wields a powerful armoury of apparently original metaphors, metaphors which can however conceal subtle or elusive misrepresentations. In the first part of his narrative the analogy of the Apennine watershed reasserts the Italic point of view from which Crassus' Greek cultural history is being appraised, and introduces the spatial element which will become territorial in later imagery. But perhaps the dominant analogy from 3.57 to 3.88 is that between philosophical discussion and play, the occupations either of *otium* for statesmen, or of *negotium* for lower classes like entertainers—gladiators, actors, and singers. When Crassus turns back from his aesthetic analysis of ornament to renew the quarrel with the philosophers a new image dominates, taken from Roman private law, the *possessio* (108, 110, 122) of orator-statesmen which philosophers have invaded.[51]

---

[51] It may surprise that *possessio*, derived from a verb denoting occupation rather than ownership, is by the time of the Verrines (e.g. 3.70, *bona possessiones fortunasque aratorum*) the regular term for legally owned estate: cf. Caesar, *BC* 1.86.3, *domicilium aut possessiones*); in theory, however, Roman law recognized estate occupied without dispute for two years as the property of the occupant. On that basis it would seem that Crassus is too late in raising the claims of oratory on this intellectual property.

But after attacking the philosophers as usurpers of rhetorical material Crassus actually reproaches them for carelessness in losing their own inheritance. In 108 the orators have been driven from their property onto a small and disputed plot of land (*litigioso praediolo*) and have to borrow from the philosophers who have broken into their inheritance. And yet the same philosophers (109) have shrunk from concern with the whole of civil society to take their name from a small area in the city, like the Academy or the Peripatos. Nor have they presented their claims on the material of rhetoric in the praetor's court or before an arbiter (*in iure aut in iudicio*) or even imposed them by force, but simply made a symbolic challenge by breaking off a branch (*surculo defringendo*) of the disputed *silva*. While no legal text recognizes this gesture, we can guess that by this minimal act the claimant of woodland would invite his rival to establish his own possession by taking him to court and suing him for damages.

When Crassus recalls this image at the end of his enumeration of *theses* he chooses language that will send his readers back to our friends' first conversation, and to Scaevola's original challenge to the orator. Immediately after Crassus' opening encomium Scaevola had warned him that he would be sued by the philosophical schools and other disciplines too, for rashly occupying other men's property: *quod tam temere in alienas possessiones inruisses* (1.43). Here, having, as he hoped, reached the conclusion of his argument, Cicero through Crassus retaliates: 'this entire property of wisdom and learning is our estate' (*nostra est, inquam, omnis ista prudentiae doctrinaeque possessio*, 122), and these philosophers have exploited their leisure to seize the estate as neglected and therefore abandoned (*caducam et vacuam*) by its orator-owners.

This time it is Catulus who raises the contradictory reproach against the Greek philosophical tradition that (131) they have wasted their education, their leisure, and enthusiasm for culture, by adding nothing to their rhetorical skills and failing to preserve what they inherited. What they inherited (*relictum quidem et traditum*) is the tradition of public oratory seen in its ideal form, as political wisdom and service to the state.

Can the opposing reproaches be reconciled? I think so. The philosophers who abandoned public service also prevented teachers of rhetoric from training their pupils in the kind of general

argumentation which was needed for public speaking. So they first appropriated the property of the rhetoricians, then wasted this skill on theoretical debating. And since the philosophers are in fact Greeks they can be reproached with the condition of their society, which lost the capacity for self-government in factional and local strife, leaving to the Romans the originally Greek art of *civilis scientia* (123), expanded as *eius, qui consilio et oratione in civitate valeat scientia* (131). On the Roman statesman falls the multiple burden of mastering a foreign education, while guiding the empire—now seen as the world—and fulfilling his private obligations in the world's most bustling community.

Antonius is silent, but Catulus' lavish praise is backed by that of Cotta (3.144–5), whose enthusiasm reflects how far Crassus has been carried beyond routine precepts, and Caesar Strabo (3.146) Only Sulpicius is discontented, and we shall see in the next chapter how Crassus satisfies him and even introduces a new source of ornament which Sulpicius had not considered.

But as readers we may well be troubled by this too easy appropriation of philosophical argument on behalf of rhetoric. Will the orator, even one with a philosophical education, practise the objective love of truth and search for knowledge Plato has taught us to ask from philosophy? Can we test this out by imagining how our educated orator will speak? Clearly if he needs to use argument to prove the innocence of a client or the utility to society of a proposed measure, his arguments may be true—or part of the truth—but his motivation will be wrong; this man is simply a more moral version of the hired gun. If on the other hand he is arguing a general *thesis* concerning either action (morality) or knowledge (physics, metaphysics) and he proceeds to use logically correct argument to elicit the implications of an unbiased definition, then he is surely observing the rules of objective discourse: he may of course do this simply as intellectual exercise, and we may again regret his motivation, but if he is trying to reach a non-misleading statement that can be used for further argument, this is surely all we ask from philosophy? Plato, or rather Socrates, has shown us repeatedly that most such definitions are inadequate and what matters most cannot be known—hence the development of Academic scepticism such as the teachings of Philo of Larissa, whom Cicero followed and Crassus seems to

echo here.[52] But is there not a compromise, such as Aristotle recognized, in which rhetoric can argue correctly about the merely probable particular events of real life, moving from probable and plausible premises to equally probable conclusions? If then the prudent and moral speaker of 3.55 is trained in logic and educated in ethics as well as rhetoric, surely this *doctus orator* can meet the requirements of Crassus' summing up at 3.142–3? If the modern reader remains unconvinced, it is I think for two reasons: the recognition that virtually no argument in the public world (whether Cicero's world or modern public life) is disinterested and objective, and that the power of eloquence is only needed because there is something to disguise, so that audiences must be convinced of what cannot be proved.

---

[52] W. Görler, 'Silencing the Troublemaker: *De Legibus* 1.39,' in J. G. F. Powell (ed.), *Cicero the Philosopher* (Oxford, 1995), 91, 95, and 98–100, argues specifically for the Philonian scepticism of Crassus' great speech 3.19–143, which is characterized as 'something beyond down-to-earth reasoning and strict argumentation.' Görler suggests that its nature is confirmed by the respectful silence with which it is received, and Cotta's comment that Crassus has converted him to Academic scepticism: *me in Academiam totum compulisti* (3.145).

# *Res Pervolgatae*: Words and their Manipulation in Standard Rhetorical Theory

Omnis . . . oratio conficitur ex verbis, quorum primum nobis ratio simpliciter videnda est, deinde coniuncte. Nam est quidam ornatus orationis qui ex singulis verbis est, alius qui ex continuatis coniunctisque constat.   (3.149)

All discourse (speech) is made up of words, whose application we must first consider singly, then in combination. For there is one kind of ornament of discourse derived from single words, and a quite different kind composed of words in sequence and combination.

As I noted in the previous chapter, Crassus is openly reluctant to gratify Sulpicius with an account of formal rhetorical instruction on style, since so many rhetoricians had converted their teaching into manuals: there is some irony, surely in his descriptions of these men as *auctores et inventores . . . harum sane minutarum rerum* (3.149), mocking their proud claim to be 'originators' of what was in fact a mass of trivial detail. But the fourth book of the anonymous teacher of Herennius, on *elocutio*, confirms the author's pride in originating even such detail, and his near indifference to underlying principles. Why does Cicero let Crassus oblige Sulpicius, and why should Catulus and his friends, or any modern readers, pay any attention to these hackneyed[1] 'elements of style'?

---

[1]  Cf. *pervolgatas res,* 3.149. This is the fourth time that Cicero has used the intensive *pervolgatus* (*vo-* is the preferred but not consistent spelling in Kumaniecki's text) for the common and hackneyed rules (*ista omnium communia et contrita praecepta,* 1.137) of standard rhetorical instruction: cf. Antonius at 2.75 and 2.358 *in re nota et pervolgata*, and Crassus at 3.51, *de pervulgatis* (sic) *nova quaedam est oratio*

First a quick survey of the terrain: Crassus gives more or less equal time to the artistic use of individual words (149–70) and the more complex arrangement of these words to construct harmonious sentences (171–99). Then with deliberate compression he fast-forwards through a list, first of the figures of thought available to the speaker (202–5), then of figures of language (206–8). Theophrastus' fourth virtue, appropriateness, has not yet been discussed, but since this is so specific to individual situations, Crassus covers its contingencies in three paragraphs (210–12). There remain only *memoria* and *actio*, the fourth and fifth phases (*partes*, 1.142) needed to convert composition into performance by enclosing the speech in memory and finally delivering it in proper style (*post memoria saepire; ad extremum agere cum dignitate* 1.142).

But although he gives equal time to artistic use of individual words and to their skilful combination and ordering within the sentence, we will see that Crassus attaches more importance to some aspects of verbal style than to others. As we would expect from the previous discussion, he explains his recommendations in terms of both the aesthetic and the intellectual response of the audience: to this he adds the argument that beauty in any structure of words, as in a physical structure, is generated from functionality, as Art collaborates with Nature.[2] We have already met these approaches in 3.21–6 and 3.91–103. Here too Crassus' theoretical framework can be related to the teachings on style found in Aristotle, *Rhetoric* 3, and to what survives of the refinements made by his successor Theophrastus.

One fundamental axiom of public oratory was accommodation to the attitudes and capacities of the public itself. In his personal preface Cicero had proclaimed it the worst of faults in an orator to be remote from the common style of speaking and the established tradition of general opinion: *a vulgari genere orationis atque a consuetudine communis sensus abhorrere* (1.12). This is one reason why Crassus insists early in book 1 that he will not speak like a teacher or craftsman, but just like any Roman gentleman, with an average

---

*tua*. The adjective *vulgaris* tends to be neutral: 'commonly agreed' as in 1.12, *vitium vel maximum sit a vulgari genere orationis atque a consuetudine communis sensus abhorrere*; 1.108, *volgarem popularemque sensum*.

[2] I have capitalized Nature here and throughout this chapter, because Cicero follows the Stoic practice of assigning to the force of nature a providential purpose, and so personifies *Natura*. See especially 3.178–80, discussed below.

understanding based on experience in the forum: *ne ut quidam magister atque artifex, sed ut unus e togatorum numero atque ex forensi usu homo mediocris* (1.111). This sense of oratory as governed by general norms is similarly reflected in Varro's discussion of the aspiring language reformers in *De Lingua Latina* 9. He argues that, if word forms have become corrupt and inconsistent, the orator does not have the same right to substitute normalized forms as the poet. While the public as a whole should follow consistency in all its word formations, and correct itself if it has malformed them, 'the public speaker should not use forms which he cannot utter without causing offence: I am not master of popular usage, but the public is master of mine', *cum orator non debeat in omnibus [sc. verbis analogia] uti, quod sine offensione non potest facere . . .* (6) *ego populi consuetudinis non sum ut dominus, at ille meae est* (Varro, *LL* 9.5–6).

Cicero has shown through Crassus' own report in *De Or.* 3.33 (cf. 3.92) and his personal reminiscences in *Brutus* (143) that his teacher was rather exquisite in his diction, so we may suspect that the element of restraint in Crassus' precepts here makes him appear more cautious than he actually was. The stylistic recommendations of this book need not be false to his actual practice, but we cannot help believing that Crassus is serving here as Cicero's mouthpiece for principles he would not have known, but which Cicero himself had absorbed from reading Aristotle and Theophrastus—or at least their followers. 'Crassus' had stressed in 3.39 that one should not use words no longer in current usage, but select from the most current usage whichever words were most refined (*usitatis ita poterit uti lectissimis ut utatur*, recalling his own selective practice as a student, 1.155). This he elaborates when discussing *Latinitas:* we should use current words that properly denote what we mean and want to make clear (*verbis usitatis ac proprie demonstrantibus ea quae significari ac declarari*[3] *volemus*, 3.49). Latin did not yet have exact equivalents of the technical

---

[3] The verb *declarare* is particularly common (15 times) in *De Oratore* because of Cicero's concern with revealing significance or underlying principles; actual verbal declaration is secondary to metaphorical expression; cf. 1.18, *histrionum levis ars et scaena declarat*, 1.73, 1.193; with 3.49 compare 3.155, *quod enim declarari vix verbo proprio potest, id translato cum est dictum . . .* and communication through *actio* in 3.215, *animi permotio, quae maxime aut declaranda aut imitanda est arte*, 220, *non demonstratione sed significatione declarans*, and 222, *oculos autem natura nobis, ut equo leoni saetas, caudam, auris ad motus animorum declarandos dedit.*

terms we find in Aristotle's discussion of language, but when Crassus approaches the *ornatus* consisting of words, he begins with ornament from individual words: *ornatus orationis, qui ex singulis verbis est*.

He will set out the categories of vocabulary twice, in 149–50 and again in 152. The main categories are (1) the basic and regular terms *quae propria sunt et certa quasi vocabula rerum*, (2) words transferred metaphorically into another field of reference: *quae transferuntur et quasi alieno in loco conlocantur*, and (3) word-coinages: *iis quae novamus et facimus ipsi*. A fourth category of rarities, *inusitata*, is added in 152, and illustrated by archaic and poetical forms which should be used most sparingly. These correspond to four categories which Aristotle had already distinguished in his *Poetics*[4] before he came to assemble the remarks we have in book 3 of the *Rhetoric*: first the basic or proper words, *kuria*[5] or *oikeia*, corresponding to Crassus' *propria*; next *xena*, and the related term *xenika*,[6] corresponding to *aliena*, which Crassus introduces through the context in 149 before using it directly in 159 (*omnes translatis et alienis magis delectantur verbis*). Latin prose was less tolerant of archaisms (Aristotle's *glottai*) and coinages (Aristotle's *pepoiemenoi*) than Greek, and Cicero gives only a few sentences to illustrating some acceptable archaic forms found in prose contemporary with Crassus, and two kinds of coinage both found in earlier tragedy and epic: compound forms and original formations from existing stems (3.153–4).

Let us measure Cicero's originality of approach here by comparison with the slightly earlier text of the *Ad Herennium*. In book

---

[4] Cicero did not have access to the Poetics, but clearly by the time of De Oratore had either direct or indirect access to the Rhetoric (see the discussion in Ch. 7). In *Rhetoric* 3 Aristotle refers to his own account of different kinds of nouns in the *Poetics*, introducing *glottai, dipla onomata, pepoiemena* (3.2, 1404$^b$26–34): he adds that, unlike *to kurion kai oikeion kai metaphora*, the compound and archaic terms should be used seldom and in few contexts (3.2, 1404$^b$27–31). At 3.2, 1405$^a$3–6) Aristotle again refers to the *Poetics* (ch. 21), this time for the classification of types of metaphor.

[5] Cicero does not attempt to provide an equivalent for *kuria*, with its notion of dominating or controlling: he prefers the implications of *oikeios*, which suggests the word as proper or belonging to the concept. Horace however will offer dominantia for *kuria* in his discussion at *Ars Poetica* 234.

[6] Aristotle does not use the derivative *xenikon* for the metaphorical terms themselves, but in the sense of exotic in 3.2.6 (1404$^b$36) and 3.2.8 (1405$^a$8) where he claims metaphor is 'clear, pleasant and exotic.'

4, after the author's general comments on the role of ornament in style and the three samples of grand, middle, and plain style, with their perverted forms, he turns first to figures of language (*Rhet. Her.* 4.18.25–29.41). It must be noted, however, that these include a number of figures that would more properly be seen as figures of thought, since they are types of speech act, such as claiming to be uncertain which alternative course of action to follow, or eliminating explanations of an action until only the preferred interpretation is left.

At 4.31.42, however, the author introduces the canonical ten tropes, *decem exornationes verborum*, which he sees as sharing the quality of departing from the ordinary meaning of words (*ut ab usitata verborum potestate recedatur*). He proceeds from the most crude of these, onomatopoeia (*nominatio*) to antonomasia (*pronominatio*, which substitutes an external name to a person or thing such as 'the grandsons of Africanus'), metonymy (*denominatio* (43), substituting an associated idea for the original), and periphrasis (*circumitio*, as in 'the foresight of Scipio crushed the power of Carthage'). Then, inexplicably, the author lists a figure of word order, hyperbaton (44), the artificial postponement or separation of related words. Since Quintilian comments on hyperbaton as an intrusion among the tropes,[7] its inclusion clearly goes back to a respected source, but it is not in any sense an adaptation or substitution of a word, which is what we understand by a trope. He moves on to hyperbole (*superlatio*) then to synecdoche (*intellectio*: 'the hand that rocks the cradle') which should more properly have been considered with metonymy, then catachresis (*abusio*, 45): the necessary metaphor like the foot of a mountain or table) and metaphor itself (*translatio*). Only allegory (*permutatio*, 46, a statement constructed from a series of substituted metaphorical terms) is left to follow metaphor.

However, among the author's unsystematic listing there are still observations in common with Cicero's more orderly account. Essentially in *De Oratore* Crassus treats the transferring of a term into an alien context as the primary aspect of trope: there is no list

---

[7] Quintilian discusses tropes at length in 8.6, but notes in 9.1.3 that 'even distinguished authorities include periphrasis, hyperbaton and onomatopoeia among the tropes'. His own list in 9.1.5 differs from that of *Rhet. Her.* chiefly in adding *metaleipsis* (cf. 8.6.37).

of tropes, but metaphor[8] is seen as originating in the linguistic
necessity of catachresis ('borrowing', cf. *mutuationes*, 3.156) but
maturing and flourishing in the pleasure earned from optional and
imaginative use, like clothing invented to keep out the cold, but
refined for the sake of its beauty and appeal (3.155–6). Crassus
includes without explicit naming both metonymy (*immutatio*,
3.167) and synecdoche (3.168), and concludes by describing but
not naming *illa . . . non verbi sed orationis, quae ex pluribus ut exposui
translationibus conexa sunt*, known elsewhere as *allegoria*. Recapitu-
lating Crassus includes the various offshoots of metaphor in a new
term: *immutata* [*sc. verba*] (3.169). In the much briefer account of
metaphor and its by-forms at *Orator* 92–6 Cicero will introduce
them as *tralata aut immutata . . . in quibus pro verbo proprio subicitur
aliud quod idem significat*. This later account moves from catachre-
sis to metaphor, cites metonymy by its Greek name (but also by the
rhetoricians' name *hypallage*) and ends with allegory, again identi-
fied by its Greek name.

Obviously I have passed over about ten paragraphs from Cras-
sus' discussion of metaphor, which arise out of the development of
metaphor as an ornament (3.156–66)[9] Here Cicero, like Aristotle
before him, tries to explain the pleasure given by metaphor and its
power over the audience. When a word is slipped into a foreign
context (*alieno loco*, 157), if it fits and is understood, it gives pleas-
ure. And this in turn Cicero relates to the motives of the speaker; to
make things clearer or more brilliant,[10] for brevity (3.158) and to
test and exercise the intellect of the hearer (*ingeni specimen*, 3.160),
enabling the listener to depart from the context without getting
lost. To all this he adds the sensory appeal of well-calculated
images, especially to sight, the keenest of our senses. Metaphor
then will be a variety of *enargeia* or *evidentia* that imprints an idea
through its visualization. Most of these motives are condensed into

---

[8] See now D. M. Innes on classical theory of metaphor in G. R. Boys-Stone
(ed.), *Metaphor, Allegory and the Classical Tradition: Ancient Thought and Modern
Revisions* (New York, 2003), 8, 'its use does not change the essential meaning of a
passage, but substitutes one term for another to set up a comparison of two things
which are perceived as alike'.

[9] On this section, and the relationship between Cicero's views on metaphor and
those of Aristotle see A. Leeman, *Orationis Ratio* (Leiden, 1966), 125–33, and my
discussion in *Comparative Studies in Republican Latin Imagery* (Toronto, 1972),
app. 2, 176–80.

[10] *Omnia fere, quo essent clariora, translatis per similitudinem verbis dicta sunt*,
3.157: this is simply a gloss on the preceding declarari (155, cf. n. 1 above.).

the briefer comments of Herennius' teacher, who sees metaphor as useful for putting the event before the eyes (*rei ante oculos ponendae causa*, 4.34.45) or achieving brevity, or serving as euphemism, or amplifying or diminishing the object compared.[11]

But Cicero's Crassus gives as much attention to warning against misuse of metaphor as to outlining its powers. His illustrated cautions in 3.163–6 correspond in a general way to Aristotle's cautions in *Rhet*. 3.3 where he considers ill-conceived metaphors as one of the four kinds of frigidity. And here we should introduce a further quasi-technical term based on the idea of proportion (*to analogon, Rhet*. 3.2.9, 1405$^a$12). The criterion of proportion is used by Aristotle in discussing both metaphor and other stylistic features, and he begins his treatment of impropriety by warning that metaphors out of proportion will be improper or unbecoming (*aprepes*). The equivalent in Crassus' account is found in the form of warning against far-fetched images (163) and images disproportionate to their context (164) such as comparing an actual storm to a drunken party, or vice versa. But the Latin orator also counsels against a cruder form of impropriety, in the use of shameful images like dung and castration (164). One aspect of Aristotle's discussion of metaphor passed over in *De Oratore* may not have been known to Cicero. For in the *Rhetoric* Aristotle refers back to the *Poetics* for the four relationships between metaphor and context, of which he prefers metaphors based on a proportional relation (*kat' analogian*, 3.10.7, 1411$^a$1), but in his account of *kat'analogian* the metaphor is not judged in terms of scale, but of the parallelism between, say the wine-cup of Dionysus and the sword of Ares, which justifies calling the wine-cup the sword of Dionysus.

