PROFESSION and PERFORMANCE

ASPECTS OF ORATORY IN THE GRECO-ROMAN WORLD

EDITED BY CHRISTOS KREMMYDAS, JONATHAN POWELL, & LENE RUBINSTEIN

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TABLE OF CONTENTS

INTRODUCTION

The papers in this volume were delivered at a one-day colloquium in November 2010 entitled 'Actio – Hypokrisis – Delivery', held under the auspices of the Centre for Oratory and Rhetoric at Royal Holloway, University of London. As it turned out, the papers focussed as much on the profession of oratory as on the delivery of speeches – to use the terminology of linguistics, on competence as well as performance – and this shift of emphasis has been reflected in the title of the volume.

The question what constitutes professional competence in a public speaker has been an important one both in ancient times and in the modern world. It can be examined from several angles. To start with, one cannot ignore the social and historical question of whether, to what extent and at what periods the practice of oratory constituted a 'profession', whether in the sense of a career choice, a source of livelihood, an identifiable group of practitioners with or without formal membership of an organisation or a shared code of ethics, or a pool of those who have received a particular kind of education or have been trained in a particular set of skills. It is relatively easy to trace institutional changes, such as the establishment and rise of the rhetorical schools in early imperial Rome, or the gradual supplementation and eventual replacement of rhetoric by law as the approved training for practitioners in the late Roman courts. More complex is the task of tracing changes in attitude, and one always has to be on one's guard against two dangers in particular: the imposition of modern categories, and the temptation to construct oversimplified narratives of evolutionary development.

In classical Athens, it is tempting to speak of a 'profession' of oratory as soon as speeches start to be composed for a fee by logographers for their clients.[1] Bers in this volume writes of the linguistic standards observed in 'professionally composed' fourth-century Attic oratory. But as is well known, practising Athenian orators were not themselves professionals in the modern sense of the word, except in so far as they may have made money from producing written speeches for other people to deliver.[2] To appear in court for a fee was against Athenian law, while the man who addressed the

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[1] In this volume, the discussions of Greek oratorical practices in the classical period are limited to Athens. Although there is a wealth of sources for the importance of both symbouleutic and forensic oratory in other Greek *poleis* (democracies and oligarchies alike) during the fifth and fourth centuries, most of the surviving contemporary literary evidence has been written by Athenians, who may consciously or unconsciously have applied Athenian norms and conventions even when representing oratory performed abroad. Very little of the epigraphical evidence that can be used to throw further light on non-Athenian practices is earlier than the last quarter of the fourth century.

[2] H.-J. Wolff, *Demosthenes als Advokat: Funktionen und Methoden des Prozeßpraktikers im klassischen Athens. Schriftenreihe der juristischen Gesellschaft e.V. Berlin* (Berlin 1968) is still a classic discussion of this issue. It has since been published in an English translation in *Oxford readings in the Attic orators*, ed. E. Carawan (Oxford 2007) 91-115.

assembly or the Council of 500 in return for pay (other than the stipend, *misthos*, paid from the public treasury to assembly-goers and councillors) laid himself open to charges of bribery and even treason. This in itself may not have deterred a good number of Athenian citizens who were skilled in oratory from generating a substantial income from their activities in the public sphere. Nevertheless, the fact that it was illegal to turn the practice of oratory into one's livelihood meant that no Athenian would have wanted to admit to the designation of himself as 'a professional orator'.

However, if the Athenians were not prepared, legally or ideologically, to tolerate openly 'professional' orators, their attitudes towards oratorical expertise were more ambiguous. Although modern discussions have often emphasized passages in the Attic Orators where litigants profess their own lack of experience in speaking, it is nevertheless suggestive that this '*topos* of inexperience' is deployed most frequently in the context of private legal disputes,[3] but only rarely by defendants in public actions,[4] or by litigants who were volunteering as prosecutors in public actions.[5] The avoidance of the *topos* by the second and third categories is undoubtedly due to the close connection between certain types of Athenian public legal procedure and the political life played out in the Athenian assembly and, to a lesser extent, in the Council of 500.[6] Citizens who chose to involve themselves in prosecutions concerned with, for example, illegal decree-proposals, treason or embezzlement of public funds are frequently known themselves to have been active as speakers in the assembly and the Council of 500.[7] If such litigants were known already from previous appearances on the platform in the assembly and in the courts in other high-profile public actions, professions of oratorical inexperience on their part would most likely fail to carry conviction.

By contrast, a litigant who referred to his lack of experience in the context of a private action may have been entirely honest in making this claim. The modern reader may perceive a glaring contradiction between the speaker's profession of his lack of oratorical

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[3] Lys. 17.1, 23.1, Is. 1.1, 8.5, 10.1, Dem. 27.1-2 (Demosthenes' debut as a speaker), 29.1, 34.1, 41.2, [44].4, 48.1, [52].1-2 (delivered by Apollodoros son of Pasion at the young age of 25, soon after the death of his father), 54.1, 55.2.

[4] Lys. 7.1, 18.1 with 18.25, 19.1-3.

[5] Exceptions are Lys. 12.3, delivered by Lysias who, as a non-Athenian, would not have been in a position to build up a reputation in the Athenian assembly, [Dem.] 58.1-3, delivered by a very young man, and [Dem.] 59.14-15, where Theomnestos, who is only nominally the main prosecutor of Neaira, hands over to his *synegoros* Apollodoros.

[6] Note that the types of public action in which the surviving speeches were delivered are not representative of the entire range of Athenian public procedures. The overwhelming majority of the surviving speeches were delivered in trials in which the community as a whole was construed as the victim of the defendant's crime, and which involved no individual victim. The exceptions are Dem. 21 *Against Meidias* and Is. 11 *On the estate of Hagnias* which was delivered as a defence speech in an *eisangelia* for maltreatment of an orphan. It is possible that prosecutions brought by or on behalf of individual victims may have been more likely to have involved citizens who were not otherwise heavily engaged as speakers on the platform of the assembly.

[7] For illustration, see the convenient inventory in M. H. Hansen, '*Rhetores* and s*trategoi* in fourth-century Athens', in *The Athenian ecclesia II. A collection of articles 1983-89* (Copenhagen 1989) 25-72 (34-69).

skills in his *prooimion* and the often very highly polished written speech that is to follow.[8] Yet, it is a distinct possibility that the speaker's true lack of experience would be clear to his audience because of the way in which he delivered his speech, a style of delivery that would have contrasted strongly with the style of more seasoned oratorical performers.

Unfortunately, this proposition is extremely difficult for the modern observer to verify, not least because no theoretical treatments of delivery have survived from the fifth or fourth centuries. The fact that techniques of delivery were discussed by Thrasymachos of Chalkedon in the late fifth century and by Theophrastos in the late fourth or early third suggests that, from quite early on, these techniques were recognized not only as an important aspect of the orator's craft but also as techniques that could be systematically taught and acquired.[9] On the other hand, the loss of treatises of this type means that for classical Greece in general, and for classical Athens in particular, we know only very little about actual performative techniques, including voice control, hand-gestures and body-movements more generally, let alone how exactly their deployment would have contributed to distinguishing the 'expert' orator from the novice.

Because of the loss of classical Greek systematic discussions of delivery (*hypokrisis*), modern scholars have been forced to rely almost entirely on comments on and references to performative techniques in the surviving works of the Attic Orators, often combined with the later philosophical and biographical tradition.[10] The use of evidence gleaned from the Attic Orators presents a number of methodological problems. A particularly serious difficulty is due to the fact that most of these comments, as has previously been noted by Easterling,[11] pertain to the style and mode of delivery adopted by the speaker's opponent: it is extremely rare to find a speaker commenting explicitly on aspects of his own performative style.[12] As a result, the explicit references to oratorical performance in

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[8] See *e.g.* J. Hesk, *Deception and democracy in classical Athens* (Cambridge 2000) 208 with references to previous scholarship.

[9] On Theophrastos' lost work *On delivery* and on his predecessors in this area, see W. W. Fortenbaugh, *Theophrastean studies* (Stuttgart 2003) 253-71. Fortenbaugh points out that Theophrastus' treatise may well have treated not only oratorical performance but also performance on the musical and dramatic stages.

[10] Although some of the anecdotes incorporated in the philosophical and biographical traditions may go back to the classical period, there is a considerable risk that the material relating to oratorical performance may have been distorted in the process of the later authors' adaptation and presentation of it to their contemporary audiences. The peripatetic tradition may have been particularly important in shaping Demosthenes' later reputation as an orator, as has been argued by C. Cooper, 'Philosophers, politics, academics: Demosthenes' rhetorical reputation in antiquity', *Demosthenes. Statesman and orator,* ed. I. Worthington (London 2000) 224-45. Cooper argued that much of the tradition that emphasises the similarities between Demosthenes' style of delivery and *hypokrisis* on the dramatic stage may have its origin in the hostile evaluation made by Demetrios of Phaleron.

[11] See P. Easterling, 'Actors and voices: reading between the lines in Aischines and Demosthenes' in *Performance culture and Athenian democracy,* ed. S. Goldhill and R. Osborne (Cambridge 1999) 154-66 (159).

[12] In Dem. 18.143, Demosthenes recalls how he himself, in a moment of acute desperation 'protested and shouted' in the assembly, while the elected prosecutor involved in the *apophasis* against Aristogeiton uses the verb *anaboao*, 'shout aloud' in connection with the performance by

the Attic orators are nearly always negative. Whereas a rhetorical handbook, or *technē*, would have been likely to focus mostly on the 'do's', albeit with occasional warnings on what to avoid in specific situations,[13] the evidence of the Attic orators concentrates overwhelmingly on the 'don'ts'. But while the context of these comments leaves no doubt that they were meant to denigrate certain characteristics of the opponent's performance, our lack of a contemporary coherent prescriptive and descriptive theoretical framework means that it is most often extremely difficult to identify precisely why it was that a particular aspect of the opponent's performance could be held up to censure, occasionally combined with ridicule.[14]

An equally important problem is how to determine the extent to which the evidence gleaned from the orators offers a representative picture of Athenian norms of delivery generally. As noted by both Edwards and Bers in the present volume, modern scholarship has, especially since the early 1990s, emphasized the affinity between the techniques of delivery that formed part of the orator's craft and the techniques employed by actors on the tragic and comic stages.[15] Indeed, it has often been observed that there is incontrovertible evidence for the political participation of Athenian actors both as speakers addressing the *ekklēsia* and as members of ambassadorial teams sent out to speak for Athens abroad. Among these, Aischines son of Atrometos of Kothokidai is of course the most famous, and it is probably no coincidence that nearly all contemporary Athenian comments on the parts played by actors in the city's political and diplomatic life are to be found in just the four speeches where Aischines and Demosthenes confronted each other directly in court: the paired speeches Demosthenes 19 and Aischines 2 on the False Embassy, and the pair Aischines 3 and Demosthenes 18 delivered in Aischines' prosecution of Ktesiphon for proposing an honorary decree for Demosthenes.[16]

What is more, if we leave aside the frequent comments pertaining specifically to performance by defendants and their supporters who were expected (by their prosecutors

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himself and the rest of the prosecution team (Din. 2.6). In Dem. 45.47, Apollodoros refers to his own lamentations (*apodyramenos*) in court and so does the young Alkibiades, son of the famous general, in Isoc. 16.49. The speaker of Dem. 25 (probably but not necessarily Demosthenes himself) refers with the verb *rhapsōdein* to the performance by himself and his fellow-prosecutors lined up against Aristogeiton (25.1), the same verb as is used by Demosthenes in 14.13 about futile speeches delivered by Athens' envoys. On this metaphor and on the possibility that Dem. 25 may be a logographic work, see G. Martin, *Divine Talk* (Oxford 2009) 199-202.

[13] For an example of 'do's' combined with 'don't', see *Rhetorica ad Alexandrum* 1427b1-10 on how to formulate a defence strategy.

[14] The most famous example is probably Aischines' description of Timarchos' wild performances in the assembly (1.26 and 33), but see also *e.g.* Dem. 25.47 on Aristogeiton (a description that bears a certain resemblance to Demosthenes' description of Aischines' assembly performance in 19.209).

[15] The bibliography is vast; see *e.g.* W. J. Slater, 'The theatricality of justice', *Classical Bulletin* 71 (1995) 143-57; E. Hall, 'Lawcourt dramas: the power of performance in Greek forensic oratory' *BICS* 40 (1995) 39-58; A. Chaniotis 'Theatricality beyond the theatre. Staging public life in the Hellenistic world' in *De la scène aux gradins. Thêatre et représentations dramatiques après Alexandre le Grand dans les cités hellénistiques*, ed. B. Le Guen (Toulouse 1997) 219-59.

[16] For a seminal discussion of the references to oratorical performance in these speeches see P. Easterling, 'Actors and voices' (n.11, above).

and presumably also by their dicastic audiences) to engage in tearful speaking and lamentation, the majority of explicit remarks on oratorical performance are concentrated in precisely these four speeches.[17] Both Bers and Edwards observe that the high concentration of explicit comments on delivery made by Aischines and Demosthenes respectively is almost certainly due to Aischines' reputation as an actor and, as Bers suggests, also to Aischines' own desire to project, partly through his style of delivery, his persona as Aischines the Orator – a persona who differed significantly from that of Aischines the Actor.

The fact that modern discussions of classical Athenian delivery are forced to rely so heavily on Demosthenes' and Aischines' comments on each other's performative styles means that we should be wary of using this material as a basis for generalisations on delivery in fourth century Attic oratory. As Edwards points out, the famous reference to Hypereides' style of performing his speeches 'without acting/delivery (*hypokrisis*)' constitutes a clear warning against the assumption that Aischines and Demosthenes were in any way 'typical' in terms of their style(s) of delivery. Not only does the example of Hypereides – who may very likely have deliberately cultivated an ostentatiously understated mode of delivery as his personal trademark – suggest that the styles of performance adopted by experienced orators were highly individual. Edwards also reminds us that the Athenian courts were not by any means monopolized by these 'experts'. Even if most of the speakers who delivered the surviving forensic orations did belong to the most prosperous section of the Athenian population, they were not necessarily to be counted among those who volunteered on a regular basis as speakers in the assembly or in the courts as prosecutors in public actions.[18]

As noted earlier, it is extremely hard to determine on the basis of the extant forensic orations precisely how delivery by an inexperienced litigant of a written text purchased from a logographer would have differed from delivery by an experienced orator performing his own script. In his contribution, Edwards suggests that successful logographic products may have been devised in such a way that they reduced the need for 'acting' to a minimum. Even stylistic features such as *prosōpopoeia*, which may often have been performed with a good deal of histrionic art by experienced performers, may still have been effective if performed rather more 'artlessly' by less experienced speakers. As for non-verbal communication, Edwards draws attention to *apostrophē* as one example

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[17] For anticipation of the tearful appeals made by defendants and their *synēgoroi*, see the discussion in S. Johnstone, *Disputes and Democracy*, (Austin, Texas 1999) 109-25. In addition to the copious references to performance in Aeschin. 2, 3, Dem. 18, 19, comments on the opponent's style of delivery are also found in Is. 6.59; Aeschin. 1.**26**, **33**; Dem. 20.**166**; 21.138, **200**, 201; 22.**68**, 24.**13**, 25.**9**, 47, **49**, **64**; 26.19; 36.61; 40.53, 61; 42.20; 45.30; 57.11; Lycurg. 1.31. The overwhelming majority of these passages refer to the loudness of the opponent's voice (sometimes combined with the derogatory noun *kraugē*, 'bawling', or its cognate verb). It is suggestive that nearly half of the comments (those highlighted above in bold) relate to the opponent's performance on the platform of the assembly rather than that of the court.

[18] Note that several of the surviving speeches were delivered by men who were not Athenian citizens and therefore excluded from appearing on the *bēma* in the assembly. In addition to Antiph. 5 mentioned by Edwards, Isocr. 17, Dem. 34, and [Dem.] 56 are among our surviving logographic works composed for delivery by non-Athenians.

of a body-movement which was clearly signalled in the litigant's script itself: the change of the speaker's addressee would almost certainly have been accompanied by the speaker's physically turning to face his opponent on the opposite platform. Like *prosōpopoeia*, *apostrophē* may have been most effective if performed by an 'expert', but the figure may still also have worked for the ordinary litigant. What is important to note is that, as far as Athenian forensic oratory is concerned, the different levels of expertise possessed by different types of litigant as well as different individual styles deliberately adopted by experienced speakers are likely to have produced considerable diversity in performance techniques, which make generalisations extremely difficult.

Bers' contribution, like that of Edwards, also discusses the extent to which we should expect significant variations in performance styles between different speakers; Bers' main focus, however, is on the question whether modes of delivery varied according to the genre of the speech itself. Bers is concerned particularly with the possible differences between the performance of symbouleutic and of dicanic orations. He suggests a number of ways in which we, as modern readers, may be able to identify stylistic differences, relevant to the question of delivery, between the two genres on the basis of the written texts that have survived. Such differences include the choice of vocabulary and not least the use of particles. A comparison between the use of particles in Demosthenes' symbouleutic oratory and in his forensic speeches does indeed suggest that Demosthenes may have adopted different modes of delivery depending on whether he was addressing a crowd in the *ekklēsia* or a panel of *dikastai* and spectators in the courtroom.

The question addressed by Bers is directly related to Edwards' observations on the varying degrees of expertise and experience possessed by individual speakers, for while the courts (at least those judging private actions concerned with inheritance, return of dowries and other *oikos*-related disputes) were very likely populated by litigants with very diverse levels of oratorical proficiency, the *bēma* in the assembly probably was less so. While it may have happened several times during the lifetime of an ordinary Athenian that he would have been forced by circumstances to appear as a litigant in connection with private disputes or inheritance claims,[19] no citizen was ever compelled in the same way to address the assembly or the Council of 500 with a symbouleutic speech. Indeed, there is a broad consensus among modern scholars that the *bēma* in the Athenian assembly was dominated by a small number of extremely active citizens, although Hansen has suggested that, in the fourth century at least, rather more Athenians may have been actively involved in assembly debates than has traditionally been assumed.[20] But even if participation was somewhat wider than the more pessimistic modern assessments have suggested, it is still most probable that the vast majority of speakers addressing the assembly during the fourth century, as well as the fifth, possessed a level of rhetorical expertise that set them apart from most of their fellow citizens.

As is to be expected, neither the *Rhetorica ad Alexandrum* nor Aristotle's *Rhetoric* offer much advice on how to tailor oratorical performance to suit the two different genres.

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[19] See the discussion in V. Bers, *Genos dikanikon: amateur and professional speech in the courtrooms of classical Athens* (Cambridge MA 2009) esp. 10-24.

[20] See 'The number of *rhetores* in the Athenian *ecclesia*, 355-322 B.C.' in M. H. Hansen, *The Athenian ecclesia II. A collection of articles 1983-1989* (Copenhagen 1989) 93-127, (122-27).

However, Bers draws attention to the important observation made by Aristotle in *Rhetoric* 1414a8-17 that high stylistic finish is less effective the larger the crowd that is being addressed, and, more importantly, that the need for 'dramatic delivery' (*hypokrisis*) and powerful voice projection increases with the size of the audience, in part as a result of the speaker's physical distance from his listeners. As Bers points out, the symbouleutic and dicanic genres were each associated with physical settings that differed markedly from one another, and he suggests that these differences may have had led to a differentiation, *de facto*, between the styles of delivery associated with each of the two genres. At Athens, symbouleutic orations would have been associated first and foremost with the open-air setting of the Pnyx and with audience sizes of 6000 men or more. Forensic speeches, by contrast, were associated first and foremost with roofed courtrooms and typically with audience sizes of between 201 and 501 judges, except for certain public actions of especial importance where audience numbers in the fourth century are known to have reached 2501.[21]

The match between oratorical genre and physical setting is, of course, not by any means a perfect one. Until *ca.* 360 BC some forensic speeches (and not the least important ones!) were delivered in impeachment trials, *eisangeliai*, heard by the assembly. Even after *ca.* 360, when the hearings in chief of all *eisangeliai* appear to have been referred to the ordinary *dikastēria*, the initial stage of an *eisangelia* was still conducted in the assembly. The evidence suggests that this stage, like the initial stages of *probolai* and perhaps also of some *apophaseis*, bore a close resemblance to a regular trial with speeches made by the accuser(s) against the accused and, if the latter was present, with an opportunity for the accused to defend himself.[22] Likewise, a large number of symbouleutic speeches were delivered in the roofed venue of the Council of 500, the *bouleutērion*, where the audience size was the same as that of a dicastic panel hearing a standard public action. This, however, does not weaken the case in favour of assuming that the physical environment on the Pnyx may have contributed significantly to a development of modes and conventions of symbouleutic delivery that set this genre apart from the genre of the *logos dikanikos*.

Bers' contribution builds on C. Lyle Johnstone's discussion of the acoustic conditions that may have prevailed on Pnyx I, which functioned as Athens' *ekklesiastērion* until 404/3 BC, and the problem of audibility on the site. There can be little doubt that, in the fifth century especially, there was most likely a marked contrast between the demands made on speakers who addressed the assembly and those who addressed dicastic

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[21] For a collection of the evidence relating to different panel sizes, see M. H. Hansen, *Eisangelia. The sovereignty of the people's court in the fourth century B.C. and the impeachment of generals and politicians* (Odense 1975) 10 n.14. Hansen notes that And. 1.17 suggests that in 415 a panel of 6,000 judges heard a *graphē paranomōn*; this is unparalleled in the evidence for the fourth century.

[22] See for instance Hyp. 1 *For Lycophron* 3; here the defendant himself was abroad when his prosecutors made accusations against him in the assembly. The close resemblance of the adversarial debate preceding the vote by the assembly in *probolai* to a regular trial can be illustrated by the fact that even here assistance by *synēgoroi* appears to have been a regular occurrence (*e.g.* Dem. 21.206).

audiences in the regular, roofed courts, where audibility was almost certainly far better.[23] Bers discusses the possible implications of the acoustic problems on Pnyx I for the performative styles adopted by the speakers on its *bēma* and for their interaction with their audiences. Here it may be noted that Andokides 2 *On His Return*, delivered at some point between 410 and 406 BC, is our only surviving assembly speech to have been performed on Pnyx I. The style of that speech, which M. Edwards has characterized as seeming, at first sight, 'to be poorly ordered, and to consist of a series of short topics delivered in almost staccato fashion',[24] may indeed add further support to Bers' contention that the challenges presented to speakers on Pnyx I had a direct and discernible influence on their style of delivery and use of language

As conceded by C. Lyle Johnstone,[25] audibility on the Pnyx may have been improved considerably with the construction of Pnyx II and the re-orientation of the auditorium and the speaker's platform. In the new setting, the speakers would have addressed their audiences with the prevailing north-easterly wind blowing from behind them, which may have made it easier for them to make themselves heard. But even though the acoustic conditions may well have been significantly better in Pnyx II and III,[26] where all the rest of our surviving assembly speeches were delivered, it is highly likely that any performative techniques developed in response to the physical conditions of Pnyx I lived on in the fourth century, because they had by now become an intrinsic part of the genre.

Moreover, the challenges presented by the sheer size of the audience would have been just as important in the fourth century as they had been in the fifth. The distance between

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[23] That audibility was considered a priority in the choice of venue for Athenian trials is strongly suggested not least by the allocation to the Periklean *Ōdeion* of cases belonging to the jurisdiction of the Eponymous Archon. This building was designed primarily for musical performances (see A. Boegehold, *The lawcourts of Athens: sites, buildings, equipment, procedure, and testimonia. The Athenian agora XXVIII* (Princeton, New Jersey 1995) 94. It may be no coincidence that the trials taking place in this building both in the fifth and the fourth century were first and foremost those relating to the *oikos* sphere, in which ordinary Athenian citizens – with little or no oratorical experience – were most likely to become involved.

[24] M. Edwards, *Greek orators IV: Andocides* (Warminster 1995) 89.