Instead Crassus moves to the more general caution against bold or harsh metaphors, which should be softened by an extenuating phrase like 'so to speak.' Longinus attributes this idea to both Aristotle and Theophrastus, and it is clearly connected with the recommendation that a metaphor should be *pudens*, treated as traditional in *Rhet. Her*. 4.34.45 (*translationem pudentem dicunt esse oportere*) and attributed to Theophrastus in a late letter from Cicero to his literary secretary Tiro.[12]

---

[11] Cf. Innes, 'Metaphor' 16.

[12] *Fam*. 16.27.1 recommends *quomodo Theophrasto placet, verecunda tralatio*; cf. *Orator* 81 in a Theophrastean context: *nec in faciendis verbis erit audax et in transferendis verecundus*.

Recent work on recovering the stylistic theories of Theophrastus[13] has revealed an aesthetic already latent in Aristotle's *Rhetoric*, but perhaps closer than Aristotle to what Cicero presents here. The most aesthetically significant ideas in Crassus' long discussion all seem to have precise counterparts, if not also models, in Theophrastus. Thus on word selection, Theophrastus defines a beautiful word as 'pleasant in regard to hearing or in regard to sight or that which suggests in thought great value' (fr. 687 from Demetrius, *On Style* 173, tr. Rhys Roberts). And in a particularly subtle comment on audience psychology, he praises narrative that leaves the listener to infer significant details.

> one ought to . . . leave some things for the listener too to perceive and infer for himself; for when he perceives what you have left out, he is not only a listener but becomes your witness and in addition more favourably disposed. For he thinks himself perceptive because you have provided him with the occasion of perception.   (fr. 696, from Demetrius, *On Style* 222)

This is the same principle on which Aristotle and Crassus have explained the persuasiveness of metaphor as an *ingeni specimen* in *De Or.* 3.160. Passing on beyond the individual word, as Crassus does in *De Or.* 3.170, Theophrastus is quoted as saying words are beautiful 'which when combined . . . will result in beautiful and magnificent phrasing' (fr. 688, from Dion. Halic. *On Composition* 16). Like Crassus he believes that 'grandeur and dignity and eminence of style' arise from three things: 'the selection of words and the harmonious arrangement arising out of them and the figures in which they are set' (fr. 691, from Dion. Halic. *On Isocrates* 3).

What Crassus does not, indeed cannot, discuss in this context is the special thematic use of metaphor practised by Cicero in *De Oratore* itself.[14] While it was a regular practice of Greek pedagogical authors after Socrates to teach through metaphor and analogy, for example, from material to intellectual *technai*, I do not know of anyone who adapted the pedagogical analogies to serve as leitmotifs as Cicero has done in this work, where he uses them as a kind of implicit backward and forward reference: two examples

---

[13] For the testimonia and fragments see *Theophrastus of Eresus: Sources*, ed. W. W. Fortenbaugh *et al.*, ii (Leiden, 1992) 529–49: Doreen Innes, who reviews and criticizes the theory of tropes in *De Oratore in Rhetorica*, 6 (1988), 307–26, has also published a most helpful discussion, 'Theophrastus on the Theory of Style'.

[14] This is discussed in Fantham, *Comparative Studies*, ch. 6, 'Imagery in the Literary Dialogue; Cicero's *De Oratore*', 139–53.

of such imagery will suffice here; the theme of intellectual trespass and litigation between philosophy and rhetoric raised by Mucius Scaevola in 1.41, and reversed by Crassus at 3.108 and 122, and the representation of Aristotle's argumentative *topoi* as *loci* or *sedes argumentorum* in 2.162 and 173.

Once Crassus has said his piece on the selection of words he turns to their combination. The subject of word arrangement so as to avoid either hiatus between final and opening vowels or harsh coincidence (*asper . . . concursus*) between multiple consonants, is not one that lends itself to conversational analysis, and Crassus subordinates it to the larger purpose of making speech continuous, smooth, and evenly flowing (*cohaerentem . . . levem . . . aequabiliter fluentem*, 3.172). Prose rhythm, on the other hand (*modus et forma verborum*, 173, cf. 171) was a subject dear to Cicero's heart, to which he returned at length in *Orator*. Aristotle gives only a short chapter to this topic in *Rhet*. 3.8, where he seems to take the principle of prose rhythm as established, and passes on quickly to focus on the different types of sentence structure (3.9).

From him or his predecessors come two principles: that prose should be free from the regular repeated patterns of metre (which would be distracting and suggest artifice) but controlled by rhythm; however, rhythms which carry associations, (like dactylic rhythm with the grandeur of epic, or iambic with everyday conversation, and trochaic with dancing) should be avoided. Instead the speaker should seek out other unobtrusive rhythms like the paean. Aristotle praises this extended foot, combining three short syllables with either an opening or closing long syllable, and makes a positive recommendation that speakers should favour the form with the opening long at the beginning of sentences, but those which end in a long syllable to round off the sentence at its close. A third, more general principle, is that it should be rhythm, rather than the limits of human breathing power, or written punctuation, that marks the end of a complex periodic sentence (*Rhet*. 3.8, 1408[b]–1409[a]).

Crassus himself moves from arrangement for harmony of sound to the secondary purpose of arrangement—for rhythmic effect.[15]

---

[15] His language in 3.173, *hanc diligentiam subsequitur*, seems to imply that concern for avoidance of hiatus, etc. should precede concern for rhythm. Note that in *De Or*. 3.170–1, *conlocatio* (cf. 1.151) seems to stand in for *compositio* (used in this sense by Antonius at 2.58) the more familiar rhetorical equivalent of Greek *synthesis*.

This is probably the most technical phase of his entire discussion, and readers of this book may wish to skip the next few pages in favour of less specialized aspects of composition.

The point of departure for Crassus' survey echoes the closing statement of Aristotle, *Rhet.* 3.8. The experts of the past (*veteres illi* may well denote Aristotle and Theophrastus, as we shall see) wanted the sentence endings to be marked not by our running out of breath, nor the marks of scribes, but by a sort of rhythm (*numeros quosdam*). Here, in 173 as in 171, *modum quendam formamque verborum*, the word *modus* has to do double duty, both as a measure/limit and as a pattern of words.[16] In *De Oratore* the practice of rhythmic prose is attributed to Isocrates and based on the report of his pupil Naucrates. This is corrected in *Orator* 174–5 where Cicero has clearly consulted a greater number of Greek authorities. The corrected version notes that, although Isocrates was most successful in using rhythm, it was Thrasymachus who invented it, and Gorgias too favoured the symmetrical and antithetical sentences which naturally produced this kind of rhythm (*quae sua sponte, etiam si id non agas, cadunt plerumque numerose*). Besides citing Aristotle and Theophrastus, *Orator* refers to Theodectes and Ephorus (198, 214) for their recommendations on rhythm.

Cicero develops his own recommendations at a later phase of this discussion: at *De Or.* 3.174, however, he is content to stress the purpose of this Greek practice, and its adaptation from poetry 'to overcome the surfeit of (our) ears by the delight in the rhythm of the words and the pattern of sounds', *ut et verborum numero et vocum modo delectatione vincerent aurium satietatem.* This section returns to the continuing stress on the response of listeners which I noted in two earlier passages of book 3.[17] The idea of rhythm was

---

[16] Cf. 173, *modus etiam et forma verborum*, expanded in the next sentence as *verborum et sententiarum modo*. See May–Wisse ad loc. and n. 232, although they read these sentences as confusing the form of rhythm of the clausula with recommendations about the length of sentences: *numerus*, as they say, is ambiguous, but so is *modus*, which precedes and follows it in 172–3.

[17] Cf. 3.25–32 and 91–103. For convenience I list here all the references to aural reaction and judgement in this discussion: 173, 174, the invention of prose rhythm; 177, rhythm as a means of achieving variety, 181, the aural pleasure given by rhythm, 183, the measurement of the paean as clausula by the ears, 185, their control of the voice used, 191, aural expectation of a given length in the period, 195, the judgement of a listening crowd, and 198, what the ears require for satisfaction. There is only one explicit reference in the account of *actio*, at 3.225, as Crassus approaches its end.

probably new for Cicero's readers, and more difficult to communicate because of the discrepancy between the flexible rhythms of Greek with its many short syllables, and the heavier rhythms of Latin, in which the finite verbs which typically ended a sentence consisted chiefly of long syllables. Hence perhaps the insistence (3.176) that rhythmic composition is 'less difficult than it is necessary, for nothing is so delicate and flexible as speech, which follows wherever you lead it'. As before, he points out that the words used in oratory are not different from those of conversation and daily use (*sermo . . . usum cotidianum*). The orator is like a sculptor who works with a wax model: he can use words to achieve diction at every level from solemnity to simplicity and his style will go through changes to delight the listeners' ears and heart:

When we have picked up ordinary words from the common stock, we can mould them like soft wax to our will, being at times weighty, at times plain, and at times keeping a middle level. Our style will follow the thoughts we have begun and change and transform to produce every kind of pleasure to the ears and emotion in the heart.

Ea nos cum iacentia sustulimus e medio, sicut mollisssimam ceram ad nostrum arbitrium formamus et fingimus. Itaque tum graves sumus, tum subtiles, tum medium quiddam tenemus; sic institutam nostram sententiam sequitur orationis genus, idque ad omnem aurium voluptatem et animorum motum mutatur et vertitur.   (3.177)

The source of this exciting power lies in Nature, which has contrived that whatever conduces to survival also has beauty, in both its manifestations, as grandeur (*dignitas*) and as charm (*venustas*).[18] Adopting Stoic ideas, Crassus illustrates the beauty of functionality first from the cosmos itself and the geocentric system of sun, moon, and planets, then from human and animal bodies, of which every part is perfect by design, not by chance (*arte, non casu*, 179).[19] Trees with their complex branching structure make a fine

[18] We should note that *venustas*, introduced at 3.30 as a quality of the theatre (*scaenica . . . venustate*) becomes in 3.178 an ideal in nature and then in art (cf. *venustas* and *venustus* in 179, 180, and 199 and the comparison of the figures to the poses and gestures of combat at 200 and 206). *Venustas* has much in common with *lepos,* and probably stands for the Greek *charis* rather than e.g. *to kalon,* corresponding to a number of the surviving recommendations of Theophrastus.

[19] This phrase might seem to beg the question, since the argument assumes a binary opposition of Nature and Art: but in Stoic thought Nature and the divine mind were identical, and divine purpose practised its own form of art (for the transition from Nature to Art compare 3.26 above). The same Stoic notion of

transition to the perfection of human constructions, transferring to the products of crafts the same convergence of utility and beauty found in Nature. Crassus' last examples are the construction of ships (surely a Greek preoccupation), and temples, culminating in the Roman shrine of Capitoline Jupiter. In speech too, as he said in 177, appeal and charm come from the utility of its necessary parts, and the mere need to breathe produces rounded sentence units that delight the listener. Nature and Art, however, diverge on both the best length and the best rounding of the sentence, leading to specific avoidance in oratory of everyday spoken rhythms like the iamb or trochee, or markedly poetic rhythms like the dactyl or anapaest.

From 181 Cicero uses Crassus to explain the role of rhythm in the periodic sentence, but we should pause to comment on this concept. Young writers nowadays are discouraged from constructing sentences with more than one subordinate clause; indeed the very software I am forced to use will panic and underline any of my old-fashioned sentences which use multiple subordination. But Greek, and then Latin, artistic prose developed a complex form of discourse that could encompass a whole argument or narrative phase within a sentence that marked its own closure by the ordering of dominant verbs deferred until the complex was ready for completion.[20] (This sentence is an example.) Aristotle in *Rhet*.3.9 distinguishes this organized complex sentence from the strung-along sequence of parallel main clauses, and calls it a *periodos*. Crassus has already used phrases like *continuata verba* and the noun *continuatio* (3.49 and 166, 167) for the sentence, but now, when an artistically constructed sentence is the issue, he introduces three more terms: *complexio*, found only in 182, highlights the extent of speech the human lungs can encompass; more technical are *quasi verborum ambitus* (186), borrowed from its social use to serve as a calque for *periodos*, and *circuitus* (191, 198). In glossing the Greek term Crassus has adapted another Latin

the world and its human and animal creation as products of teleological design is used in *De Natura Deorum* 2.49–56. Cicero may be dependent on Poseidonius here.

[20] On the intellectual breakthrough in the Roman expression of thought in the periodic sentence see E. Rawson, 'The Introduction of Logical Organization in Roman Prose Literature', *PBSR* 46 (1978), 12–34 = *Roman Culture and Society* (Oxford, 1991), 326–51, and Claudia Moatti, *La Raison de Rome* (Paris, 1997), ch. 6, pp. 215–54.

form, *conversio*, used earlier in the dialogue to describe the rotation of the sky.[21]

Without going into detailed analysis of Crassus' evaluation of the different rhythms for marking the closure of the periodic sentence, we should note that he refers specifically to Aristotle as his source in 182, and Theophrastus in 184 in support of the notion that 'refined and composed speech ought not to be rigorous but relaxed in its rhythm'. It would probably be fair to attribute to Theophrastus the following recommendation of the richer and freer dithyrambic[22] rhythms (185), and the discussion, marked off by 187, 'these views are uttered by those philosophers whom you most respect, Catulus'. Certainly when Crassus explains the period, he goes beyond Aristotle's comments in *Rhet*. 3.9 with a fundamental interpretation of rhythm: 'there is no rhythm in a sequence of words (*in continuatione*) but the marking and beat of even, or often varied, intervals creates rhythm'. This account of rhythm and of the rhythmic marking of clauses and phrases,[23] with the need for later units to be equal or greater than those preceding them, is explicitly referred to Catulus' Peripatetic authorities. Crassus has reached a natural pause, and there is an exchange of courtesies (187–9), in which Antonius breaks his silence to recant his claim never to have heard an *eloquens*, before Crassus resumes the last instalment of his account.

This is overtly protreptic, concerned to convince his young hearers that practice in writing can help them achieve a fluent period, neatly articulated in its clauses and enriched with final paeans, dactyls, or cretics.[24] Crassus argues that in prose few

[21] Cicero's astronomy is geocentric, as I noted in 178–9. In 191 and 198 he uses a close parallel to *ambitus*: *circuitus . . . circuitum et quasi orbem verborum*. In the extended discussion of *Orator* he uses *ambitus* (168) and the related *conclusio sententiarum* (169) as well as *cursus verborum*, but actually glosses *periodos* at 204 not only by *ambitus* and *circuitus* but with *comprehensio, continuatio,* and *circumscriptio*.

[22] This seems to be simply a different way of recommending the paean. Aristotle does not mention dithyrambs in his discussion of different feet in *Rhet*. 3.8, but cites dithyrambic preludes as parallel for the non-periodic sentence at the beginning of 3.9.

[23] The main units of a sentence are *membra,* their subdivisions *articula*, corresponding to Greek *kola and kommata*.

[24] This recommendation seems to diverge from the earlier discussion, but the dactyl was recommended in 183, at least for the opening of sentences, and the cretic ($-\smile-$) explained as equivalent to the paean ($\smile\smile\smile-$, or $-\smile\smile\smile$). Latin, in fact, produces far more cretic than paeanic word-forms, and most clausulae in Cicero's speeches rely on cretics combined with trochees.

people notice the beginnings of sentences, whereas if the endings
are not varied, they will be rejected either by conscious judgement
or the inevitable surfeit of the ears (*aurium satietate*, 192). Once he
has argued from poetic improvisation to the relative ease of com-
posing rhythmic prose, Crassus has one more point to make: the
universality of audience response. Rhythm is not a refinement only
noticed by connoisseurs, but judging words and rhythms and
pitch[25] is instinctive, and Nature has ensured that no one is com-
pletely tone-deaf. An untrained theatre crowd will protest if an
actor mispronounces or sings off-pitch. This too lies in Nature
(196), in the natural basis of Art, which will be wasted unless it
naturally moves and delights an audience. And for this Crassus
argues from the natural affinity of voices and rhythm to our minds
(*cognatum mentibus*, 'innate' 197, is another derivative from *Nat-
ura*). Luckily the crowd is kinder to orators than to poets. Cicero
returns to the notion of popular judgement of oratory at greater
length in the *Brutus*, where he concludes that the crowd reacts
instantly to a blundering orator, but will admire a merely good
speaker until he is eclipsed by a consummate artist.[26]

Now he is ready to move on to his final topic—the figures. The
transition comes through an element of rhetorical theory that
Cicero has left unmentioned until this late point in *De Oratore*,
the so-called three styles, mentioned incidentally in 177. Crassus is
moving back, away from ornament in individual words or word-
groups to the speech as a whole and its physique. The language is
highly metaphorical, and vivid:

But if you also want to know its physique and complexion, there is a style
full but also rounded, and a slender one with sinews and strength, and the
other one that shares in both natures and is praised for its moderation. In
all three styles there should be a beauty of colour not smeared on with
cosmetics but circulating through the bloodstream.

---

[25] In translating *voces* as pitch I am taking a risk; it also denotes what we call
notes, and the actor hissed by the crowd may be singing not off-pitch, but the wrong
note—if the audience knows the music. May–Wisse translate 'voices . . . out of tune'.
The problem of understanding different epithets applied to the human voice be-
comes acute in the section on *actio* from 213 onwards.

[26] For a comparative judgement of the two passages see Dirk Schenkeveldt,
'*Iudicia vulgi*: Cicero *De Oratore* 3.195 and *Brutus* 183ff', *Rhetorica*, 6 (1988),
291–306. Cicero illustrates the same popular reactions in his discussion of rhythm
at *Orator* 213–14, when the crowd in a popular assembly cried out in pleasure at the
younger Carbo's manipulation of commata and his final clausula *temeritas fili
comprobavit*.

Si habitum etiam orationis et quasi colorem aliquem requiritis, est et plena quaedam, sed tamen teres, et tenuis, non sine nervis ac viribus, et ea quae particeps utriusque generis quadam mediocritate laudatur. His tribus figuris insidere quidam venustatis non fuco inlitus sed sanguine diffusus debet color. (3.199)

This should be compared with the language used by the author of *Ad Herennium* to introduce the three styles in *Rhet. Her.* 4.8.11:

So there are three styles, which we call forms, which comprise any kind of speech that is not defective; we name one weighty, another middling, and the third slight. The weighty style is formed of the smoothed and enriched composition of weighty words. The middling style consists of a humbler but not utterly low or vulgar (*pervulgatissima*) standard of words. The slight style is simplified to the most commonly acceptable usage of pure speech.

sunt igitur tria genera, quae genera nos figuras appellamus, in quibus omnis oratio non vitiosa consumitur: unam gravem, alteram mediocrem, tertiam extenuatam vocamus. gravis est, quae constat ex verborum gravium levi et ornata constructione. mediocris est, quae constat ex humiliore neque tamen ex infuma et pervulgatissima verborum dignitate. adtenuata est, quae demissa est usque ad usitatissimam puri consuetudinem sermonis.

The author seems to be reporting existing 'styles' rather than recommending adherence to one of three different norms, and he follows his summary with more detailed descriptions and an approved sample of each style, each appropriate to its subject matter, judicial, deliberative, and narrative (4.8.12–10.14). No doubt his students were taught when and how to adopt each level of style, and perhaps also warned by the cautionary examples of inept attempts at each style which follow in 4.10.15–11.16. But while Cicero seems to acknowledge the three levels of style at this point in *De Oratore*, he prefers not to use this kind of template. Only in *Orator*, when he is answering Brutus' advocacy of the plain Attic style, does he give attention to the *nota ac formula* (cf. *figura* in *Rhet. Her.* 4.8.11) of each style. He begins with the plain orator (*quem solum quidem vocant Atticum. summissus est et humilis*, 76–90), then introduces the middling style in 91: 'there is another style, somewhat more sturdy than this humble one, and yet more modest and than the most powerful which will be discussed next', *uberius est aliud aliquantoque robustius quam hoc humile . . . summissius autem quam illud de quo iam dicetur amplissimum*. The third style of speech

(97) is full, abundant, weighty, and enriched (*amplus copiosus gravis ornatus*), and it is he who carries the most forcefulness. Cicero makes no bones that the grand orator must be able to rise gradually to his full powers, and vary them with simpler passages, but it is only this rich and full speaker who can handle all the various levels that are required in any speech (98–100).[27] Two appropriate elements for the so-called plain style, however, reflect features of eloquence prominent in *De Oratore*, metaphor (*Orator* 81–2), discussed in *De Or*. 3.163–70 and the use of wit and humour, to which Cicero devotes four sections (87–90; see Ch. 8 above).

The modern critic may wonder why Cicero has brought Crassus back to the macroscopic three levels of style between the microscopic treatment of shaping and giving rhythm to the period, and the final (*tum denique*, 200) detailed discussion of localized figures of language and thought. Because of the three-style presentation of the *Rhetorica ad Herennium*, and later analyses in terms of four styles by Demetrius, or seven *ideai* by Hermogenes, we are likely to overestimate the popularity of this theoretical approach. It may be more significant that the physiological language of this stylistic theory enables Crassus to revive a major element in his thinking from the imagery of 3.96, and so pass from this expression of style in terms of physique to images comparing figures of speech to the action and postures of the body in motion.