[25] C. Lyle Johnstone, 'Greek oratorical settings and the problem of the Pnyx: rethinking the Athenian political process' in *Theory, text, context. Issues in Greek rhetoric and oratory*, ed. C. Lyle Johnstone (Albany, New York 1996) 97-127 (116).

[26] Unfortunately, too many uncertainties surround the reconstruction of the second and third stages of the Pnyx to permit the kind of acoustic assessment that C. Lyle Johnstone carried out for Pnyx I. See for example the contributions by G. R. Stanton and J. McK. Camp jr. in *The Pnyx in the history of Athens,* ed. B. Frösen and G. Stanton (Helsinki 1996). Of particular interest here is Camp's suggestion that the auditorium of Pnyx III was either level with or sloping downwards away from the raised *bēma*, rather than upwards as has conventionally been assumed, and thus that 'the orators literally, if not figuratively, looked down on their audience' (J. McK. Camp jr., 'The form of Pnyx III', in *The Pnyx in the history of Athens*, ed. B. Frösen and G. Stanton (Helsinki 1996) 41-46 (45)). It is possible that only one of the surviving symbouleutic speeches in the Demosthenic corpus, [Dem.] 17, was performed in Pnyx III, but since the third stage of Pnyx III can be dated only approximately to *ca.* 340, it cannot be ruled out that Demosthenes' speeches from the late 340s were also delivered there.

the speaker and the part of his audience sitting furthest away from the *bēma* had not been reduced as a result of the reorientation of platform and auditorium. Thus, the performance of speeches there (and, for that matter, in the theatre of Dionysus which served as one of the alternative assembly venues in the fourth century) would almost certainly still have required more exaggerated gestures and body-movement along with greater volume than speeches performed in the courtroom.[27] Improved audibility may have made it more feasible for experienced orators to develop and perfect more distinct, individual styles of symbouleutic delivery in the fourth century, but there can be little doubt that the platform in the assembly largely remained the preserve of oratorical 'experts'.

The absence from this volume of a chapter on the Hellenistic period does not in the least imply that we subscribe to the view that oratory in that period was in decline: rather, it is clear that oratory of various kinds (political, diplomatic, forensic) persisted vigorously even though the speeches, by and large, were not recorded *in extenso*, or, if they were, have not survived as written texts as those of the classical Athenian orators did. This period has been treated in a previous volume,[28] and our next chapter shifts the scene to Ciceronian Rome.

As a result of the accessibility of the texts of Cicero's speeches and rhetorical works, this period has been relatively well studied from the point of view both of 'profession' and 'performance'. However, one still finds over-simplified statements of the contrast between the Athenian court in which the litigant spoke for himself, and the court of the Roman Republic in which advocacy was the norm. In fact, there is less difference than might be supposed. The role of the supporting speaker (*synēgoros*) in the Athenian courts was examined in detail by one of the present editors in 2000[29] and it is clear that, although it is true that on a formal level litigants spoke in person, the presentation of either side of a case at Athens was in many if not most cases a team effort, and in some cases the chief burden fell on the *synēgoros* rather than the litigant. Furthermore, although it seems to be historically true that the practice of advocacy grew out of the older Roman system of patronage (hence the word *patronus* applied to the advocate), in fact the relationship between Cicero and his clients was neither precisely that of a patron nor that of a modern professional lawyer-advocate. The Roman advocate in the Republic was still in principle unpaid; fees were forbidden by a law of 204 BC which was not repealed until the early Principate. Of the formal relationship of patron and client there remained, in this context, only the terminology, unless the advocate happened in fact to stand in some kind of protective relationship to the person on whose behalf he spoke (as for example Cicero did to Caelius). Most of Cicero's 'clients' were his equals in social standing and in seniority,

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[27] It is perhaps suggestive that in fourth-century oratory several of the negative references to screaming, shouting and exaggerated body-movements on the *bēma* pertain to the opponents' performances in the assembly rather than the courtroom (n.17, above for references). Although, as noted earlier, these comments are almost invariably hostile, the evidence points to the conclusion that a more flamboyant and extravagant style of delivery was tolerated and perhaps even expected in connection with assembly speeches, also in the fourth century.

[28] C. Kremmydas and K. Tempest ed., *Hellenistic oratory: continuity and change* (Oxford 2013).

[29] L. Rubinstein, *Litigation and co-operation: supporting speakers in the courts of classical Athens* (Stuttgart 2000).

and it is evident that his relationship to them in many cases was not dissimilar to that of an Athenian *synēgoros* to the main litigant. He and other advocates appeared not as hired professionals but as themselves, speaking on behalf of a friend in trouble. Consequently it was often necessary for him to justify his appearance in court. [30] Additionally, many of his speeches do not represent the whole of the case he is pleading;[31] those where he appeared alone, such as the prosecution speeches against Verres or the defence of Milo,[32] bear a greater resemblance to modern lawyers' speeches than do those in which he is just one of a defence team, where often the main arguments had already been presented to the court by an earlier speaker and did not need to be gone over again.

However, there does appear to be a clear difference between the Attic orators and Cicero in one respect: their attitude to oratorical expertise. While the Attic orators were as ready as Cicero was to criticize the performances of their opponents negatively, any positive recommendations on how an orator ought to perform in court or in politics are (as we have already seen) usually very brief. Cicero, however, is unembarrassed both when he lays down the law about the qualifications needed in a successful orator, and when he lays claim to those qualifications himself. This feature is particularly evident in the speech known as the *Divinatio in Q. Caecilium*, in which he pressed his own claims to prosecute against those of a rival prospective accuser. Cicero had never prosecuted before, but this was no disadvantage in a world in which habitual prosecutors were distrusted; and he could nod in the direction of modesty by disclaiming any special natural gifts (*ingenium*) and stressing his nervousness in undertaking such a case. But of his general oratorical expertise, attributed to hard work, constant practice, and accumulated courtroom experience, we are left in no doubt.

The negative points made against Caecilius also contribute to the picture: he lacks a metropolitan Greek or Roman education (§39), he has memorised clichés from old speeches (§43), and he speaks from a script (§§47 and 52) composed for him by a rhetorical teacher. His proposed subsidiary prosecutors also come under attack; one is inexperienced in the courts, another is 'strong and practised in shouting' (*cf.* above, p. 5 n.17) but will be inhibited by speaking in third place. All this is in addition to Caecilius' personal disqualifications as a former associate of the defendant Verres. Here an unwary modern reader might think that the issue is one of professional ethics, but this would be misleading: in the Republic the prosecutor was a volunteer,[33] and it was not at all

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[30] For discussion of these issues see J. Crook, *Legal advocacy in the Roman world* (London 1995); J. Powell and J. Paterson ed., *Cicero the advocate* (Oxford 2004) esp. the introduction and the chapter by C. Burnand.

[31] See J. G. F. Powell, 'Court procedure and Rhetorical Strategy in Cicero' in *Form and function in Roman oratory,* ed. D. Berry and A. Erskine (Cambridge 2010).

[32] He may formally have had one or more *subscriptores* for the prosecution of Verres, as was the norm, but it is not clear whether they said anything in court; for what seems to be an allusion to them see *Div. in Caec.* 50. Asconius' account of the Milo trial makes it clear that although there were several advocates who appeared for Milo in court and took part in the examination of witnesses, Cicero alone was selected to make the formal reply to the charges.

[33] The system of volunteer prosecutors did not by any means die with the Republic; it is still very much alive in the early empire, hence the opprobrium attaching to the habitual *delator*. By Trajan's reign it is clear that the Senate appointed independent prosecutors to accuse provincial governors (as

unknown for Roman officials to be prosecuted by their subordinates, who would often be in the best position to know the details of any corruption. But in doing so they laid themselves open to accusations either of disloyalty to their former superior, or of initiating a sham prosecution for ulterior motives;[34] Cicero uses both of these insinuations against Caecilius to good effect.

Obviously, care is necessary here as elsewhere in interpreting the evidence, which can only give us an incomplete picture. What is called *divinatio*[35] was no doubt an established part of the statutory procedure, but since we have only this one example of a speech of this kind, we cannot generalize about the kinds of arguments used in *divinatio* speeches. One may surmise that it could have been difficult to conduct this part of a case without to some extent dwelling on one's own credentials (a likelihood which renders less plausible the supposition that we are just dealing with a manifestation of Ciceronian vanity). However, the manner in which Cicero turns the whole speech into a rhetorical manifesto for the qualities needed by a successful prosecution advocate is indeed noteworthy. Because it is a speech and not a theoretical treatise, the *divinatio* has been neglected as a source for the development of rhetorical theory; but on the question of how to conduct and deliver a prosecution, it is in some respects more informative than the *De Oratore* written fifteen years later.

Tempest's chapter brings out this point, and then goes on to examine the prosecution speeches themselves to demonstrate how Cicero put his own prescriptions into practice. While we may suspend judgement on whether Cicero was right in his claim that Caecilius has none of the requisite skills and is incapable of conducting the prosecution as it deserves, we can at least accept that the repertoire of skills and competences required by advocates in major public trials at Rome was very considerable.[36] As Tempest further demonstrates, the text of the second *Actio* against Verres provides numerous examples of precisely those oratorical skills. This speech (for it is a single speech in five sections, not five speeches as customarily presented) has been signally neglected in recent times as a source of examples of effective oratory, probably because of the common persuasion

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Pliny and Tacitus were appointed to prosecute Marius Priscus in 100 AD) and their position was evidently much more analogous to that of a modern prosecution advocate.

[34] Cicero suggests that Caecilius would use the quest for evidence as an opportunity to destroy the records of his own shady dealings in Sicily (*Div. Caec.* 28). Accusations of *praevaricatio* (*i.e.* being bribed or otherwise persuaded not to press charges) were apparently commonplace and need not always be taken at face value; Caecilius may genuinely have quarrelled with Verres but was in difficulties because of his former association with him.

[35] *Divinatio* was the name of the procedure for challenging another's right to prosecute. The name suggests that originally the choice was made by appealing to divination, but in Cicero's time it is clear that the decision was made by the jury empanelled for the case, after speeches had been heard on both sides; the challenger (in this case Cicero) spoke first.

[36] The juries were much smaller than at Athens: it is thought that the juries for Republican trials usually numbered between 30 and 50. It can still be argued that the Republican orator spoke not only to the jury but also to the numerous others present in and around the usually open-air court, and hence that a certain element of crowd control was still important. On Roman oratorical delivery in general see J. Hall, 'Oratorical delivery and the emotions: theory and practice' in *Blackwell companion to Roman rhetoric*, ed. W. Dominik and J. Hall (Oxford and Malden MA 2007).

(which is not in fact securely founded in the evidence)[37] that it was never delivered but only circulated in writing. But for all that, it can still be treated as a text for performance, in which (as this analysis reveals) the phrasing itself often suggests a particular manner of delivery.

Our next chapter moves to the period of the Second Sophistic. The oratorical texts that survive from this period mainly belong to the genre of epideictic, *i.e.* display oratory for particular occasions. It has generally been assumed that the development of Roman law entailed that oratorical expertise became gradually less relevant in the courts; this assumption is often combined with the beliefs that Greek oratory went into decline after the end of democracy, and Roman after the end of the Republic. Thus it is easily taken for granted that this was a period in which both forensic and political oratory underwent eclipse, leaving only epideictic as an arena for the 'sophists' of the time to display their rhetorical prowess. That this picture is misleading is strongly suggested by Karambelas in his chapter. Drawing initially on an unexpected source of evidence – Artemidoros' treatise on the interpretation of dreams – Karambelas argues for the continued importance of *synēgoroi* on the forensic platforms of Greek cities under the Roman Empire. The term now referred to advocates in Roman or local courts, who could be paid for their services after Claudius' reform of the law on this point. Just as in earlier ages, there was a hierarchy of expertise in oratorical practice, and Karambelas' chapter also performs the useful service of disentangling the terminology applied to oratorical practitioners of various kinds in this period. Advocacy in the courts, as it emerges, was just one of a number of functions that could be performed by a qualified orator; on the other hand, an expert orator might be at pains to distinguish himself from lower-level forensic practitioners, as Cicero had attempted to do. Those who have written histories of rhetoric and oratory have tended to take at face value the complaints of authors such as Tacitus (in the *Dialogus*) that by the end of the first century AD there were no more real orators, only hack legal practitioners or academic rhetoricians. But there is a mounting body of evidence to show that this was not necessarily the case either for Rome itself or for the Greek East;[38] and the material discussed in this chapter indicates clearly that the active, quasi-professional *synēgoroi* of the second century were clearly neither low-grade lawyers, nor were they just a memory of the distant past. Their prominence and active engagement in contemporary society is reflected in their representation as 'healers' of the civic *nosos*.

It is probably safe to say that by this time, nobody became an orator without having attended a rhetorical school. The story of the rise of rhetorical education in the first two centuries of the Roman Empire is too familiar to bear repetition here. A new word for the graduates of the schools, or rather a new sense for an old word, makes itself known by the fourth century, when for example the Theodosian Code (8.10.2, quoting a constitution of Constantius in 344 AD) refers to *scholastici* who receive excessive honoraria for pleading in court. Evidently, these *scholastici* are advocates, qualified by their rhetorical training to

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[37] We await publication of K. Tempest and J. Powell, 'Who says the *Verrines* weren't delivered?', a paper delivered at the Cicero Awayday held at University College London on 30 May 2012.

[38] See especially Crook, *Legal advocacy* (n.30, above) drawing on both traditional Roman material and the evidence of the Egyptian court records on papyrus.

undertake the role; and as late as the sixth century, we find a little-known group of anonymous short stories about the fictional (or at least embroidered) exploits of one such *scholasticus*, by name Honorius. Although oratory itself (in the accepted sense of the delivery of continuous speeches) plays little direct role in the stories, Honorius is referred to as *bonus orator* and he lives up to the best traditions of the profession in his ability to persuade and influence a court or the general public, although by frankly unorthodox means. He is imagined as a well-known figure who appears as advocate, as judge, and as a bystander who is called upon to intervene to prevent a lynching; his propensity for coming to the rescue in difficult situations directly recalls the metaphorical 'healing' capacity of the *synēgoroi* of four hundred years before (see p. 12 above). One of his exploits is an adaptation of an anecdote about Anaximenes of Lampsacus, one of the founding fathers of ancient rhetoric, though separated from his time by nearly a thousand years; another is a version of a widely diffused Oriental folktale; yet another recalls a celebrated case of the Augustan advocate Asinius Pollio (better known to modern classicists as a historian and patron of Virgil), while the remaining two, less easy to parallel, raise questions about crowd psychology and the examination of material evidence. Powell's discussion of these stories resists easy evolutionary narratives, and emphasises rather the continuity of ancient attitudes and their implications for the orator's profession and performance both ancient and modern.

Our five chapters by professional classical scholars, then, survey the competences of several related types of oratorical performer: the Athenian citizen-orator in the assembly and the courts, the Republican Roman *patronus*, the *synēgoros* of the Greek-speaking empire, and the late Roman *scholasticus*. In our introduction we have pointed to some continuities and some differences among all of these. The enquiry can be extended further, into the modern world. We should beware of the facile opposition of ancient and modern: again, there are continuities (or at least similarities) and there are differences, and it is not within the scope of the present volume to explore these systematically. However, we feel it appropriate to include a foretaste of the lines that such an enquiry might take.

Although classical scholars have sometimes talked about oratory as a profession in the ancient world (despite the problems that lurk around the use of that word), it is uncommon to hear anybody nowadays described professionally as an 'orator'. Instead, oratory is viewed as a natural gift or skill that may or may not be present in (for example) a professional politician, lawyer or lecturer; it is an optional rather than a core subject. Good speakers, we incline to believe, are born, not made; there is no exact modern parallel to the role of the rhetorical schools in the Roman Empire as the essential preparation for any public career. Yet in these days there is an increasing public interest in the arts of communication. The styles of rhetoric employed by politicians are debated vigorously in newspapers and on the internet. The art of the speechwriter (comparable with that of the ancient logographer) flourishes. University lecturers are now given training in how to lecture – though, it has to be said, not always very good training. And students are now more inclined than they used to be to take courses that explicitly develop oral presentation skills in preparation for a wide variety of careers. Anyone who has studied ancient rhetoric and oratory has a decided head start in this area.

Even in what is now the relatively clinical world of the law, there is still a place for the 'alchemy of persuasion' as our final contributor calls it. Lord Justice Laws, a judge of the

British Court of Appeal, kindly agreed to address our November 2010 colloquium on oratorical delivery, and his lecture 'The rhetoric of the common law', which touches in equal measure on issues of professionalism and of performance, is here printed (with editorial changes kept to a minimum) as our sixth and last chapter. Not only does the chapter make a strong case for the continuing relevance of the rhetorical discipline in the world of the law – despite the differences in the system – but it also provides an example in written form of those powers of clear speech and persuasiveness which have distinguished the good speaker in all periods of history.

L.R.
J.G.F.P.
C.K.
October 2012

HYPOKRITĒS IN ACTION:
DELIVERY IN GREEK RHETORIC

MIKE EDWARDS

It is not an easy task to find new things to write on the topic of delivery in Greek rhetoric, for two reasons in particular. First, because our evidence for what was apparently a key element of rhetorical training is meagre; and secondly because what evidence there is has been pored over again and again, recently, for example, by Victor Bers in his excellent book *Genos dikanikon*.[1] But I think there is more to be said, and I offer what follows as a small contribution to the subject. I am going to start with the theory of delivery in Greek rhetoric, but this will inevitably be brief since the surviving theoretical material is preponderantly Romano-centric. I shall then concentrate on two aspects of delivery for which the texts of the Attic orators themselves seem to me to provide the evidence.

There is, then, very little discussion of delivery that survives from the Athenian classical period. Nothing in the *Rhetorica ad Alexandrum* and only a few unsatisfactory chapters in Aristotle's *Rhetoric* (3.1.3-10), as well as a few other brief pointers such as a reference to speakers shouting at *Rhetoric* 3.7.5. Hellenistic treatises are lost, yet in developed rhetorical theory, which begins for us in the early first century BC with the *Rhetorica ad Herennium,* the training of an orator had five parts: invention, arrangement, style, memory, and delivery.[2] Observe that delivery comes last, and this is the order also espoused by Cicero and Quintilian, who deals with memory in Book 11.2 and delivery in Book 11.3. Whether this was the order in which the five parts were introduced into rhetorical theory is another matter. Aristotle, who I note deals with style before arrangement in Book 3 of the *Rhetoric,* treats delivery very cursorily, commenting twice that no art of delivery had yet been composed, though it had been touched on by a few authors, including Thrasymachus, and that it was of great importance – but also that it was 'a vulgar matter (φορτικόν) when rightly understood' (*Rhetoric* 3.1.5); and he does not discuss memory at all. It appears that delivery was first dealt with extensively by his pupil Theophrastus in a lost treatise.[3] With regard to memory, Harry Caplan, in his

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[1] V. Bers, *Genos dikanikon. Amateur and professional speech in the courtrooms of classical Athens* (Cambridge MA 2009).

[2] *Rhetorica ad Herennium* 1.2.3: oportet igitur esse in oratore inventionem, dispositionem, elocutionem, memoriam, pronuntiationem ... pronuntiatio est vocis, vultus, gestus moderatio cum venustate ('The speaker, then, should possess the faculties of Invention, Arrangement, Style, Memory, and Delivery ... Delivery is the graceful regulation of voice, countenance, and gesture'). Trans. H. Caplan, *[Cicero] Ad Herennium* (Cambridge MA and London 1954). *Cf.* Cicero, *De inventione* 1.9, *De oratore* 1.31.142; Quintilian 1.22. On delivery see also Diog. Laert. 5.48 (Theophrastus). On mnemonics see Cic. *De or.* 2.351-54; Quint. 11.2.11-16.

[3] See W. W. Fortenbaugh, 'Theophrastus on delivery', *Rutgers University Studies* 2 (1985) 269-88.

note in the Loeb on the *Ad Herennium* passage, remarks that Theophrastus was the first to treat delivery and 'when precisely in the Hellenistic period Memory was added as a fifth division by the Rhodian or the Pergamene school, we do not know'. Likewise, Thomas Cole contends that 'delivery and memory [note the order] are two standard parts of the later rhetorical treatise which could not have been discussed except through analysis and precepts; but they are, significantly, almost completely ignored by early writers. Only Thrasymachus treated the latter [*sic*] ... Memory, aside from a few lines in the *Twofold Arguments* (9.1-6), is not certainly attested as a topic until the Hellenistic period'.[4] Again, Thomas Olbricht entitles his survey in Porter's *Handbook* 'Delivery and Memory', noting that he 'will follow the now traditional order'.[5] Given the Aristotelian evidence, delivery/memory may be the correct temporal order, but note that, as Olbricht himself relates, the invention of mnemonics was attributed by both Cicero and Quintilian to Simonides of Ceos, whose *floruit* in the late sixth/early fifth century is considerably earlier than that of Thrasymachus of Chalcedon in the late fifth century, the only one of those Aristotle says tried to say something about delivery before him whom he actually names. So why does Aristotle ignore mnemonics? The first of the few lines from the *Dissoi Logoi* that are dismissed by Cole run as follows (*Dissoi Logoi* 9.1)**:**

μέγιστον δὲ καὶ κάλλιστον ἐξεύρημα εὕρηται ἐς τὸν βίον μνάμα καὶ ἐς πάντα χρήσιμον, ἐς φιλοσοφίαν τε καὶ σοφίαν.

The greatest and finest discovery that has been made for our lives is memory; it is useful for everything, for intellectual pursuits (*philosophia*) and for wisdom (*sophia*). (trans. Gagarin and Woodruff)[6]

This anonymous treatise was probably written around 400, and I would suggest that *philosophia* here very much includes rhetoric, as with the *philosophia* of Isocrates. But regardless of that, I should have thought that the *mos maiorum* evidenced by the *Ad Herennium* ought to be good enough for modern commentators: regardless of the date of introduction, delivery was the fifth part of rhetoric, and that is indeed where it should logically be treated.

But because of the lack of evidence, it is with practical oratory that I am mainly concerned here. Theory about delivery was mainly concerned with two things, voice and gesture. I am going to look at two discussions which have previously covered these topics, and which do not feature in Bers' bibliography: for voice, Edith Hall's article in *BICS* 1995 on 'Lawcourt dramas';[7] and for gesture, Alan Boegehold's 1999 book, where he deals with oratory in chapter 7.[8] I propose to take some of the themes Hall and Boegehold discuss where, for me, they may not quite have got the whole picture, and to suggest how study of certain rhetorical figures employed in surviving speeches might indeed enhance their accounts.

Edith Hall, with her great expertise in Greek drama, adduces numerous parallels between the stage and the lawcourt, including their setting, various aspects of performance, and the subject-matter itself. The very term for delivery in Greek, *hypokrisis,* is of course the same as that used for acting,

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[4] T. Cole, *The origins of rhetoric in ancient Greece* (Baltimore 1991) 88.

[5] T. H. Olbricht, 'Delivery and memory', in *Handbook of classical rhetoric in the Hellenistic period 330 B.C.-A.D. 400,* ed. S. E. Porter (Leiden 1997) 159-67.

[6] M. Gagarin and P. Woodruff, *Early Greek political thought from Homer to the Sophists* (Cambridge 1995).

[7] E. Hall, 'Lawcourt dramas: the power of performance in Greek forensic oratory', *BICS* 40 (1995) 39-58.

[8] A. L. Boegehold, *When a gesture was expected* (Princeton 1999).

and there is no doubt that many a deliverer of speeches, *hypokritēs,* was acting both in the sense of putting on a performance and with respect to the veracity of the material he was performing. Hall makes a very persuasive case, but one which is perhaps a shade overdone: in all this entertainment we may lose sight at times of the harsh reality of the courtroom in comparison with the *mimesis* of the theatre.