In Greek theory, notably in Isocrates, figures were seen as *schemata*, postures in wrestling.[28] Now, without alluding to the Greek image, Crassus substitutes a different kind of imagery taken from the body in armed combat. The links in thought seem to be first the analogy between speech and the human body, and secondly the preservation of *venustas,* in the motions of combat as in the manly body at rest. So Crassus introduces the idea of performing offensive and defensive moves in agonistic oratory with the same elegance (to gloss *venustas*) as in sword-fighting or wrestling.

---

[27] Cicero's concluding sentence (100) requires all three: 'that man is eloquent who can discuss humble matters plainly and lofty topics with weight and middling topics with moderation', *is est enim eloquens qui et humilia subtiliter et alta graviter et mediocria temperate potest dicere*. For the most detailed discussion of the system of clasification of styles (whether three or more) see F. Quadlbauer, 'Die genera dicendi bis Plinius der jungere', *Wiener Studien*, 71 (1958), 55–111.

[28] Cf. Isocr. *Antidosis* 183, and discussion in Fantham, *Comparative Studies*, 164 n. 26.

The dominant term, however, is not *fingere* or *figura*.[29] In *De Oratore* from 3.200, *formare, conformare*, and their derivatives cover first the orator himself, *conformandus verbis et sententiis,* then the modelling of language and thought in the figures. It is not enough to select one's vocabulary and produce a smooth and rhythmical sentence: the orator must adorn his speech with figures of language or thought. The former depend on the words themselves, which cannot be changed without damaging the figure: figures of thought, on the other hand, are independent of the vocabulary or its arrangement. Crassus takes these conceptual figures first.

His preliminary image of combat also refers this aspect of *elocutio* back to Antonius' discussion of tactics as a preliminary to *dispositio* in book 2. There Antonius compares his pretended concessions in argument to putting on a show in combat by feigning a retreat, *quandam in dicendo speciem et pompam et pugnae similem fugam* (2.294, cf. 2.303). Antonius also praises Philippus' analogies between opening a speech and beginning a fight by playing for appeal, while reserving one's energy for the real combat: *primas illas hastas ita iactare leniter ut et venustati vel maxime serviant et reliquis viribus suis consulant* (2.316). What he stresses is the contribution of his feints and tactics to appeal, rather than to forcefulness (*non vis potius quam delectatio*), and the various rhetorical moves which Crassus cites as *lumina . . . sententiarum* (201, cf. 206) have the same double effect on the audience.

Though some of the figures listed are more easily understood as types of argumentation or subspecies of the *stasis* of quality used in defending an action, all do something to vary the linear progress of narrative or argument. Crassus opens with ways of stressing a point by lingering over it in detail, or putting it boldly before the audience's imaginative vision, *sub aspectum paene subiectio*, one of the most powerful techniques known to rhetoricians as *enargeia, hypotyposis*, or *evidentia*. Other recommended techniques are the deliberate digression and return to the topic (which corresponds to a regular part of the speech in some rhetorician's teaching), and the *propositio,* providing an advance analysis of what one is about to

---

[29] Cicero uses *figura* in 3.199 for the general idiom, but he will not adopt either *forma* or *figura* for the Greek *schema* until *Orator*, where he glosses the Greek term with *quasi aliquos gestus orationis* (*Orator* 83), and *orationis formae* (181).

argue and marking it off from what has been said (which largely overlaps with *propositio* as the second formal part of the speech). Crassus also includes exaggeration or belittling of an act or issue, rhetorical questions, irony, the figure of hesitation between impossible alternatives (*dubitatio*), self-correction (*correctio*), and the pretence of consulting the jury (*communicatio*). The list is, perhaps deliberately, too long and miscellaneous for readers to follow.[30] Indeed some of the weaknesses mentioned below are best explained as a hint by Cicero himself that such lists are inadequate, and as a form of teasing by Crassus of the literal-minded Sulpicius. But the list becomes easier to follow as it closes. Crassus ends with a series of speech acts: scolding, promising, excusing oneself or begging for pardon, seeking to conciliate, or insulting, expressing a wish, or cursing.[31]

This catalogue is linked to the figures of language by a renewal of combat imagery, in which Crassus represents the language itself as weapons which are either brandished in attack (*comminatio et quasi petitio*) or handled for grace in display (*ad venustatem ipsa tractatio*, 206). Only at the beginning does Crassus point to the double potential of such figures as reduplication, polyptoton (different forms of the same word juxtaposed) anaphora and epiphora (opening or closing reiteration of a dominant word) for both force and charm. Among them he naturally includes the conspicuous Gorgianic word patterns of symmetrical clauses, ending in similar or rhyming inflections, but gives them no special attention.[32]

These and other figures, already dominating the account of *elocutio* in book 4 of *Ad Herennium,* would be the focus of many later rhetorical manuals. Quintilian prefers quoting the two lists from *De Oratore* in full (9.1.26–36) to criticizing Cicero's authority, but recognizes some of the difficulties in our text. He also

[30]  Besides a helpful analytical note ad loc. (287 n. 279)) May–Wisse have supplemented their translation with a detailed analysis, containing useful parallels from other rhetoricians in appendix B, 301–6.

[31]  Note that Cicero makes two significant changes in *Orator* 134–9: he puts the figures of speech before those of thought, and he expresses each of the figures as an action (we might say 'speech-act'). The list of figures of thought ends with an almost identical set of speech acts. Quintilian (9.3.90) interprets Cicero's omissions from *Orator* as implicit rejection of the omitted figures.

[32]  These are *parisosis*, *homoeoptoton* and *homoeoteleuton*: cf. *Orator* 135, and the fuller critical comment at *Orator* 38, that such forms were created for the pleasure of the ears and better suited to epideictic than judicial oratory.

mentions at least three discussions of figures subsequent to Cicero's treatments: those of Celsus and Visellius and the separate treatise of Rutilius Lupus compressing the four volumes of Cicero's contemporary Gorgias[33] into one of his own. In Crassus' list some terms, like *traiectio,* are used for two different figures of thought,[34] others such as *declinatio, digressio, dubitatio* and *correctio*, are listed as both figures of thought and of language.[35] Given Cicero's inventive powers, I would prefer to interpret these complications as a comment on the futility of such lists.

Certainly when Cotta thanks Crassus, he notes that Crassus has poured out his lists without explanation or examples, but Crassus' reply, distinguishing simple theory from the subtlety of practice, introduces a more important if elusive topic: the final long-postponed virtue of appropriateness or propriety. As Crassus warns his young listeners (209), the definition and theory of such figures is routine, but their application is challenging and extremely difficult. Now that he has pointed out the sources of every kind of ornament in formal speech, the group must set itself to consider what is appropriate, or most becoming, in a speech (3. 210–12).

Why does Cicero allow Crassus only a few hundred words on the all-important *aptum*? One reason is that considerations of propriety have been voiced throughout both Antonius' outline of *inventio* (especially in 2.290–309), and Crassus' many-sided treatment of *elocutio*. The other problem is that, like the Greek rhetoricians' concept of *kairos* ('the timely', what is needed at the given moment), a matter of presence of mind as much as decorum, what is *aptum* has to be felt and acted upon in each individual situation: it is in the application that the orator is tested. Thus one's style of speaking must be fitted to the seriousness of the charge, whether a capital criminal case or some private lawsuit: it must be adjusted to the context of political deliberation or encomia or trials or conversation. It must fit the audience (senate, assembly,

[33] This Gorgias taught Cicero's son at Athens in 46–45 BC, but his discipline was found unsatisfactory by Cicero himself.

[34] The second of these, *traiectio in alium* (204), 'transferring responsibility to another', is clearer than the first instance, but given that no earlier or indeed other use of *traiectio* is attested in rhetoric, one can only wonder at Cicero's uncharacteristic lack of vocabulary and clarity.

[35] This is noted by May–Wisse in their appendix, and commented on by Quintilian 9.3.88–9. As he observes, the speaker can express doubt or correct either a word or an idea.

or jurors), the speaker's own standing, and the general public circumstances of peace and leisure, or crisis and war. Once again the only general recommendation Crassus can give is to choose the level of style[36] appropriate to the business in hand. The orator is free to use the same ornaments with varying degrees of vehemence or moderation, but the problem remains that he can depend on his natural gifts and artistry to achieve what is becoming, but it requires judgement for him to know what will be becoming and when: *posse quod deceat facere artis et naturae est, scire quid quandoque deceat prudentiae* (212).

Do we feel we have heard this before? We have come very close to it, early in book 1 when Crassus introduced the requirements of the young trainee, and stressed his natural (physical and intellectual) gifts and the need for art: in 1.130–2 the theme was *decere,* but this was a different kind of decorum, personal grace in performance: *caput esse artis decere, quod tamen unum id esse quod tradi arte non possit* (1.132).

Crassus' return in 3.213 to the complementary roles played by Nature and Art is both consistent with his whole extended series of discourses (they are not quite lectures), and highly relevant to the last remaining component of book 3—*actio*. Of the four functions of the orator, Cicero has given due attention to *inventio, dispositio, elocutio,* but two more skills are needed to carry the oratorical composition into action: *memoria*, the art of memorizing, and finally *actio* itself. It is time to prepare for the forum and what *De Oratore* has to say about the speaker's performance face to face with his public.

---

[36] *De Or*. 3.212. This is actually Cicero's third and last reference to the three styles, the full, the plain, and the intermediate; cf. 3.177 and 199 above.

## 12

# Into Action: The Orator as Public Figure

Magnum quoddam est onus atque munus suscipere atque profiteri se esse omnibus silentibus unum maximis de rebus magno in conventu hominum audiendum.   (1.116)

It is undertaking a great task and responsibility for a speaker to declare that when everyone is silent he is the one to be heard on matters of very great importance in a very great gathering of men.

The orator is now fully equipped to determine what he should include in his speech (*inventio*) and how to organize it (*dispositio*) and give it expression (*elocutio*). When he has completely prepared his text, two of the five functions of oratory remain: to commit his speech, or its essence, to memory, and to deliver it.

The two functions of *memoria* and *actio* are clearly regarded as to some extent subordinate. Cicero has separated their treatment in *De Oratore*, so that Antonius deals briefly with the artificial construction of memory at the end of book 2, and Crassus ends his discourse in book 3 with the recommendations for *actio*. But Cicero is not the only writer to deal with memorization before expression: the teacher of Herennius deals with both delivery (*pronuntiatio*) and memory in the third book, reversing their natural sequence, before book 4, entirely devoted to *elocutio*. Quintilian more conventionally completes his theory of ornament (books 8–9) and discusses various aspects of training the adult student in book 10 before handling memory in 11.2 and delivery at greater length in 11.3, but the two functions still precede his last word on *elocutio*, the extended chapter 12.10 on the orator's personal idiom.

There are more than two centuries between Aristotle's recommendations on training the memory, and the first Roman treatment of the *Rhetorica ad Herennium*. One might be tempted to think that the mechanical system of *imagines* and *loci* that we shall

be discussing was a Hellenistic invention, like the system of *staseis* (Latin *status*-theory), devised by Hermagoras of Temnos around 150 BC. But Jocelyn Penny Small has recently argued that this artificial memory system was in fact a Roman invention: just as Roman art constructed architectural backgrounds for its action paintings, whereas the Greeks left their figures unassociated by background, so it would be a Roman approach to think of objects integrated by a common streetscape or architectural setting.[1]

Given the considerable resemblance between the teaching of all three works on memory, it will be easy and useful to supplement Antonius' formal account with references to the same material in *Rhetorica ad Herennium* and Quintilian's *Institutio*.[2] But first we should try to understand more fully to what extent Roman orators were expected to speak from memory. On this at least Quintilian is our most helpful source. Many busy pleaders must have improvised their speeches, especially on civil lawsuits where the audience would consist only of a single adjudicator. Yet our authors all talk primarily in terms of preparing material to present it in a formal continuous speech. Clearly the question of memory arose most urgently if the orator had prepared a written text, rather than planning to cover certain narrative details and arguments and then thinking on his feet—not exactly improvisation. In chapter 7 of his tenth book Quintilian makes it clear that many pleaders conducted their cases without formal written texts, some on the basis of headings jotted on writing tablets (10.7.31), some relying on *commentarii* (10.7.30) which would supply exact wording for the all-important introduction and for the essential arguments of the speech. But while Quintilian accepts as legitimate that a speaker should rely on glancing at his tablets to keep to the order of his arguments, it is seen as a concession. He refers to the practice of Sulpicius, and of Cicero, according to his secretary Tiro, for what seem to be different uses of *commentarii*. The three speeches preserved in Sulpicius' notebooks are apparently so polished that they could have been composed as a record for posterity: in contrast,

---

[1] Jocelyn Penny Small, *Wax Tablets of the Mind: Cognitive Studies in Memory and Literacy in Classical Antiquity* (London, 1997), ch. 8, 'The Roman Contribution'. Readers should also consult Ann Vasaly, *Representations*: *Images of the World in Ciceronian Oratory* (Berkeley, Calif., 1993).

[2] For previous studies on the ancient system of memory see Francis Yates, *The Art of Memory* (London, 1966), and Mary Carruthers, *The Book of Memory: A Study of Memory in Medieval Culture* (Cambridge, 1990).

Cicero's *commentarii* had been composed only as aids to memory (*Gk*. hypomnemata) before delivery, and were compiled and edited later by Tiro.

Memorization was clearly expected, and Quintilian repeatedly warns that it must be thorough, or else the speaker will be seen to be searching for words: yet alongside this thorough memorization the speaker must have developed sufficient assurance and fluency to be able to glide into unprepared speech where necessary. His greatest fear seems to be that the student will try to depend on the written text when he does not properly control it (11.2, 34–5, 45). And this, I think, explains why his last word on preparation declares that one should not even write a text down unless one is going to memorize it (11.2, 48–9).

Naturally the challenge of memorization was more severe for the orator than for the singer, whose memory is sustained by the rhythm and melody, or the actor, who is kept alert by his stage interlocutors and in Rome at least was guided by the metre of his comic or tragic text. The orator was expected to deliver an uninter-rupted[3] speech (*oratio perpetua*), and would need command of his arguments and emotional effects simply to convince, but would also aim to control his phrasing in order to achieve the highest eloquence: hence the distinction maintained by all our theorists between essential *memoria rerum* and the refinement of *memoria verborum*. The other binary division common to all our sources is the fundamental distinction between natural and artificial (i.e. cultivated) memory.

From the beginning of *De Oratore* Cicero stresses the urgent need for memory 'since unless it is set to guard the ideas and language we have devised, all the orator's talents, however splen-did, will be wasted' (1.18). And when Crassus discusses the selec-tion of future orators, he includes among essential natural gifts 'an accurate and lasting memory'. They must be *ad memoriam firmi atque diuturni* (1.113): to this he adds the essentials for delivery: quality of voice, expression, and deportment (1.114–15) without which no one can hope to be an orator.

We have seen that Antonius introduced a number of important general warnings about conducting a case (2.291–307) before he

---

[3] This does not exclude the deliberate invitation of readers to recite laws, docu-ments, and other texts, as in the prosecution of Plancus by Iunius Brutus and his defence by Crassus himself (cf. *De Or*. 2.223, quoted in Ch. 9, and Quint. 6.3.44)

turned his attention to the details of formal *dispositio*. Among these
preliminaries is a careful foreshadowing of memory theory, as he
praises the extraordinary natural memory of Themistocles, who
rejected the offer of training in the recently developed techniques
of artificial memory, because he already remembered far more than
he wanted to (2.299). After Antonius ends his comments on *dis-
positio* in each of the three genres, he recalls Themistocles' hyper-
active memory to introduce the topic of artificial memory in 2.351
and lead into the marvellous tale of how it was discovered by
Simonides (perhaps fifty years before Themistocles).[4] The poet
had been commissioned by a Thessalian lord to compose a victory
ode in his honour, but when his patron realized a large part of the
ode praised Castor and Pollux, the divine horsemen, he withheld
half the poet's fee, telling him to collect the rest from Castor and
Pollux. Now while Simonides was dining in the lord's hall, he was
suddenly called out by two horsemen who wished to speak with
him, but as soon as he was in the open the hall collapsed, reducing
his host and fellow diners to mangled and unrecognizable corpses.
Thanks to his memory, Simonides was able to point out who had
sat in each place, so that they could be identified for burial. The
lesson was that one could best memorize any set of objects or
arguments by placing them in order in a precise setting: memoriz-
ing, then, depended on having as background a familiar set of *loci*
or *sedes*, and locating images (*imagines*) of one's material (persons,
things, even ideas and arguments) against this stable background
(2.354, cf. *Rhet. Her.* 3.16, 29–31). Both Cicero and his predeces-
sor use the analogy of writing, in which the images function like
letters, and their background as the wax tablets, so that they can be
read off by the memory.[5] The fuller discussion of Herennius'
teacher makes it clear that one chose the *loci* as a permanent
background on which new sets of images can be arranged for

---

[4] Quintilian 11.2, 11–16 tells the story of Simonides, citing this passage of Cicero,
but clearly drawing on other, probably Greek, sources which disputed the identity
of the Thessalian hosts and whether the episode happened at Pharsalus or, as Cicero
reports, apparently depending on Callimachus, at Crannon. But he is sceptical
enough to call the story 'entirely mythical' (*totum fabulosum*) and declare that it
was not reported by Simonides himself.

[5] *De Or.* 2. 355, 360; *Rhet. Her.* 3.16.30. Quintilian 11.2.21 quotes and para-
phrases *De Or.* 2.358. He also suggests in his practical recommendations that the
student should memorize the text from the writing tablets on which he has com-
posed it, so as to have the benefit of what we call photographic memory.

each new speech (3.17.31). Thus since control of the system depends on secure knowledge of the constant setting, it is essential to choose a place—say one's route along a familiar street or through a familiar mansion—that will be firm in one's memory to hold securely the variable images of each new context.[6] Cicero is clear that this system depends on the dominance of vision and the visible over our minds, and that the images provoke the cooperation of the mind in the same way as metaphors and related tropes.[7] But he offers no examples. Quintilian (11.2.19) suggests some simple emblems, such as an anchor or weapon for a voyage or campaign, but how could the speaker devise a complex emblem to recall a complex idea? The *Rhetorica ad Herennium* illustrates. Suppose we want to remember that the accused was alleged to have poisoned the victim for the sake of an inheritance; in front of many witnesses, then we should imagine the victim in bed, and the accused offering him a cup, while holding writing tablets in the other hand, with bull's testicles (a pun on *testes*, witnesses) draped over his arm. An incongruous image, and therefore memorable, for we should choose images that stimulate (*exsuscitare*) our minds, such as whatever we find exceptionally ugly, grand, ridiculous, and strange (3.21.35–22.37).

In this connection a curious verbal coincidence in the *Rhetorica* and *De Oratore* may suggest a common source. *De Or.* 2.358–9 shares with *Rhet. Her.* 3.16.29–24.40 the stress we have already noted on variety, and images that are distinct: but more conspicuously they share the recommendation of *imaginibus . . . agentibus, acribus, insignitis* (2.358), cf. *imagines . . . firmae et acres* (3.21.35), *non multas nec vagas sed aliquid agentes . . . quo magis insignita sit forma* (3.22.37). Cicero uses *insignitus/insignite* only twice in *De Oratore*, in 2.349 and 358; the author of *Ad Herennium* also uses *insignitus* twice in this context: once for the *imagines*, and once for the *loci*, cf. 3.16.29: *locos . . . qui breviter, perfecte, insignite aut natura aut manu sunt absoluti.*

All three authors divide their attention between two types of memory association; using the *imagines* and *loci* to recall ideas (*res*)

---

[6] *Rhet. Her.* 3.17.31 and 22.37 reiterates the need to renew one's knowledge of the backdrop and its *loci*.

[7] *De Or.* 2.357–8 especially *conversa et immutata casibus aut traducta ex parte ad genus notatio et unius verbi imagine totius sententiae informatio*. Compare the argument of 3.161–7 discussed in the preceding chapter.

and to recall words (*verba*). But each writer acknowledges that it is more important to use the system to organize ideas. Cicero is quite clear that *verborum memoria* is less necessary, whereas *rerum memoria* is the proper skill of the orator (2.358, 359). The prefabricated set of images to represent words was a Greek technique, associated by Antonius with Charmadas, whom he knew as a young man at Athens, and Metrodorus of Scepsis.[8] The teacher of Herennius too distances himself from the *imagines verborum* as a piece of Greek theory (3.22.38) and advises concentrating on *rerum ipsarum memoria*, but he hesitates to disparage learning these *imagines*, if only because this practice develops the capacity for the more useful images of ideas (3.24.40). As for Quintilian, he is content to cite the Greek inventors of this system of word-imagery from Cicero and dismiss their expertise as too demanding for ordinary *ingenia*. Their theory once outlined, he points out the difficulty of finding enough images to correspond to so many different words (11.2.25),[9] and returns at the end of his practical recommendations (44–8) to the choice between memorizing word for word (*ad verbum*) or by content (*vim modo rerum atque ordinem*). For all our sources realized that natural memory had its limits. While the artificial memory system could increase memory power (*De Or.* 2.356–7; cf. *Rhet. Her.* 3.16.28 and 22.36, Quint.11.2.1), it could only develop it in proportion to the orator's natural capacity.

Thanks to Cicero's reorganization of the five functions, Crassus' account of *elocutio* can avoid the anticlimax of a technical discussion of memory and lead straight into the limelight of *actio*. The importance of delivery, or, to use a broader concept, performance, had been acknowledged by Aristotle in his introduction to book 3 of the *Rhetoric*, but without development.[10] Besides its lack of conceptual content, he may have been deterred by the dependence of any treatment on perceptual elements difficult to convey in words. To quote Herennius' teacher: no one has written carefully about delivery, because they all thought it virtually impossible to write clearly on voice and expression and gesticulation, since these

---

[8] On the academic Charmadas see *De Or.* 1.47, 84, and 93. In praising Hortensius for his memory Quintilian (11.2.24) is echoing Cic. *Brutus* 301.

[9] As an example, he will ask how one can convey conjunctions by an image.

[10] Ar. *Rhet.* 3.1, 1403[b]18–25: note esp. 'No treatise has yet been composed on delivery, since the matter of style itself only lately came into notice, and rightly considered it is thought vulgar.'

things concerned direct sense perceptions.[11] But since Demosthenes' notorious claim that performance was the most important ingredient in oratory, taking first, second, and third place,[12] *actio* had become a major focus of interest. Some of Cicero's personal interest is already apparent in both the preceding books. Discussing natural talent in book 1 Crassus uses the judgement of the great actor Roscius[13] as his authority for stressing that without *decere* in delivery the orator is useless. When Antonius holds the stage in book 2 he illustrates the importance of emotional effect by describing the delivery of famous tragic speeches (2.193), and it is to these that Crassus turns first and foremost to discuss *actio*. As in book 2, he argues a fortiori from the importance of delivery in the fictional world of the stage to its even greater prominence in the real-life pleading of orators (*veritatis ipsius actores*, 3.214). Acting, it appears, is yet another skill which recent orators have abandoned for another profession to usurp.[14] But Crassus makes his opening quotation one of the very few excerpts from Roman oratory before his own time that was truly famous: Gaius Gracchus' cry of despair in his last speech: 'alas where shall I take myself? To the Capitol? But it is overflowing with my brother's blood. To my home? To see my poor mother wretched and cast down?'[15] It was part of the legend that even his enemies wept to see his eyes, voice, and gestures (*oculis, voce, gestu*). This triad is repeated below at 216, when Crassus leads into his illustrations from well-known tragic scenes with the claim that 'every emotion has been given by nature its proper expression and gesture and sound', *omnis . . . motus animi suum quendam a natura habet voltum et sonum et gestum*. In fact the major difference between Cicero's treatment of *actio* and the

---

[11] *Rhet. Her.* 3.11.19, *nemo de [pronuntiatione] diligenter scripsit, nam omnes vix posse putarunt de voce et vultu et gestu dilucide scribi, cum eae res ad sensus nostros pertinerent*. The claim is repeated in 3.16.27.

[12] *De Or.* 3.213, also quoted in *Brutus* 142, *Orator* 56, and Quintilian 11.3.6.

[13] I have argued elsewhere (in '*Orator* and/*et Actor*', in P. Easterling and E. Hall (eds.), *Greek and Roman Actors* (Cambridge, 2002), 364–78, that Cicero not only knew Roscius personally but had trained with him when young.

[14] The notion that orators are real-life *actores* plays on several common meanings of *agere*: the noun *actor*, perhaps best translated as 'enacter', 'performer', is only incidentally used to designate an actor, as in 3.102, but because *agere* is the standard word for conducting a case, *actor* is normal Latin for the prosecutor who brings a lawsuit. For the contrast between life and the fiction of the theatre see also 2.191–2.

[15] *Quo me miser conferam? quo vortam? in Capitoliumne? at fratris sanguine redundat. an domum? matremne ut miseram lamentantem videam et abiectam*? Malc. *ORF* fr. 23, modelled on Ennius' *Medea*, fr. 227–8 Joc., cited at 3.217.

discussion of *pronuntiatio* in *Rhetorica ad Herennium* will lie in
the stress placed by Crassus on conveying emotion not only by
voice, but by the eyes and expression, part of Cicero's more
thoughtful treatment of the face and body. Herennius' teacher
really limits himself to vocal performance, with two aims in
mind: the greatest impact on the audience, and the need to pre-
serve the voice itself. It is Cicero's innovation to stress the power of
gesture and expression.[16]

  Crassus begins by presenting the problem in terms of nature
(*veritas ipsa per se*, 3.215) and art: he argues that, although every
emotion has a natural form of expression, this is often confused and
obscured, so that we have to eliminate intrusive elements and
present what is immediate and conspicuous. Emotion is reflected
through men's bodies and faces and utterances (*voces*) like a
stringed instrument that sounds now high-pitched, now low, now
fast, then slow, now loudly and then softly (this corresponds to
Aristotle's triad of aspects of the voice: *megethos, harmonia, rhyth-
mos* at *Rhet.* 3.1, 1403[b]31). But there are also other variations in
vocal quality subordinate to these (and here I translate as best
I can) 'smooth or rough, compressed or open, with continuous or
interrupted breathing, choked, staccato or crescendo and diminu-
endo with changing pitch'. Among these we find all three of the
terms used for pitch accent—acute, grave, and circumflex—are we
to assume Crassus in each case means a change of pitch within the
spoken words? His intent is best explained by his examples. The
first three examples indicate anger by being 'high-pitched, excited,
and frequently broken up,' *acutum, incitatum, crebro incidens*;[17] in
contrast Crassus describes the pitiful outcry of Medea (an exact
parallel to Gaius Gracchus' outcry) and the lament of Andromache
as 'changing pitch, full-throated, broken, and in tones of lament',
*flexibile, plenum, interruptum, flebili voce*.[18] The other emotions

_____

[16] I have not brought Quintilian's extended chapter on *actio* (11.3) into this
discussion because much of his advice on voice and gesture echoes Cicero; in the
second half this is followed by some interesting comparative material from contem-
porary theatre, and a prolonged discussion of the care and management of the toga.
See, however, Fantham, 'Quintilian on Performance', *Phoenix*, 36 (1982), 243–63.

[17] They are taken from a speech of Thyestes in Accius' tragedy *Atreus*, the speech
of Telamo from Pacuvius *Teucer* previously cited in a similar context at 2.193, and
another excerpt from the *Atreus*.

[18] Medea is cited from Ennius' version of Euripides' tragedy (227–8 Joc.),
Andromache from his *Andromache Aichmalotis* (87, 92–3 Joc.). Cicero returns to
these and other excerpts in his discussion of the emotions in *Tusculans* 4.55.

dealt with are fear (in low hesitating tones), passion (which is strained, violent, and threatening with the excitement of grim intensity), pleasure, and distress.[19] None of his examples is without its problems of interpretation, but then we are forgetting that Cicero's public would usually hear these quotations within the dialogue delivered aloud by their own professional reader (*anagnostes*). Cicero's friends and public would hear these passages, not look at them silently. Hence each excerpt is preceded by an interpretation of the vocal colour (cf. 3.217) for the reader to follow, and no quotation needs a following comment. Instead Crassus passes on to the gestures: these should accompany each motion, without following each phrase like stage gesture; the orator should avoid theatricality and indicate rather than demonstrate the idea, with virile movements closer to those of combat than to drama, inhibiting the expressiveness of the hand and fingers, and extending the arm like a kind of weapon.

This is where Cicero leads into discussion of *vultus* and *gestus* before returning in 224 to the traditional discussion of the qualities of the voice. As at 216 this new material is constructed around framing maxims, first for the gaze or expression: 221, *sed in ore sunt omnia . . . animi est enim omnis actio, et imago animi voltus, indices oculi* (everything depends on the face. For all *actio* comes from the heart, and the expression is the image of the heart, and the eyes its signal.) There are differences in the usage of *os* and *vultus* which have been brought out clearly in a recent study by Bettini. While *os* may allude to the mouth as organ of speech, Cicero mainly uses it for the natural face or features, in contrast with *vultus*, the expression of mood or emotion, and occasionally of character.[20]

---

[19]  Fear is illustrated from Ennius' *Alcumeo* (Alcmaeon) cited again in *Fin.* 4.62, 5.31, and *Tusc.* 4.15. For *vis*, which I have translated passion, though it is perhaps more specifically vehemence, Cicero returns to Accius' villainous Atreus. Pleasure, described as gushing and tender, joyous and relaxed, is from an unidentified play and in excited trochaic septenarii; depression or distress (*molestia*) described as heavy and covered in a single low pitch, comes from Pacuvius' tragedy *Iliona*.

[20]  See M. Bettini, *Le Orecchie di Hermes* (Turin, 2000), 317–36. Thus, in *De Or.* 1.114, a man's appearance is *figura totius oris et corporis*, and 2.251 (listing modes of physical mimicry) *ore, vultu, imitandis moribus, voce, denique corpore*, followed by a warning against *oris depravatio* 252 (cf. 3.222 below: *nam oris non est nimium mutanda species*). A man's expression either reflects his thoughts or he can control it to reflect the emotions he wants to display. Most often Cicero couples the speaker's conscious expression and tone of voice, *vultus* and *vox*, as in 1.18, 115, 2.190, 218, 242; and in the plural 3.216 above, *eius omnis vultus omnisque voces*.

At 222 he introduces the role of body movements with another maxim: *est enim actio quasi sermo corporis*, ('for *actio* is like the speech of the body'—not our 'body language,' but deliberate use of the body). Few specific body movements are mentioned, but Cicero, like the *Rhetorica ad Herennium* specifies stamping the foot, at least at the beginning and end of more impassioned sections (*contentiones*, 3.15.27). Cicero is more concerned with facial expression, justifying its power to match every emotion with two anecdotes, a Greek and a Roman, that reflected the loss of acting power when the face was not seen. The Roman anecdote is culturally interesting because it presupposes that an older generation had seen stage actors play without masks, and were disappointed even by the great comedian Roscius when he began to wear a mask. This matches the citation of Theophrastus in 221, reporting a comment that an actor who focused his (masked) gaze on some object when he spoke 'was turning his back on the audience.'[21] As Crassus notes, the expressive power of the eyes is particularly important because it is ungentlemanly to distort one's features like a mime actor.[22] As in his discussion of rhythm, Crassus appeals to the popular reaction to confirm the importance of this aspect of speaking. 'In our performance, the expression (*vultus*) is second only to the voice.' It is the natural power of the eyes and expression to convey emotion that moves even ignorant audiences or barbarians (who do not understand Greek or Latin). Emotion is universal and marked by universally recognizable signals.

Finally Crassus comes to the traditional theme of how to use and support the voice (3.224): this is where Cicero takes up themes that coincide with the *Rhetorica ad Herennium* on voice training. So let us look back to its organization of the discussion of *pronuntiatio*. The author starts from the physical voice and its properties of volume, durability, and flexibility (*magnitudo, firmitudo*, and *mollitudo*), giving its needs priority over the levels of diction within a

---

[21] The Roscius anecdote may have come to Cicero from Roscius himself, but there is a problem in the evidence we have which suggests that masks had been worn from the time of Plautus on. The old men of Crassus' anecdote presumably were attending dramas around 140–130 BC. The reference to Theophrastus justifies Fortenbaugh's use of this passage in reconstructing Theophrastus' views on delivery, for which there is otherwise very little evidence.

[22] This is why recent films like Kubrick–Spielberg's *AI*, which use computer-simulated characters, have devoted particular care to imparting intelligence and vitality to the eyes of their simulations.

speech. These range (cf. 3.13, 23–5) from relaxed *sermo*, to grander *amplificatio* (chiefly in the final peroration), and fierce *contentio*. But each type also has its subcategories, and the most demanding is *contentio*, used either in continuous argument (*continuatio*) or itemizing lists (*distributio*). To protect the firmness and flexibility of the voice (3.11.20) requires vocal exercises, here called *declamatio*. The orator should alternate relaxed *sermo* and *clamor*, avoid high-pitched shouting (*acutae exclamationes*) and uninterrupted straining and pass through a variety of tones: for variety is most pleasant (he uses the noun *suavitas*) to the listener. This is of course the overarching aesthetic we met in Crassus' account of variation in ornament (3.91–103) and may well go back to Theophrastus. Having set out his categories Herennius' teacher describes in 3.15, 26–7 the gestures appropriate to each level of diction. His precepts coincide with those of Crassus in many respects that we have already mentioned, and both experts recognize the importance of variation (*De Or.* 3.224–5 = *Rhet. Her.* 3.12.22) and the challenge of *contentio*.

Indeed Crassus gives this emphasis by postponing to the end his description of how Gaius Gracchus controlled his vocal pitch in his public speeches by having an attendant flute player sound the desired pitch when he was sinking too low or straining too high. A timely question from Catulus provides the explanation that the voice should rise gradually from its normal pitch, and not strain above its highest level of urgency (*contentionis extremum*), although this is itself lower than outright shouting. By varying its pitch between the upper and lower limit the voice both protects itself and gives pleasantness to the performance—something his hearers can hope to do without needing a flute as control. So Crassus returns at the end of his account to the alliance of *varietas* and *suavitas*, which we met as his guiding principle in ornament. Only the *Rhetorica ad Herennium* actually applies to vocal performance the overarching aesthetic principle which Cicero articulated apropos of rhythm, that in Nature's design what is most useful is also most pleasing.[23] 'Thanks be to Nature, the same behaviour which we say is good for preserving the voice, contributes to the pleasantness of delivery, so that what is good for our voice also wins the

---

[23] Cf. *De Or.* 3.178, 'Nature has contrived in speech as in most other things, that the features which were most useful were also most dignified and even charming.'

listener's praise' (3.12.21). With a similar counsel of practice and restraint (3.227) Crassus encourages the next generation to go into the forum relying on their own judgement.

## Into the Forum: The Orator's Debut

Unfortunately Crassus' protégés failed him, but for different reasons. The headstrong Sulpicius changed political sides, and adopted the path of violence which brought him to his death, leaving behind only the *commentarii* on three speeches, and Cotta had so little faith in himself that he resorted to a ghost writer, Aelius Stilo, for his own defence.[24] This adds an incentive for Cicero's final gesture, to imitate Plato's parting message in the *Phaedrus* by invoking and sending good wishes to the next speaker to have a full career, Catulus' son-in-law, Hortensius.

And this in turn enables us to link theory with *actio*. We have followed Crassus and Antonius equipping their imaginary student for action. How would they begin their career? What do we know of the debuts of Crassus and Hortensius and others who achieved distinction? This is actually a topos of Roman critics of oratory, and both Quintilian and Tacitus stress the early age at which many famous republican statesmen gave their first speech. Quintilian is relatively vague in his comment; Tacitus actually mistaken. At 12.6.1 Quintilian claims Demosthenes launched his lawsuits against his guardian when he was still a boy (*puerum admodum*) while Calvus, Caesar, and Pollio made their debuts well before the age of the quaestorship—which was around 30. He says nothing of Crassus, whom we know from *De Oratore* 3.73 to have made his debut at 21. In Tacitus' *Dialogus de Claris Oratoribus*, Messala claims that Crassus made his debut in his nineteenth year and Caesar in his twenty-first; Pollio prosecuted C. Cato in his twenty-second year and Calvus accused Vatinius when he was not much older (*Dial*. 34.7). The text of Tacitus is sound, and his examples, besides their chronological order, deliberately move from the youngest beginner to the least young; but we know from Suetonius and Plutarch that Caesar prosecuted Cn. Dolabella (Cos. 81), as soon as he returned from misgoverning Macedonia

---

[24] Cf. *Brutus* 205, for Cotta's reliance on Aelius Stilo when prosecuted in the *quaestio Varia*.

in 77, when Caesar was 23. But there is more to learn from our evidence than simple ages and dates.

There is no doubt that men made their name by these early prosecutions, long before they were eligible for any magistracy, and that young men of noble blood, like Crassus or Caesar, could expect to make their first appearance at a lower age than men from less distinguished backgrounds.[25] Crassus himself spoke early in book 1 of his own stage-fright: at his debut (1.121) he was so nervous that the praetor Fabius Maximus did him a great favour by dismissing his court (*consilium*)—as soon as he realized that Crassus was incapacitated by fear. But it is unlikely the trial which he flunked was the major partisan political prosecution in which he obtained the conviction of the Gracchan turncoat Cn. Papirius Carbo.[26] Indeed Tacitus may have had a record of some now forgotten civil lawsuit which Crassus launched in his nineteenth year. What we also know from Cicero's carefully dated narrative in *Brutus* 159–60 is that only a year later Crassus made his first deliberative speech, supporting the proposal to found a colony at Narbo in Provence, and that Cicero found the speech mature beyond his years. But where could Crassus have made such a speech at the age of 22? Not in the senate, surely? Then as invited speaker at a *contio*? Cicero explains that he not only advocated the colony but was put on the board of three to found it, so we should shift to a different question; why was he appointed? Had he perhaps served in the recent successful campaigns against the Allobroges and Arverni in the *provincia*? Was there a traditional clientela of the Licinii that would have given him a claim to serve on the colonial board? His right to speak surely depended on the expectation that he would be nominated to the board.

We have a similar problem with Cicero's immediate predecessor, Hortensius, for whose debut the end of *De Oratore* is our

---

[25] On the Roman practice of youthful prosecution, see J.-M. David, *Le Patronat judiciaire au dernier siècle de la République Romaine* (École Française de Rome; Rome, 1992).

[26] For this and other trials see E. S. Gruen, *Roman Politics and the Criminal Courts* (Cambridge, Mass., 1968); M. Alexander, *Trials in the Late Roman Republic 149 BC to 50 BC* (Toronto, 1990). On the trial of C. Carbo (Alexander, no. 30, p 16) see Gruen, *Roman Politics*, 107–9. On the age of Crassus and other late republican orators see G. V. Sumner, *The Orators in Cicero's Brutus: Prosopography and Chronology* (Toronto, 1973).

primary evidence.[27] Crassus reports that Hortensius 'defended the case of Africa in the senate during my consulship, and recently [excelled] even more when he spoke for the King of Bithynia' (3.229). The former occasion cannot be the actual prosecution of Marcius Philippus after his governorship of Africa (the setting of several jokes cited in 2.220, 245, 249), because Crassus sets Hortensius' 'defence' in the senate. Nor was the 22-year-old Hortensius yet a senator. *Brutus* 229, which sets Hortensius' debut in the forum in this year, without naming the defendant, surely refers to this prosecution. Perhaps the omission of Philippus' name in *Brutus* and the allusion in *De Oratore* 3.229 to a senatorial speech both reflect Philippus' acquittal in the actual trial: certainly he was not convicted.[28] What was Hortensius doing in the senate? Was he a witness to abuses of office by Philippus, perhaps while serving in his praetorian *cohors?* Was he invited by the patron of the African plaintiffs to support the charge of provincial malfeasance with his testimony? His second public speech, on behalf of Nicomedes of Bithynia, may have been purely political, or else a civil suit, in which Nicomedes could have been either petitioner or defendant.

The next debutant was Cicero himself. With Crassus as his patron he might well have expected to enter the forum with a prosecution around 87–86 BC, if only there had been no Social War and no Marian revolution. As it was, his actual debut seems to have been the civil lawsuit *Pro Quinctio* (Alexander, no. 126) in 81, during Sulla's dictatorship. There Cicero opens by presenting himself and his client as at a disadvantage: Quinctius because of the opponent's great influence, and Cicero as advocate because of Hortensius' eloquence and his own inexperience. The theme of inexperience also opens his more spectacular second case, the defence of Roscius of Ameria (Alexander, no. 129) on a charge of murdering his own father. Here too Cicero opens by imagining the

[27] Cicero gives a full account of Hortensius' career in *Brutus* 317–21, 213–14: after his early debut, he served in the courts along with Cicero in 76 when Hortensius was candidate for the aedileship and Cicero was quaestor; on Cicero's return from Sicily Hortensius as consul defended Verres against Cicero's prosecution and failed. Although Cicero marks this year as the beginning of Hortensius' decline, he continued to defend major political cases, often with Cicero and in his last year (50 BC, aged 64) with Brutus, his junior by sixteen years. But although Cicero predicts that Hortensius' speeches will show posterity what kind of orator he was, they did not survive, nor did he achieve any independent contribution to politics.

[28] This is Alexander, no. 90, from 95 BC.

jury's surprise that the defending advocate in such a serious case should be an inexperienced young man like himself;

I am sure you are wondering, gentlemen of the jury, why it is that when so many front rank speakers and men of noble birth are sitting here, it is I who am rising to my feet, though I cannot be compared with those seated in age or talent or authority . . . . Why is it then? Am I the boldest of them all?

Credo ego vos mirari, iudices, quid sit quod, cum tot summi oratores hominesque nobilissimi sedeant, ego potissimum surrexerim, is qui neque aetate neque ingenio neque auctoritate sim cum eis qui sedeant comparandus . . . quid ergo? Audacissimus ego ex omnibus? (*Rosc. Am.* 1)

Here too he stresses the power of the adversary (6–7): this time his client's prosecutors are backed by *adulescens vel potentissimus hoc tempore nostrae civitatis*, the sinister freedman Chrysogonus who stands to gain from their charge. Did all new advocates play the underdog in this way?