Thus, Hall begins her section on 'Delivery' with the well-known anecdote about Demosthenes, that when asked what the most important things in oratory were, he replied 'delivery, delivery, delivery'.[9] Whatever the truth about this story and others concerning his stance and vocal training – fastening a dagger to the ceiling of his cave study to stop a twitch in his shoulder and standing in front of a full-length mirror to iron out his faults; shouting above the waves at Phalerum and putting pebbles in his mouth to cure a lisp like that of Alcibiades which produced lambda instead of rho – it is clear that at the end of the day when, Pytheas gibed, his lamp was still burning, Demosthenes was no ordinary speaker.[10] Likewise his bitter rival Aeschines, the tritagonist as Demosthenes styles him, who learned in his youth from his prostitute priestess of a mother how to howl (ὀλολύζειν) at the top of his voice, but whose voice, in reality, was evidently far superior.[11] But were all speakers on the *bema* and more especially in the *dikasteria* expected to perform like Demosthenes and Aeschines? Hyperides, for one, did not, at least according to the same, admittedly questionable source Pseudo-Plutarch (850a):

> λέγεται δ' ἄνευ ὑποκρίσεως δημηγορῆσαι καὶ μόνον διηγεῖσθαι τὰ πραχθέντα καὶ τούτοις οὐκ ἐνοχλεῖν τοὺς δικαστάς.

> It is said that in addressing the public he did not employ the actor's art (ἄνευ ὑποκρίσεως), that he merely related the facts of the case and did not bore the jurors even with these. (trans. Fowler)[12]

Hyperides, we should remember, was ranked by the ancients behind only Demosthenes; indeed, again according to Pseudo-Plutarch (849d), 'he is said to have excelled all in addressing the people; and by some critics he is ranked above Demosthenes'. I should point out, too, that this is the same Hyperides who, on defending his courtesan lover Phryne, allegedly employed the ultimate act of pathetic persuasion when the trial was going against her, of getting her to bare her breasts to the jurors while weeping piteously himself (Pseudo-Plutarch 849e; Athen. 13.590c). But what about the ordinary Athenian who found himself faced with the daunting prospect of defending himself before a jury of five hundred fellow-citizens? I emphasize the adjective 'ordinary', for while it is generally assumed that the speeches we have were written by expensive logographers for wealthy clients, not all litigants were wealthy and indeed not all of the ones we meet necessarily fall into that category. One obvious, well-known conundrum is how the blunt farmer Euphiletus of Lysias' speech 1 could have afforded Lysias' fees. It may well be that he was not in fact as poor

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[9] Cic. *Brutus* 142, *Orator* 56; Philodemus, περὶ ῥητορικῆς 1.196.3 Sudhaus; [Plut.] *Mor.* 845b. The sources in fact say that he answered 'delivery' to three successive questions.

[10] Demosthenes' training: [Plut.] 844e-f; Plut. *Dem.* 11.1 (8.4 for Pytheas).

[11] Aeschines' howling: Dem. 18.259.

[12] H. N. Fowler, *Plutarch's Moralia vol. X* (Cambridge MA and London 1936).

as he makes out – he has a house in Athens which he calls an *oikidion* (1.9), 'a little house', but it does have two floors; and he may also have had a place in the country (though that could have been more like a shed) – but the point is that he wants the jurors to believe he is an ordinary Athenian like them.[13] Another example is the speaker's opponent in Isaeus 4. The rival claimant to the estate of Nicostratus was a mercenary soldier called Chariades, whose character the speaker blackens by a classic piece of *diabolē* (4.28-29):

ὥστε πολὺ μᾶλλον τούτους προσήκει κατὰ δόσιν τῶν χρημάτων τῶν Νικοστράτου ἢ Χαριάδην ἀμφισβητεῖν. οὗτος γάρ, ὅτ᾽ ἐπεδήμει ἐνθάδε, πρῶτον μὲν εἰς τὸ δεσμωτήριον ὡς κλέπτης ὢν ἐπ᾽ αὐτοφώρῳ ἀπήχθη, τότε δὲ ἀφεθεὶς μεθ᾽ ἑτέρων τινῶν ὑπὸ τῶν ἕνδεκα, οὓς δημοσίᾳ ἅπαντας ὑμεῖς ἀπεκτείνατε, πάλιν ἀπογραφεὶς εἰς τὴν βουλὴν κακούργων, ὑποχωρῶν ᾤχετο καὶ οὐχ ὑπήκουσεν, ἀλλ᾽ ἀπ᾽ ἐκείνου ἑπτακαίδεκα ἐτῶν Ἀθήναζε οὐκ ἀφίκετο, πλὴν ἐπειδὴ Νικόστρατος ἀπέθανε. καὶ ὑπὲρ μὲν ὑμῶν οὔτε στρατείαν οὐδεμίαν ἐστράτευται οὔτε εἰσφορὰν οὐδεμίαν εἰσενήνοχε, πλὴν εἴ τι ἄρα ἐξ ὅτου τῶν Νικοστράτου ἠμφισβήτησεν, οὔτ᾽ ἄλλ᾽ οὐδὲν ὑμῖν λελῃτούργηκεν. ἔπειτα τοιοῦτος ὢν οὐκ ἀγαπᾷ εἰ μὴ τῶν ἡμαρτημένων δίκην δώσει, ἀλλὰ καὶ τῶν ἀλλοτρίων ἀμφισβητεῖ.

So they could far more fittingly claim Nicostratus' money as a bequest than could Chariades. He, when he lived here, was first of all arrested in the act as a thief and led off to prison, then released with some others by the Eleven, all of whom you publicly condemned to death; and when he was again denounced to the Council as a common criminal (*kakourgos*), he absconded and failed to appear. He didn't return to Athens for seventeen years after that, until Nicostratus died. He has never served in the army on your behalf or paid any war-tax, except perhaps since he claimed Nicostratus' property, nor has he performed any other public service for you. And then, such as he is, he is not content to avoid punishment for his crimes, but he actually claims other people's property! (trans. Edwards)[14]

Again, whatever exaggeration there may be in the rhetoric here, the speaker wants the jurors to believe Chariades is a lowlife trying to get his hands on somebody else's inheritance. Did Lysias offer Euphiletus training in delivery as well as a speech to deliver? What help did Chariades receive from his logographer? I am not suggesting, of course, that there is any simple antithesis between 'wealthy = skilled *hypokritēs*' and 'ordinary = unskilled *hypokritēs*'. For every Andocides, who was clearly a natural performer as well as being stinking rich, there were doubtless hundreds of less well-off members of the *hoi polloi* who, when they found themselves in court, had the ability to pull the wool over the eyes of the jurors. Further, there was a distinction, especially as the fourth century progressed, between the professional speaker (*rhētor*) and the rest; but this was primarily in the political sphere, and the trials involving Demosthenes and Aeschines were themselves major political events. But what I would suggest is that much of the performance aspect that we hear about in connection with prominent politicians, and which forms the core of Hall's evidence base,

[13] Again, the social composition of Athenian juries is impossible to determine, even I think when they consisted of the *ephetai,* as here. On Euphiletus' wealth see S. C. Todd, *A commentary on Lysias speeches 1-11* (Oxford 2007) 58-60. See in general Bers, *Genos dikanikon* (n.1, above) 10ff.

[14] M. J. Edwards, *Isaeus* (Texas 2007).

was achieved for the ordinary, unpractised litigant by the logographer's skill at *ethopoiia*: the speech itself, in other words, with all those asides that give the impression of spontaneity, did most of the work of creating the requisite persona for the speaker. If he could act convincingly as well, so much the better. To that extent Aristotle's greater emphasis on 'what to speak' than 'how to speak', which is noted critically by Hall,[15] was indeed the right approach for the bulk of ordinary litigants.

Most of these litigants were Athenian citizens. Hall notes the prejudice that existed 'against those who spoke with a barbarian or non-Attic accent ... this is expressed especially in cases where the defendant has been accused of not being a full-blooded Athenian citizen';[16] and she refers to the example of Euxitheus in Demosthenes 57, who appeals against the decision of his deme to deny him citizenship and reduce him to the status of a metic. His opponent in court, the *demarch* Eubulides, had claimed that Euxitheus' father spoke with a foreign accent (ὡς ἐξένιζεν, 57.18), and he is forced to reply to this slur.[17] But the defendant of Antiphon 5, who by coincidence is usually thought also to have been called Euxitheus, unquestionably did speak with a non-Attic accent, since he was a Mytilenean from Aeolic Lesbos. In the aftermath of the Mytilenean revolt of 428/7 a Mytilenean defendant in a popular court in Athens cannot have been competing on a level playing field with an Athenian. So did this Euxitheus have no chance of success in an Athenian court simply because of his nationality? However Antiphon may have trained him, I do not see that he can have disguised his accent any more than he could his background, and what kind of performance will the jurors have expected from him? Would they not have thought more consciously than normal that, if he gave a good one, this really *was* a performance? This is also a good case to use as possible evidence for a defendant in court having some kind of text as an *aide-memoire* – I still find it hard to believe that Euxitheus, after being arrested for murder, transported to a foreign city and thrown into prison, then being given a long speech to memorize that repeatedly argued on the basis of intricate aspects of Athenian law that he was being tried in the wrong court, can possibly have had the *sangfroid* to deliver the speech entirely from memory. We should recall, as does Bers,[18] the fragment of Euripides describing the effects of fear on a man accused of homicide, and the comic version of Labes the dog in the *Wasps* being unable to bark in his own defence.[19] The source usually cited as evidence for speaking without a text is Alcidamas, who in his *On Those Who Write Speeches or On Sophists* expresses the well-known opinion that 'public speakers and litigants in court and those engaged in private discussions must necessarily speak extemporaneously'.[20] But we should remember that Alcidamas is primarily thinking about professionals, as when he adds that 'people who

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[15] Hall, 'Lawcourt dramas' (n.7, above) 41.

[16] Hall, 'Lawcourt dramas' (n.7, above) 48.

[17] See further Bers, *Genos dikanikon* (n.1, above) 46-50.

[18] Bers, *Genos dikanikon* (n.1, above) 60-61.

[19] Euripides frg. 88 Kannicht: 'when someone comes to speak at his trial for homicide, fear stuns his tongue and mind and keeps him from saying what he wants. For the one man [the defendant] there is danger, while the other [the prosecutor] is invulnerable. After all, I must elude this trial, since I see my life is the prize' (trans. Bers); *cf.* Ar. *Wasps* 944-48.

[20] Alcidamas, *On those who write speeches or On sophists* 9: λέγειν μὲν ἐκ τοῦ παραυτίκα καὶ δημηγοροῦσι καὶ δικαζομένοις καὶ τὰς ἰδίας ὁμιλίας ποιοῦσιν ἀναγκαῖόν ἐστι. (trans. Gagarin and Woodruff)

write speeches for the lawcourts avoid great precision of expression and imitate instead the style of extemporaneous speakers; and their writing appears finest when they produce speeches least like those that are written'.[21] He also has an agenda – he opens the essay with a thinly veiled attack on Isocrates, who was a notoriously poor speaker: 'Some of those who are called sophists are not concerned with inquiry or general education, and they are just as inexperienced in the practice of speaking as ordinary men'.[22] So even he admits a few lines later: 'Now, to speak appropriately, on the spot, on whatever topic is proposed, to be quick with an argument and ready with the right word, and to find just the right speech to match the current situation (*kairos*) and people's desires – all this is not within the natural ability of everyone nor the result of whatever education one happens to have had'.[23] We must always bear in mind the possibility that Euxitheus' actual speech bore only a passing resemblance to the edited version that we call Antiphon 5: perhaps, rather like Cicero's *Pro Milone,* the speech as preserved is the one that the speaker (in this case the young, doubtless frightened defendant himself rather than an experienced but nevertheless unnerved advocate) *would* have given if he had not been suffering from stage fright. But equally, perhaps he did say roughly what we have, with the aid of some kind of text, and in a Mytilenean accent; and even with success? Of course, the outcome of the trial is unknown, and we have no idea whether Euxitheus indeed won any votes at all. But were Athenian juries always prejudiced against foreign defendants? Even in the dedicated metics' court, presided over by the polemarch? Antiphon 5 is unique in the preserved corpus in concerning a crime committed abroad, but in the heady days of the Athenian empire trials involving non-citizens cannot have been at all unusual. Thucydides indicates the contrary, and the historian has the Athenian speakers at Sparta claim that the Athenian courts were impartial (1.77.1):

καὶ ἐλασσούμενοι γὰρ ἐν ταῖς ξυμβολαίαις πρὸς τοὺς ξυμμάχους δίκαις καὶ παρ' ἡμῖν αὐτοῖς ἐν τοῖς ὁμοίοις νόμοις ποιήσαντες τὰς κρίσεις φιλοδικεῖν δοκοῦμεν.

For example, in law-suits with our allies arising out of contracts we have put ourselves at a disadvantage, and when we arrange to have such cases tried by impartial courts in Athens, people merely say that we are overfond of going to law. (trans. Warner)[24]

He would, of course. But with Thucydides as my guide I have some amount of confidence, even if it is naive and misplaced, that a non-Athenian with a strange accent will not inevitably have lost a trial in Athens against a citizen; and it then seems to me that his

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[21] Alcidamas, *id*. 13: οἱ γὰρ εἰς τὰ δικαστήρια τοὺς λόγους γράφοντες φεύγουσι τὰς ἀκριβείας καὶ μιμοῦνται τὰς τῶν αὐτοσχεδιαζόντων ἑρμηνείας, καὶ τότε κάλλιστα γράφειν δοκοῦσιν, ὅταν ἥκιστα γεγραμμένοις ὁμοίους πορίσωνται λόγους.

[22] Alcidamas, *id*. 1: ἐπειδή τινες τῶν καλουμένων σοφιστῶν ἱστορίας μὲν καὶ παιδείας ἠμελήκασι καὶ τοῦ δύνασθαι λέγειν ὁμοίως τοῖς ἰδιώταις ἀπείρως ἔχουσι ...

[23] Alcidamas, *id*. 3: εἰπεῖν μὲν γὰρ ἐκ τοῦ παραυτίκα περὶ τοῦ παρατυχόντος ἐπιεικῶς, καὶ ταχείᾳ χρήσασθαι τῶν ἐνθυμημάτων καὶ τῶν ὀνομάτων εὐπορίᾳ καὶ τῷ καιρῷ τῶν πραγμάτων καὶ ταῖς ἐπιθυμίαις τῶν ἀνθρώπων εὐστόχως ἀκολουθῆσαι καὶ τὸν προσήκοντα λόγον εἰπεῖν, οὔτε φύσεως ἁπάσης οὔτε παιδείας τῆς τυχούσης ἐστίν.

[24] R. Warner trans., *Thucydides* (Harmondsworth 1954).

performance, like that of any ordinary citizen, cannot in the sense discussed by handbooks and scholars have been the overriding factor in his victory.

I suggest, therefore, that there is sometimes a tension between the theory and practice of public speaking. I am sure George Kennedy was right to declare that 'probably no one would learn how to speak in the first instance from reading Aristotle, but any speaker might well profit from much of his advice'.[25] An area where I feel a strong tension is in the training of the orator by use of poetry, on which the standard article is by North.[26] Hall emphasizes the importance of poetry in this training and observes that 'direct quotations from poetry in the extant corpus of speeches are therefore surprisingly infrequent'.[27] As I have argued elsewhere, 'infrequent' is in fact an understatement, with six of the ten members of the canon not quoting from poetry at all in their extant speeches.[28] It makes one wonder.

I suggested earlier that study of certain rhetorical figures might enhance the accounts of Hall and Boegehold. Hall's missed opportunity for me is the use of the figure *prosopopoeia*, which Stephen Usher defines as 'representation of absent or dead person(s) as interested observers of the present scene, or imagination of future scenes'.[29] I would add that it also includes representation of inanimate objects, such as one's country or the laws, the best known example of which is not in the orators, but Plato (*Crito* 50a ff.). Possibly the most famous *prosopopoeia* of all – or rather *prosopopoeiae* – is Cicero pretending to be Appius Claudius Caecus and then Clodius in the *Pro Caelio*, which was admired by Quintilian.[30] Cicero, of course, had been trained by the comic actor Roscius and the tragic actor Aesopus.[31] Now Aeschines *was* an actor, while Demosthenes was supposedly trained by Satyrus – Satyrus becomes Andronicus in Pseudo-Plutarch's version,[32] who also relates that Demosthenes paid 'Neoptolemus the actor ten thousand drachmas to teach him to speak whole paragraphs without taking breath' (844f). Aeschines uses *prosopopoeia*, or strictly speaking an *eidolopoeia*, when the absent person referred to is dead, in his prosecution of Demosthenes (3.259):

> Θεμιστοκλέα δὲ καὶ τοὺς ἐν Μαραθῶνι τελευτήσαντας καὶ τοὺς ἐν Πλαταιαῖς καὶ αὐτοὺς τοὺς τάφους τοὺς τῶν προγόνων οὐκ οἴεσθε στενάξειν, εἰ ὁ μετὰ τῶν βαρβάρων ὁμολογῶν τοῖς Ἕλλησιν ἀντιπράττειν στεφανωθήσεται;

[25] G. A. Kennedy, *The art of persuasion in Greece* (Princeton 1963) 123.

[26] H. North, 'The use of poetry in the training of the ancient orator', *Traditio* 8 (1952) 1-33.

[27] Hall, 'Lawcourt dramas' (n.7, above) 45.

[28] See M. J. Edwards, 'Rhetoric and technique in the Attic Orators and Aristotle's *techne rhetorike*', in *Inspiration and technique. Ancient to modern views on beauty and art*, ed. J. Roe and M. Stanco (Oxford 2007) 35-47.

[29] S. Usher, *Greek oratory. Tradition and originality* (Oxford 1999) 368.

[30] Cicero, *Pro Caelio* 33ff.; *cf.* Quint. 3.8.54, 12.10.61.

[31] Plut. *Cic.* 5.

[32] Plut. *Dem.* 7; [Plut.] 845a-b.

Don't you think Themistocles and the men who died at Marathon and Plataea and the very graves of our ancestors will groan aloud, if a man who admits to plotting with the barbarians against the Greeks receives a crown? (trans. Carey)[33]

Demosthenes has a striking *prosopopoeia* in his very first speech, the prosecution of his former guardian Aphobus (27.69):

μέγα δ' ἂν οἶμαι στενάξαι τὸν πατέρ' ἡμῶν, εἰ αἴσθοιτο τῶν προικῶν καὶ τῶν δωρειῶν, ὧν αὐτὸς τούτοις ἔδωκεν, ὑπὲρ τούτων τῆς ἐπωβελίας τὸν αὐτοῦ υἱὸν ἐμὲ κινδυνεύοντα ...

Loudly methinks, would my father groan, should he learn that I, his son, am in danger of being forced to pay the sixth part of the marriage-portions and legacies given by himself to these men... (trans. Murray)[34]

There are other examples in Demosthenes (19.66; 20.55, 87; 39.31), including the famous scene in the *De Corona* of the description of the fall of Elateia (18.170):

ἠρώτα μὲν ὁ κῆρυξ "τίς ἀγορεύειν βούλεται;" παρῄει δ' οὐδείς. πολλάκις δὲ τοῦ κήρυκος ἐρωτῶντος οὐδὲν μᾶλλον ἀνίστατ' οὐδείς, ἁπάντων μὲν τῶν στρατηγῶν παρόντων, ἁπάντων δὲ τῶν ῥητόρων, καλούσης δὲ τῆς κοινῆς τῆς πατρίδος φωνῆς τὸν ἐροῦνθ' ὑπὲρ σωτηρίας.

The herald asked: "Who wishes to speak?" And no one came forward. The herald asked the question many times, but still not a man got up, though all the generals and all the regular speakers were present, and their country was crying out in her collective voice for a man who would speak to save her. (trans. Usher)[35]

But the figure of *prosopopoeia* had been part of oratory as far back as one of the earliest speeches that have come down to us, Antiphon's *Against the stepmother*,[36] and it was especially employed, as Usher points out,[37] towards the end of speeches in their epilogues, as in the Aeschines and first Demosthenes passages above. In Antiphon 1 the speaker ends his prosecution of the stepmother for homicide on a grave note with the image of the gods watching the outcome; and Lysias ends his prosecution of the tyrant Eratosthenes with the dead (12.100):

οἶμαι δ' αὐτοὺς ἡμῶν τε ἀκροᾶσθαι καὶ ὑμᾶς εἴσεσθαι τὴν ψῆφον φέροντας, ἡγουμένους, ὅσοι μὲν ἂν τούτων ἀποψηφίσησθε, αὐτῶν θάνατον κατεψηφισμένους ἔσεσθαι, ὅσοι δ' ἂν παρὰ τούτων δίκην λάβωσιν, ὑπὲρ αὐτῶν τιμωρίας πεποιημένους.

[33] C. Carey trans., *Aeschines* (Texas 2000).

[34] A. T. Murray trans., *Demosthenes IV. Private orations XXVII-XL* (Cambridge MA and London 1936).

[35] S. Usher, *Demosthenes. On the crown* (Warminster 1993).

[36] Ant. 1.31.

[37] Usher, *Greek oratory* (n.29, above) 30.

I imagine them listening to us and that they will take cognisance of the verdict you give. They will consider that those of you who vote to acquit these men will have confirmed their own condemnation to death, but that those who exact justice from them have taken vengeance on their behalf. (trans. Usher)[38]

Other examples may be found in Isocrates, Lycurgus, and the allegedly non-acting Hyperides.[39] Again, many of these examples are from leading politicians, and I would suggest that experienced speakers would very much act the part, whereas less experienced litigants might speak the words with less acting but nevertheless with some effect.

Let us turn now to Alan Boegehold, who in general terms is surely right to urge that an awareness of nonverbal communication, *i.e.* gestures such as a nod of the head or wave of the hand, is crucial to a full understanding of Greek poetry and prose. Quintilian had the theory of gesture off to a fine art,[40] with advice on how to move the head, face, neck, shoulders, arms, hands, body, and feet; for example (11.3.79):

vitium in superciliis si aut inmota sunt omnino aut nimium mobilia ...

It is a fault of the eyebrows either to be completely immobile or to be too mobile ... (trans. Russell)[41]

I cannot believe that the Greeks were less expressive than the Romans. I think, however, that Boegehold also goes a little too far at times with his thesis, particularly when discussing an unfinished conditional sentence in the Gortyn law code (*IC* 4.72.8, ll. 17ff.):

καὶ μέν τίς [κ' ὀ]πυίει ἐν ταῖς τριάκοντα ἔ κα ϝείποντι. αἰ δὲ μ<έ> ...

And if anyone should marry her <it should be> within thirty days from the time they made the proclamation, but if not <...> (trans. Willetts)[42]

Boegehold suggests that the words in the square brackets should be <GESTURE = well and good>, and then ties himself up in knots trying to explain how this 'elliptical phrase, characteristic of the language as spoken, [found] its way into the published version of the Law Code of Gortyn':[43] some of the locals needed a literate reader or interpreter, who would gesticulate as they read. I would suggest that probably most, not some, of the locals would have had this need, but what about those who *could* read it for themselves – did they need to gesticulate at certain points? But Boegehold then goes a further stage back and argues that the person who first read the law to the scribe will have made a gesture, and the scribe wrote or inscribed the words as he heard them, knowing exactly what was meant. This is now, it seems to me, entering the realms of fantasy. With reference to the orators themselves, Boegehold picks out several passages which might imply that, in their original performance, a gesture was used to complete the

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[38] M. J. Edwards and S. Usher, *Greek orators I: Antiphon and Lysias* (Warminster 1985).

[39] Isoc. 6.110, 19.42-47; Lyc. 1.150; Hyp. 6.39.

[40] Quint. 11.3.65-136.

[41] D. A. Russell trans., *Quintilian. The orator's education V, books 11-12* (Cambridge MA and London 2001).

[42] R. F. Willetts, *The law code of Gortyn* (Berlin 1967).