The next orator of distinction to enter the forum was Caesar, scion of a decayed patrician family: his first and second prosecutions both concerned the province of Macedonia, where he presumably had either a hereditary link of patronage, or friends based on personal or business connections. But his prosecution of the governor and ex-consul Cn. Dolabella (Alexander, no. 140) seems to have ended in acquittal: not surprisingly since Dolabella had Hortensius and Cotta as advocates, and the jury, in conformity with the Lex Cornelia of Sulla, consisted entirely of fellow senators. Suetonius (*D J* 55) claims the prosecution put Caesar into the front rank of orators; but also (*D J* 4) that he left Rome soon after to avoid the unpopularity (*invidia*) he had incurred. If he did, it was not until he had launched a further prosecution, this time a civil lawsuit against young Antonius Hybrida before the peregrine praetor Terentius Varro Lucullus, on behalf of Achaean Greeks whom Hybrida had plundered with the aid of a cavalry squadron. This time the accused resorted to appealing to the tribunician college against the terms of the praetor's formulation, and cried off the lawsuit. It may not have brought Caesar much glory, but the case became notorious because the censors of 70 BC made it grounds for expelling Hybrida from the senate.[29] He would return in due course, to the senate, to Macedonia, and to the courts.

[29] On Hybrida's expulsion see Asconius on Cicero's *In Toga Candida*, 84, 87C. This case is Alexander, no. 141, but C. Damon and C. S. Mackay have argued

Hybrida must have reinsinuated himself into the senate by elec-
tion—probably as tribune—since he was elected praetor for 66
along with Cicero, declining a province in favour of the more
lucrative position as a legatus of Pompey against Mithridates. In
the consular elections for 63 he cooperated with Catiline, but the
elections brought him in as second of the consuls. In 63 Cicero
offered him his own province of Macedonia in return for his
support against the budding Catilinarian conspiracy, and Hybrida
had the auspices as governor of Macedonia when he officially
commanded the force that defeated Catiline near Pistoia in January
62.[30] He then went out to Macedonia, lingering even after his recall
in 60. According to Dio Cassius (38.10) he had incurred some
defeats and considerable resentment in the Greek communities
and was an obvious candidate for prosecution on his recall. It
was now that Cicero's former pupil, M. Caelius Rufus, made his
debut by prosecuting Hybrida for mismanagement of his com-
mand.[31] Cicero was every defendant's first choice as advocate: he
also supposedly owed Hybrida money over the purchase of his
house, and had a political motive for defending the indefensible
because it was expected that accusers would attack Hybrida for
sharing in Cicero's actions against Catiline and his fellow conspir-
ators. Did Cicero expect or even want to win his defence? Quintil-
ian (4.2.123–4) has preserved a brilliant satirical description by
Caelius of the drunken Antonius supported by courtesans and
unable to respond to enemy attack. Convicted, he went into exile
in Cephallonia, and would be recalled after Caesar's death, to
become one of the censors for 42 BC.

This was not Caelius' only prosecution, for early in 56 he
charged Calpurnius Bestia with electoral bribery (Alexander,

convincingly in *Historia*, 44 (1993) for a different interpretation. Essentially
Hybrida did not serve on the governor's staff but plundered these Greeks with a
squadron lent to him by the now dead Sulla: since Sulla could no longer be
prosecuted *repetundarum*, nor could anyone who had profited from his actions as
governor; hence Caesar had to launch a civil lawsuit if his clients were to recover
their property.

[30] He was allegedly incapacitated by gout and delegated command to his legate
Petreius.

[31] Alexander, no. 241, is uncertain whether the charge was *maiestas* under the
Lex Cornelia, as I believe, or *vis*, based on implication in the Catilinarian conspiracy
of 63. But that was rather the motive for Antonius' condemnation than the actual
charge.

no. 268); Bestia was acquitted but avenged by his young son's participation in the retaliatory prosecution of Caelius *de vi* (Alexander, no. 275) In Cicero's successful defence, less than a year before he began *De Oratore*, he explains Caelius' prosecution of Hybrida as a normal stage in an ambitious orator's career:

He wanted to make his industry (!) known to the Roman people by some conspicuous prosecution, *according to the age old custom and precedent of other young men who subsequently became leading men and distinguished citizens in our state*. . . . He accused my colleague C. Antonius, whose glorious service to the state did not help him: instead he was harmed by the belief that he had contemplated a disservice.

Voluit vetere instituto et eorum adulescentium exemplo qui post in civitate summi viri et clarissimi cives exstiterunt industriam suam a populo Romano ex aliqua inlustri accusatione agnosci ... accusavit C. Antonium, collegam meam, cui misero praeclari in rem publicam benefici memoria nil profuit, nocuit opinio malefici cogitati.   (*Pro Caelio* 74)

Caelius too was acquitted. It is noticeable that, with the exception of the *Pro Milone*,[32] Cicero did not publish unsuccessful defence speeches: two more examples are his coerced defences of Gabinius in 54 (Alexander, no. 303, cf. no. 304), and of Vatinius whom he had denounced only two years earlier (Alexander, no. 292). Vatinius was prosecuted *de sodaliciis*, a form of electoral abuse in his campaign for the praetorship of 55. Since we know little about Pollio's debut prosecuting C. Cato (Alexander, no. 286), except that Cato was acquitted, the condemnation of Vatinius will be our last instance of a debut. Cicero was pitted against Licinius Calvus, poet and friend of Catullus, who cultivated a deliberately plain 'Atticist' style. Writing after Calvus' death, Cicero would devote much of the *Brutus* to attacking this plain style, insisting that Calvus lacked *vis (Brut*. 279, 283), but there is contemporary evidence for his effective delivery: not only were the speeches against Vatinius still famous in the time of Quintilian and Tacitus, but they won instant admiration. Compare the anecdote in Catullus 53, and the elder Seneca's report that Calvus was so violent and excited an accuser that Vatinius protested: 'I ask you, gentlemen of

[32] According to Asconius 42C, the extant *Pro Milone* is not the speech Cicero struggled to deliver at the trial, but a revised version: Milo himself claimed he was glad Cicero had not given the revised version, or he would have missed the culinary delights of exile at Massilia.

the jury, just because he is eloquent does that mean I have to be condemned?'[33] Given that established pleaders kept to defending rather than prosecuting, each of these debuts could succeed only at the professional expense of a more experienced advocate: even Cicero's victory over Verres cost Hortensius a major defeat. After 56 it was Cicero's turn to see his clients convicted, but apart from Milo these men were forced upon him and he was no doubt happy to get his reluctant defences over and forgotten.

I have tried to bring out in this survey of first performances the sheer variety of contexts in which they occurred. Although there would be a tendency to treat only major criminal cases in the *Quaestiones* as real trials of the speaker's skill, as well as of his defendant's innocence or guilt, enough evidence of lawsuits and political speeches has survived to draw the modern student's attention to the far greater mass of non-criminal hearings and unspectacular political deliberations: probably only a tiny fraction of these were remembered even a few years later, but even this was enough to dominate the thinking of a century later, as people looked back to the eloquence of the 'free' republic.

---

[33] Cf. Catullus 53, *cum mirifice Vatiniana | meus crimina Calvus explicasset | admirans ait haec, manusque tollens, 'di magni, salaputtium disertum!'* 'When my Calvus marvellously unfolded the charges against Vatinius, a bystander raised his hands in wonder and said ''ye gods, what an eloquent little cock!'' ' and Sen. *Contr.* 7.4.6, on Calvus as a *violentus et concitatus actor*.

# Epilogue: The Statesman and the State in *De Oratore* and After

The main purpose of this study of Cicero's first great dialogue has been to juxtapose its recommendations for creating the ideal public orator and statesman with the radical change from the cultural and political context of Crassus and Antonius at the dramatic date of *De Oratore* in 91 to the experience of Cicero himself in the years leading up to the composition of this first dialogue. Cicero's circumstances changed irretrievably during this period, and his letters reflect the painful recognition of the deteriorating political climate. I considered in the opening chapter just how Cicero saw the political world of the mid-50s: the growing threat to senatorial government and his own dwindling place in political life must have supplied a strong motive for displacing his dialogue into the 90s, immediately before the political crisis provoked by Livius Drusus. Cicero does not conceal the clouds hanging over his statesmen, but they are still able to recall the relative calm of the recent past, before the outbreak of the fierce war between Rome and her disappointed Italian allies. It is the effects of this war and the ensuing Marian and Sullan terrors which Cicero evokes by the allusion to *perturbatio disciplinae veteris* in his personal introduction to *De Oratore* (1.3). But he offers only a bare and deliberately generalized outline of the long generation from the convulsion of the old ordered government[1] in his first youth to the universal struggle and crisis (*rerum omnium certamen ac discrimen*) of his consulship and the ensuing period when

---

[1] Even this translation may be too specific. May–Wisse translate the phrase as 'disruption of traditional order and morals'.

he depicts himself as battered and almost submerged by the waves
that he had heroically diverted away from public calamity. Phrases
like 'convulsion', 'crisis', and 'public calamity (or plague)'
are sufficiently general for his readers, regardless of their sympa-
thies, to supply their own references and interpretation
without him naming people and events. There is a similar calcu-
lated generality in the terms in which Cicero speaks of his consul-
ship and subsequent exile in the near-contemporary letter to
Lucceius requesting a monograph centred on his triumph and
tribulations.[2]

We may perhaps see another displacement from Cicero's
own experience in what is almost the only direct political criticism
made by Cicero's dramatis personae. Near the beginning of the
conversation, and again at its end, the brothers Tiberius and Gaius
Gracchus are singled out for reproach. Early in book 1 Scaevola,
the oldest participant, who remembers hearing the brothers
in action, contrasts the elder Ti. Sempronius Gracchus (Cos. 177,
163) with his sons, as a warning against the harm that can be
done by eloquence. According to Scaevola, the father was
wise and responsible, rather than eloquent. And his greatest polit-
ical service was to restrict the freedmen who were new citizens
to the four urban tribes, which he achieved simply through
his authority. Indeed Scaevola claims that, without Gracchus'
intervention, 'we would long since have lost all control of the
state, which we now barely retain' (1.38, *quod nisi fecisset, rem
publicam quam nunc vix tenemus iam diu nullam haberemus*). In
contrast his eloquent and superbly educated sons brought on the
disintegration of the state (*rem publicam dissipaverunt*) using
the very art of eloquence which Crassus has praised as the guidance
of states.

Why was the censorial act of the elder Gracchus treated as so
important by Crassus and his friends—or rather, by Cicero?
A possible motivation for this comment is the memory of the
radical behaviour of young Sulpicius soon after the time of this
dialogue. As tribune in 88 Sulpicius proposed distributing the new
(Italian) citizens and the freedmen through all the tribes in order to

---

[2] *Fam*. 5.12, especially 4. *Att*. 4.6.4, the same letter which speaks of the mysteri-
ous *Hortensiana* (now dated to Apr. 55; see Ch. 1), urges Atticus to get a copy of the
letter from Lucceius, and calls it 'a very fine piece.'

benefit from their political support.[3] Sulpicius was killed in the ensuing political violence, so his proposal was never implemented. But Cicero himself had reason to fear the predominance of freedmen exercising citizen rights in the urban population: his enemy Clodius had found a different way of exploiting their increasing number—not so much through their votes in the assemblies as by using their violence to shift the vote in favour of Clodius' legislation in 58, including the personal decree outlawing him as an exile.

As for the brothers Gracchi, their tribunates were an ominous landmark for Cicero as he looked back two generations. This is why Crassus' last discussion, on *actio*, chooses as its final illustration a practice of Gaius Gracchus, who used the prompting of a flute player to control the pitch of his public harangues to the Roman people. It might seem counter to Cicero's advocacy of the orator as model statesman to draw his readers' attention to Gaius, for Cicero the example of misused eloquence. But Crassus' regret 'that he and his brother sank to such criminal behaviour in their politics' (*in eam fraudem*[4] *in re publica esse delapsos*), uses the Gracchi as a bridge to a still more gloomy prognosis: that 'a new way of living is now being provoked and displayed to posterity which will make us long for citizens' (such as the radical Gracchi) 'whom our fathers could not endure'.[5] Caesar Strabo begs Crassus to drop the subject, but as he approaches closure Cicero is returning his readers to the approaching troubles of Crassus' time and indirectly to the continuing decline they were themselves experiencing: the troubles on the eve of Crassus' death in 91, recalling those of the Gracchan years from 133–121,

---

[3] Our source is not the historical introduction to *De Oratore* 3, which only mentions Sulpicius' betrayal of his friends (3.11) but a combination of Asconius, *In Cornelianam* 64C (K-Schoell 57), Livy (Epit. 77), Appian, *BC* 1.55–6, and Plutarch, *Sulla* 8. On the preponderance of freemen among the urban plebs, and their exploitation by Clodius, see A. W. Lintott, *Violence in Republican Rome* (Oxford, 1999), 75–7, 85–8, on Sulpicius' attempts to maximize the effect of their votes by distributing them across all thirty-five tribes, ibid. 196 and J. G. F. Powell, 'The Tribune Sulpicius', *Historia*, 39 (1990), 446–60. Powell does not mention that Sulpicius' support of Marius would have been acceptable if not welcome to L. Crassus, who had married his daughter to Marius' son.

[4] *De Or*. 3.226. Cicero uses *fraus* of politically harmful behaviour in *De Or*. 1.3, 1.202, and 2.35. What makes this phrase exceptional is the verb *delabi*, with its mitigating implication that the brothers almost unwittingly slipped into (cf. *De Or*. 1.96, 2.246) this destructive conduct.

[5] 3.226, *quanquam . . . ea incitatur in civitate ratio vivendi ac posteritati ostenditur ut eorum civium quos nostri patres non tulerunt, iam similes habere cupiamus.*

are showing the next generation (*posteritati*, Cicero's present time) how to become even worse citizens. The rupture caused by the tribune Tiberius Gracchus both within the senate and within the Roman people becomes in *De Re Publica* the immediate crisis that opens the political debate of Scipio Aemilianus and his friend Laelius, who insists (1.31) on its greater urgency than the phenomenon of the two suns (*parhelia*) which has excited Tubero. Cicero will use the same framing technique in the *Brutus*, written under Caesar's domination in 46, to mark his otherwise muted grief over the political situation, evoking the suppression of free public speech both at the beginning of the dialogue proper, in 22, and approaching its end in 331–2.[6]

We are accustomed to think that, in the years after Caesar's first consulship, when Cicero constructed his portrait of the orator-statesman, the senatorial government of the Roman common-wealth was collapsing, or had already collapsed, under the pressure of the military and financial power controlled by Caesar, Pompey, and Crassus. Hindsight is by definition infallible. But what did Cicero believe in 59? Or after his restoration in 57, in 55, or even in 51–50? One of the last speeches delivered before Cicero was effect-ively silenced by the three was his defence of Sestius, accused of *vis* in February 56 because of his armed support of the public assem-blies needed to reach the vote for Cicero's own restoration in August 57. Famously Cicero used this occasion to make a profes-sion of his political credo, tracing liberty to the replacement of violence by justice (*vis* by *ius*) in true commonwealths which extended to their citizens the protection of the laws. He argues that, since Clodius had obstructed the courts in the execution of the law, Sestius' use of force was not violence, but the defence of law on behalf of his fellow citizens.[7] This argument is central to Sestius' plea, but subsidiary to Cicero's impassioned manifesto of republicanism. This lays claim (S*est*. 97) on the implicit support

[6] *Brutus* 22: 'other things fell apart and eloquence itself fell silent', *cum alia ceciderunt tum etiam ea ipsa . . . eloquentia obmutuit*. When Cicero ends by deploring the lack of opportunity for Brutus' eloquence he sets it in the context of 'our state's wretched misfortune' (331, *misera fortuna rei publicae*), and 'this ruthless disaster in our community' (332, *haec importuna clades civitatis*).

[7] On this plea, see now Christopher Craig, 'Shifting Charge and Shifty Argu-ment in Cicero's Speech for Sestius', in Cecil W. Wooten (ed.), *The Orator in Action and Theory in Greece and Rome: Essays in Honor of George A. Kennedy* (Leiden, 2001), 111–22.

of all honourable men of every walk of life from leading statesmen (*principes consili publici*) to respectable but humble folk (*integri . . . et sani et bene de rebus domesticis constituti*) for the religious and political institutions of Rome, the authority of the senate, the laws, customs, and courts, the empire, and Rome's military strength: *religiones, auspicia, potestates magistratuum, senatus auctoritas, leges, mos maiorum, iudicia, iuris dictio, fides, provinciae, socii, imperii laus, res militaris, aerarium* (*Sest.* 98). But even while Cicero proclaimed that the great majority of citizens loyally supported senatorial government, he had to acknowledge the overwhelming power of Caesar, Crassus, and Pompey: 'Caesar with his immense army in Italy, while the other two, though without a command in 57 were <at the head of the Roman people> and could raise an army if they wished, and Clodius said they would.'[8] Cicero shrewdly attributes this affirmation of the supremacy of the three commanders to his enemy Clodius, but it already represented his own and other men's perceptions.

We cannot expect him to parade his disillusionment or his fears in this or other public speeches, or even in letters that might reach beyond his most trusted friends. When he writes to Atticus in 59 that 'the state is utterly lost'[9] does this imply a wider level of political oppression than his report to the absent Lentulus Spinther in 55 that 'whatever I aimed for, when I had come to the end of the highest magistracies and greatest effort, dignity in expressing my political judgments and liberty in pursuing my policies has been utterly taken from me, yet no more than it has been taken from us all' (*Fam.* 1.8.3)? Or to take another formulation from his extended political apologia of the following year: 'I did not think I should fight against such great power, nor that the leadership of these preeminent citizens should or even could be abolished' (*Fam.*1.9.21). The word I have translated as 'leadership'

---

[8] *Sest.* 41, *ex quibus unum habere exercitum in Italia maximum, duo, qui privati tum essent, et <populo Romano praeesse> et parare, si vellent, exercitum posse, idque facturos esse dicebat.* I rather doubt Peterson's OCT supplement (bracketed) for the MSS *praeesse*; it seems too populist in tone for Cicero, and Wolff's *praesto esse* is more likely.

[9] *Att.* 2.21.1, 'Why write to you in detail about the state? It is utterly lost', *de re publica quid ego tibi subtiliter? Tota periit.* But earlier letters (2.18–20) from June or July 59 reflect the same loss of public and private liberty. On Cicero's perception of his loss of political liberty in this decade see P. A. Brunt, 'Libertas', esp. 327–8, in *The Fall of the Roman Republic and Other Essays* (Oxford, 1988).

is *principatus*, the state of being *princeps* (a leader, or leading man), and if this usage is common, the abstract noun—which would become the constitutional designation of Rome's government under Augustus and his successors—is not.[10] This seems to be the first application to actual political life of the concept, which in a sense formalizes the regular usage of *principes* for the leading men of authority in Rome's day-to-day senatorial business.

We could, of course, treat these laments as momentary cries of despair from a mercurial personality who seems hopeful enough about his own political role and the senate's independence of decision in other letters from, say, 56 or even 54. However, any attempt to compare these private assessments of political life with the views which Cicero allows to appear in *De Oratore* is falsified by several constraints. We cannot directly measure Cicero's private beliefs about the contemporary state of government at Rome from the dialogue of Crassus and his circle, whose dramatic date prevents any reference to events after 91. We might claim that the choice of this early dramatic date demonstrates his desire to avoid passing judgement on his own time: but we could more justifiably argue that, if Cicero had been utterly convinced in 55 that the senate and the individual politician would never again have a free voice in directing the state, he could hardly have devoted such care and artistry to presenting an unrealizable model of ordered government. His personal preface to the first book of *De Oratore* certainly conveys deep discouragement at the loss of an honoured and influential old age, but it avoids any specific allusions to Clodius or to his own exile and restoration, still less to the compact of the 'triumvirs' dominating elections and legislation at Rome from mid-56 until well after the completion of the dialogue. And the more objective second phase of his preface, enumerating the personal and educational requirements of the ideal orator, depends on his readers accepting the continued possibility of such a public career. Better, then, to assume that Cicero, like most of us, wanted to believe that present troubles would sooner or later come to an end, reverting to a future more like the remembered stability of the past.

---

[10] Thus Caesar uses *principatus* for the leadership of one Gallic tribe over the others, and the position offered to Cingetorix as chieftain (*BG* 6.8); Cicero typically applies it to moral authority in *De Sen.* 64, *De Off.* 1.86 (the ideal citizen worthy of *principatus*), and *De Off.* 2.66, the *dignitatis principatus* traditionally accorded to eloquence.

As reported by later historians, there are few episodes of violence and disorder in the 50s without precedents in the previous decade, when violence was associated with the legislation of Pompey's major commands, and Cicero's own consulship was threatened with *a coup d'état* by a defeated political competitor. Cicero must also have gained some reassurance from earlier renewal of more or less conventional government after the Social War and Marian massacres,[11] and again in his late twenties after Sulla's autocracy and the terror of the proscriptions.

## *De Oratore* and *De Re Publica*: Idealizing the Leadership of the Orator-Statesman

Another approach to Cicero's expectations at the time of *De Oratore* can be made by comparing his views on the statesman's individual role in our dialogue with his second treatise, the *De Re Publica*, circulated in 51. The themes of the two dialogues are to some extent complementary, as Cicero moves from constructing the ideal statesman to analysing the ideal state—or better, constitution. But it would be a mistake to assume that when Cicero composed *De Oratore* he had already formed the plan of complementing it with a second dialogue, nor should we make the opposite assumption that his perspective would have changed with the events between 55 and 51 which posterity now interprets as leading to breakdown and to autocracy. Instead it may be helpful to return to the issue of individual preeminence and examine what kind of role Cicero claims for his ideal statesman, first in *De Oratore*, then in the more incomplete and problematic text of *De Re Publica*. Any inferences about Cicero's views of contemporary political life in this dialogue are complicated by three factors: its chronological displacement, this time by two generations, to 129 BC; its partial modelling on Plato's *Republic* (concerned with an ideal, not an actual state, and that only as a magnified version of the ideal soul); and finally the loss of much of the original text.

So let us start from Cicero's comments on different kinds of leadership in *De Oratore*. From the beginning he stresses the importance of eloquence in wise government, and the orator's role as a statesman: compare the political language of Crassus'

[11] He describes the years under Cinna in *Brutus* 308 as *sine armis, sed oratorum aut interitu aut discessu aut fuga:* scarcely political normality.

encomium in *De Or*. 1.30–2, and of Antonius in 2.35. As we saw in Chapter 9, the oratory of the statesman controlling the masses becomes the focus of Antonius' shrewd recommendations in 2.334–40.

For at least a century before the dramatic date of our dialogue the Romans had formally recognized their most respected senior statesman as *princeps senatus*, but it is far more common to find *principes* used collectively (as in *Sest*. 97) of the senate's recognized leaders. Thus *De Or*. 1.23 describes the interlocutors of the dialogue as 'our most eloquent men, pre-eminent in every kind of distinction' (*nostrorum hominum eloquentissimorum et omni dignitate principum*), and goes on (1.24) to equate Philippus' invective against Crassus and his allies with an attack on 'the cause of our leading men' (*causam principum*). Similarly *princeps* and related nouns are associated with the *auctoritas* of the senate collectively, or of its senior statesmen whose career and public service has earned them personal authority,[12] but Cicero can use other terms in formulating this. In 1.211 Antonius uses the traditional term *auctor* to define the statesman, but also the new quasi-metaphorical *rector*:

The man who understood the basis of procuring and enhancing public advantage, and employed it, should be considered the guide of the commonwealth and initiator of public policy.

qui, quibus rebus utilitas rei publicae pareretur <et> augeretur teneret, iisque uteretur, hunc rei publicae rectorem et consili publici auctorem esse habendum.

*Rector* occurs only here in the whole dialogue, and is in fact the first instance in Cicero,[13] but Antonius glosses his meaning more conventionally on the next page as *ille consilii publici auctor ac senator bonus* (1.215) and in his account of Pericles (1.216) as *princeps consilii publici* 'leader of public policy'.

---

[12] Cf. Cicero's reference to *auctoritas senatus* in 1.24, with the speech of Crassus cited at 3.4; for Crassus' *auctoritas* as derived from his career through the magistracies (*perfunctio honorum*) see 3.7; for the *auctoritas* of the orator, 2.333, 3.211. On *auctoritas* as the basis for the status of *princeps/principes* see P. A. Brunt, 'The Fall of the Roman Republic' in *Fall,* 43–7 (with endnote 4), and 'Libertas', 323–30. Like Brunt's discussion any consideration of *auctoritas* must go back to R. Heinze's great essay, reprinted pp. 43–59 in *Vom Geist des Römertums* (Darmstadt, 1960).

[13] *OLD* s.v. *rector* 1 shows that the word originated as a synonym of *gubernator*, 'steersman.'

Now Antonius, the trial lawyer, deliberately distinguishes in this speech between statesmen like Aemilius Scaurus and the orator whom he defines more widely to include his forensic functions as 'able to use agreeable language and persuasive arguments in legal and public disputes' (1.213, *qui et verbis ad audiendum iucundis et sententiis ad probandum accommodatis uti possit in causis forensibus atque communibus*). But he will later admit that he did not believe the case he was arguing, and endorse Crassus' wider concept of the orator. For the agenda behind Cicero's impersonation of Crassus is to fuse the concept of orator with that of statesman by the cumulative effect of a series of persuasive definitions.

Cicero may have been the first to associate eloquence with the authority to determine public policy. To make this claim of leadership for the orator, rather than for the aristocrat who based his claim on *genus* or the general who relied on military *virtus*, he had to redefine and expand the basis of eloquence to include both practical prudence and moral wisdom. Thus Crassus himself is described by Antonius in 1.105 as 'pre-eminent in judgement and speech', *consilio linguaque princeps*. When Cicero returns to the contention between philosophy and eloquence in 3.60, he contrasts the quietist Epicurean school with a fuller description of the ideal orator as:

the man whom we are seeking and desire as an initiator of public policy and guide in directing the state and a leader in expression of judgement and eloquence in the senate, before the people and in public trials . . .

quem quaerimus et quem auctorem publici consilii et regendae civitatis ducem et sententiae atque eloquentiae principem in senatu, in populo, in causis publicis esse volumus.   (3.63)

The necessary skills and qualities of this orator-statesman are repeated most explicitly at the heart of Crassus' response to the philosophers' challenge:

That full possession of wisdom and theory is ours, I say, if we are true orators, and if we are the men to be employed in the disputes of citizens, in their prosecutions, and in public deliberations as initiators and leaders.

Nostra est enim—si modo nos oratores, si in civium disceptationibus, si in periculis, si in deliberationibus publicis adhibendi auctores et principes[14]

---

[14] The same combination is applied in *De Re P.* 2.46 to L. Iunius Brutus as instigator of Rome's popular revolution (see discussion below).

sumus. Nostra est inquam, omnis ista prudentiae doctrinaeque possessio. (3.122)

But if the schools of philosophy were the chief intellectual obstacle to the orator's claims of wisdom as his professional expertise, in Roman political life the obstacle was the traditional hierarchy of society itself. It was the closed circle of the hereditary elite, based on conditioning by fathers and grandfathers in office, and on the solidarity of bonds of marriage and business dealings, which had offered the most resistance to Cicero's rise to the consulship. His teacher, Lucius Crassus, was born inside this elite, which enabled him to reinforce his claims to authority through his eloquence by his inbred familiarity with the unwritten codes of senatorial practice.

And to move his focus from the statesman to the state in *De Re Publica* Cicero took on the persona of an even more aristocratic figure, fully equipped with *genus* and *virtus*—Scipio Aemilianus, conqueror of Carthage and Numantia. For Scipio he created a swan song in the *De Re Publica* to match Crassus' wisdom in *De Oratore*. Cicero now expanded his horizons to debate the respective merits of the three forms of government known to Plato, and a fourth, composite or mixed, constitution which had been predicated on the Roman *res publica* by Polybius. Unfortunately the text of Cicero's treatise has significant gaps caused by the passages not recoverable from its unique palimpsest, so that allowance must be made for the possibility of modification and even contradiction of the arguments that have survived in lost arguments made against them.

The real novelty in Cicero's new excursus into political theory is not the Platonic antithesis between monarchy and aristocracy (not to mention democracy) but the comparison between an aristocratic government and a mixed government in which a single leader is predominant. In his own day Scipio himself, whose victories had brought him authority as a statesman (cf. *principem rei publicae*, 1.34), might have been that unique leader. But before Scipio makes his argument for the merits of single rule Laelius is allowed to make a strong case for aristocracy (*delecti ac principes cives*, 42, cf. *principes*, 51[15]). Indeed, what survives of this book leaves the

[15] Cf. J. E. G. Zetzel, 'Cicero and the Scipionic Circle', *HSCP* 76 (1972), 173–80, at 177 'Is there any wonder that a dialogue written between 55 and 51, in the period of growing turbulence before the Civil War, marked by the death of Crassus and the domination of Pompey at Rome, imagines a state under the control of enlightened aristocrats like Scipio?' Was Cicero already approaching his design

impression of preferring collective aristocratic rule. In the cycle of changing and declining forms of government adapted from Plato the best phase of aristocracy is described in language evoking senatorial government as 'an ancestral (or fatherly?) council of leaders taking good thought for the people', *patrium consilium populo bene consulentium principum* (1.65).[16] This will lead in book 2 to the modified or mixed constitution finally proposed by Scipio in Polybian terms, which balances the due authority in the council of leading men (2.58, [*satis*] *auctoritatis in principum consilio*) with the right proportion of power in the magistrates (*potestatis satis in magistratibus*), and of liberty in the people (*libertatis in populo*).

In the reinterpretation of early Roman history which occupies most of this book, the senate is consistently treated with respect. But both later in book 2, and in excerpts preserved from book 5 where Cicero is not arguing directly about Rome itself, there is more stress on the preeminence of a single good leader: thus 2.51 adapts language we have met in Cicero's collective description of good statesmen in *De Or*. 1.8. There they were 'those able to direct and steer the state by their advice and wisdom', *consilio et sapientia qui regere et gubernare rem publicam possent*. In *De Re P*. 2.51 the antithesis of the tyrant is portrayed through similar images taken from law and navigation:

a good and wise man, experienced in public advantage and honour, a sort of guardian and administrator of the commonwealth, for so should the man be called who will be the guide and steersman of the state.

bonus et sapiens et peritus utililitatis dignitatisque civilis quasi tutor et procurator rei publicae: sic enim appelletur quicumque erit rector et gubernator civitatis.

It is, in fact, chiefly book 5, devoted to the delineation of the ideal citizen-statesman, which has led some historians to believe that Cicero came to advocate the primacy of a single guide or guardian.

for the *De Re P*. during the composition of *De Oratore*? Is it a foreshadowing of the roles assigned to Aemilianus, Laelius, and Philus in *De Re P*. that in *De Or*. 2.154 Cicero singles out these three men as *auctoritate grav(es)*, and groups them with *multis principibus civitatis*?

[16] This is continued in the account of how the Roman constitution evolved in *De Re P*. 2: the senate are introduced as *principes* (2.14, cf. 2.23, 26, 56, and 57), and seen as a source of *auctoritas* (cf. 2.15, 55, 56, and 58).

This figure is mentioned three times in its excerpts. In 5.5 (a fragment of the palimpsest) Cicero's speaker treats the ideal *rector* as a long-term administrator, comparing him to the steward (*dispensator*) and overseer (*vilicus*) of a private estate:

Just so this 'director' of ours will have devoted himself to knowing the law and statutes so that he can as it were administer and in some sense oversee the commonwealth.

Sic noster hic rector studuerit sane iuri et legibus cognoscendis . . . ut quasi dispensare rem publicam et in ea quodam modo vilicare possit.

Two other excerpts come indirectly: the first is Cicero's bitter recall of this ideal during the historical crisis of Pompey's flight from Rome, in a letter to Atticus (*Att.* 8.11.1) contrasting Pompey with the *moderator rei publicae* to whom he would have entrusted everything. The letter specifically attributes to Scipio in the fifth book the description of the ideal moderator who makes his goal the happiness of his fellow citizens: *sic huic moderatori rei publicae beata civium vita proposita est.* In the second excerpt Augustine talks of Cicero's concern to educate a *princeps civitatis*.[17] From these fragments and references in book 2, knowledge of historical events leading up to the principate prompted the idea that by the time Cicero composed *De Re Publica*, he had come to believe that Rome needed a single leader.[18] Some historians, familiar with talk of dictatorship for Pompey in 53 and his sole consulship in 52, have inclined to think Cicero was hinting at Pompey, while others have believed he was alluding to himself.

Was Cicero in the lost fifth book of *De Re Publica* still using the Platonic argument to talk about Rome? And if so was he contemplating an official and continuing position for his *rector*, or a more informal recognition of the wise statesman's superior authority? How could he have been thinking of Pompey, the single most

---

[17] These quotations are grouped as *De Re P.* 5 (6) 8, Ziegler.

[18] See P. A. Brunt, in *Fall*, and earlier studies such as E. Lepore, *Il princeps Ciceroniano e gli ideali politici della tarda repubblica* (Naples, 1954); also the discussion in A. Michel, *Le Dialogue des orateurs de Tacite et la philosophie de Cicéron* (Paris, 1962), 56–60. I support the more sceptical approach of Elizabeth Rawson, *Cicero: A Portrait* (London and Ithaca, NY, 1975, 1983), 152, 'it is generally agreed that there may be more than one *rector* or *gubernator* in the state at one time, and that he (*sic*) has none of Augustus' solid . . . powers, but depends wholly on example, knowledge of the laws and influence over public opinion. Nor was Pompey the model . . . Rather, the models are the great men of old.'

powerful man in Rome at the time? Let us review the period from
February 52 when Pompey was first sole consul, then joint consul
with Metellus Scipio, his nonentity of a father-in-law. What did he
achieve and how does Cicero judge these achievements? The most
drastic of his legislative actions was a tightening of court procedure
to reduce time consumed in advocacy and eliminate letters of
written support.[19] Although it was still remembered as a landmark
by Tacitus more than a century later, this legislation brought
Cicero himself a rare judicial and political defeat. He had been
backing the consular candidacy of his old supporter T. Annius
Milo, when their common enemy Clodius was killed by Milo's
followers in a skirmish on the Appian Way in January 52. The
rioting of Clodius' supporters culminated in the arson of the senate
house: soon the continuing impossibility of holding consular elec-
tions for the year that had already begun led to Pompey's formal
election as sole consul. He immediately declared the killing of
Clodius to be contrary to the interest of the state, and aimed the
new procedures of his legislation *de vi* and *de ambitu* at the con-
demnation of Milo, whose trial was conducted under the threat of
military intervention. Pompey also enacted or endorsed two more
laws, one promoted by the college of tribunes authorizing Caesar
to stand for election for the consulship while still exercising com-
mand over his provinces—something Cicero holds against Pompey
in letters from the same period as his quotation from his own *De Re
Publica*.[20] The other law, designed to eliminate electoral bribery,
prevented praetors and consuls from taking up a province until five
years after ending their office; it was this act which sent Cicero to
Cilicia against his will, and effectively cancelled the legal guaran-
tees provided by the tribunician law for Caesar.

No, far from the likelihood that Cicero writing in 52 or 51 would
have had Pompey in mind as his model *rector* and *moderator*, one
might have expected the experience of those years to discourage
any idea of entrusting the state and its policies to a single leading
statesman.

---

[19] Full details are given by Asconius' introduction to Cicero's *Pro Milone*, 36C
(=31 K-Sch., and cf. 38C= 34 K-Sch.), cf. *De Fin* 4.1. This legislation is noted as a
factor in the decline of oratory at Tacitus, *Dialogus* 38.2.

[20] See *Att*. 8.3.3 (written a few days before 8.11 quoted above), for Cicero's list of
Pompey's blunders, including this law.

Why infer that Cicero actively advocated a monarchic role for any statesman in Rome in the years after *De Oratore*? We saw that in *De Re P.* 2.51, when Scipio sets up his ideal leader as the opposite of the imaginary tyrant in the Platonic cycle of constitutions, he portrays his function first in legal terms, as a guardian or administrator, then in the language of guidance, as the steersman of the community. His function is to protect the state by his advice and service (*consilio et opera*). Although there is no mention of the word *princeps*, it looks as though Scipio was moving to suggest an alternative name for his paragon when the text breaks off. Indeed, it would help Cicero's argument if Scipio had gone on to recall the example of the liberator L. Iunius Brutus, hailed only five sections earlier (*De Re P.* 2.46) as the *auctor et princeps* who roused the people to drive out the monarchy.[21] James Zetzel is right to conclude his fine analytic note on this passage by dissociating it from the subsequent formal development of the principate.[22] Despite the implication of long-term administrative responsibility suggested by *De Re P.* 5.5 (quoted above) Cicero is surely thinking primarily of a statesman equipped to take this kind of initiative in emergency, something which the wise and eloquent man should seize, even without holding office.

And after 63 Cicero was himself, like L. Iunius Brutus, *privatus*, without office. But he would naturally also recall his initiative in saving the state as consul in 63. Could he have been thinking of himself in such a guiding role? Readers of his letters from the 50s know how totally disillusioned he was about pursuing any political action, and how he despaired of finding wise and virtuous senators and magistrates with the public interest at heart. Even the virtuous Cato badly lacked practical wisdom. Polybius had identified the monarchic element of Rome's mixed constitution as the consulship. But Cicero had every reason to see the consulships of the 50s as oscillating between tyranny (59 and 55), corruption (58), and impotence—no longer a useful vehicle of government. Cicero

---

[21] *De Re P.* 2.51 continues 'And since this name [*gubernator?*] is unfamiliar in our language, and we will have to discuss this kind of man frequently in the rest of our speech ...'
[22] J. E. G. Zetzel, *Cicero: De Re Publica*: *Selections* (Cambridge, 1995), 205–6, with which compare the introduction to his annotated translation *Cicero: On the Commonwealth and On the Laws* (Cambridge, 1999).

may often have despaired of the current leadership in the senate of the 50s, but we simply do not have any evidence to support the hypothesis that he ever rejected senatorial government or advocated a new kind of autocracy to meet the constitutional needs of Rome.

In the time of Caesar's domination Cicero mostly worked on rhetorical theory and philosophy: only the first work he completed in 46, *Brutus* (subtitled *On Distinguished Orators*), touches on political life, and does so with some inhibition. We have seen that Cicero began and ended *Brutus* with laments over the loss of opportunity (or liberty) for eloquence. While he gives full coverage to the careers and rhetorical skills of Antonius (139–43) and Crassus (144–64), Cicero avoids political context. Brief and quickly suppressed protests follow his account of M. Marcellus (Cos. 51), at that time still in exile, and of two friends of Brutus, Torquatus and Triarius, who died in the civil war.[23] But when Cicero comes to treat the next generation of speakers, the men who were or could have been his own students, Cicero refrains from identifying the circumstances of their deaths: only the fate of young P. Crassus, defeated and murdered by the Parthians, is hinted at (281–2), while Caelius (273), Calidius (274–80), Calvus (280, 283–4), and Curio (280) are described only in terms of their art. Since the living are excluded from discussion (cf. 248), Pollio and Messala go unmentioned, and Cicero diverts the dialogue away from the whole civil war generation to the rhetorical issue of Atticism (284–99), circling back in 300 to Hortensius and his long career.

## A Retrospect on *De Oratore* and its Generation: Tacitus' *Dialogus*

A more distant reflection on our dialogue and its times is provided by Tacitus' *Dialogus De Oratoribus*. The dramatic date of the work is around AD 75, but it was most probably composed in the years

[23] Cf. *Brutus* 251 on Marcellus: 'I find myself rushing to recall our shared misfortunes, although I have extended this conversation with the aim of forgetting them,' and 266, where Brutus is upset by the names of his friends, and wishes Cicero's attempts at conciliation had succeeded, and the state had not lost so many other fine citizens. In reply Cicero alludes to the even more bitter expectation of new ones, *acerbior exspectatio reliquorum*. This is probably the boldest and most pointed comment in the dialogue.

between the death of Domitian and 102.[24] Despite its brevity, the
dialogue echoes the language and much of the form of *De Oratore*.
Its theme, as its title suggests, is orators and oratory, and three
questions are raised. First, is it better for an eloquent man of
the elite political class to employ his talent as orator or as poet?
Secondly, how are modern orators to be judged in comparison with
great speakers of the republican past, and finally, if they are infer-
ior, what are the moral, social, and political reasons for this?

   We know from the author of 'On the Sublime', composed a
century after Cicero's death, and shortly before the dramatic date
of Tacitus' dialogue, that the decline of public oratory was a
common theme at this time. The author of 'On the Sublime',
writing from a Greek and probably Jewish cultural point of view,
introduces as epilogue to this critical study his own mini-dialogue
with a philosopher who attributes this decline to the loss of demo-
cratic freedom of speech.[25] But both the author and his interlocu-
tor are thinking in terms of Athenian democracy, and of the
absorption of Athens into the Macedonian empire in the time of
Demosthenes, not of Rome in the time of Cicero. He clearly
accepts rhetorical decline as a fact, but attributes it to individual
moral decadence rather than external political causes.

   Both 'On the Sublime' and Tacitus' *Dialogus* end with concern
over the impact of changed political life on oratory, not with the
power of oratory itself to control political debate and guide a
(relatively) free community. In Tacitus the question of decline in
the art of oratory is debated between the modernist Aper and the
conservative Vipstanus Messala, before the discussion is extended

[24] The date is still disputed; see T. J. Luce, 'Reading and Response in the
*Dialogus*', in *Tacitus and the Tacitean Tradition* (Princeton, 1993), 11 n. 5;
C. Murgia, 'The Date of Tacitus' *Dialogus*', *HSCP* 84 (1980), 99–125; T. D. Barnes,
'The Significance of Tacitus' *Dialogus de oratoribus*', *HSCP* 90 (1986), 225–44; and
R. G. Mayer, *Tacitus: Dialogus de Oratoribus* (Cambridge, 2001), 22–7.

[25] I follow the interpretation of Donald Russell *Longinus' On the Sublime* (text
and commentary; Oxford, 1964); tr. in *Ancient Literary Criticism: The Principal
Texts in New Translation* (Oxford, 1972). The text, long attributed to the 3rd-cent.
Cassius Longinus, belongs to a much earlier period, in or soon after the principate
of Nero. The author's culture is primarily Greek, but his citation of *Genesis* has
suggested that, like Philo or Caecilius of Cale Acte, he was Jewish. For him
Cicero was simply an author of texts, and his comparative criticism of Cicero and
Demosthenes (ch. 12) is strictly stylistic. Although he adopts the form of a reported
dialogue for the postscript in which he discusses decline (44) he shows no interest in
Ciceronian rhetorical theory or political life before the principate under which he is
writing.

by their host, the poet and former orator Curiatius Maternus, to take into account the political conditions that favoured oratory in Cicero's generation, and contrast them with the present day.[26] The *Dialogus* echoes some structural elements of *De Oratore* as well as its didactic analogies, and has usually been read as endorsing L. Crassus' encyclopedic approach to the orator's education.