[43] Boegehold, *Gesture* (n.8, above) 91-92.

grammatical sense. I have my doubts about most of these, but will pick out one example only. There is an anacoluthon at Lysias 24.2, *i.e.* a sentence where the grammatical structure breaks down:

καίτοι ὅστις τούτοις φθονεῖ οὓς οἱ ἄλλοι ἐλεοῦσι, τίνος ἂν ὑμῖν ὁ τοιοῦτος ἀποσχέσθαι δοκεῖ πονηρίας; εἰ μὲν γὰρ ἕνεκα χρημάτων με συκοφαντεῖ·

Now tell me, what villainy do you think a man would shrink from, who envies those whom others pity? If it is for my money that he is slandering me...! (trans. Usher)

In his commentary Usher wrote, following Adams and in line with the dash printed by Hude in the OCT,[44] that the break here is an example of aposiopesis, that is (in Usher's definition) an 'abrupt silence in mid-sentence, to signal [a] speaker's reluctance to talk about an inauspicious, unpleasant, or absurd subject'.[45] In this particular case the desired effect was one of laughter, and Usher argues elsewhere that this parodic use of the figure fits his thesis that Lysias 24 is a *paignion*, or play-piece.[46] Boegehold counters 'but surely Lysias in composing the version of his speech that he finally published did not break his text off at that point because laughter had drowned out whatever the lame man had wanted to say. The break was a clear sign to his client to improvise with a gesture. The lame man for his part knew what gesture to make, given the condition expressed. If he did not know how to say "This is incredible" with his hands and head, he could be instructed at a rehearsal before the trial'.[47] Now it is not at all certain that teaching his clients how to act their roles was necessarily a part of the logographer's remit – it may, as Bers suggests, have depended on how much the client was able to pay;[48] nor do I necessarily agree with Usher that Lysias 24 was a *paignion*.[49] But Boegehold surely misses the point here that any gesture will have supplemented the intended rhetorical effect, not supplanted it.

The rhetorical trick I think Boegehold misses is that of *apostrophe*, in Usher's definition 'turning aside to address someone or something other than the audience – usually one's opponent in a hostile way'.[50] The use of the pronoun σύ ('you') and its other forms is central here – surely that is literally the point in the speech when a gesture was to be expected? As in the following classic example from the rather less than cordial relationship between Demosthenes and Aeschines (Dem. 18.199-200):

ἐπειδὴ δὲ πολὺς τοῖς συμβεβηκόσιν ἔγκειται, βούλομαί τι καὶ παράδοξον εἰπεῖν. καί μου πρὸς Διὸς καὶ θεῶν μηδεὶς τὴν ὑπερβολὴν θαυμάσῃ, ἀλλὰ μετ' εὐνοίας ὃ λέγω θεωρησάτω. εἰ γὰρ ἦν ἅπασι πρόδηλα τὰ μέλλοντα γενήσεσθαι καὶ προῄδεσαν πάντες καὶ σὺ προὔλεγες, Αἰσχίνη, καὶ διεμαρτύρου βοῶν καὶ

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[44] Edwards and Usher, *Greek orators I* (n.38, above) 264; C. D. Adams, *Lysias. Selected speeches* (New York 1905); K. Hude, *Lysiae orationes* (Oxford 1912). C. Carey in the new OCT prints a colon, *Lysiae orationes* (Oxford 2007).

[45] Usher, *Greek oratory* (n.29, above) 364.

[46] Usher, *Greek oratory* (n.29, above) 109.

[47] Boegehold, *Gesture* (n.8, above) 87-88.

[48] Bers, *Genos dikanikon* (n.1, above) 9-10.

[49] Bers does not, *Genos dikanikon* (n.1, above) 9.

[50] Usher, *Greek oratory* (n.29, above) 364.

κεκραγώς, ὃς οὐδ᾽ ἐφθέγξω, οὐδ᾽ οὕτως ἀποστατέον τῇ πόλει τούτων ἦν, εἴπερ ἢ δόξης ἢ προγόνων ἢ τοῦ μέλλοντος αἰῶνος εἶχε λόγον. νῦν μέν γ᾽ ἀποτυχεῖν δοκεῖ τῶν πραγμάτων, ὃ πᾶσι κοινόν ἐστιν ἀνθρώποις ὅταν τῷ θεῷ ταῦτα δοκῇ· τότε δ᾽ ἀξιοῦσα προεστάναι τῶν ἄλλων, εἶτ᾽ ἀποστᾶσα τούτου Φιλίππῳ προδεδωκέναι πάντας ἂν ἔσχεν αἰτίαν. εἰ γὰρ ταῦτα προεῖτ᾽ ἀκονιτί, περὶ ὧν οὐδένα κίνδυνον ὄντιν᾽ οὐχ ὑπέμειναν οἱ πρόγονοι, τίς οὐχὶ κατέπτυσεν ἂν σοῦ; μὴ γὰρ τῆς πόλεως γε, μηδ᾽ ἐμοῦ.

Since he lays so much stress on results, let me venture on a paradox. And by Zeus and the gods, if it seems extravagant, let none of you be surprised, but still give friendly consideration to what I am saying. Suppose that the future had been revealed to all of us, that everyone had known what would happen, and that you (σύ), Aeschines, had predicted and protested, shouting and storming – though in fact you never opened your mouth – even then the city could not have departed from that policy, if she had any regard for honour, or for our ancestors, or for the days that are to come. As it is, we seem to have failed, which is the common lot of humanity, whenever God so wills. But then, if Athens, after claiming primacy over the others, had run away from her claims, she would have been held guilty of betraying everybody to Philip. If, without striking a blow, she had abandoned the cause for which our forefathers flinched from no peril, is there a man who would not have spat at you (οὐχὶ κατέπτυσεν ἂν σοῦ)? At you, not at Athens, not at me. (trans. Usher)

Doubtless the last phrase too, 'not at me' (μηδ᾽ ἐμοῦ), was accompanied by a gesture.

At the end of the *Rhetoric* (3.19.6), Aristotle paraphrases Lysias, the third occasion on which Lysias is either quoted (2.23.19) or paraphrased (3.10.7) in the work, though he is never actually named. I leave it to the reader's imagination how Lysias will have performed the immortal words ἀκηκόατε, ἑοράκατε, πεπόνθατε, ἔχετε· δικάζετε.

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PERFORMING THE SPEECH
IN ATHENIAN COURTS AND ASSEMBLY
ADJUSTING THE ACT TO FIT THE *BĒMA*?

VICTOR BERS

This paper starts with a call for caution in terminology, and then goes on speculate as to the differences between the performance of speeches in court and speeches at political meetings.

My knowledge of the practice, and even more the theory, of dramatic performance is nugatory, but I know enough to be certain that it is important to stay alert for differences between the theatrical, in the narrow sense of the word, and the human activities theatre imitates. Much recent scholarship has, in my view, incautiously assimilated those two things. To a degree, the mistake has been falling into the trap of metaphor, a trap especially tenacious for the obvious reason that theatre is, one way or another, mimetic of humans, or to follow Aristotle's qualification, not of humans but of humans' action and life (*Poetics* 1450a16-17). The Athenian courts offered citizens of the right age and gender paid employment as *dikastai* as well as amusement to spectators and, as Stephen Usher has shown, to readers.[1] The same was true of sessions of the Athenian assembly, the *ecclesia*, and the *boule*. Beyond that, the outcome of debates in these *fora* mattered very much to people's lives, and decisions were made very quickly and often in full public view. It would be very strange indeed if these events were not, in the ordinary sense of the word, 'dramatic'. For some of the modalities of forensic drama, the now classic work is Edith Hall's 1995 article 'Lawcourt dramas: acting and performance in legal oratory', which should be consulted in the revised and expanded version in her 2006 book.[2] Our sources are predominantly speech texts, which together with discursive treatments, anecdotes, and parodies allow some informed speculation on the speeches as they were actually given. Lying closest to the surface, in a sense, is the matter of how the words of what amounts to a considerable collection of texts became acoustic. Sound is a phenomenon of many dimensions, and the sounds came from moving bodies on *bēmata*. Sound, physical stance, and movement are constituents of delivery, a word that can do

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[1] S. Usher, 'Lysias for pleasure?' in *Law, rhetoric and comedy in classical Athens. Essays in honour of Douglas M. MacDowell*, ed. D. L. Cairns and R. A. Knox (Swansea 2004) 113-21.

[2] *The theatrical cast of Athens: interactions between ancient Greek drama and society* (Oxford and New York 2006) 353-92. Perhaps relying on an incomplete statement at V. Bers, 'Dikastic *thorubos*', in *Crux: essays presented to G. E. M. de Ste. Croix on his 75th birthday*, ed. P. Cartledge and F. D. Harvey (Exeter 1985) 1-15(5) Hall (364) remarks 'Aristotle's *Rhetoric* strangely neglects *thorubos*, although there is a brief account of the demagogue Androcles dealing with it in the assembly (2.1400a9-14)'. There are other references at 1356b24 and 1419a16.

mischief when we think about 'performance'. But try to ignore matters of delivery, and the ghost of Demosthenes will shout at you: μηδαμῶς, ὦ βέλτιστε· ὑπόκρισις, ὑπόκρισις, ὑπόκρισις ('No, my good fellow! delivery, delivery, delivery!).[3] Greek oratory in Athens while she was still a democracy could not be pried away from its performance. True, Aristotle insists that even when read, not performed, the script of a well-composed tragedy will do its work (*Poetics* 1450b18), but that was Aristotle in one of his rare iconoclastic and overly abstract moments. And we might also worry about Isocrates, a man who would probably resign the prime ministry rather than face the tumult of PMQs. The bulk of his *oeuvre* was of course 'performed' only in a much-etiolated sense of the word. Within a century of Isocrates' death, Hieronymus (fr. 52a.5 Wehrli) declared it impossible to deliver an Isocratean oration as a public speech; he uses the verb δημηγορῆσαι. And yet Isocrates is useful insofar as his complaints of the rowdiness of political meetings give us some idea of the challenges facing a speaker in the *ecclesia*.

Inconveniently for my purpose here, the noun ὑπόκρισις and the corresponding verb is often used in unmistakable references to acting *per se*, that is, in plays performed in the literal theatre; but it can also mean 'delivery' in the speaker's own *persona*. 'Performing' is, to my mind, a much safer word than 'drama'. The words 'dramatic', 'histrionic', and 'theatrical' have more potential for conceptual damage, but even with 'performance' we must be on guard to avoid homogenizing different tactics and different goals as we move among the texts. We can lose our footing as confusions arise between strict denotation and those connotations which cause us to slide on metaphors when we hear the 'glib and oily art', as Cordelia describes rhetoric.[4] 'Impersonation' should be strictly excluded where what we really mean is that a speaker is excited or intense, his language 'marked', somehow distinct from his own normal speech style. In his very useful article 'Demosthenes Actor on the Political and Forensic Stage', Craig Cooper adduces a remark of Eratosthenes, the third-century BC librarian of Alexandria quoted by Plutarch (FGrH 241 F 32). Eratosthenes speaks of Demosthenes as πολλαχοῦ γεγονέναι παράβακχον, which Cooper translates: '[He] often …became frenzied or theatrical (*parabakhon*)'.[5] In selecting 'theatrical' as one of two glosses of παράβακχον, Cooper agrees with LSJ *s.v.*, which translates 'Like a Bacchanal, theatrical'. That is an unjustified move from one category to another, perhaps triggered by an implicit reference to the patron deity of theatre in Athens, Bacchus (Dionysus), and then to actors in a theatre. Cooper goes on to remark: 'we can well imagine the kinds of gesturing that accompanied the invective against Aeschines' mother, who was nicknamed Empousa because she did it all and submitted to it all'.[6] The gestures *I* can imagine as appropriate to the situation are crudely imitative, but by no means specifically theatrical.

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[3] I adapt Demosthenes' slogan in its most famous form: Quintilian, *Inst. Orat.*11.3.6, but see C. Cooper, 'Philosophers, politics, academics' in *Demosthenes: statesman and orator*, ed. I. Worthington (London and New York 2000) 224-45 (231-32).

[4] William Shakespeare, *King Lear*, Act 1, Scene 1.

[5] In C. Cooper 'Demosthenes actor on the political and forensic stage' in *Oral performance and its context*, ed. C. J. Mackie (Leiden and Boston 2004) 145-61, (158).

[6] Cooper 'Demosthenes' (preceding n.) 158.

The problem of terminology is complicated by an attested overlap of professional activities, acting, and diplomatic services. The reader will immediately think of the jibes Demosthenes throws out to disparage Aeschines, the howling actor, the *tritagonistes* as he calls him (18.129 *et alibi*). It is true that the Athenian state and Philip II of Macedon gave some professional actors diplomatic, we might say para-political, roles,[7] but this cannot be called general practice, even at Athens. As for Aeschines, Demosthenes is very likely to have harped on Aeschines' acting career as a tactic to disarm his own hard to overcome deficiencies in delivery; the famous anecdotes (pebbles on the tongue, shouting into the roaring surf, *etc*.) are likely to have originated in Demosthenes' difficulty with breath control, volume, and loss of composure under stress. To counter, Aeschines makes pious remarks about the physical restraint of earlier speakers. His paradigm is the statue of Solon, with the great man's hand decorously concealed under his cloak as he harangued the Athenians (1.26); Demosthenes' retort (19.251-52) consists of claiming that the statue was made long after Solon's death.[8] As I see it, we should studiously avoid assuming that modification of normal gesture, stance, or even costume were basically aping that which happened on the stage. It would be silly to deny that in oratory meant for delivery before a large audience – 201 up to 6,000, or possibly more – there were *any* methods oratory shared with stage performance, particularly in vocal technique, but the repertory of the one was far from coextensive with the other. We make a serious mistake in underestimating what it would take to push away from the audience's consciousness vast differences of meter, music, appearance, and the exploitation of space. Rhetorical performance was often mimetic, but only in a specific and very narrow sense: imitative of some notions – fluid notions – of how men should present themselves to achieve their goals in the *fora* established by the city for the purpose of judicial or political debate and decision making. Aeschines' sanctimonious, and of course silly, claim (1.25) about how men used to talk, with an arm or hand 'inside', that is, within the *himation*, probably points to his own style on the *bema*. Though he says 'now we all speak with our arm, or hand, outside', I conjecture that Aeschines was especially austere in his physical movements to the point of rigidity, making it his practice to avoid flailing with his arm, perhaps even holding it within his cloak throughout his time on the *bēma*, hoping by this strategy to distinguish Aeschines the Actor from Aeschines the Orator, and thereby to undermine Demosthenes' and other enemies' ridicule of his acting career. At the *dokimasia tōn rhētorōn* for which *Against Timarchus* was written, the ex-actor counsels the jury *not* to imagine that 'Furies pursue men guilty of impiety, as in the tragedies with blazing torches' (1.190). As I read this, far from bringing his old career into his new one, Aeschines is flattering the jurymen, crediting them with the good sense to distinguish real and theatrical worlds.

Now to the larger matter, the comparative performance styles of forensic and political speech. Following Aristotle's own methodological default manoeuvre, we must be sure we have made the necessary distinctions; in this case, we need to consider how well

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[7] A. Pickard-Cambridge, *The dramatic festivals of Athens* 2nd edn rev. by J. Gould and D. M. Lewis (Oxford 1988) 168, 278ff.

[8] C. Carey in his translation of Aeschines (Austin 2000) 10, suggests Demosthenes 'also gives us to understand that the consummate actor Aeschines mimicked the statue's posture at this point.'

conceived is his own division of rhetoric into three *genē*, paying especially close attention to his positing as separate things a *genos dikanikon* and a *genos symbouleutikon*. With the exception of Pericles' *epitaphios* (see p. 38), I will leave practicalities of the *genos epideiktikon* to one side, although it could sit as easily as the other two in a discussion of oratorical performance. I remark only that it is curious that Aristotle, or more properly those who put together the work known as Aristotle's *Rhetoric* from his lectures, did not point out that Isocrates' compositions – excepting the forensic works – pose the greatest awkwardness to the tripartite division.[9] Evidently Aristotle was not on good terms with Isocrates, so I would expect him or his people to get sarcastic, a tone we note from time to time in the *Rhetoric*. The relevant discussion at *Rhetoric* begins at 1358a36 with distinctions by audience; this turns immediately to distinctions of time relative to the speech event. Policy is selected for the future (but note Demosthenes' jibe in 5.2 that the Athenians, unlike other men, deliberate *after* the fact). Aristotle swerves and wobbles a bit to take in distinctions of what we might call *agenda*: in deliberative speech, the subject matter is what actions the city should take, or not take, in the future; in forensic, prosecution, or defence of past actions. Some of the time Aristotle is categorical – for instance, the symbouleutic orator 'does not deal with all things, but only with such as may or may not take place' (1359a32);[10] more often he allows for degrees and mixtures, as at 1358b, where he assigns as the *telē* of the three genres, the advantageous in political oratory, the just in forensic, and the beautiful and honourable in epideictic. This is the same trio we meet in the *Nicomachean Ethics*. But Aristotle allows for crossovers, such as consideration of the advantageous in a law court speech (1358b33). As an example of that mixture in a law court speech, one might think of Lysias 1, where the defendant, a supposedly cuckolded husband who killed a man he found in bed with his wife, both claims that killing his wife's lover was just, and that convicting him would hand burglars a powerful weapon. If caught in someone's house stealing a cooking pot, a burglar could, by the speaker's logic, ward off the owner by claiming that he was after his wife, not his pot, and leave the premises scot-free. A bit later Aristotle allows that 'deliberative speakers often grant other factors, but would never admit that they are advising things that are not advantageous [to the audience] or that they are dissuading [the audience] from what is beneficial' (1358b33-36). Though the *Rhetoric* as we have it is certainly not the complete and authoritative work Aristotle would want it to be, the inconsistency of his remarks on delivery could well have risen from his distaste for the subject. This holding-of-the-nose is clearly seen in the opening of Book 3 of the *Rhetoric* especially 1403b35-37: οὔπω δὲ σύγκειται τέχνη περὶ αὐτῶν [aspects of delivery], ἐπεὶ καὶ τὸ περὶ τὴν λέξιν ὀψὲ προῆλθεν· καὶ δοκεῖ φορτικὸν εἶναι,καλῶς ὑπολαμβανόμενον. ('A treatise on delivery has not yet been written, since consideration of style appeared late on.') Those looking to the Lyceum for a treatment devoted to delivery had to wait for Theophrastus to do that job.

    From the standpoint of performance, is it sensible to follow the Aristotelian bipartite division: forensic/political? Are these really different rhetorical situations? In a short

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[9] See D. Whitehead, 'Isokrates for hire: some preliminaries to a commentary on Isokrates 16-21' in *Law, rhetoric, and comedy*, ed. D. L. Cairns and R. A. Knox (Swansea 2004) 151-85 (159).

[10] Unless otherwise indicated, all translations from the *Rhetoric* are taken from G. A. Kennedy, *Aristotle*: *a theory of civic discourse* (New York 1991).

while I will return to Aristotle himself, but it is prudent to see how some contemporaries, or near contemporaries, divide the terrain. First, Plato. At *Phaedrus* 261a-b Socrates floats the notion that everything rhetorical can be condensed into a single art, that of leading the soul, using the instrument of *logoi*, words, speeches, or arguments: τέχνη ψυχαγωγία τις διὰ λόγων ('the art is working on the soul by using words.'); moreover, this art is at play 'not only in law-courts and all other kinds of public gatherings, but in private ones too'. Socrates' young interlocutor balks: rhetoric, he says, is rather 'a science of speaking and writing perhaps especially employed in lawsuits, though also in δημηγορίαι,' (261b3-5), addresses to the people, normally in the assembly. But Socrates is impatient with these conventional distinctions, just as a little earlier in the dialogue (258a) he likens decrees to something like love-letters, adducing as a proof the standard prescript, where politicians put first the names of their admirers, the Council and the assembly: Ἔδοξέ … 'τῇ βουλῇ' ἢ 'τῷ δήμῳ' ἢ ἀμφοτέροις, καὶ 'ὃς <καὶ ὃς> εἶπεν' ('The council or assembly, or both bodies, resolved, and so-and-so spoke'.). In the *Sophist* (222c) Plato goes further, having the Eleatic Visitor consolidate in a single τέχνη of persuasion the forensic, political, and the 'conversational' (προσομιλητική). Aristotle might have tolerated this manoeuvre in its context, but probably not the Visitor's next move, which is to divide the τέχνη into public and private, since for Aristotle rhetoric does not truly apply if there is an audience of just one (1414a11-12). The highly practical Alcidamas, proponent of *ex tempore* speaking, is content with the bipartite division. For Isocrates, who wrote forensic speeches but then pretended otherwise (*Antidosis* 46; *Panegyricus* 11-12), the division is between dicanic speech and that part of his own oeuvre he acknowledged. Anaximenes, thought to be the author of the pseudo-Aristotelian *Rhetorica ad Alexandrum*, also has the tripartite division (1.1.1).[11]

Apart from discursive works on rhetoric, the preserved speeches themselves show the limited accuracy of Aristotle's scheme of three *genres*. The *Olympic* oration of Lysias (*Lysias* 33), epideictic in its style and supposedly recited at the Olympic games, proposes military action against two figures on what today would amount to a global scale, Dionysius II, tyrant of Syracuse, and the Great King of Persia. If we can believe Dionysius of Halicarnassus, who preserves what we have of the speech (*Lysias* 31-32), the speech was meant to encourage an immediate attack on the lavish quarters built for Dionysius' use during the game. The ostensible content, then, is unquestionably political. Demosthenes' court speech against Leptines is a forensic speech with primarily political ends. The same is true of Aeschines 1 *Against Timarchus* and Demosthenes 19 *On the false embassy*. Indeed in Aeschines' speech the potential connections of *genres* beyond the speech at hand is made explicit: Aeschines asks, 'Is Demosthenes to get his comrades off in your court?… Some of his pupils have come to listen. For I'm told he declares … that without your noticing he will shift the ground of debate and your attention; that he will bring confidence to the defendant the moment he appears in court and reduce the accuser to panic and fear for himself; that he will summon such loud and hostile heckling

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[11] The history of the question at hand in that text (and others) has been given an interesting treatment by D. Mirhady, 'Aristotle, the *Rhetorica ad Alexandrum* and the *tria genera causarum*' in *Peripatetic rhetoric after Aristotle*, ed. W. W. Fortenbaugh and D. C. Mirhady (New Brunswick, New Jersey and London 1994) 54-65.

from the jurors by dragging in my political speeches …that I will not even turn up in court to defend myself, when I submit to my audit for my service as envoy' (1. 173-75; trans. C. Carey). There might also be distinctions to be drawn between private and public law cases (*dikai* and *graphai*), though I cannot say I have seen that this corresponds to probable differences in performance style.

Despite considerable leakage from category to category in the use made of these *genres,* I think that the division is more than an optical illusion reified by the overly abstract thinking of fourth-century Athenians. The audiences of the two types, and in particular those portions of the audiences which voted, were not identical, only partially overlapping. Politics at the highest level was sometimes the game (that term is, of course, also a metaphor) in the courts; nevertheless the citizens regarded courts, council, and assembly as distinct bodies. Long ago I was persuaded by Mogens Hansen's argument that the Athenians conceived the *dēmos* and *dikastērion* as constitutionally distinct bodies.[12] Venue, number, membership qualifications, and procedure were all different, and I think this must have reinforced the theoretical distinctiveness of the bodies.

In the *Rhetoric* Aristotle issues a general warning to speakers to avoid a verbal style that is not appropriate, πρέπουσα (1404b4). Though Aristotle has not won my complete trust in the matter of style (his remarks about the diction of characters of different status seem inaccurate),[13] we can believe his recommendation that 'authors should compose without being noticed and should seem to speak not artificially but naturally. The latter is persuasive, the former the opposite; for if artifice is obvious people become resentful, as at someone plotting against them, just as they are at those adulterating wines' (1404b18-22).[14] Similarly, he warns speakers against falling into meter, for that will divert the listeners' attention to the form and, presumably, endanger the speaker's credibility (1408b21-26). Anti-rhetorical pressure, 'rhetoric against rhetoric,' well-described in articles by Schloemann[15] and Hesk,[16] must have had some bearing on performance style.

Also important would have been expectations at the start of proceedings that would vary with the nature of the event. There was certain to be confrontation between the parties at a standard trial; otherwise there would be no need for the procedure. At a *dokimasia* or *euthuna* there was a good likelihood of no confrontation whatsoever; only jurors or spectators with advanced word of a challenge would arrive expecting a heated atmosphere. In the political sphere, expectations will doubtless have varied from *ennui* among unwilling participants pushed into the Pnyx by the Scythian archers with their dyed ropes to intense excitement when there was a prospect of war breaking out. A classical Athenian audience

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[12] '*Demos*, *ecclesia* and *dicasterion* in classical Athens', *GRBS* 19 (1978) 315-30. Republished with addenda in M. H. Hansen, *The Athenian ecclesia* I (Copenhagen 1983) 139-60.

[13] 1408a16-25, see V. Bers, *Genos dikanikon: amateur and professional speech in the courtrooms of classical Athens* (Cambridge, MA and London 2009) 95.

[14] Trans G. Kennedy, *Aristotle on rhetoric: a theory of civic discourse* (Oxford 1991).

[15] J. Schloemann, 'Entertainment and democratic distrust: the audience's attitudes toward oral and written oratory in classical Athens', in *Epea and grammata: oral and written communication in ancient Greece*, ed. J. M. Foley and I. Worthington (Leiden 2002) 133-46, (139-42).

[16] J. Hesk, 'The rhetoric of anti-rhetoric in Athenian oratory', in *Performance culture and Athenian democracy'* ed. S. Goldhill and R. Osborne (Cambridge 1999) 201-30.

on the alert for speakers' tricks was, we can be sure, an audience prone to react, and though their reaction might not have risen to the level of cat-calls and hissing, even the subtler signs of opposition or agreement will have got them perceptibly keyed up. In their volume, pitch, phrasing, and bodily movements speakers surely reacted to the atmospherics. Explicit sensitivity to the 'atmospherics' was not new in Greek culture. One example from Homer: in the *Iliad* speakers are not heckled while they are talking, and after many speeches everyone falls into a stricken silence: ὣς ἔφαθ᾽, οἳ δ᾽ ἄρα πάντες ἀκὴν ἐγένοντο σιωπῇ ('So he spoke and all were silent.').[17]

More advice from Aristotle's *Rhetoric*: 'The *lexis* will be appropriate if it expresses emotion and character and is proportional to the subject matter. Proportion exists if there is neither discussion of weighty matters in a casual way nor solemn discussion of trivial things, and if ornament is not attached to a trivial word. Otherwise, the result seems like comedy, like the [tragic] poetry Cleophon composes. Some of what he used to say is like addressing a fig as "Madame"'.[18] The poet has slipped from one genre to another out of sheer ineptitude (contrast a controlled slide, as in Euripides' parody in his *Electra* of the recognition scene in Aeschylus' *Choephoroi*). Audiences at the plays and jurors and court tourists were, in all probability, ready to howl if they perceived a speaker's verbal realization as incongruous. This could happen whether a speaker was cleaving to a text premeditated in leisure or improvised on the spot. The *agon* between speakers is very likely to have gained in intensity with the size of the audience. Moreover, this effect was probably not linear, directly and uniformly proportional to the size of the audience, but something of a rising curve.

With an audience *en garde* against the artificial, one might expect that putting before a crowd the most faithful copy of people as they sound and look would have the best chance of winning them over. It is, then, something of a surprise that Aristotle is recommending something less than 'faithful to the original'. But that is what he does *if* you mistrust the manuscripts and the Latin translation of the *Rhetoric* William of Moerbeke produced for the Greekless Thomas Aquinas.[19] The first part is unproblematic: 'Do not use all analogous effects [of sound and sense] together; for thus the hearer is tricked. I mean, for example, if the words are harsh, do not deliver them with a harsh voice and countenance. Otherwise, what you are doing is evident. But if sometimes one feature is present, sometimes not (*i.e.*, if I understand the text correctly) within a single, rather short stretch of oratory you accomplish the same thing without being noticed' (1408b4-9). Then we hit a crux. Adapting Kennedy's translation it runs as follows: 'If gentle things are said harshly and harsh things gently, the result is persuasive'. Unaltered, Kennedy translates these words: ἐὰν οὖν τὰ μαλακὰ σκληρῶς καὶ τὰ σκληρὰ μαλακῶς λέγηται, ἀπιθανόν γίγνεται (1408b9-10). I favour a nineteenth-century emendation by Charles Thurot that replaces ἀπιθανόν with its antonym,

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[17] *e.g. Il*. 3.95, 7.92, 7.398, 8.28, and *passim*.

[18] *Rhet*. 1408a.10-16: Τὸ δὲ πρέπον ἕξει ἡ λέξις, ἐὰν ᾖ παθητική τε καὶ ἠθικὴ καὶ τοῖς ὑποκειμένοις πράγμασιν ἀνάλογον. τὸ δ᾽ ἀνάλογόν ἐστιν ἐὰν μήτε περὶ εὐόγκων αὐτοκαβδάλως λέγηται μήτε περὶ εὐτελῶν σεμνῶς, μηδ᾽ ἐπὶ τῷ εὐτελεῖ ὀνόματι ἐπῇ κόσμος· εἰ δὲ μή, κωμῳδία φαίνεται, οἷον ποιεῖ Κλεοφῶν· ὁμοίως γὰρ ἔνια ἔλεγε καὶ εἰ εἴπειεν 'πότνια συκῆ'.

[19] J. J. Murphy, *Rhetoric in the Middle Ages* (Berkeley, Los Angeles, London 1974) 90.

πιθανόν.[20] With this text, Aristotle makes this recommendation remembering what he says in the other passages, that the orators' audiences suspect being gulled by the artificiality, as it were, of too perfect a copy. Hence I reject Kennedy's translation, 'but if, as a result, gentle things are said harshly and harsh things gently, the result is unpersuasive,' both the 'unpersuasive' and the 'but'; 'but' seems to me an unjustifiable translation of οὖν as I read the text and Denniston's treatment of οὖν in *The Greek particles*.[21] I think we have Aristotle's clear warning to avoid turning the *bema* into a branch of the *theatron*. The warning is issued not to report an unchallenged consensus on how things *should* be done, but because Aristotle must think at least some speakers are doing things wrong, much as the *Poetics* scolds contemporary tragedians for drifting far from Aristotle's notions of how a play should be written. Less momentous, this interpretation is consistent with my general claim in *Genos dikanikon* that professional speech aimed at suppression of affect, for that technique would enhance the speaker's perceived manliness. Here Aristotle makes no explicit differentiation of *genos*, and the passage cannot be adduced as evidence for a differentiation in the composition of court and political speech, but at the start of the second book of the *Rhetoric*, having returned to the threefold division of oratory declaring that the speakers of both forensic and political oratory must 'construct a view of themselves as a certain kind of person and that their hearers suppose them to be disposed in a certain way' (trans. Kennedy), a distinction follows: 'For the speaker to seem to have certain qualities is more useful in deliberation, for the audience to be disposed in a certain way is more useful in lawsuits' (1377b223-31; *cf.* 1378a6); then, more comprehensively: 'There are three reasons why speakers themselves are persuasive; for there are three things we trust other than logical demonstrations: These are practical wisdom (*phronēsis*) and virtue (*aretē*) and good will (*eunoia*) (φρόνησις καὶ ἀρετὴ καὶ εὔνοια 1378a6-8). The joining of φρόνησις, a faculty very much at play in deliberation, together with εὔνοια, seems to me evidence that political speeches were delivered in an expansive style. A deliberative speaker who confined himself to a matter-of-fact argument for policy (γνώμη is the right Greek translation) would thereby harm his case; and Aristotle very soon (1378a18-19) assigns εὔνοια a place among the πάθη, a category that by its nature would have an effect on the performance dynamics of a public speech.

Here I must confess to great simplification and to trusting Aristotle as a reporter and analyst. The proper description of a speaker's qualities, the means by which they are assessed, and the relative importance of emotions on both sides – the audience's and the speaker's – were very likely the subject of arguments among those who offered advice. Reportage on the performance of forensic and deliberative rhetoric is far from abundant, especially if we narrow the focus in the hope of finding plausible signs of differences

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[20] See also C. Cooper 'Demosthenes actor' (n.5, above) 158 n.57: 'At 3.7 (1408b7) [Aristotle] warns against excessive correspondence between style and delivery; if the words are harsh, the voice and facial expression should not be'. The text I favour: *Rhet.* 1408b.4 ἔτι τοῖς ἀνάλογον μὴ πᾶσιν ἅμα χρήσασθαι (οὕτω γὰρ κλέπτεται ὁ ἀκροατής)· λέγω δὲ οἷον ἐὰν τὰ ὀνόματα σκληρὰ ᾖ, μὴ καὶ τῇ φωνῇ καὶ τῷ προσώπῳ τοῖς ἁρμόττουσιν·εἰ δὲ μή, φανερὸν γίνεται ἕκαστον ὅ ἐστιν. ἐὰν δὲ τὸ μὲν τὸ δὲ μή, λανθάνει ποιῶν τὸ αὐτό. ἐὰν οὖν τὰ μαλακὰ σκληρῶς καὶ τὰ σκληρὰ μαλακῶς λέγηται, πιθανὸν γίγνεται.

[21] J. D. Denniston, *The Greek particles*, 2nd edn (Oxford 1954) 464-66.

between them. The problem is that we have very little in the way of contemporaneous comparative material. Reaching back among the 'chestnuts' in descriptions of Greek oratory, we find a few scraps of some evidentiary value. In Antenor's portrayal of Menelaus and Odysseus as speakers on a diplomatic mission to Troy on the subject of Helen (*Iliad* 3.205-24) there is no way of saying how large a crowd of Trojans assembled (3.209) to see Odysseus' *faux naïf* clumsiness in handling the speaker's staff. For the full effect, one would have to be close enough to see how Odysseus kept his eyes fixed to the ground, 'like an idiot' (3.219). At *Iliad* 9.443, where Achilles talks of what seems to be strenuous training he had from Phoenix in words and deeds, it is at least possible that the training included lessons not just in devising a piece of strategy, but in arguing for it. His richly metaphorical style is, of course, on display early in the first book, as is the simple choreography of speakers rising in turn. (It does not escape me that the word 'choreography' has its natural home in theatrical contexts.) We meet an undoubtedly heated assembly of spectators at one moment in the extended description of the shield Hephaestus constructs for Achilles, the *tableau vivant* of the adjudication of a dispute over the paying of a blood price. Bailiffs need to restrain the crowd of observers (18.503) who evidently decide between or among the judges, not between the litigants themselves. We are very poorly informed about trials at Athens until late in the fifth century, from which we have Antiphon 1, 5, 6,[22] and perhaps some speeches of Lysias. Still, the little that we hear about trials with an undoubted political dimension (granted that their institutional status was forensic) suggests that litigants and their supporters resorted to a sort of theatricality: Miltiades on his litter (Herodotus 6.136), Pericles weeping at the trial of Aspasia (Plutarch *Pericles* 32.5). Remarks on rhetoric – who did it best, who could teach it – go on to become a major topic of interest with ramifications in real and artistic life. That state of affairs is too well known to require demonstration here.[23] The culture's continuing and socially widespread exposure to rhetoric is presumably what explains what would otherwise be mysterious in Aristotle's warning that too accurate a *mimēsis* of actual speech acts could trigger suspicion – that is, if we accept the reading I favour (see above).

The best strategy, as I see it, is to look first for simple, statistically significant differences among categories of texts, in part simply to confirm that we have divided them up correctly. I give pride of place to formal differences in that which is most directly accessible, the words on the page. Among verbal differences, the presence or absence of certain particles has the special value of simplicity. Does particle usage distinguish the two *genē* at issue? Denniston gives some evidence so suggesting. He notes that δῆτα, a word 'far more at home in question and answer than elsewhere' is found some thirty-four times in oratory, all but one in forensic; and the single political occurrence falls in a

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[22] I regard the papyrus text of Antiphon's defense speech as most probably a school exercise – not an especially good one – prompted by Thucydides' admiration (see S. Hornblower, *A commentary on Thucydides*: 3 vols (Oxford 1997- 2008) III, 957).

[23] I cannot agree with my old colleague at Yale, Tom Cole in his claim that what he calls 'meta-rhetoric', that is discursive theory rather than just sample speeches displaying the writer's *technē,* begins only in the fourth century with Plato's *Phaedrus*: see his *The origins of rhetoric in ancient Greece* (Baltimore 1991).

Demosthenic *Proem*, which might be only a late exercise.[24] Perhaps the particle seemed not suited to the normally far larger actual (and notional) audience of the *ecclesia*. Regrettably, there is not the substantial chronological overlay of forensic and political speeches that would free us from the danger that we are, as it were, comparing the concentration of a single component of river water at the source, another at its mouth, as if we could be sure that no contaminant was entering somewhere in between; but we must play with the cards we have been dealt. We can be somewhat more confident in the case of τοίνυν, described by Denniston as 'essentially an Attic, and a colloquial particle…conversational and lively';[25] it is about five times more common in Demosthenic court than political speech. At least that is the pattern found in one orator's oeuvre, or to put it more accurately, the works collected under the name 'Demosthenes'. Paired τε (τε...τε…) is never found in any of Demosthenes' political speeches, but 35 times in his forensic works.[26] Denniston is puzzled: 'Was τε...τε felt, perhaps, to be slightly colloquial?'.[27] However, the distribution in Antiphon, where the language tends to the stiff and abstract, seems to point exactly the other way. A syntactical and lexical favourite of my own is emphatic denial expressed by the sequence οὐ μή followed by the future indicative or the subjunctive. This was almost certainly something you could hear all the time at the fish market or similar venues, but almost never in professionally composed Attic oratory.[28] Most probably, professionals exercised a highly acute sense of propriety, sometimes prompted by the differing function of the two *genres*, that assigned different linguistic items to the two arenas, courts and deliberative bodies. Specific utterances could sometimes be momentous – remember the close attention to the mangled English that George W. Bush produced when speaking off-the-cuff; but even then the distinctions could arise from nothing more than simply 'knowing how it's done here'. This is what Freud famously dubbed 'the narcissism of small differences', a behaviour, verbal or otherwise, likely to have had a strong influence on the discourse of public meetings.[29] Denniston speculated that 'the budding speaker, at the turn of the fifth and fourth centuries, was recommended, as a kind of stylistic convention, to start off with a μέν, and to trust more or less to luck that he would and answer to it, and not to care greatly if he did not'.[30]

We can also exploit evidence for one aspect of these performances, the power exercised over the speakers by a boisterous crowd. This approach does not allow confident generalizations, but at least yields explicit indications over a long chronological stretch that speakers and audiences tugged back and forth for control of the situation.

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[24] Denniston, *Greek particles* (n.21, above) 269.

[25] Denniston, *Greek particles* (n.21, above) 568ff.

[26] Denniston, *Greek particles* (n.21, above) 269.

[27] Denniston, *Greek particles* (n.21, above) 503 n.1

[28] Bers, *Genos dikanikon* (n.13, above) 114-18.

[29] Sigmund Freud, *The Standard edition of the complete psychological works of Sigmund Freud* (London 1957) vol. 21, 199.

[30] Denniston, *Greek particles* (n.21, above) 383ff.

There are many references to *thorubos*, organized or otherwise, at the *ecclesia*.[31] If, as I have claimed,[32] Thucydides has Cleon make an oblique reference to members of the assembly crowd calling out in the Mytilene debate, we have good reason to believe that at least as early as 427, and probably far earlier, a speaker sometimes had to fight the shouting of the crowd to be heard. The 'Old Oligarch' (1.6) complains that the Athenians allow 'even the worst people to speak', but in the *Protagoras* Plato has Socrates remark 'that when we convene in the Assembly and the city has to take some action on a building project, we send for builders to advise us…. And so forth for everything that is considered learnable and teachable. But if anyone else, a person not regarded as a craftsman, tries to advise them, no matter how handsome and rich and well-born he might be, they don't accept him. They laugh at him and shout him down until he either gives up trying to speak and steps down himself, or the Scythian archer-police remove him forcibly by order of the board. This is how they proceed in matters which they consider technical. But when it is a matter of deliberating on city management, anyone can stand up and advise them' (319b-c, trans. S. Lombardo and K. Bell). But one's man's 'merely technical' is another man's notion of policy and the integrity of the system: Americans will immediately think of the disputed voting apparatus in Florida of the 2000 presidential vote and the arguments over voting machinery in some subsequent elections. My guess is that Plato, who probably attended very few meetings of the *ecclesia*, had no precise idea of how often speakers were heckled; it is, I believe, telling that a passage in the *Laws* shows him indulging a fantasy of audiences at theatrical and musical events sitting in perfect silence, awaiting word from certain educated, refined critics who would signal whether they were to applaud (700-01)**.** Since that supposed Golden Age, Plato has the Athenian Visitor say, the city has deteriorated into a *theatrokratia*. To my knowledge, no orator makes reference to the relative power of speakers in courts and political meetings to control the floor, but we do have a comparison in the *Theaetetus* (172e3). Regrettably, the source is again Plato, not a man to trust very far when he speaks of the democracy at Athens. He has Socrates describe the freedom of the man engaged in philosophical debate as free to talk as long as he wants, free of the constraint of the water clock. The next part is very dubious: 'the man of the law courts ... his adversary standing over him, armed with compulsory powers and with the sworn statement, which is read out point by point as he proceeds, and must be kept to by the speaker. The talk is always about a fellow-slave, and is addressed to a master, who sits there holding some suit or other in his hand'.[33] Plato's remark, tendentious and procedurally imprecise, is not credible in light of what we see, at least in the *genos dikanikon* outside the homicide courts, where there really may have been an enforced rule, or at least a strong tradition, against wandering very far from the charges at hand.[34] The water clock was never, to my knowledge, disregarded by the

[31] M. H. Hansen, *The Athenian assembly* (Oxford and New York 1987) 71.

[32] Bers, 'Dikastic *thorubos'* (n.2, above) 5.

[33] Plato, *Complete works*, ed. J. M. Cooper (Indianapolis, Cambridge 1997) trans. Levett rev. Burnyeat.

[34] See P. J. Rhodes, 'Keeping to the point' in *The law and the courts in ancient Greece,* ed. E. M. Harris and L. Rubinstein (London 2004) 137-58, and in the same volume A. Lanni, 'Arguing from "precedent": modern perspectives on Athenian practice', 159-71.

participants. Time limits must have played a large role in the atmosphere of the courts and served as something of a damper, probably more effective than the Speaker in the House of Commons intoning 'Order! Order!', when the parliamentary *thorubos* gets too long and too loud.

At *Rhetoric* 1414a8-17 Aristotle distinguishes among the sub-genres of oratory in general terms, starting with a visual metaphor: 'The style of oratory addressed to public assemblies is really (παντελῶς) just like scene-painting.' Then, somewhat more informatively: 'The bigger the throng, the more distant is the point of view: so that, in the one and the other, high finish in detail (τὰ ἀκριβῆ) is superfluous and seems better away. The forensic style is more highly finished; still more so is the style of language addressed to a single judge…high finish is wanted least where dramatic delivery (ὑπόκρισις) is wanted most, and here the speaker must have a good voice, and above all a strong one'.[35] At a minimum, speakers in the Pnyx must have spoken – or shouted – louder than speakers in the courts, at least with a normal size jury in session, say 201 or 501, or in the *bouleutērion*, addressing 500 men. That seems obvious *a priori*, and Aristotle comes close to confirming that this was so.

We need at least to acknowledge an acoustic challenge. Difficulty hearing the speaker is mentioned just before the *Funeral Oration* at Thucydides 2.34. In S. Lattimore's translation: 'Pericles son of Xanthippos was chosen to speak. And when the moment arrived, coming forward from the tomb to a platform that had been elevated so that he could be heard by as much of the crowd as possible, he spoke as follows'.[36] 'As much of the crowd as possible' certainly allows for the possibility that some mourners and others in attendance could *not* hear the *epitaphios*. In his important 1996 article, Christopher Johnstone treated 'Greek oratorical settings and the problem of the Pnyx: rethinking the Athenian political process.'[37] Johnstone took on a difficult propaedeutic: acquainting himself with the fundamentals of acoustical engineering, which allowed him to take in factors most of us would probably not think about at all, such as the effect of atmospheric conditions on intelligibility. He notes that 'During most of the year Athens enjoys a relatively warm, dry climate';[38] but 'such conditions are not the most conducive to sound-transmission. When the presence of the northeast wind is figured in (almost always a factor on the Pnyx), the difficulties confronting the orator and the audience are practically insurmountable. Speech articulation tests done in an open-air setting indicate a significant reduction in the area of intelligibility when a moderate wind (20-25 mph) is blowing. Indeed, when the results of these tests are applied to the Pnyx, the proportion of the audience within the area of 75 per cent 'syllable articulation' (regarded as satisfactory) falls significantly below half'.[39] Johnstone then gives, citing a standard work, the

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[35] τοῦτο δὲ ὅπου φωνῆς, καὶ μάλιστα ὅπου μεγάλης.

[36] Thucydides, *The Peloponnesian war*, trans. S. Lattimore (Indianapolis 1998)

[37] 'Greek oratorical settings and the problem of the Pnyx: rethinking the Athenian political process' in *Theory, text, context: issues in Greek rhetoric and oratory*, ed. C. L. Johnstone, (Albany, New York 1996) 97-127. I do not find a reference to the platform where I would expect it (his n.7), though it should count as evidence in favour of his argument.

[38] Johnstone, 'Greek oratorical settings' (n.37 above) 118.

[39] Johnstone, 'Greek oratorical settings' (n.37 above) 124.

conditions to be met if 'all auditors are to hear without undue strain and if the actors are to speak without undue effort. The various factors leading to loss of intelligibility impose limitations on the size of open-air theatres; if certain standards of acoustics are to be maintained a seating capacity of about 600 should be regarded as the upper limit of size when the theatre, not equipped with a sound-amplification system, is to be used principally for spoken drama [and oratory], if all auditors are to hear without undue strain'.[40] Alarmingly, 600 would be larger than the smallest possible jury panel assembled to hear Demosthenes speak in a *graphē paranomōn*, for instance, the most celebrated forensic speech occasion, for which he wrote the *De Corona*. At §52 we see – if the scholiast is to be trusted – a wonderful performance trick, the deliberate mispronunciation of μισθωτός as proparoxytone to provoke a resounding linguistic correction from the audience that confirmed Demosthenes' substantive claim; the massed *vox populi* condemning the prosecutor as a lackey in the employ of Philip II. But the jury probably consisted of 1001, or even larger, an audience size that would, if Johnstone and his authorities are right, preclude many in the jury, to say nothing of the bystanders, catching the pseudo mistake. Clearly, the Pnyx did not conform to those specifications. 'When the *ekklesia* met there during the fifth century, it is doubtful whether even half of the 5,000 present could regularly understand what speakers were saying'.[41] And he concludes: 'If many or most of those in attendance could not understand speakers adequately, when it came time to vote on competing proposals, on what did they base their decisions? Apparently it cannot have been the eloquence of the speaker himself, nor the arguments – at least not directly. Perhaps the content of speakers' addresses was passed from the front to the rear of the auditorium by those who could hear clearly'.[42] If this is so, then the noise level in the area would have been even greater than has already been suggested. And clearly, much would have been 'lost in the translation'. Perhaps, alternatively, those citizens who could not hear clearly voted merely on the basis of the speaker's name and reputation. 'If this was the case, then the primacy of public address in public decision making at Athens must again be questioned'.[43] M. H. Hansen has suggested (personal communication *via* Prof. Lene Rubinstein) that the ambient noise level of the classical city was far lower than in modern times, and this factor might have prejudiced Johnstone's experiment more than he concedes.[44] But if Johnstone's acoustic analysis is even approximately right in its pessimism, we might be able to make a guess pertinent to performance in the Pnyx. The passage from the *Theaetetus* I quoted earlier ends with the word δρόμος, there denoting the trial process, but by a very nice coincidence the word appears in its the literal sense of 'a run' in Plutarch's description of Cleon's manner at the

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[40] Johnstone, 'Greek oratorical settings' (n.37 above) 120.