But it is far from obvious that Tacitus identifies with any of the points of view expressed by his interlocutors. A recent paper of Sander Goldberg has made a strong case for reading both Antonius' opposition in *De Or.*1 and Aper's in the *Dialogus* not as counter-argument for its own sake, but as presenting an equally valid point of view:[27] certainly in *De Oratore* Cicero must treat respectfully the point of view of Antonius, since it is maintained by his brother Quintus, to whom the dialogue is dedicated. But although Messala, 'an imitator of all the richest work of the older orators',[28] represents the values of Ciceronian rhetorical theory revived by Quintilian, he is too predictable and lacking in subtlety to be a good advocate. Thus his first speech argues from the lack of recent speakers who can match the orators of the republic—not Cicero's generation but Asinius Pollio, Caelius, and Calvus. Messala is not considering orators as statesmen, only in terms of their stylistic merits and he lists four causes for the supposed artistic inferiority of modern orators: the idleness of youth, neglect by their parents, the ignorance of their instructors, and the general forgetfulness of the good old practices, *oblivio moris antiqui* (28.2).

In the good old days, attentive mothers brought up their children to be worthy leaders,[29] with personal supervision like that of

---

[26] For a detailed analysis, see Luce, 'Reading' 12–13.

[27] 'Appreciating Aper: The Defence of Modernity in Tacitus' *Dialogus de Oratoribus*', *CQ* 49 (1999), 224–37, esp. 232-end. Goldberg may be justified in stating that (232) 'from the perspective of the later first century A.D., Cicero's world was still essentially the world of Licinius Crassus, the Gracchi and the elder Cato, a world that gave extraordinary licence to the orator', but if we are to understand both Cicero's aspirations in composing *De Oratore*, and their frustration, we must get behind this imperial perspective.

[28] *Laetissima quaeque antiquorum imitantem, Dialogus* 23.6. Although this is a stylistic judgement of Messala's courtroom oratory, his emulation of Cicero extends to the moral and educational content of his speeches in the dialogue, as will be indicated below.

[29] I follow Persson's interpretation of *principes* in *principes liberos* as predicative, as opposed to Güngerich's trivializing 'children of the elite'. However Güngerich's commentary is helpful in supplying many of the linguistic echoes from *De Oratore*.

Cornelia, mother of the Gracchi, instead of leaving them to ignorant servants (28.5). They did not fill their sons' heads with gossip about the theatre and chariot races, nor did they send the boys off to the *rhetores*, but had them read good authors and study history, just like Cicero's education as reported in the *Brutus*.[30] Cicero's books show he lacked no arts, including dialectic, ethics, physics (30.4); this was the source of his abundant and flourishing eloquence.[31] For (and here we are encouraged by verbal echoes to recall *De Oratore*);

The power and ability of the orator is not confined in narrow and cramping boundaries like other disciplines, but that man is a real orator who can speak on every issue splendidly and richly and in a persuasive fashion in keeping with the seriousness of the subject matter, to meet the needs of the circumstances and ensure the enjoyment of the audience.

Neque oratoris vis et facultas sicut ceterarum rerum angustis et brevibus terminis clauditur, sed is est orator qui de omni quaestione pulchre et ornate et ad persuadendum apte dicere, pro dignitate rerum, ad utilitatem temporum, cum voluptate audientium possit.[32]    (30.5)

Cicero's emphasis on the need to educate his statesman in philosophy, history, and civil and statute law was not of course confined to *De Oratore*, but is repeated in condensed form in *Orator* 116–20. But some elements in Messala's prescription were only developed in *De Oratore*: for example, he follows Crassus' exposition of the value of ethical theses as material for speech (cf. 3.111–18) and the uses of dialectic in argumentation. The theses, he claims, and the study of ethics are the *fontes*[33] from which the man who understands psychology must draw to move the jury to or from anger and other emotions, controlling his speech as the character of each person requires. (Here Messala combines Crassus' analysis in

[30] In *Dialogus* 30.3 Tacitus summarizes *Brutus* 306 and 309 and even echoes two turns of phrase (*non contentus* and *peragrasse*) from 316.

[31] Cf. *De Or.* 1.68, 157–8, and 3.58 on dialectic and ethics; on physics see 3.122, 127–8.

[32] In 30.5 the idea of confining the power of oratory echoes Cicero's use of *termini* (∼ 1.70, 1.214, 2.5) and *angustiae* (∼ 3.121 and 126, in the same context) while the allusion to *dignitas rerum* echoes *De Or.* 1.144, ad rerum dignitatem apte.

[33] On the *theses* see Crassus' account in 3.107, 109–18. Both Crassus and Antonius (1.94 and 203; 2.45 and 144; 3.123) emphasize the philosophical *fontes* of the orator's arguments already prominent in Cicero's own introduction (1.12 and 17). Other phrases that echo *De Oratore* in this section are *Dialogus* 31.2, *subiecta ad dicendum materia* (∼ *De Or.* 2.116, 3.54), 31.3, *varietatem complecti* (∼ *De Or.* 3.126), and 31.4, tenebit venas (∼ *De Or.* 1.223).

book 3 with Antonius' imagery and account of emotional persuasion in book 2.) The good orator will sample (*libare*) all the arts, but drink in (*haurire*) only the most important. Like Crassus in *De Oratore* 1.166–200 Messala insists on knowledge of civil law, and distinguishes assimilated knowledge from what is borrowed for the occasion: in short no one can become an orator unless he comes to the forum equipped with all the arts, like a man entering battle fully trained in handling all weapons.[34] Here again Tacitus reinforces Messala's Ciceronian message with Antonius' imagery of combat (*De Or*. 2.291–2). Finally as Messala reaches his peroration, the neo-Ciceronian borrows from Crassus' own climax in *De Or*. 3.121–5 the language of usurpation and trespass. Present-day speakers (*diserti*) reduce eloquence to a few propositions and narrow aphorisms, as if the art had been driven out of her own realm (*velut expulsam regno suo*) stripped of her supreme power, her retinue, and her status, like some humble handicraft.[35]

Although Messala's conservative manifesto only refers explicitly to Cicero's *Brutus* (30.3) and *Orator* (32.6), its material recalls many passages of *De Oratore*. Maternus encourages Messala, prompting him to expatiate on the right kind of training, given by exposure to a gentlemanly form of apprenticeship—the *tirocinium fori*—which would teach the student to know the laws, to measure his adversaries, and to satisfy the audience. But although his praise of the old is preserved intact, Messala's denunciation of the newer declamatory system is swallowed in a lacuna.

When the text resumes, both speaker and theme have changed. It is generally believed that Maternus is speaking, and that his argument has the approval of Tacitus himself. In contrast with the rhetoricians' traditional claim that oratory arose in peaceful societies, Maternus singles out the anarchic features of the late republic which glamorized oratory: the disturbances and licence of the period. At that time, when the whole community was thrown into conflict without a single *moderator*, any orator was as effective as the misguided populace could be persuaded: *mixtis omnibus et*

---

[34] Another favourite image: Güngerich notes that Tacitus transfers Cicero's use of *instructus* in *De Or*. 1.73 from the orator to the fighter. The forum is the battle line (*acies*, 1.157, 2.84, etc.) as opposed to the playground of the school.

[35] In *Dialogus* 32.4, *detrudere* echoes *De Or*. 1.46, *expulsam regno suo*, the main message of Crassus' complaints in 3.108 and 122, while *circumcisa et amputata* echoes 1.65 *circumcidat atque amputet*.

*moderatore uno carentibus tantum quisque orator saperet quantum erranti populo persuaderi poterat* (36.2). Maternus' description of the political scene is only too familiar to readers of Cicero's speeches and letters of the 50s: it was one of constant legislation, of claims to speak for the popular interest, of magistrates spending the night on the *rostra*, of prosecutions of the powerful, and hereditary family feuds, with incessant struggles between senate and people. Eloquence won office, influence with the *principes*, authority with the senate, and fame with the common folk (36.3–5). In this world orators had the kind of paramount influence Aper claimed for the *delatores* of the principate: republican orators were courted by magistrates and paradoxically enjoyed power without holding office: *ne privati quidem sine potestate erant.* According to Maternus, eloquence was indispensable to political life, since reluctant statesmen could be made to appear in front of the assembly, senators had to couch their votes in an eloquent speech, and men accused might have to defend themselves, just as witnesses were forced to speak in person in the public courts. Patronage and office alike depended on the public man's ability to hold his audience.

What Maternus adds to this portrait of the late republican scene is the prominence of those accused (37.4–6), and magnitude of cases, whether of bribery, embezzlement, or civil violence. Cicero gained his fame from the importance of his opponents—and here Maternus lists Catiline and Antony (Cicero's political enemies, attacked in senatorial speeches and *contiones*) along with Verres and Milo, whom he accused or defended in the criminal courts. Another factor was the sheer publicity and duration of the trials in the open forum. In Cicero's time the Roman people and representatives of the Italian communities beyond Rome (*clientelae quoque ac tribus et municipiorum etiam legationes*, 39.4) watched the trials because they believed their own interests were affected by the fate of politicians whom Cicero defended. In the later republic whole assemblies and many speakers did not refrain from harassing and feuding with great men like Scipio (is this Africanus or Aemilianus?), Sulla, or Pompey and were fired by popular hatred to attack Rome's leading men (*principes viros*).[36]

---

[36] Here surely *principes* is not a collective, but stands for men each of whom was in his time pre-eminent, that is, *princeps*.

Some of the contrasting features of the early empire are here suppressed, but could be easily supplied by Maternus' audience, and Tacitus' readers, who were well aware of the trials of magistrates by the imperial senate, and of nobles charged with treason (*maiestas*) or adultery in the imperial private rooms (*intra cubiculum*). But what emerges is a picture of the disintegrating *res publica* as political guerrilla warfare, a free-for-all, or at least for all personalities who had won fame or notoriety. Tacitus' speaker closes with a panorama of self-destruction. Let his retrospective account serve as an epitaph for the world in which Cicero lived in the years after his consulship, exile, and recall, when he chose to assign to his boyhood teachers the counter-factual task of constructing a statesman for a better society:

Our state too, so long as it blundered and wore itself out with partisan factions and conflicts and discord, so long as there was no peace in the forum, no harmony in the senate, no restraint in the courts, no respect for superior authority and no limits imposed on the magistrates, certainly produced a healthier eloquence—but the eloquence of the Gracchi was not so valuable to the state that it had to endure their laws (nor did Cicero compensate with the fame of his eloquence for the nature of his death).

Nostra quoque civitas, donec erravit, donec se partibus et dissensionibus et discordiis confecit, donec nulla fuit in foro pax, nulla in senatu concordia, nulla in iudiciis moderatio, nulla superiorum reverentia, nullus magistratuum modus, tulit sine dubio valentiorem eloquentiam . . . sed nec tanti rei publicae Gracchorum eloquentia fuit ut pateretur et leges, nec bene famam eloquentiae Cicero tali exitu pensavit.   (40.4)

Cicero, as we saw, agreed with Tacitus' judgement on the Gracchi: he may indeed have been Tacitus' source. But what does the last sentence mean? It is usually understood as trading on the standard theme reflected in Seneca's sixth *suasoria*:[37] that Cicero's oratory did not deserve the brutal death inflicted on him. But this is in no way parallel to what was said of the Gracchi. To maintain that parallel we would expect Maternus to continue by claiming that

---

[37] Cf. e.g. the weighing of Cicero's services against his death preserved in Livy's necrology (*Suas.* 6.22): 'his death . . . might have seemed to fair judges less outrageous since he suffered nothing worse from his triumphant enemy than what he would himself have inflicted. But if anyone were to weigh his faults against his virtues, he was a great and memorable man'. . . . *mortem quae vere aestimantibus minus indigna videri potuit, quod a victore inimico <nil> crudelius passurus erat quam quod eiusdem fortunae compos victo fecisset. si quis tamen virtutibus vitia pensarit, vir magnus et memorabilis fuit.*

even Cicero's eloquence did not compensate fairly for the damage he did the state (not least by his promotion of young Octavian in 44–43), but would Tacitus ever have voiced or even implied this criticism? And, given the irony of Maternus' apparent praise of the autocracy of *sapientissimus et unus* (41.4), can we take any or all of his account of the last generations of the republic as what Tacitus himself believed? This too may have been 'making a case', as T.J. Luce has suggested.[38] Yet the truth of Maternus' negative account of Roman political life in the years when Cicero still flourished in the courts and wrote his powerful advocacy of the educated orator-statesman is confirmed by our primary sources for the repeated disruptions of political practice—Cicero's own public and more often private communications. Given that military and economic power could bribe or silence conventional collective government by the senate, and prevent or subvert the election of the regular magistrates, there was no longer an open debate in which the disinterested statesman could hope for an audience. The enlightened community which the civic orator of *De Oratore* could have served and guided was beyond recall: the Roman world implied inside the dialogue and the world around its author had diverged beyond recovery.

In the end it is not Cicero the political thinker, but Cicero the educational and rhetorical theorist (and advocate) who has won this dialogue respect from posterity. Lovers of Latin experience a real admiration for its easy and elegant conversation: literary critics are—or should be—impressed by Cicero's architectural control, and his art in recalling relevant earlier points in the dialogue by skilful use of thematic imagery like musical leitmotifs. The society into which readers have been admitted is both morally and aesthetically superior, and graced by courtesy, modesty, and humour. But the dialogue also embodies two further achievements. Cicero was not the first Roman to respect and pursue Greek studies of man's role in society, devoting himself to understanding both the rhetorical and ethical approaches to political life. One thinks of Varro, and the unproductive studies of Cicero's friend Atticus. But the breadth and depth of Cicero's study was unique for his generation, and he forged a vision that encouraged his Roman peers to welcome and assimilate Greek values.

---

[38] In the discussion of the *Dialogus* cited n. 21 above.

Scholars have commented on the delicate balance that Cicero achieved through his speakers between honouring the major Greek writers and thinkers who inspired him, and affirming the superiority of Roman communal institutions and values. His skill in dissimulating his expertise in Greek art and literature in his public speeches is well known: but even in the private world of the dialogue, as Leeman[39]shrewdly observed, his speakers must extenuate their love and knowledge (say rather, *his* love and knowledge), of Greek thought, by deprecating their un-Roman behaviour in discoursing on intellectual matters like a professor. To win a Roman audience for Greek ideas required not only deep research but a balancing act of presentation. There was of course, and Cicero is open about it, an element of envy and cultural competition, even pride in mastering and then rivalling such a range of literature, philosophy, and historical writing. But surely we need not go so far in applying sociological theory that we speak of Cicero's genuine enthusiasm in terms of strategies and expropriation of Greek cultural capital?[40] I do not understand how fine scholars who admire Cicero and the culture he gave to Rome can treat his work as a quest for power, as if we could not acquire and apply other men's knowledge without besting them in some sort of zero-sum game.

It has become old-fashioned to praise a liberal education, or the educators who still hope to preserve or revive it, but this dialogue presented an entirely new model for its time, of learning to know one's own law, history, religion, and literature, while enriching it with the older more privileged culture which elite Romans needed to absorb from Greece. This at least is valid for modern times, that we should ourselves learn to value other cultures and urge our children to do so: but first they need to learn more about their

---

[39] I return to Anton Leeman's paper '*Ironie in Ciceros De Oratore*', *Form und Sinn: Studien zur Römischen Literatur* (Frankfurt, 1985), from which I quoted in the preface. The *dissimulatio* of Crassus and Antonius is depicted with a special subtlety in *De Or.* 2.12–28, the subject of Leeman's discussion.

[40] I have in mind a number of scholars who have applied Bourdieu's theories to classical literature, but in particular Tom Habinek's 'Ideology for an Empire in the Prefaces to Cicero's Dialogues', in A. J. Boyle (ed.), *Roman Literature and Ideology: Ramus Essays for J. P. Sullivan* (Berwick, 1994), 55–67, and *The Politics of Latin Literature: Writing, Identity and Empire in Ancient Rome* (Princeton, 1998). Despite his respect for Cicero, Habinek presents his intellectual output in terms of power politics.

own inheritance from study of their country's law and institutions, and (moral or religious) values. Only informed comparison of their own culture with the interests and values of other societies will teach them what they can cherish with legitimate pride. For those who enjoy learning, such a humane education need not take valuable time from commercial and technological skills. Cherishing one's language, literature, and history is no more incompatible now with proper study of the physical and mathematical sciences than it was in the Italian Renaissance, or in the eighteenth century. In that century the *Philosophes* of the French Enlightenment and the great political theorists and rhetoricians of Scotland found their inspiration in Cicero: he was central not only to the secular theories of Hume but to the evangelical education which the Reverend John Witherspoon brought to the College of New Jersey (Princeton) less than a decade before the American revolutionary war. Witherspoon's syllabus, containing not only the classical languages and theology but logic and rhetoric, history, geography, and science, produced a great president, James Madison, and many of the statesmen of the new Commonwealth, whose constitution he helped to draw up.[41] If we cannot expect such happy consequences in our current century we can still hope by appreciating the world of *De Oratore* to enrich both our understanding of the Roman republican past and our own lives, whether public or private.

[41] On John Witherspoon, see most recently Arthur Herman, *How the Scots Invented the Modern World* (New York, 2001), 142–54. If I may end with a personal footnote, it was a source of great pride and comfort to me at Princeton to discover how this great educator contributed to his country's creation and political principles. Like Cicero (*De Fin.* 5.1–5) I was encouraged by walking in the footsteps of great men. For ten years I could see Witherspoon's tomb from any window of my home, and would look for the name of his son John inscribed among the revolutionary dead in the antechamber of Nassau Hall: this young man wrote his senior thesis to justify resistance to government when it became tyrannical, and fought and died for this ideal.

# Bibliography

## Cicero

*De Oratore*, ed. K Kumaniecki (Teubner: Leipzig, 1969).

*De Oratore libri III*, i (1.1–165), ed. Anton D. Leeman and Harm Pinkster (Heidelberg, 1981); ii (1.166–2.98), ed. Leeman, Pinkster, and Hein L. W. Nelson (Heidelberg, 1985); iii (2.99–290), ed. Leeman, Pinkster, and Edwin Rabbie (Heidelberg, 1989); iv (2.291–3.95), ed. Leeman, Pinkster, and Jakob Wisse (Heidelberg, 1996); v ed. Jakob Wisse (forthcoming).

*De Oratore: libri tres*, ed. A. S. Wilkins (Oxford, 1895; rep Olms Hildesheim, 1965).

*On the Ideal Orator (De Oratore)*, tr. James M. May and Jakob Wisse (Oxford and New York, 2001).

*De Re Publica*, ed. K. Ziegler (Stuttgart, 1960).

*De Re Publica: Selections*, ed. J. E. G. Zetzel (Cambridge Greek and Latin Series; Cambridge, 1995).

*Brutus*, ed. A. E. Douglas (Oxford, 1967).

*Brutus*, ed. O. Jahn and W. Kroll, 6th edn., rev. B. Kytzler (Berlin, 1962).

*Orator*, ed. J. E. Sandys (Cambridge, 1885; repr. Hildesheim, 1973).

*Cato Maior: De Senectute*, ed. J. G. F. Powell (Cambridge, 1988).

*Letters to Atticus*, ed. D. R. Shackleton Bailey, i–vii (Cambridge Classical Texts and Commentaries, 3–9; Cambridge, 1966–70).

*Epistulae ad Familiares Vols 1–2*, ed. D. R Shackleton Bailey (CCTC 16–17; Cambridge, 1977). Tr.: *Letters to his friends, Vols. 1 and 2*, by D. R. Shackleton Bailey (London, 1985).

*Epistulae ad Q. Fratrem, ad Brutum*, ed. D. R. Shackleton Bailey (CCTC 22; Cambridge, 1980), tr. with *Letters to his Friends Vol 2*.

*Ad C. Herennium libri IV de ratione dicendi/Rhetorica ad Herennium*, ed. H. Caplan (LCL; Cambridge, Mass., 1954; repr. 1968).

*Orationes vols. I–VI*, ed. A. C. Clark (Oxford, 1901–1911).

Cicero's philosophical works are quoted from the Teubner editions, except for *De Finibus* and *De Officiis*, ed. L. J. Reynolds (Oxford, 1998, 1994).

## Other Texts of Roman Rhetoric and Oratory

*Oratorum Romanorum Fragmenta*, 4th edn. by H. Malcovati (1955).

*Rhetorica ad Herennium*, ed. H. M. Caplan (LCL; Cambridge, Mass., 1954).

[*Cornifici*] *Rhetorica ad C. Herennium*, 2nd edn. by G. Calboli (Bologna, 1993).

Quintilian, *Institutio Oratoria*, i (1–6), ii (7–12) ed. M. Winterbottom (Oxford, 1970).

Quintilian, *Institutio Oratoria*, ed. J. Cousin, i–vii (Collection Budé; Paris, 1975–80).

Quintilian, *Institutio Oratoria*, ed. D. M. Russell, i–v (LCL; Cambridge, Mass., 2001).

## Selected Secondary Bibliography

Adams, J. M., and Mayer, R. G., *Aspects of the Language of Latin Poetry* (Publications of the British Academy, 93; Oxford, 1999).

Alexander, M. C., *Trials in the Late Roman Republic, 149–50* BC (Phoenix Suppl. 26; Toronto, 1990).

André, J. M., *L'Otium dans la vie morale et intellectuelle romaine des origines à l'époque augustéenne* (Paris, 1996).

Aygon, J.-P., '*Le Dialogue comme genre dans la rhétorique antique*', *Mélanges Jean Soubiran = PALLAS*, 59 (2002), 179–208.

Badian, E., 'Caepio and Norbanus', in *Studies in Greek and Roman History* (Oxford, 1959).

—— 'Ennius and his Friends', in O. Skutsch (ed.), *Ennius* (Entretiens de la Fondation Hardt, 17; (Geneva, 1972).

Barnes, J., 'Roman Aristotle', in J. Barnes and M. T. Griffin (eds.), *Philosophia Togata*, ii (Oxford, 1997).

Bauman, R. A, *Lawyers in Roman Republican Politics: A Study of the Roman Jurists in their Political Setting, 316–82 BC* (Münchener Beiträge zur Papyrus-Forschung und Antiken Rechtsgeschichte, 75; Munich, 1983).

—— 'Roman Legal Writing', *Acta Classica*, 16 (1973), 135–46.

Beard, Mary, 'Ciceronian Correspondence: Making a Book out of Letters', in T. P. Wiseman (ed.), *Classics in Progress: Essays on Ancient Greece and Rome* (Oxford, 2002), 103–44.

Bettini, M., *Le Orecchie di Hermes: Studi di antropologia e letterature classiche*, (Turin, 2000).

Bonner, S. F., *Education in Ancient Rome, from the Elder Cato to the Younger Pliny* (Berkeley and Los Angeles, 1977).

Brennan, T. Corey, *The Roman Praetorship*, i and ii (Oxford, 2002).

Broughton, T. R. S, *Magistrates of the Roman Republic*, i and ii (=*MRR* i and ii) (Cleveland, Ohio, 1951, repr. 1968; iii, supplement, Atlanta, 1991).

Brunt, P. A., 'The Fall of the Roman Republic', in *The Fall of the Roman Republic and Other Essays* (Oxford, 1988), 1–92 and 443–502.

Chroust, A. H. 'Aristotle's First Literary Effort, the Gryllus, a Lost Dialogue on the Nature of Rhetoric', tr. from *REG* 78 (1965), 576–91, in *Aristotle: The Classical Heritage of Rhetoric*, ed. K Erickson (Metuchen, 1974).

Coleman, R. G., 'Poetic Diction, Poetic Discourse, and the Poetic Register', in J. M. Adams and R. G. Mayer (eds.), *Aspects of the Language of Latin Poetry* (Oxford, 1999), 21–96.

Cope, E. M., revised J. E. Sandys, *The Rhetoric of Aristotle with a Commentary*, 3 vols. (Cambridge, 1877).

Corbeill, A., *Controlling Laughter* (Princeton, 1996).

Cornell, T. J., 'Cicero on the Origins of Rome', in J. G. F. Powell and J. A. North (eds.), *Cicero's Republic* (BICS supplement, 76; (London, 2001), 41–54.

Craig, C. P., 'Cato's Stoicism and the Understanding of Cicero's Speech for Murena', *TAPA* 116 (1986), 229–39.

—— 'Shifting Charge and Shifty Argument in Cicero's Speech for Sestius', in C. E. Wooten (ed.), *The Orator in Action and Theory in Greece and Rome: Essays in Honour of George A. Kennedy* (Leiden, 2001), 111–22.

Damon, C. N., *The Mask of the Parasite: A Pathology of Roman Patronage* (Ann Arbor, Mich., 1997).

David, J.-M., *Le Patronat Judiciaire au dernier siècle de la république romaine* (Rome, 1992).

De Vivo, A., 'Le leggi e l'uso della storia nella riflessione di Cicerone', *Paideia*, 55 (2000), 187–210.

Dodds, E. R. (ed.), *Plato: Gorgias* (Oxford, 1959).

Douglas, A. E., 'The Intellectual Background of Cicero's Rhetorica: A Study in Method', in W. Haase and H. Temporini (eds.), in *Aufstieg und Niedergang der Römischen Welt*, i/3 (Berlin and New York, 1973), 95–137.

Dugan, J., 'How to Make (or Break) a Cicero: *Epideixis*, Textuality and Self-Fashioning in the *Pro Archia* and *In Pisonem*', *CA* 20/1 (2000), 35–79.

Erickson, K., *Aristotle: The Classical Heritage of Rhetoric* (Metuchen, 1974).

Fantham, R. E., *Comparative Studies in Republican Latin Imagery* (Phoenix Suppl., 11; Toronto, 1972).

—— 'Ciceronian *Conciliare* and Aristotelian *Ethos*', *Phoenix*, 27 (1973), 262–75.

—— 'Imitation and Evolution: Rhetorical Imitation in *de Oratore* and Related Passages', *CP* 73 (1978), 1–16.

—— '*Varietas* and *Satietas: De Oratore* 3. 96–103 and the Limits of *Ornatus*', *Rhetorica*, 6 (1988), 275–90.

Fantham, R. E., 'The Growth of Literature and Criticism at Rome', in
   George A. Kennedy (ed.), *Cambridge History of Literary Criticism*,
   i (Cambridge, 1989).
—— 'Occasions and Contexts of Roman Public Oratory', in W. J.
   Dominik (ed.), *Roman Eloquence* (London, 1997).
—— 'Meeting the People: The Orator and the Republican *Contio* at
   Rome', in L. Calboli Montefusco (ed.), *Papers on Rhetoric*, iii (Bologna,
   2000), 95–112.
—— '*Orator* and/*et Actor*', in P. Easterling and E. Hall (eds.), *Greek and
   Roman Actors* (Cambridge, 2002).
Ferrari, G. R. F., *Listening to the Cicadas: A Study of Plato's Phaedrus*
   (Cambridge, 1987).
Fortenbaugh, W. W., 'Aristotle's Rhetoric of the Emotions', in K. Erick-
   son (ed.) *Aristotle: The Classical Heritage of Rhetoric* (Metuchen, 1974).
—— 'Some Remarks on Cicero *De Oratore* 2. 178–216', *Rhetorica*, 6
   (1988) 259–74.
—— *Theophrastus of Eresus: Sources for his Life, Writings, Thought and
   Influence*, ii. *Psychology, Rhetoric and Poetics* (Leiden, 1992).
—— 'Cicero's Knowledge of the Rhetorical Treatises of Aristotle and
   Theophrastus' and 'Cicero's Topics and its Peripatetic Sources', in
   W. W. Fortenbaugh and P. Steinmetz (eds.), *Cicero's Knowledge of the
   Peripatos* (Rutgers University Studies in the Classical Humanities, 4;
   New Brunswick, NJ, 1989).
Goldberg, S., *Epic in Republican Rome* (Berkeley, Calif., 1995).
—— 'Appreciating Aper: The Defence of Modernity in Tacitus' *Dialogus
   de Oratoribus*', *CQ* 49 (1999), 224–37.
Görler, W., 'From Athens to Tusculum: Gleaning the Background in *De
   Oratore*', *Rhetorica*, 6 (1988), 215–35.
Griffin, M. T., 'The Intellectual Developments of the Ciceronian Age', in
   J. Crook, A. Lintott, and E. Rawson (eds.), *Cambridge Ancient History*,
   ix, 2nd edn. (Cambridge, 1994), 689–728.
—— 'Philosophy, Politics and Politicians at Rome', in M. T. Griffin and
   J. Barnes, *Philosophia Togata* (Oxford, 1989), 1–37.
Griffin, M. T., and Barnes, J., *Philosophia Togata: Essays on Philosophy
   and Roman Society* (Oxford, 1989).
—— *Philosophia Togata, ii*, (Oxford, 1997).
Griswold, C. L., *Self-Knowledge in Plato's Phaedrus* (New Haven 1986).
Grube, G. M. A., *Plato's Thought* (London, 1985).
Gruen, E. S., *Roman Politics and the Criminal Courts*, *147–78* (Berkeley,
   Calif., 1968).
—— *The Last Generation of the Roman Republic* (Berkeley, Calif., 1974).
Habinek, T. N., 'Ideology for an Empire in the Prefaces to Cicero's
   Dialogues', *Ramus*, 20 (1994), 55–67.

—— *The Politics of Latin Literature* (Princeton, 1998).

Hackforth, R., *Plato's Phaedrus*, tr. with introduction and commentary (Cambridge, 1972).

Haffter, H., 'Die römische Humanitas', in H. Oppermann (ed.), *Römische Wertbegriffe* (Darmstadt, 1967).

Hall. J., 'Persuasive Design in Cicero's *De Oratore*', *Phoenix*, 48 (1984), 210–25.

—— 'Social Evasion and Aristocratic Manners in Cicero's *De Oratore*', *AJP* 117 (1996), 95–120.

—— 'Cicero to Lucceius (*Fam.* 5.12) in its Social Context: *Valde Bella?*', *CP* 93 (1998), 308–21.

Hendrickson, G. L., 'The *De Analogia* of Julius Caesar: Its Occasion, Nature and Date, with Additional Fragments', *CP* 1 (1906) 97–120.

—— 'The Memoirs of Rutilius Rufus', *CP* 28 (1933), 153–75.

Heinze, R., '*Auctoritas*' (1925), repr. in *Vom Geist des Römertums* (Darmstadt, 1960), 43–59.

Hinks, D. G. A., '*Tria genera causarum*', *CQ* 30 (1936), 170–6.

Hirzel, R. *Der Dialog*, i–ii (Leipzig, 1895).

Innes, D. M., 'Theophrastus and the Theory of Style', (*Rutgers Studies in Classical Humanities*, ii New Brunswick, NJ, 1986), 251–69.

—— 'Cicero on Tropes', *Rhetorica*, 6 (1988), 307–25.

—— 'Metaphor, Simile and Allegory as Ornaments of Style', in G. R. Boys-Stone (ed.), *Metaphor, Allegory and the Classical Tradition*: *Ancient Thought and Modern Revisions* (New York, 2003), 7–27.

Irwin, T. (ed.), *Plato: Gorgias* (Oxford, 1979).

Jehne, M. (ed.), *Demokratie im Rom? Der Rolle des Volkes in der Politik der Römischen Republik* (Wiesbaden, 1995).

Jocelyn, H. D. (ed.), *The Tragedies of Ennius* (Cambridge, 1967).

Kaster, R. (ed.), *Suetonius: De grammaticis et rhetoribus* (Oxford, 1991).

Kelly, J. M., *Studies in the Civil Judicature of the Roman Republic* (Oxford, 1976).

Kennedy, G. A., *The Art of Persuasion in Greece* (Princeton, 1963).

—— 'The Rhetoric of Advocacy in Greece and Rome', *AJP* 89 (1968), 419–36.

—— *The Art of Rhetoric in the Roman World* (Princeton, 1972).

—— (ed.), *The Cambridge History of Literary Criticism*, i. *Classical Criticism* (Cambridge, 1989).

Kroll, W., 'Studien über Ciceros Schrift *de Oratore*', *Rheinisches Museum*, 58 (1903), 552–97.

Kumaniecki, K., 'La Tradition manuscrite du "De Oratore"', *REL* 44 (1966), 204–18.

Kunkel, W., *An Introduction to Roman Legal and Constitutional History*, tr. J. M. Kelly (Oxford, 1966).

Leeman, A. D., 'The Structure of Cicero's *De oratore* book I', in A. Michel and R. Verdiere (eds.), *Hommages . . . Kazimierz Kumaniecki* (Leiden, 1951), 140–9.

—— *Orationis Ratio: The Stylistic Theories of the Roman Orators, Historians and Philosophers* (2 vols. Leiden, 1963).

—— *Form und Sinn: Studien zur Lateinischen Literatur* (Frankfurt, 1985).

Levy, Carlos, '*La Conversation à Rome à la fin de la république*', *Rhetorica*, 11 (1993), 399–415.

Lintott, A. W., *The Constitution of the Roman Republic* (Oxford, 1999).

—— *Violence in Republican Rome* (2nd edn. Oxford, 1998).

Long, A. A., 'Cicero's Plato and Aristotle', in J. G. F. Powell (ed.), *Cicero the Philosopher* (Oxford, 1995), 37–61.

Luce, T. J. (ed.), *Tacitus and the Tacitean Tradition* (Princeton, 1993).

Mack, D., *Senatsreden und Volksreden bei Cicero* (1937, repr. Hildesheim, 1967).

Marx, R. K., 'The Trial of Rutilius Rufus', *Phoenix*, 44 (1990), 122–39.

May, J. M. (ed.), *Brill's Handbook to Cicero's Oratory and Rhetoric* (Leiden, 2002).

Mayer, R. G., 'Grecism', in J. M. Adams and R. G. Mayer (eds.), *Aspects of the Language of Latin Poetry* (Oxford, 1999), 153–92.

—— (ed.), *Tacitus: Dialogus de Oratoribus* (Cambridge, 2001).

Michel, A., *Rhétorique et philosophie chez* Cicéron: *Essai sur les fondements philosophiques de l'art de persuader* (Paris, 1960).

—— *Le 'Dialogue des orateurs' de Tacite et la philosophie de Cicéron* (Paris, 1962).

Millar, F., 'Popular Politics at Rome in the Later Republic', in I. Malkin and Z. W. Rubinsohn (eds.), *Leaders and Masses in the Roman World: Studies in honor of Zwi Yawetz* (Leiden, 1995), 92–113.

—— *The Crowd at Rome in the Late Republic* (Ann Arbor, Mich., 1998).

—— *Rome, the Greek World and the East, i. The Roman Republic and the Augustan Revolution* (Chapel Hill, NC, and London, 2002).

—— *The Roman Republic in Political Thought: The Menahem Stern Jerusalem Lectures* (Hanover and London, 2002).

Moatti, C., *La Raison de Rome* (Paris, 1997).

Morford, M., *The Roman Philosophers* (London, 2002).

Mouritsen, H., *Italian Unification* (BICS Supplement, 70; London, 1998).

—— *Plebs and Politics in the Late Roman Republic* (Cambridge, 2001).

Narducci, E., *Cicerone e l'eloquenza Romana: Retorica e progetto culturale* (Rome, 1997).

—— '*Brutus*: The History of Roman Eloquence', and '*Orator* and the Definition of the Ideal Orator', in J. M. May (ed.), *Brill's Companion to Cicero: Oratory and Rhetoric* (Leiden, 2002), 401–26 and 427–44.

North, J. A., 'Democratic Politics in Republican Rome', *Past and Present*, 126 (1990), 3–21.

Ober, J., *Mass and Elite in Democratic Athens: Rhetoric, Ideology and the Power of the People* (Princeton, 1989).

Pina Polo, F., *Contra Arma Verbis*: *Der Redner vor dem Volk in dem späten römischen Republik* (Stuttgart, 1996).

Powell, J. G. F. (ed), *Cicero the Philosopher: Twelve Papers* (Oxford, 1995).

—— 'The Tribune Sulpicius', *Historia*, 39 (1990), 446–60.

Quadlbauer, F., 'Die genera dicendi bis Plinius d. J.', *W. St.* 71 (1958), 55–111.

Rawson, E., 'L. Crassus and Cicero: The Formation of a Statesman', *PCPS* 17 (1971), 75–88 = *Studies in Roman Culture and Society* (Oxford, 1991), 16–33.

—— 'The Introduction of Logical Organization in Roman Prose Literature', *PBSR* 46 (1978), 12–34 = *Studies in Roman Culture and Society* (Oxford, 1991), 326–51.

—— *Intellectual Life in the Late Roman Republic* (London and Baltimore, 1985).

—— 'Sallust on the Eighties?', *CQ* 37 (1987), 163–80 = *Studies in Roman Culture and Society* (Oxford, 1991), 546–69.

Reeve, M. D., Reynolds, L. D., and Winterbottom, M., 'Cicero: Rhetorical Works', in L. D. Reynolds (ed.), *Texts and Transmissions* (Oxford, 1983), 98–112.

Russell, D., *Longinus On the Sublime* (Oxford, 1964).

—— and Winterbottom, M., *Ancient Literary Criticism: The Principal Texts in New Translation* (Oxford, 1972).

Rutledge, S., 'Plato, Tacitus and the *De Oratore*', *Latomus*, 254 (2000), 345–57.

Rubinsohn, Z. W., *Leaders and Masses in the Roman World: Studies in Honor of Zwi Yavetz*, ed. I. Malkin and Z. W. Rubinsohn (Leiden, 1995).

Schenkeveldt, D., '*Iudicia vulgi*: Cicero *de Oratore* 3.195 and *Brutus* 183 ff', *Rhetorica*, 6 (1988), 291–306.

Schmidt, P. L., 'Die Anfänge der institutionellen Rhetorik im Rom: Zur Vorgeschichte der Augusteischen Rhetorik', in *Monumentum chiloniense: Festschrift . . . Erich Burck zum 70sten Geburtstag* (Munich, 1975), 183–216.

Scholz, U. W., *Der Redner M. Antonius* (Nurnberg, 1963).

Schutrumpf, E., 'Cicero *de oratore* I and Greek Philosophical Tradition', *Rh. M.* 133 (1990), 310–21.

Shorey, P., 'Phusis, Melete, Episteme', *TAPA* 40 (1909), 185–201.

Small, J. P., *Wax Tablets of the Mind; Cognitive Studies in Memory and Literacy in Classical Antiquity* (London, 1997).

Solmsen, F., 'Aristotle and Cicero on the Orator's Playing upon the Feelings', *CP* 33 (1938), 390–402 = *Kleine Schriften*, ii (Hildesheim, 1968), 216–30.

—— 'The Aristotelian Tradition in Ancient Rhetoric', *AJP* 62 (1941), 35–50, 169–90 = *Kleine Schriften*, ii 178–215.

Soubiran, J. (ed.), *Cicero: Aratea: Fragments Poètiques* (Paris, 1972).

Stark, R. (ed.), *Rhetorika: Schriften zur Aristotelischen und hellenistischen Rhetorik* (Hildesheim, 1968).

Steidle, W., 'Einflusse römischen Lebens und Denkens auf Cicero's Schrift De oratore', *MH* 9 (1952), 10–41.

Sumner, G. V., *The Orators in Cicero's Brutus: Prosopography and Chronology* (Phoenix Suppl. 12; Toronto, 1973).

Taylor, L. R., 'On the Chronology of Cicero's Letters of 56–55 BC', *CP* 44 (1949), 217–21.

Tellegen Couperus, O., *A Short History of Roman Law* (London, 1993).

Thomson, D. F. S., 'Catullus and Cicero: Poetry and the Criticism of Poetry', *CW* 60 (1967), 225–30.

Ullman, B. L., 'History and Tragedy', *TAPA* 73 (1942), 25–53.

Vasaly, A., *Representations: Images of the World in Ciceronian Oratory* (Berkeley, Calif., 1993).

Vaughn, J. W., 'Law and Rhetoric in the Causa Curiana', *CA* 3 (1985), 208–22.

Vickers, B., *In Defence of Rhetoric* (Oxford, 1988).

Walbank, F. W., 'History and Tragedy', *Historia*, 9 (1960), 216–34 = *Selected Papers: Studies in Greek and Roman Historiography* (Cambridge, 1985), 224–41.

—— 'Tragic History: A Reconsideration', *BICS* 2 (1955), 4–14.

Watson, A., *The Law of Succession in the Roman Republic* (Oxford, 1971).

—— *Lawmaking in the Later Roman Republic* (Oxford, 1974).

Wiseman, T. P., 'The Census in the First Century B.C.', *JRS* 59 (1969), 59–75.

—— 'The Senate and the Populares, 69–60 BC', and 'Caesar, Pompey and Rome', in J. A. Crook, Andrew Lintott, and Elizabeth Rawson (eds.), *Cambridge Ancient History*, ix (2nd edn. Cambridge, 1994), 327–67 and 368–423.

Wisse, J., *Ethos and Pathos from Aristotle to Cicero* (Amsterdam, 1989).

—— 'The Intellectual Background of Cicero's Philosophical Works' and 'De oratore: Rhetoric, Philosophy and the Making of the Ideal Orator' in J. M. May (ed.), *Brill's Handbook to Cicero's Oratory and Rhetoric* (Leiden, 2002), 331–74 and 375–400.

Wood, N., *Cicero's Social and Political Thought* (Berkeley and Los Angeles, Calif., 1988).

Woodman, A. J., *Rhetoric in Classical Historiography: Four Studies* (London, 1988).

Wooten, C. W., 'The Orator in Action and Theory in Greece and Rome', in C. W. Wooten (ed.), *Studies . . . in Honour of George A. Kennedy, Mnemosyne Supplement*, 225 (Leiden, 2001).

Yates, F., *The Art of Memory* (London, 1966).

Zetzel, J. E. G., 'Cicero and the Scipionic Circle', *HSCP* 76 (1972), 173–80.

——*Cicero: De Re Publica, Selections* (Cambridge, 1997).

——*Cicero on the Commonwealth and on the Laws* (Cambridge, 1999).

Zoll, G., *Cicero, Platonis aemulus* (Zurich, 1962).

*This page intentionally left blank*

# Index I
## Authors, Works, and Passages Cited

Authors mentioned but not cited are listed in INDEX II.

# Index II Persons

(For authors cited or discussed see Index I. Romans are listed alphabetically by their gentile name: e.g. *Caecilius* Metellus, *Cornelius* Lentulus, *Iulius* Caesar, *Licinius* Crassus, *Sempronius* Gracchus, *Tullius* Cicero)

# Index III
## Legal, Political, and Rhetorical Terms

Greek terms are quoted first when they are more familiar