[41] Johnstone, 'Greek oratorical settings' (n.37 above) 126.

[42] Johnstone, 'Greek oratorical settings' (n.37 above) 124-26. This reminds me of the Sermon on the Mount as portrayed in Monty Python's 'Life of Brian'. Those at greatest distance from the speaker are baffled by a phrase passed back to them, 'Blessed are the cheesemakers.'

[43] Johnstone, 'Greek oratorical settings' (n.37 above) 127.

[44] Johnstone, 'Greek oratorical settings' (n.37 above) 111 n.7: 'Even taking into account the greater ambient noise in modern versus classical Athens'.

podium: δρόμῳ μετὰ τοῦ λέγειν ἅμα χρησάμενος ('running as he spoke').[45] I conjecture that Cleon was aiming to reach right, centre, and left sectors of the crowd. The same might be true of Demosthenes – recall the reports of his problems in delivery. Indeed, it might have been a manoeuvre performed by all experienced speakers. Accounts that have reached us attribute it explicitly to no orator besides Cleon, but that might reflect only the particular revulsion the *oligoi* felt for him.

Putting together Aristotle's remark about the politicians' need to make spectacles of themselves, as it were, together with the acoustic challenge of the Pnyx, I am emboldened to make a few generalizations. When speaking in courts, for themselves or their friends and allies, professional orators took great care to appear composed, to be seen as speaking *ex tempore*, even if they had memorized all or much of their speeches.[46] On the *bēma* of the Pnyx, the same men (again, I have in mind *de facto* professionals) were much louder and more flamboyant – unless, like Aeschines, they had been mocked for ludicrous histrionics associated with stage acting. If the issue up for debate was urgent and controversial, they spoke at their highest *fortissimo*, and possibly at whatever pitch they could manage that could best penetrate the noisy crowd, pretending, at least, not to respond to men heckling them at close range, while using their own partisans as amplifiers of their actual words, or at least claques. They made a tour of the *bēma* or, at least swivelled their heads and upper torsos. When the public speaker left the *bēma* he hoped for, but did not solicit, thunderous applause all would hear and some would admire.

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STAGING A PROSECUTION:
ASPECTS OF PERFORMANCE
IN CICERO'S *VERRINES* [1]

KATHRYN TEMPEST

Introduction

Staging a prosecution at Rome was not an easy task. To judge from the *Divinatio* speech, in which Cicero asserted his better aptitude to undertake the case against Verres over his rival claimant Caecilius, there were many qualities and skills a prosecutor ought to possess (Cic. *Div. Caec.* 27-39). But the largest demand of all he reserved for the moment of delivery (§39):

> Dicenda, demonstranda, explicanda sunt omnia, causa non solum exponenda, sed etiam graviter copioseque agenda est; perficiendum est, si quid agere aut proficere vis, ut homines te non solum audiant, verum etiam libenter studioseque audiant.

> Everything must be explained, established and exposed; the case should not just be presented, it must be *delivered* methodically and richly. You need to make sure that, if you wish to finish or *deliver* anything, men are not just listening, but that they are listening willingly and eagerly (my emphasis).[2]

Ample passages in the Graeco-Roman rhetorical tradition attest to the pre-eminence of delivery among the tasks of the orator.[3] Yet, despite its stated importance, Cicero offered only summary discussions of *actio* in his rhetorical treatises, and nowhere did he comment explicitly on his own use of voice and gesture.[4] Consequently, it used to be a common lament in Ciceronian studies that the aspect of delivery was an irrecoverable, though essential, feature of Cicero's oratorical success: invariably any attempt to reconstruct the

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[1] When referring to the *Verrines* corpus, I treat the collection as three speeches: (i) the *Divinatio,* (ii) the *Actio Prima*, and (iii) the *Actio Secunda*, which I count as one speech rather than five; see K. Tempest, 'Cicero and the art of *dispositio*: the structure of the *Verrines*', *Leeds International Classical Studies* 6.02 (2007) 1-25 (available online at: http://lics.leedsac.uk/2007/200702.pdf). Taken together, the speeches of the two *actiones* constitute the case *In Verrem*.

[2] All references to the text are to Peterson's OCT edition; all translations are my own.

[3] For the importance of *actio*, see Cic. *Orat.* 56, where Cicero recalls and appears to agree with the anecdote that Demosthenes accorded it first, second and third place among the criteria for effective speaking (*cf.* Cic. *Brut.* 142). This saying is recorded by several ancient authors, *e.g.* Phld. *Rh.* 1.196 (Sudhaus), Ps.-Plut. *Vita X Orat.* 845B, Quint. *Inst.* 11.3.6.

[4] The important passages are Cic. *De or.* 3.213-27, *Orat.* 54-60.

performance of a speech remains a subjective and partial enterprise.[5] However, this reluctance to envisage the performance of a speech was not a problem shared by the ancient student of oratory. In a famous passage of the *Institutio Oratoria*, for example, Quintilian (*Inst.*11.3.47-51) recites the opening lines of the *Pro Milone*, offering a commentary on how Cicero would have delivered them. That is not to say that Quintilian had first-hand information or direct knowledge of Cicero's performance, but that he could *imagine* it based on shared norms of oratorical performance.

It is also in Quintilian's work that we find the broadest extant treatment of *actio*, encompassing the art of performance, the modulation of the voice, and all the ranges of gestures and emotions.[6] Primarily building upon this theoretical treatment of performance, studies of Roman oratorical delivery have become increasingly popular as a means of approaching the texts of Cicero's speeches. Aldrete has documented and illustrated a whole range of gestures that would have accompanied the delivered speech,[7] while Hall and Bond have opened our eyes to the potential means of persuasion that could be exploited through performance.[8] These studies remind us that oratory was first and foremost a performative art. But the definition of performance should not be restricted to the delivery of a text alone; it should also be broadened to include the performative situation and the orator's reaction to events as they arise, as Manuwald has convincingly demonstrated by using Cicero's *Philippics* as a test case.[9]

Scholars working in this field admit that certain problems of methodology arise in studying the texts as evidence for performance in Roman oratory.[10] Not least among them is the question of how faithfully the published speech represents the words actually delivered in the court, assembly or Senate; although we know that Cicero edited his

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[5] Thus *e.g.* M. L. Clark, 'Ciceronian oratory', *Greece & Rome* 14 (1945) 72-81 (81), concludes his survey of Ciceronian oratory with the reminder: 'A modern reader cannot feel to the full Cicero's spell. The fire and vigour of the delivery, the vibrant voice, the flashing eyes, the tears, the expressive gestures, are all lost. To recover the effect of his oratory we must imagine his vivid and expressive delivery.'

[6] Quint. *Inst.* 11.3; also useful is the treatment at *Rhet. Her.* 3.19-27. For further discussion of *actio*, largely based on Quintilian's theoretical treatment, see E. Fantham, 'Quintilian on performance: traditional and personal elements in *Institutio* 11.3', *Phoenix* 36 (1982) 243-63, U. Maier-Eichhorn, *Die Gestikulation in Quintilians Rhetorik* (Frankfurt am Main 1989), G. Wöhrle, 'Actio: Das fünfte officium des antiken Redners', *Gymnasium* 97 (1990) 31-46, F. Graf, 'Gestures and conventions: the gestures of Roman actors and orators', in *A cultural history of gesture from antiquity to the present day*, ed. J. Bremmer and H. Roodenburg (Cambridge 1991) 36-58, and A. Cavarzere, *Gli arcani dell'oratore: alcuni appunti sull'actio dei romani,* Agones. Studi, 2 (Rome 2011).

[7] G. S. Aldrete, *Gestures and acclamations in ancient Rome* (Baltimore and London 1999).

[8] J. Hall and R. Bond, 'Performative elements in Cicero's orations: an experimental approach', *Prudentia* 34.2 (2002) 187-228. An experimental attempt to reconstruct the delivery of a passage of Cicero's *Pro Caelio* has also been made by S. M. Goldberg: http://cicero.humnet.ucla.edu .

[9] G. Manuwald, 'Performance and rhetoric in Cicero's *Philippics*', *Antichthon* 38 (2006) 51-69.

[10] See the discussions by A. Vasaly, *Representations: images of the world in Ciceronian oratory* (Berkeley and Los Angeles 1993) 8-10, Hall and Bond, 'Performative elements' (n.8, above) 187-88, and Manuwald, 'Performance and rhetoric,' (n.9, above) 51-52.

speeches before publishing them, the extent of his revisions remains a matter of debate.[11] A consensus appears to be emerging that the published forensic speeches do reflect the delivered orations truthfully: Cicero would have been able to write up his speeches with a fair amount of accuracy as a result of his careful preparations before the trial; indeed, any later additions may have actually brought the text closer to the live performance by incorporating the twists and turns of the trial.[12] But, if we also allow that Cicero had the oral performance of the text in mind throughout the process of its composition, what we get in the written version are literary traces of how the speech was, or at the least could have been, delivered in practice. While Cicero himself conceded the difficulty of accurately capturing the spirit of the performance in writing,[13] the published orations nevertheless offer evidence of convincing and plausible oratorical performances by virtue of their having to represent the physical circumstances of a forensic speech. The imaginability of a text's performance was thus arguably more important to the student of oratory than its actual delivery.[14] Consequently, the question should not be *how* Cicero actually delivered a given oration, but what aspects of performance we can understand to have been effective, and what they contributed to the speech's persuasive strategy.[15]

Performative elements can thus be teased out from a close reading of all of Cicero's published speeches. Even the *Actio Secunda* of Cicero's *Verrines*, which, according to received tradition, was never delivered,[16] may be treated as a script for performance and

[11] For Cicero's editorial efforts on his own speeches, see *e.g.* Cic. *Att.* 1.13.5, 13.44.3. The opposing views are traditionally represented by J. Humbert, *Les plaidoyers écrits et les plaidoiries réelles de Cicéron* (Paris 1925) and W. Stroh, *Taxis und Taktik: die advokatische Dispositionskunst in Ciceros Gerichtsreden* (Stuttgart 1975); for recent summaries of the debate see M. C. Alexander, *The case for the prosecution in the Ciceronian era* (Ann Arbor 2002) 15-26, J. G. F. Powell and J. J. Paterson, 'Introduction' in *Cicero the advocate*, ed. J. G. F. Powell and J. J. Paterson (Oxford 2004) 52-57, and G. Manuwald, *Cicero: Philippics 3-9*, 2 vols (Berlin and New York 2007) I, 54-90, with an extensive bibliography (54 n.148).

[12] Thus Alexander, *Case for the prosecution* (n.11, above) 18-19.

[13] See *e.g.* Cic. *Orat*. 130: 'Whatever qualities are in me … are apparent in my speeches, even if books lack that breath of life, which usually makes them seem more impressive when delivered than when they are read.' ('Quae qualiacumque in me sunt … sed apparent in orationibus, etsi carent libri spiritu illo, propter quem maiora eadem illa cum aguntur quam cum leguntur videri solent'); *cf.* also *Brut*. 91-94.

[14] This is precisely how the ancient student approached the published text: for Quintilian, even the second *Philippic* was imaginable as a live performance (see Quint. *Inst.* 11.3.167 on the pronunciation of Cic. *Phil.* 2.63).

[15] This has been the approach of several scholars; *e.g.* A. Vasaly, 'The masks of rhetoric: Cicero's *Pro Roscio Amerino*', *Rhetorica* 3 (1985) 1–20, considers the roles assigned to the main parties in the trial of Roscius of Ameria; H. C. Gotoff, 'Oratory: the art of illusion', *Harvard Studies in Classical Philology* 95 (1993) 289-313, examines how Cicero adapts his argument to the circumstances of the trial.

[16] This belief is based on the evidence of the pseudo-Asconian scholia, although this account is heavily flawed and the evidence for Verres' withdrawal before the *actio secunda* is nowhere else firmly attested: for further discussion of the evidence see Powell and Paterson, *Cicero the advocate* (n.11, above) 56. Several scholars have argued that the *Actio Secunda* betrays a more 'literary'

thus retain the quality of the spoken word.[17] Fuhrmann calls this phenomenon 'fictive orality':[18] the reader is the true addressee, and he is transposed into the 'imaginary present' of the trial so that he may learn by what means Cicero could influence the jury.[19] Yet Fuhrmann does not provide an analysis of these elements in the *Verrines*, nor does the concept of 'fictive orality' allow for an examination of how performative aspects may have contributed towards the orator's rhetorical strategy in practice.[20] For, as we shall see, aspects of performance do more than simulate the circumstances of a given speech; they actively contribute towards its overall success.

This chapter will therefore examine the *Verrines* for the further light they shed on *actio* and performance in Roman oratory, based on the hypothesis that the *Verrines* may help us towards achieving a theory or, more precisely, a typology of prosecution techniques.[21] This feature of the *Verrines* was particularly important for the ancient student of oratory, for, although it was generally expected that a young man should

character; see R. L. Enos, *The literate mode of Cicero's legal rhetoric* (Carbondale and Edwardsville 1988), accepted by A. M. Riggsby, *Crime and community in Ciceronian Rome* (Austin 1999) 178-84, and M. von Albrecht, *Cicero's style: a synopsis followed by selected analytic studies* (Leiden 2003) 206-17. Enos has suggested that there is a difference between the rhetorical form of the delivered speeches of the *In Verrem* (the *Divinatio* and the *Actio Prima*) and the published text of the *Actio Secunda*, while von Albrecht suggests that literary considerations influenced the arrangement of Cicero's material, especially in the *peroratio*. S. Gurd, 'Verres and the scene of rewriting', *Phoenix* 64 (2010) 80–101, further argues that the *Actio Secunda* self-consciously reflects on its own fictionality. The most persuasive resolution to date, however, is that of T. D. Frazel, 'The composition and circulation of Cicero's *In Verrem*', *Classical Quarterly* 54.1 (2004) 128-42. Frazel argues that there is little difference in style between the speeches in the *Verrines* collection. Furthermore, he suggests that the speech would have been drafted long before Cicero could have known that Verres would escape into an early exile. Thus, he concludes, the *Actio Secunda* should not be treated as 'fictive' (142). As I have argued elsewhere, this conclusion is supported by an analysis of the structure of the *Actio Secunda*, which adheres more closely to the precepts for rhetorical *dispositio* than most scholars have been prepared to admit; see Tempest, *Dispositio* (n.1, above).

[17] For an exemplary treatment of *Verr.* II.5.92-95, illustrating how a Roman reader might have approached this particular passage, see R. G. M. Nisbet, 'The orator and the reader: manipulation and response in Cicero's fifth *Verrine*', in *Author & audience in Latin literature*, ed. A. Woodman and J. G. F. Powell (Cambridge 1992), 1-18.

[18] M. Fuhrmann, 'Mündlichkeit und fictive Mündlichkeit in den von Cicero veröffentlichten Reden' in *Strukturen der Mündlichkeit in der römischen Literatur*, ed. G. Vogt-Spira (Tübingen 1990) 53-62 (60): 'Das kühnste Beispiel für fingierte Mündlichkeit ist die zweite Rede gegen Verres, die berühmte Actio Secunda.'

[19] Fuhrmann, 'Mündlichkeit und fictive Mündlichkeit' (n.18, above) 61: 'Der in die imaginäre Gegenwart der Verhandlung geführte Leser sollte glauben, er werde darüber belehrt, mit welchen Mitteln Cicero auf die Richter eingewirkt hatte; er sollte darüber vergessen, daß der Appell ihm galt, daß er also der wahre Adressat der Einwirkung war.'

[20] On the limitations of the term 'orality' to describe all that was happening in a Ciceronian speech, *cf.* Manuwald, 'Performance and rhetoric' (n.9, above) 63.

[21] For a fuller exploration of this idea, see K. Tempest, *Prosecution techniques in Cicero's* Verrines, unpublished Ph.D. diss. (London 2006).

undertake a 'debut' prosecution at the beginning of his political career, the theoretical literature contains relatively few specific guidelines for the trainee prosecutor.[22] And where targeted advice for prosecutors does survive, such as in the *Rhetorica ad Herennium* and Cicero's *De Inventione*, it pertains more to finding the right argumentative strategy, *loci communes*, and the presentation of argument than to questions of delivery and performance.[23] The relative paucity of rhetorical advice devoted to the task of delivering a prosecution case suggests that this topic did not lend itself to the kind of taxonomical approach found in the theoretical literature.[24] Rather it reminds us that there existed another mode of rhetorical instruction, the *tirocinium fori*: a kind of apprenticeship of the forum in which young students learned the tricks of the trade by observation and practical experience.[25] Yet students could only be expected to take in a certain amount of information by observation, and practice was essential to hone their skills; to this end model orations served as a useful supplement to the school curriculum and one of Cicero's main reasons for publishing his speeches was to instruct students in the art of oratory.[26]

In publishing the *Verrines*, Cicero doubtless envisaged that his speeches would provide a model of prosecution techniques; indeed, when he refers to them simply as his 'accusationis septem libris' and expects the speeches to be 'well known' ('nota') at *Orator* 103, his ambition had arguably been achieved even within his own lifetime.[27] Looking at the *Verrines* from a pedagogical perspective, then, it is possible to examine how performative features were embedded in the published text, or we can speculate as to how they may have contributed to the persuasive power of Cicero's speech. It is also

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[22] For a more comprehensive treatment of this problem, see Alexander, *Case for the prosecution,* (n.11, above) 8-15.

[23] See *e.g. Rhet. Her.* 1.24, 2.21-24; Cic. *Inv. Rhet.* 2.24, 32, 44-45, 53, 77-82, 88, 99-100, 108-09.

[24] As Cicero says of facial expressions and gestures at *Orat.* 55: 'How an orator uses all these to his advantage can hardly be described' ('quibus omnibus dici vix potest quantum intersit quem ad modum utatur orator').

[25] Cicero (*Brut.* 189) tells us that, in his youth, he observed the speakers in the forum; it also seems that it was a practice of which Cicero particularly approved: see J. G. F. Powell, *Cicero: Cato maior de senectute*, Cambridge Classical Texts and Commentaries 28 (Cambridge 1988) 122. On the custom of the *tirocinium fori* generally, see Tac. *Dial.* 34.1-2; *cf.* J.-M. David, *Le patronat judiciaire au dernier siècle de la république romaine* (Rome 1992) 336-41.

[26] This is the conclusion of several studies: see *e.g.* Stroh, *Taxis und Taktik* (n.11, above) 52-55, and the useful comments of C. J. Classen, 'Ciceros Kunst der Überredung', in *Éloquence et rhétorique chez Cicéron,* Fondation Hardt Entretiens, vol. 28, ed. W. Ludwig (Geneva 1982) 149-92 (185-86), and A. D. Leeman, 'The technique of persuasion in Cicero's *Pro Murena*', also in *Éloquence et Rhétorique* (Geneva 1982) 193-228 (198-99). Classen and Leeman focus their discussions on the *Pro Milone* and the *Pro Murena* respectively. Of course, there were other reasons – *e.g.* self-promotion, political motivations, literary intentions – why Cicero published his speeches, and his reasons for doing so no doubt differed from case to case: good overviews can be found in J. W. Crawford, *M. Tullius Cicero: the lost and unpublished orations* (Göttingen 1984) 3-21, and, with a particular focus on the *Verrines*, S. Butler, *The hand of Cicero* (London and New York 2002) 71-84.

[27] Thus also Fantham, 'Quintilian on performance' (n.6, above) 247.

possible to explore what further evidence the speeches may yield for a study of prosecution oratory more generally.[28]

This approach will inform one part of my discussion. But I shall also suggest that the basic structures and the procedural framework of the original trial, which included a *Divinatio* and the compulsory double hearing, enabled Cicero to reflect on the art of prosecution from a number of vantage points: in the *Divinatio* he had to prove that he was the better choice of prosecutor, while the two hearings of the *In Verrem* offered Cicero the chance to comment on his own successes at various stages of the trial.[29] This feature of the *Verrines* – appropriate to both the delivered and published oration – may in turn be used to supplement and expand Cicero's treatment of *actio* in his rhetorical writings. In the first part of this paper I shall suggest that Cicero initiates a broad discourse on oratorical performance in the *Divinatio*; the second part explores, more tentatively, how Cicero put his precepts into practice in select episodes of the *In Verrem*. In a final section, I expand the discussion of performance to include the presentation of the evidence and the role of the jury within the *Actio Secunda*. Taken as a collection, it will be seen that the three speeches of the *Verrines* corpus cause Cicero's audience, in its widest sense,[30] to consider the role of performance in oratory while also exhibiting performative features in practice.

I. Aspects of performance in discourse: the Divinatio in Q. Caecilium[31]

Early in the year 70 BC, Cicero and Q. Caecilius Niger, who had both expressed their intentions to prosecute Verres under the *lex Calpurnia de repetundis*, presented their competing claims in a procedure known as the *Divinatio*. Caecilius had been educated in Sicily (§39), had served there as Verres' quaestor (§4, §59), and claimed to have been personally wronged by his former governor (§52). But Cicero, speaking first, argued that Caecilius was complicit in Verres' crimes and was thus not a reliable choice (§§29-35).

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[28] For such an experiment *cf.* Alexander, *The case for the prosecution* (n.11, above), who uses the *Verrines* to help reconstruct the arguments of the prosecutors in the extortion trials of Fonteius, Flaccus, and Scaurus. The results of this approach are valuable. But as he admits, they are also relatively limited and methodologically problematic: it is difficult to reconstruct the prosecution's speech on the basis of the defence speech because Cicero may well be misrepresenting his opponent's arguments (29). Furthermore, it means he leaves aside the problems involved in interpreting the *Verrines* themselves and the further evidence they offer for Roman prosecution techniques.

[29] On the broader question of how the procedural framework of the delivered speech determined its published counterpart, see J. G. F. Powell, 'Court procedure and rhetorical strategy in Cicero', in *Form and function in Roman oratory*, ed. D. H. Berry and A. Erskine (Cambridge 2010) 21-36.

[30] A word should be said here on my use of the word 'audience' in this paper. For Cicero's own audience shifts between the direct addressee (*e.g.* Caecilius in the *Divinatio,* or Verres/Hortensius in the *In Verrem*), the jury (and by extension the *corona*) as the primary audience of the delivered oration, and the reader (ancient and modern) as the reader-addressee. In the interests of clarity, I shall use these terms when I wish to single out a specific recipient and consider the effect of the speech upon that individual or group of individuals. Otherwise, I shall use the term 'audience' in the broadest possible sense in line with Cicero's own habit of addressing himself either to individuals or collective groups, and with his own awareness that the 'audience' of his published text was the reader.

[31] Unless stated otherwise, all references in this section refer to Cicero's *Divinatio in Q. Caecilium.*

He added that, even if he had been wronged by Verres, Caecilius' prosecution would violate the bonds between a governor and his quaestor (§§60-63). Cicero, on the other hand, presented himself as the Sicilian's preferred choice of accuser (§§2-5), before turning to the criteria the court should apply in assigning a prosecutor (§§10ff.). It is within this context that we are presented with a rhetorical extravaganza, as Cicero assesses the oratorical credentials of each man, using the performative situation to corroborate his arguments. For although Caecilius is the prosecutor least desired by the Sicilians, he is Verres' own personal favourite for the job (*Div. Caec.* 22):

> Sunt multa quae Verres in me esse arbitratur, quae scit in te, Caecili, non esse; quae cuius modi in utroque nostrum sint, paulo post commemorabo; nunc tantum id dicam quod tacitus tu mihi assentiare, nullam rem in me esse quam ille contemnat, nullam in te quam pertimescat.

> Verres thinks I have many qualities which he knows are lacking in you, Caecilius; how we are each qualified in these respects, I shall detail a little later; for now I shall say only – and you may support me in this without saying a word – that there is nothing in me which Verres can scorn, and nothing in you to make him shudder.

In short, Caecilius does not *look* like an impressive speaker either: as he awaits his turn to speak in silence ('tacitus') his ineptitude is apparently already evident. Thus Caecilius' oratorical performance has started even before he begins his speech, and first impressions evidently counted. It is with this condemnation that Cicero begins his demolition of Caecilius' abilities as an orator. In order to manage a case at all, the good prosecutor, he argues, must possess 'some command of delivery, some experience at speaking, and some grounding or training in the forum, the courts, and the laws'.[32]

In fact, the central portion of the speech reads as if it represents Cicero's doctrine on how to present a case for the prosecution as he first assesses the credentials of Caecilius (§§27-47a) and then his proposed *subscriptores* (§§47b-51); the didactic impression is further corroborated by the fact that Cicero takes on the role as Caecilius' instructor, addressing him directly for the majority of the oration (§§27-63). Yet the imperative 'cognosce' (§27), with which this section opens, serves simultaneously to guide the audience from passive into active participation. In other words, the speech (both delivered and read) instructs its audience in the oratory of public prosecution including aspects of performance: essentially this section is a list of do's and don'ts for the would-be prosecutor.

In terms of personal qualities, an effective prosecutor must have received a good education (§§40-41), experience and training (§35, §41), and possess natural ability (§35, §39), and a blameless character (§27, §29). As regards his oratorical talents, he must be able to narrate vividly (§27), arrange and develop his arguments effectively (§§38-39), arouse the audience's hostility and indignation (§§38-39), and convince his hearers of the defendant's guilt by detailing the whole history of his life (§27, §38). The advice presented here is largely generic. Yet, as he proceeds to critique both his own experience

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[32] *Div. Caec.* 35: 'aliqua facultas agendi, aliqua dicendi consuetudo, aliqua in foro, iudiciis, legibus aut ratio aut exercitatio.'

and ability and to criticize that of his other opponents, Cicero overtly directs our attention to the importance of oratorical performance.

To begin with, Cicero's recollections of his own training and experience enable him to identify three key attributes which he personally has perfected: the *diligentia* necessary for preparing the trial, the *memoria* for delivering it, and the *vox* and *vires* necessary to sustain the performance (§§39-41). It is even tempting to imagine him confidently asserting his superiority as he strides through the long-winded syntax of the following sentence, which simultaneously describes and demonstrates the accomplishments of which he boasts (§41):

> Ego qui, sicut omnes sciunt, in foro iudiciisque ita verser ut eiusdem aetatis aut nemo aut pauci pluris causas defenderint, et qui omne tempus quod mihi ab amicorum negotiis datur in his studiis laboribusque consumam, quo paratior ad usum forensem promptiorque esse possim, tamen ita mihi deos velim propitios ut, cum illius mihi temporis venit in mentem quo die citato reo mihi dicendum sit, non solum commoveor animo, sed etiam toto corpore perhorresco.

> I am a man who, as everyone knows, has centered my activity round the forum and law courts so that at this age either none or few men have defended more cases, and who spends all the time I have left after dealing with my friends' affairs consumed in the study and toil of this profession, so that I can be better prepared and fitter for forensic practice, yet still, so may the gods help me, when I think of the day of the trial and the moment when the defendant has been summoned and I must begin my speech, I am not only mentally disturbed, but my whole body begins to shudder.

The full array of connectors in this sentence ('ita…ut', 'aut…aut', 'non solum …sed etiam'), coupled with the repeated relative pronouns ('qui…qui…quo') and the change of thought progression signaled by 'tamen', all enable us to imagine how Cicero could lead into it, pause significantly before each new clause, and finally launch towards the surprising climax 'non solum commoveor animo, sed etiam toto corpore perhorresco'. Yet anyone who tries to read this sentence out loud, as Cicero's reader would certainly have done, will soon realize that it requires some gusto to reach that climax effectively. Since speeches had to be delivered before large audiences and in varying conditions, physical stamina and a powerful voice were essential for effective oratory;[33] the ability to control both his breath and his composure were fundamental aspects of the overall delivery of his speech. Indeed, by his own admission at *Brutus* 318-19, Cicero was at his oratorical prime when he prosecuted Verres (*cf.* the confidence in his physical ability at *Verr.* I.35). Thus the injection of autobiographical elements in the *Divinatio* warns the would-be orator (both Caecilius and the student of oratory) of the demands placed upon

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[33] Thus Cicero, at *Brut.* 317: 'The great crowd of men and the noise of the forum call for an orator who is sharp, fiery both in delivery and voice' ('acrem enim oratorem, incensum et agentem et canorum, concursus hominum forique strepitus desiderat'); Quintilian *Inst.* 11.3.27 adds considerations of weather conditions: 'Are we to desert our clients if we have to speak in the heat of the sun or on a windy, wet or warm day?' ('Ita, si dicendum in sole aut ventoso umido calido die fuerit, reos deseremus?). On the size of audiences in the forum and the difficulties of voice projection, see Aldrete, *Gestures and acclamations* (n.7, above) 78-82.

the body by public speaking while simultaneously arguing that Cicero possesses the experience and qualities lacking in Caecilius.

Furthermore, in his focus on the live performance we are reminded of the great role Cicero attributes to the audience elsewhere in his theoretical works: the crowd is to the orator, what an instrument is to a musician.[34] That is to say, a favorable crowd could be exploited to great effect by a skilled speaker; conversely, a hostile one might interrupt the orator and make it difficult for him to proceed with his case.[35] This is the point Cicero stresses in the *Divinatio* too: to be an effective orator one must consider the performative situation (§42):

> Iam nunc mente et cogitatione prospicio quae tum studia hominum, qui concursus futuri sint, quantam expectationem magnitudo iudicii sit adlatura; quantam auditorum multitudinem infamia C. Verri concitatura, quantam denique audientiam orationi meae improbitas illius factura sit. Quae cum cogito, iam nunc timeo quidnam pro offensione hominum qui illi inimici infensique sunt, et exspectatione omnium et magnitudine rerum dignum eloqui possim.

> Even now in my mind's eye, I picture the great keenness of the men who will gather to hear; how much expectation the importance of the trial will bring; how great a crowd of hearers the infamy of Gaius Verres will stir up; how much attention his shamelessness will direct towards my speech. Even as I think about all this, I am already afraid, for what can I say to satisfy the indignation of the men who hate and detest him, or what will be worthy of everyone's expectations and the importance of the trial?

Cicero's ability to envisage the opening of the trial stands in contrast to the *exordium* he imagines Caecilius delivering: an old-fashioned and rehearsed appeal to Jupiter or the jury (§43). His main point, then, is that set speeches will not work in this environment, for the orator needs to improvise: to change his tone to suit the mood of the audience. The need to tailor a speech to the expectations and feelings of the orator's audience may seem an obvious part of an orator's performance, but it is a feature that Cicero repeatedly stresses in the *De Oratore* too.[36]

Another important element of the live performance, however, was the opposing advocate: in the trial of Verres this would be Hortensius, then the leading speaker of his

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[34] Cic. *De or.* 2.338: 'the crowd has power of such a sort that, just as the flute-player cannot play without his flute, so an orator cannot be eloquent without a crowd of listeners' ('habet enim multitude vim quondam talem ut, quemadmodum tibicen sine tibiis canere, sic orator sine multitudine audiente eloquens esse non possit').

[35] Cicero was famously interrupted at the beginning of his defence for Milo; thus Asconius (41-42C) reports that 'when Cicero began to speak, he was interrupted by the jeers of Clodius' supporters (Stangl 37: 'Cicero cum inciperet dicere, exceptus acclamatione Clodianorum'). For the orator's need to 'work' his audience carefully, see Gotoff, 'The art of illusion' (n.15, above) 290, Hall and Bond 'Performative elements' (n.8 above) 223, J. Hall, 'Oratorical delivery and the emotions: theory and practice', in *Blackwell companion to Roman rhetoric*, ed. W. Dominik and J. Hall (Oxford 2007) 218-34 (219).

[36] See *e.g. De or.* 1.223-30; 2.68, 131, 159, 337; 3.66.

day. As he stands in court, imagining what might happen if Caecilius were to face Hortensius in the main trial, he describes the power of an effective oratorical performance (§ 46-7):

> Quid? cum accusationis tuae membra dividere coeperit et in digitis suis singulas partes causae constituere? . . . Quid? cum commiserari, conqueri, et ex illius invidia deonerare aliquid et in te traicere coeperit? . . . Mihi enim videtur periculum fore ne ille non modo verbis te obruat, sed gestu ipso ac motu corporis praestringat aciem ingeni tui, teque ab institutis tuis cogitationibusque abducat.

> What about when he begins to dissect your prosecution speech, and to tick off the individual parts of your case on his fingers? . . . What about when he begins to excite compassion ('commiserari'), to complain ('conqueri'), and to lighten the load of prejudice against Verres by casting it onto you? . . . I can see where the danger will lie: he will not simply overwhelm you with his words ('verba'), but dazzle your eyes and senses with a mere gesture ('gestu ipso') and the movement of his body ('motu corporis'), and so lead you away from your intended line of attack.

Here, in addition to the rhetorical arguments Hortensius might use, the individual aspects of *actio* receive attention as Cicero gives some clues as to what was expected in an oratorical performance: the use of fingers and hand gestures provided a ready source of non-verbal communication;[37] Cicero's emphasis on 'commiserari, conqueri' recalls that there was a close tie between delivery and emotional appeals based on pity and anger (Cic. *De or.* 217-19). And the focus on Hortensius' words, gestures, and bodily movements may reflect the basic division of *actio* into *vox* and *gestus*.[38]

The focus on the correct use of the orator's voice receives further attention in Cicero's sketch of Caecilius' supporting cast, whom he compares to a band of Greek actors (§§47-51). This insult in itself is significant, for it evokes the ambivalent relationship orators had with theatrical artists.[39] But one of Caecilius' *subscriptores* was Titus Alienus,

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[37] *cf.* Quint. *Inst.* 13.92-106. For another description of Hortensius' oratorical style, see Cic. *Brut.* 301-03, where Cicero adds explicitly a point that is only made implicitly in the *Divinatio* speech; namely, that 'his delivery and gesture were rather more artificial than was necessary for the orator' (*Brut.* 303: 'motus et gestus etiam plus artis habebat quam erat oratori satis'). Indeed, he was famous for his use of gesture: Aulus Gellius, for instance, records the anecdote that he was once nick-named 'Dionysia' after a female mime-artist (Gell. *NA 1.5.1-3*), while Valerius Maximus adds that Hortensius' gestures were studied by Q. Roscius Gallus and Clodius Aesopus, who adapted them for the theatrical stage (Val. Max. 8.10.2). For a fuller overview of Hortensius' oratory, see C. E. W. Steel, 'Lost orators of Rome', in *A companion to Roman rhetoric,* ed. W. J. Dominik and J. Hall (Oxford 2007) 237-49 (243-44).

[38] For the rhetorical handbooks' traditional division of delivery into the two parts of voice and gesture, see *Rhet. Her.* 3.19-20; Cic. *Orat.* 55, *De or.* 3.213-14; Quint. *Inst.* 11.3.1-2.

[39] Allusions to this relationship are frequent in Cicero's rhetorical works; see *e.g. De or.* 1.118, 125, 128-29, 156, 251; 2.242, 244, 251-52; 3.83. *Cf.* Quint. *Inst.* 1.11.1, 11.3.178-83. For the relationship between oratorical and theatrical gestures, see Graf, 'Gestures and conventions' (n.6, above) 48-51, E. Fantham, 'Orator and/et actor', in *Greek and Roman actors: aspects of an ancient profession,* ed. P. Easterling and E. Hall (Cambridge 2002) 362-76, A. Corbeill, *Nature embodied: gesture in ancient*

who had begun his career as a claqueur: 'I see that he is suitably robust and trained at shouting,' Cicero mocked.[40] His criticism is directed as much against Alienus' background as it is against his style of speaking: both lack the required *dignitas*. Yet the important point here is that the prosecutor should not simply shout his case.[41] Although a powerful voice was indeed necessary to succeed in oratory,[42] the ideal voice needed to allow for far more flexibility, so that it could be sweet ('suavis') and sonorous ('canora') as the moment demanded.[43] Furthermore, Alienus' powerful voice will be of little use to Caecilius in the trial of Verres, for he will have to modify it so as not to overshadow the performance of the first actor, Caecilius (§48).[44]

Throughout the *Divinatio* the figure of Caecilius is thus used as the vehicle through which Cicero projects the vignette of the failed orator: 'he is a nobody, he can do nothing' (§47: 'ipse nihil est, nihil potest') is Cicero's damning conclusion. His inability to adapt to the moment and his over-reliance on model arguments both become key themes in Cicero's critique of his opponent. This is the particular challenge Cicero raises against Caecilius (§ 47):

> Si enim mihi hodie respondere ad haec quae dico potueris, si ab isto libro, quem tibi magister ludi nescio qui ex alienis orationibus compositum dedit, verbo uno discesseris, posse te et illi quoque iudicio non deesse et causae atque officio tuo satisfacere arbitrabor.

> For if you can reply to me and to what I am saying today, if in one single expression you manage to depart from that book composed out of other people's speeches that some schoolmaster has given to you, then I shall grant that you might not be a failure in the trial too and that you can do justice to the case and your duty.

Cicero of course has an agenda to fulfill throughout the *Divinatio*, namely to demonstrate that he is the better and more experienced of the two rival orators. To this end, Cicero shows that he is well-acquainted with the detailed theoretical techniques of an effective

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Rome (Princeton 2004) 115, and C. Panayotakis, 'Nonverbal behaviour on the Roman stage', in *Body language in the Greek and Roman worlds*, ed. D. L. Cairns (Swansea 2005) 175-94 (178).

[40] *Div. Caec.* 48: 'in clamando quidem video eum esse bene robustum atque exercitatum.'

[41] While Quintilian (*Inst.* 5.13.2-3) appears to suggest that the prosecutor's task was easier for his speech required less vocal flexibility than the defence advocate's, this was clearly not the case in practice; *cf.* Cicero's criticism that Gaius Fimbria shouted everything at the top of his voice (*Brut.* 233).

[42] *Cf. Brut.* 241, where Cicero compliments Publius Autronius on the grounds that he has a shrill ('peracuta') and loud ('magna') voice, even if he has nothing else to commend him as a speaker.

[43] Cic. *Orat.* 55-60; Cicero's compliments of orators' voices in the *Brutus* give some indication of what effects should be sought. Thus *e.g.* Gaius Lentulus was renowned for his delivery, which included an effective use of pauses, exclamations, and a sweet and sonorous voice (234: 'suavis' … 'canora'); Publius Lentulus' voice was strong and sweet (235: 'magnitudo' … 'suavis'); Gnaeus Lentulus Marcellinus also had a sonorous voice (247: 'canora').

[44] For the notion that Greek actors chose their roles carefully, in accordance with their abilities, see Cic. *Off.* 1.114.

oral performance as he sets himself up as an expert vis-à-vis the naïve Caecilius. But that does not diminish the value of his 'lessons'. As we have seen, many of Cicero's comments about delivery actually correspond to the criticisms and comments we find in his later rhetorical writings; hence we find in the *Verrines* an early exposition of Cicero's precepts. Moreover, some of the most interesting aspects of his analysis appear to be a result of his own practical experience in the school and forum.

A particularly unique contribution appears in the way Cicero exploits the moment of the performance itself in the course of his speech. Cicero spoke first, and he could only portray his opponent in a manner that was conceivably consistent with his actual character or appearance.[45] Had a charismatic and impressive Caecilius stood up to reply, Cicero's speech would have spectacularly failed in demonstrating its central thesis. Only a member of Cicero's original audience could fully appreciate this particular point in Cicero's argument, which means that in the published text Cicero includes an element of performance that goes further than creating an *ex tempore* allusion: he invites his reader to imagine the possibilities and the pitfalls created by the live performance.

Cicero even shows how an orator could draw strength for his arguments from the performative situation. Thus he concludes his section of advice to Caecilius with an alarming degree of circularity (§ 52):

> Verum ut ad te, Caecili, redeam, quam multa te deficiant vides: quam multa sint in te quae reus nocens in accusatore suo cupiat esse, profecto iam intellegis. Quid ad haec dici potest? non enim quaero quid tu dicturus sis; video mihi non te, sed hunc librum esse responsurum, quem monitor tuus hic tenet; qui, si te recte monere volet, suadebit tibi ut hinc discedas neque mihi verbum ullum respondeas.

> But to return to you, Caecilius: you see how many assets you lack; you must certainly now see how you have many assets which a guilty man would long for in his prosecutor. What can you say to this? For I do not ask what you are going to reply; for I can see that you will not reply to me in your own words, but rather from that little book which your teacher here is holding: he, if he wants to advise you rightly, will persuade you to leave this forum without saying a single word in reply.

Cicero's statement that 'you [Caecilius] see how many assets you lack' ('*quam multa* te deficiant vides') echoes his earlier insistence that 'Verres thinks I have many qualities which he knows are lacking in you, Caecilius' (§22: '*sunt multa* quae Verres in me esse arbitratur, quae scit in te, Caecili, non esse'). As he self-consciously marks off this section of advice from the rest of the speech ('Verum ut ad te'), Cicero signals that he has demonstrated what he set out to achieve: to argue that Caecilius is Verres' and Hortensius' preferred choice of prosecutor because he lacks the qualities that Cicero possesses. In this way, Cicero also paves the way for his insistence elsewhere that Caecilius is, in fact, a collusive prosecutor:

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[45] Such comments on an opponent's behaviour or appearance formed part of the stock-in-trade of Roman invective; see R. G. M. Nisbet, *M. Tullii Ciceronis in L. Calpurnium Pisonem Oratio* (Oxford 1961) 192-97, and C. P. Craig, 'Audience expectations, invective, and proof' in *Cicero the advocate* (n.11, above) 187-214. A man's expressions, affectations and physical traits had the potential for interpretation and hence ridicule; thus A. Corbeill, *Controlling laughter: political humor in the late Roman Republic* (Princeton 1996) esp. 99-173.

a *praevaricator* (§30, §58). To this end Cicero has argued that Caecilius does not look the part (§23), cannot act the part (§§27-47) and is unprepared for the role of prosecutor (§§40-3). What is more, Caecilius, who can do no better than recite from the book of set speeches given to him by his schoolmaster in §47, is dumbfounded by Cicero's oratorical performance: now, in §52, he hopes to find inspiration for his own impending performance, ironically, by turning to the book which his teacher waves before him.

To sum up the points presented so far: the *Divinatio* is a meta-rhetorical speech as Cicero makes a virtue of his personal training and experience in order to win the right to prosecute Verres. Cicero's speech offers a masterclass in using the situation of the speech to inform its substance: he addresses the majority of it to Caecilius directly, and he uses his opponent's reactions to fuel his attack further. But this strategy of presentation in the original trial extends with an equally powerful effect over the written text: the reader-addressee is subconsciously transposed into the physical environment of the trial and becomes one of the *iudices* within it. Like the original audience, the reader has been invited to assess the various merits and view the reactions of the individuals performing on stage: Caecilius, Cicero, Hortensius, and Caecilius' *subscriptores*.

Moreover, in presenting his blueprint of how to deliver a case successfully, Cicero simultaneously invites his audience to consider the demands of delivery upon the orator generally; in other words, Cicero initiates a discourse on *actio* and performance which maintains the standard theoretical division of voice ('vox'), and gesture ('gestus' or 'motus corporis'). To achieve any success, the speaker must possess 'diligentia', and 'memoria', but the rewards were significant. As we saw in Cicero's critique of Hortensius' oratory, a correctly delivered speech could dazzle the speaker's opponents while exciting strong emotions in his audience, such as pity and anger. Yet we have also seen that Cicero extends the body-centered notion of performance to include the presentation of the speaker's own character and to take in his surroundings. His performance could be further enlivened still by commenting on his opponent's reactions and behaviour; in this way Cicero brings his opponent on stage to act out the character he has created for him. Thus the orator's performance is not one-sided but involves the full array of those present at the trial. Examined closely, then, what emerges from the text is a dynamic between the performance and the speech, a kind of dialectical relationship, which enhances both in the process of their interaction: Cicero's speech is adapted to suit the performative situation, yet the performative situation in turn contributes to the persuasive force of his attack.

Cicero's concept of an overall performance in the *Divinatio* may consequently offer a new approach to examining aspects of performance in the *Verrines*, for we may examine how similar aspects of performance are embedded in the published text of the *In Verrem*, and to what extent they mirror – and hence create a dialogue – with Cicero's discursive analysis in the *Divinatio*.

II. Aspects of Performance in Practice: the In Verrem

On 5 August ('Sextilis') 70 BC, the trial of Verres commenced. The opening paragraphs of the *Actio Prima* create the impression of being present at the trial, at a particular point in the senatorial order's struggle to maintain their monopoly over the courts, and at a moment of great importance for Cicero personally. In the *Divinatio* Cicero had alluded to

the feelings of anxiety he would experience at this moment, but now he claims those particular worries have been superseded by the new challenges facing him (I.4):

> Equidem ut de me confitear, iudices, cum multae mihi a C. Verre insidiae terra marique factae sint, quas partim mea diligentia devitarim, partim amicorum studio officioque reppulerim, numquam tamen neque tantum periculum mihi adire visus sum neque tanto opere pertimui ut nunc in ipso iudicio. Neque tantum me exspectatio accusationis meae concursusque tantae multitudinis, quibus ego rebus vehement-issime perturbor, commovet quantum istius insidiae nefariae, quas uno tempore mihi, vobis, M. Glabrioni praetori, populo Romano, sociis, exteris nationibus, ordini, nomini denique senatorio facere conatur.

> Indeed, to make a personal confession, members of the jury, there are many attacks that Verres has set upon me, both on land and sea, some of which I have avoided by my own diligence, and others I have repelled with the help of energetic and dutiful friends. Yet I have never felt myself approaching so great a danger nor feared so a great task as I do now in this very trial. It is not the expectation awaiting my prosecution speech or the great size of the crowd that worry me (although these too deeply disturb me), so much as Verres' nefarious attacks, which are simultaneously directed at me, you, the praetor Manius Glabrio, the Roman people, our allies, the foreign nations, and finally to the senatorial order and its good name.

In addressing the targets of Verres' attacks, Cicero gives a panoramic view of the different interest groups present at the trial: Romans, Sicilians, and other foreign nationals had all gathered to complain about Verres' behavior. He portrays an atmosphere of bustling excitement ('expectatio accusationis meae concursusque tantae multitudinis') and describes his own feelings of great fear ('pertimui') and anxiety ('perturbor'); elsewhere he adds that the forum was packed with spectators from all parts of Italy (*Verr.* I.54). But the description of the performative backdrop is not purely gratuitous, for it contributes to the projection of Cicero's persona as he presents it throughout the *In Verrem* in two important respects.

First, Cicero has corrected his earlier statement in the *Divinatio* to reveal himself as a prosecutor who is confident he can handle the case: now he fears the moment of his performance and the expectations of the crowd less than he fears the attacks of Verres. The personal confession with which this passage opens thus establishes Cicero's *ēthos* as a competent and careful prosecutor facing a hostile and scheming opponent. Secondly, Cicero also has to demonstrate that he is not a malicious or litigious prosecutor; hence he needs to put forward a convincing display of support.[46] In an important discussion of Cicero's use of written evidence in the *Verrines*, Butler has pictured the sight of this opening day, as the *capsae* containing the documents were carried into the forum.[47] He is

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[46] In cases of extortion, the prosecutor needed to demonstrate that he had the support of the provincials behind him (*cf.* Cic. *Scaur.* 23-30). On Cicero's self-representation in the *Verrines,* with particular reference to its origins in the *Divinatio* speech, see K. Tempest, 'Combating the odium of self-praise: the *Divinatio in Q. Caecilium*', in *Praise and blame in Roman Republican rhetoric*, ed. C. Smith and R. Corvino (Swansea 2011) 145-63.

[47] Butler, *Hand of Cicero* (n.26 above) 63-64.

surely right to suggest that the piles of documents would have made a staggering first impression; we have already seen in the case of Caecilius how an orator's performance started before he even spoke a word. But the parade of witnesses to whom Cicero draws attention is equally important. By their very appearance, the *populi Romani*, *socii*, and *exterae nationes* all dramatically corroborate Cicero's self-presentation as a prosecutor backed by the victims of Verres' attacks.

To be sure, the need to project an honourable character follows a long rhetorical tradition: according to Aristotle (*Rh.* 1356a) the *ēthos* of the speaker was one of the most effective means of persuasion. Yet insofar as the orator needed to create a favourable impression on his audience, his personality was an essential component of his performance. For that reason, the speaker also needed to appear consistent and convincing; otherwise it would seem as if he were acting.[48] This consistency is achieved in the *Actio Prima* because the combination of diligence ('diligentia') and pure daring ('neque tantum periculum mihi adire visus') we see in these lines is a recurrent feature of Cicero's self-presentation in his earlier speeches.[49] But it is also a central aspect of the *ēthos* Cicero had created for the honourable prosecutor in the *Divinatio*: one of the marks of which was his willingness to face danger ('ad periculum accedere') on behalf of Rome's allies.[50]

These opening lines of the *Actio Prima* thus demonstrate that the performative context could be exploited to serve Cicero's larger rhetorical strategy – an ability Cicero had found wanting in Caecilius. Yet the diligent reader, too, will have noticed how Cicero has created a dialogue between the *Divinatio* and the *In Verrem*: in the *Divinatio* Cicero had anticipated his fear at the size of the crowd and their expectations of the trial. And while he still fears these same factors in the *In Verrem,* they cause him less anxiety than the attacks of Verres. In this way, Cicero uses the appropriate expressions of modesty with which to introduce himself to the court; but he manages to assert himself aggressively against Verres and to declare himself the champion of his victims all the same.

These victims included the senators, the president of the court, and the Senate itself – all of whom have been imperilled by Verres' schemes. Throughout the *In Verrem*, Cicero therefore draws a great advantage from the broader political context of the trial, which is

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[48] For the advice to appear sincere, see *e.g. Rhet. Her.* 3.27, where good delivery is essential 'so that the speech appears to come from the heart' ('ut res ex animo agi videatur'); *cf. Rhet. Her.* 3.26, where the author warns that over-gesticulation may give the impression of being mime artists ('histriones'). Cicero draws a similar distinction at *De or.* 3.215: orators speak the truth (they are 'actores veritatis') while the mime artists ('histriones') are the 'imitatores veritatis'.

[49] See *e.g.* Cic. *Quinct.* 1-4, 8-9; *Rosc.* 1-5, 9-10; on this aspect of Cicero's self-presentation in his earlier career, *cf.* C. E. W. Steel, *Reading Cicero: genre and performance in late Republican Rome* (London 2005) 25.

[50] For the full quotation, see Cic. *Div. Caec.* 63: 'the strongest motive and the mark of the most honest prosecution has always been this: to incur hostility, face danger, and put in the commitment, energy, and hard work in behalf of our allies, in defence of our provinces, and for the benefit of foreign nations' ('Semper haec causa plurimum valuit, semper haec ratio accusandi fuit honestissima, pro sociis, pro salute provinciae, pro exterarum nationum commodis inimicitias suscipere, ad periculum accedere, operam, studium, laborem interponere'). Compare, too, Cicero's well-known list of reasons for undertaking a prosecution at *Off.* 2.49-50.

presented as a god-sent opportunity to recover the reputation and standing of the Senate. His warning to the jury is clear (I.2):

> Huic ego causae, iudices, cum summa voluntate et exspectatione populi Romani actor accessi, non ut augerem invidiam ordinis, sed ut infamiae communi succurrerem.

> In this trial, members of the jury, I appear as a prosecutor with the great approval and interest of the Roman people, not so that I may increase the hostility against your order, but to help in allaying the discredit we all share.[51]

He includes the jury in his analysis of the situation and suggests that he and the other senators share a common concern, namely to maintain their monopoly over the courts. To do this, Cicero and the jurors must demonstrate their commitment to Republican values such as 'veritas', 'integritas', 'fides', and 'religio'.[52] In other words, their conduct too is on show and the jury are ascribed a dual role on Cicero's stage: they are both the spectators and the spectacle of this particular drama. Cicero himself was unable to resist drawing this same comparison: the trial of Verres was to be the greatest spectacle he could offer the people of Rome during his aedileship.[53]

Cicero's Republican *ēthos* stands in contrast to that of Verres. According to Cicero, Verres was one aristocrat who defied the limits of acceptable Roman behaviour. Wealthy and arrogant, he pretends to be a connoisseur of art (*Verr*. II.4.33). Like an old Bithynian king, he travels in a litter resting on a maltese cushion stuffed with rose-petals, dabbing his nose with a small bag of potpourri (*Verr*. II.5.27). He wears Greek robes and sandals;[54] he attends parties, gets drunk and submits himself to acts of lust.[55] In his

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[51] *Verr*. I.2: Cicero takes care here not to deliver a direct attack on the jurors for their corruption but to praise them as the only court honest enough to take thought for their reputation; *cf*. Quint. *Inst*. 4.1.21 for discussion of the various strategies for coping with a prejudiced or impartial jury. Quintilian cautions against issuing direct threats, although he admits that it is sometimes possible (as Cicero had, in fact, done at *Verr*. 1.36, 50).

[52] See in particular *Verr*. II.1.4: 'A greater means of ensuring the safety of the *res publica* cannot currently be found than for the Roman people to realize that – due to the prosecutor's careful rejection of jurors – our allies, laws, and *res publica* are being preserved by a court of senators. Nor could there be a more fatal blow to our prosperity than that the Roman people should believe that considerations of truth, integrity, honesty and the gods have all been cast aside by this order' (Neque enim salus ulla rei publicae maior hoc tempore reperiri potest quam populum Romanum intellegere, diligenter reiectis ab accusatore iudicibus, socios, leges, rem publicam senatorio consilio maxime posse defendi; neque tanta fortunis omnium pernicies ulla potest accedere quam opinione populi Romani rationem veritatis, integritatis, fidei, religionis ab hoc ordine abiudicari').

[53] Cic. *Verr*. I.36: 'hoc munus aedilitatis meae populo Romano amplissimum pulcherrimumque polliceor.'

[54] For jokes about Verres' costume and/or the accusation of 'going Greek' see: *Verr*. II.4. 54-55; 5.31, 40, 86, 137. The accusation was part of a long-standing, anti-Greek tradition. Famously Scipio Africanus was accused of exactly this behaviour while at Syracuse in ca. 205 BC (Livy 29.19.11-12; Val. Max. 3.6.1; Plut. *Vit. Cat. Mai*. 3.7; Tac. *Ann*. 2.59); some discussion in N. Petrochilos, *Roman attitudes to the Greeks* (Athens 1974) 31, A. Wallace-Hadrill, 'To be Roman, go Greek: thoughts on Hellenization at Rome', in *Modus operandi: essays in honour of Geoffrey Rickman*, *BICS* Suppl. 71,

presentation of Verres' character, Cicero could draw upon *topoi* and themes that were originally Greek;[56] but the physiognomy of the Greek tyrant also played a central part in Cicero's rhetorical strategy in the *Verrines*.[57] One mark of the tyrant was his arrogance ('superbia'), and it is this which leads Verres to think the law does not apply to him – a point Cicero seeks to prove by commenting on his countenance. Verres gets his way by bribery, threats, and intimidation: 'you can see that by the look on his face and the defiance ('contumacia') and arrogance ('superbia') in his eyes', Cicero claims at *In Verrem* II.3.5.[58] As he had used the appearance of Caecilius to support his claims of inadequacy in the *Divinatio*, so now Cicero directs his audience's attention to Verres' alleged reaction to corroborate his character presentation. A similar strategy is used in the descriptions of Verres' associates: Gaius Claudius makes a show of offering Verres legal advice (*Verr.* II.2.108), while Apronius, like Verres, wears an expression of defiance (*Verr.* II.3.22: 'contumacia'). The caricature of each man is ostensibly directed towards proving the accusations against them: Claudius was the man appointed as a sham advocate in the trial of Sthenius (*Verr.* II.2.106-07); Apronius was an irascible tax-collector in Sicily (*Verr.* II.3.22-24) – Verres' double and his right-hand man.

One might object that such instances of performance in the *Actio Secunda* are included merely to keep up the 'fiction' of its delivery. But this line of argument fails to account for the inclusion of similar instances in the speeches which we know for certain were delivered. As we saw in the *Divinatio,* references to Caecilius' reactions were not simply a matter of bestowing a spontaneous appearance on the published texts; rather comments on his opponent's envisaged behaviour belong to a repertoire of 'surprise tactics' which Cicero uses to strengthen his argument.[59] Thus *ex tempore* allusions do not serve solely to reproduce or evoke the atmosphere of the court. Rather, if we look at them as performative aspects (real or imagined), they show what strategies were considered effective and how they could contribute to the development of the orator's argument.

This observation may be corroborated by taking a closer look at Verres' other alleged reactions in the *Actio Secunda*, and it is significant that the extemporization in all of the instances under consideration occurs when Cicero presents the evidence against the

eds. M. Austin, J. Harries, and C. Smith (London 1998) 79-91, A. R. Dyck, 'Dressing to kill: attire as a proof and means of characterization in Cicero's speeches', *Arethusa* 34 (2001) 119-30, C. E. W. Steel, *Cicero, rhetoric, and empire* (Oxford 2001) 30, Tempest, 'Prosecution techniques' (n.21, above) chapter 6.

[55] *Verr.* II.1.33, 3.78, 5. 33, 5.80-84, 5.86.

[56] See K. Tempest, 'Saints and sinners: some thoughts on the presentation of character in Attic oratory and Cicero's *Verrines'*, in *Sicilia nutrix plebis Romanae: rhetoric, law & taxation in Cicero's* Verrines*, BICS* Suppl. 97, ed. J. R. W. Prag (London 2007) 19-36 (27-36).

[57] J. R. Dunkle, 'The Greek tyrant and Roman political invective of the late Republic', *Transactions of the American Philological Association* 98 (1967) 151-71, Vasaly, *Representations* (n.10, above) esp. 122-24, 213-15, Steel, *Cicero, rhetoric and empire* (n.54, above) 30-31, 34-35.

[58] 'sed etiam oris oculorumque illa contumacia ac superbia quam videtis.'

[59] This is not the place for a full discussion of improvisation in Cicero's speeches; good discussions include J. Wisse, *Ethos & pathos from Aristotle to Cicero* (Amsterdam 1989) 257, from whom I borrow the phrase 'surprise tactics', and Gotoff, 'Oratory: the art of illusion' (n.15, above).

defendant. For instance, P. Vettius Chilo (Verres' own brother-in-law) had not been produced as a witness in the *Actio Prima*, but was apparently expected to speak in the *Actio Secunda*. Verres' surprise at his appearance is written into the speech: 'Verres is amazed and is wondering what Vettius will say'.[60] This example highlights the advantage to be gained by holding back some of the prosecution witnesses until the second hearing; a tactic that was particularly relevant for trials *de repetundis*. At the same time, Cicero's comments on his opponent's envisaged reaction, and the fact that Verres seems alarmed, serve the obvious rhetorical function of lending his accusations greater weight.

Earlier, Verres had also objected to the manner in which Cicero reported his edict: 'He says I am not reading all of it; that appears to be what he means by shaking his head.'[61] In the event, Cicero gratifies Verres by instructing the clerk to read more, only to reveal further instances of illegality in Verres' clauses. This tactic of 'close reading' is one that Cicero often uses when he presents documentary evidence to the court.[62] We can compare for example his handling of a letter sent to Verres by Timarchides at *Verr.* II.3.154-63; here Cicero instructs the clerk to read the evidence while continuously interjecting with his own subjective comments. We can also imagine that Cicero held some of the documents in his hands and referred to them directly to draw attention to the veracity of his evidence. Thus at *Verr.* II.5.113 Cicero appears to read from a defence speech composed by Furius of Heraclea, charging Verres with cruelty for inflicting the death-penalty upon him: 'Next, I see that he said another thing …'[63] The fact that Cicero paraphrases the speech, apparently on the spot, tragically evokes the dead man's last words. More importantly, however, we see how Cicero could use other 'speakers' in his performance to validate the case against Verres.

Next we may turn to two passages which demonstrate Verres' reactions as his hopes of defending himself were allegedly deflated. In the first, Cicero recalls how Verres deserted Carbo and joined the Sullan cause, he states: 'I see what I have done: he is lifting his head, he is hoping that some defence can be puffed up for him on this charge through the goodwill and approval of those who hate the name of the late Gnaeus Carbo.'[64] In the second passage, Cicero anticipates that Verres might appeal to an argument from precedent regarding his valuation of corn (detailed in *Verr.* II.3.118-225), and asks: 'Do you intend to refer to Marcus Antonius' valuation of the corn and his exaction of money?' Again, he builds in Verres' response: '"Yes", he replies, "to Antonius" – this is what his nod of assent seems to mean.'[65] Again, Cicero's comments on Verres' reactions are deliberately included to serve Cicero's immediate rhetorical agenda: to portray Verres as a

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[60] *Verr.* II.3.167: 'Admiratur et exspectat quidnam Vettius dicturus sit.'

[61] *Verr.* II.3.26: 'Negat me recitare totum; nam id significare nutu videtur.'

[62] *Cf. e.g. Verr.* II.1.104-18 (Verres' urban edict); on the tactic of 'close reading', see Butler, *Hand of Cicero* (n.26, above) 52.

[63] *Verr.* II.5.113: 'Deinde etiam illud video esse dictum …'

[64] *Verr.* II.1.35: 'Video quid egerim: erigit se, sperat sibi auram posse aliquam adflari in hoc crimine voluntatis defensionisque eorum quibus Cn. Carbonis mortui nomen odio sit'.

[65] *Verr.* II.3.213: 'An me ad M. Antoni aestimationem frumenti exactionemque pecuniae revocaturus es? "Ita," inquit, "ad Antoni"; hoc enim mihi significasse et adnuisse visus est.'

scheming opponent and to implicate his guilt, for Verres looks for a way out rather than denying the charges against him. In so doing Cicero assigns to Verres an active role within the performance of the *Actio Secunda* and it adds to the effectiveness of his case.

Verres, however, was not the only man against whom Cicero had to contend. Indeed, one of the striking features of Cicero's initial description in the *Actio Prima* is the absence of Hortensius; in fact, he is mentioned on just five occasions in this speech and only once by way of direct address.[66] In both a performative and literary context, his exclusion underscores the essential point of Cicero's rhetorical strategy at the beginning of the trial, namely to alienate Verres and to present a force of men united against him.[67] But Hortensius was not a man who could be ignored for long. This was one of the caveats Cicero had issued to Caecilius in the *Divinatio*; yet Cicero simultaneously gave advance warning that he intended to challenge the authority of this distinguished senator, as well as the principles upon which his reputation was founded.[68] This threat is arguably realized in an extended address to Hortensius at *Verr.* II.3.6-10, where Cicero delivers an emotionally-charged diatribe (paraphrased here for simplicity):

Cicero imagines Hortensius asking him:

> What personal hostility or what private wrong has led you to undertake this prosecution, Cicero?[69]

To which Cicero replies:

> I shall not mention the fact that my close ties with the Sicilians have forced my hand in this matter; I shall respond to you ('tibi') directly about my feelings of hostility. For what greater enmity do you think can exist between men than those arising from different principles and conflicting ambitions and desires?[70]

The topic of personal differences consequently draws Cicero's attention back to Verres, to whom he directs his next question:

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[66] *Verr.* I.18-19, I.25-26, I.33 (in direct address), I. 37, I. 38.

[67] It is perhaps for the same reason that we only rarely hear about Hortensius' *subscriptores*: Sisenna (*Verr.* II.2.110, II.4.43) and Q. Caecilius Metellus Pius Scipio Nasica (*Verr.* II.4.79).

[68] *Div. Caec.* 25: 'To this man I give warning in advance, if it is your will that I deliver this case, he must change his entire method of defending; and he must change it radically, so that he adopts a far better and more honorable position than he desires' ('Huic ego homini iam ante denuntio, si a me causam hanc vos agi volueritis, rationem illi defendendi totam esse mutandum, et ita mutandum ut, meliore et honestiore conditione quam qua ipse esse vult uti').

[69] Paraphrase of *Verr.* II.3.6: 'Et in hoc homine saepe a me quaeris, Hortensi, quibus inimicitiis aut qua iniuria adductus ad accusandum descenderim?'

[70] Paraphrase of *Verr.* II.3.6: 'Mitto iam rationem offici mei necessitudinisque Siculorum; de ipsis tibi inimicitiis respondeo. An tu maiores ullas inimicitias putas esse quam contrarias hominum sententias ac dissimilitudines studiorum ac voluntatum?' This is followed by further examples of the contrasting principles and behaviour of Cicero and Verres.

> How can a man who believes in equal justice for all not be your bitter enemy,
> Verres ('tibi'), when he remembers your ('tuorum') 'ad hoc' and 'ad lib.'
> decrees?[71] *etc*.

Finally, he returns his attention back to Hortensius and attacks his scruples in protecting
men like Verres:

> Yet if Verres had acted against me in some matter and had wronged me in my
> private affairs, you would grant that my hostility against him ('ei') was justified.
> But when everything he has done has targeted the possessions, principles, way of
> life, interests, and feelings of all good men, you still ask why I am hostile to a man
> ('ei') who is hated by the people of Rome?[72] … What else can I say? It may seem
> a fickle point but it is enough to stir a few men's minds against you: namely, the
> fact that your ('tuam') friendship and the friendship of all the important men of
> noble birth are more accessible to Verres, barefaced and brazen as he is, than to
> any of us ('nostrum') honest and honorable men?[73]

The changes in address to Hortensius and Verres – indicated by the shifting personal,
possessive and deictic pronouns – give the appearance of a lively dialogue between the
main participants in the trial, while the inclusion of the audience on Cicero's side is
suggested by the use of 'nostrum' to describe all the honest and principled men. This
strategy of presentation serves to distance Verres and Hortensius from the jury, as well as
the larger body of the people of Rome, as it creates the impression that Cicero is voicing
their opinions as much as his own. The cinematic effect, as Cicero switches his focus
between the two men, has the added advantage of enabling the reader to feel a part of the
drama. Dealing with an opposing advocate of Hortensius' stature was no easy task. In the
Actio Prima when Cicero wishes to downplay Hortensius' appearance for the defence, he
pits the struggle in one of two ways: either he presents himself as a relatively junior
senator facing a senior one (*e.g. Verr.* I.37), or he couches the duel as a struggle for
oratorical supremacy (*e.g. Verr.* I.35). Yet his actual performance here, in the *Actio
Secunda*, is much more closely aligned with his anticipation of the fight in the *Divinatio*
(n.68, above): as Cicero imagined how Caecilius would be dazzled by Hortensius, he
affirmed that, by contrast, he intended to question the very honesty and integrity of

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[71] Paraphrase of *Verr.* II.3.6: 'Qui iure aequo omnis putat esse oportere, is tibi non infestissimus sit,
cum cogitet varietatem libidinemque decretorum tuorum?' This is followed by further examples of
the contrasting principles and behaviour of Cicero and Verres.

[72] Paraphrase of *Verr.* II.3.7: 'An si qua in re contra rem meam decrevisset aliquid iniuria, iure ei me
inimicum esse arbitrarere: cum omnia contra omnium bonorum rem causam, rationem utilitatem
voluntatemque fecerit, quaeris cur ei sim inimicus cui populus Romanus infestus est?'

[73] Paraphrase of *Verr.* II.3.7: 'Quid? illa quae leviora videntur esse non cuiusvis animum possent
movere, quod ad tuam ipsius amicitiam ceterorumque hominum magnorum atque nobilium
faciliorem aditum istius habet nequitia et audacia quam cuiusquam nostrum virtus et integritas?'
This is followed by further rhetorical questions and exclamatory phrases denouncing Hortensius'
friendship with Verres.

Hortensius' conduct. In the event, this challenge was all dramatically staged as a confrontation between the three main characters.

So far then we have seen how Cicero could represent the dynamics of a live performance in the written text, and also how he could successfully and spontaneously exploit the moment to corroborate his arguments. As Cicero had suggested in the *Divinatio,* the performance of a speech contributes to the projection of the speaker's own *ēthos* as well as the presentation of his opponents' characters. In these important respects, then, Cicero's performance in the *In Verrem* mirrors both the precepts and strategies he had earlier outlined. But it remains to ask what difficulties the prosecutor in particular faced in delivering his case. In the *Divinatio* Cicero had highlighted a number of qualities that the orator ought to possess: diligence, a good memory, and the strength of voice and body. And in the course of the *In Verrem*, Cicero's meta-rhetorical comments continue as he reflects on his performance in these areas.[74] Yet as he questioned Caecilius' ability in the *Divinatio,* Cicero alluded to a further challenge faced specifically by the prosecutor: 'Do you think you can accomplish what is especially necessary in a case of this sort: make all his acts of lust, impiety and cruelty appear as bitter and as unjust to those who will be listening as they felt to those who actually witnessed them?'[75] In short, the prosecutor needed to excite anger and pity for the victims of his opponent's injustices and a key resource in this task was the presentation of evidence.

III. Further Aspects of Performance: The Presentation of Evidence

Cicero had a staggering number of witnesses, whom we know of by name, to present during the course of the trial.[76] As for deputations, we know that whole groups of men stood up at the same time to condemn Verres.[77] The testimonies of all these men required a great deal of stage management on Cicero's part: the delivery of their evidence and the effect on the original audience must accordingly be included in any analysis of the performance of the speech as a whole. That Cicero envisaged the handling of the

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[74] Thus, for example, Cicero often stresses his diligence in conducting the evidence (*e.g. Verr.* I.6; *cf.* Cic. *Scaur.* 25-26) and arranging it systematically: *dispositio* (*Verr.* II.4.87). He refers to the challenge of *memoria* at *Verr.* II.4.57; as he reaches the climax of the *Actio Secunda,* the narrative of Publius Gavius' execution, he questions whether he has the strength of voice and eloquence (*elocutio*) to sustain his performance (*Verr.* II.5.158).

[75] *Div. Caec.* 38: 'Putasne posse, id quod in eius modi reo maxime necesarium est, facere ut, quae ille libidinose, quae nefarie, quae crudeliter fecerit, ea aeque acerba et indigna videantur esse his qui audient atque illis visa sunt qui senserunt?'

[76] According to my last count, 57 named witnesses testified in the *Actio Prima* while Cicero reserved a further 13 for the *Actio Secunda*; see Tempest, 'Prosecution techniques' (n.21, above) 242-47.

[77] *E.g. Verr.* II.2.120 (*legati* from Catina, Centuripae, Halaesa and Panhormus); *Verr.* II.2.175 (*decumani*); *Verr.* II.3.73, 120 (*legati* from Agyrium); *Verr.* II.3.103 (people from Agrigentum); *Verr.* II.3.105-06, 4.114 (*legati* from Aetna); *Verr.* II.4.70 (*homines e conventu* of Syracuse); *Verr.* II.4.104 (*legati* from Melita); *Verr.* II.5.10 (*homines e conventu* of Syracuse); *Verr.* II.5.158 (people from Regium and Vibo/Valentia).

witnesses as part of the orator's overall performance may be inferred from his own reflective comments on how he succeeded in the *Actio Prima* (II.1.29):

> Etenim sic me ipsum egisse memoria tenetis ut in testibus interrogandis omnia crimina proponerem et explicarem, ut, cum rem totam in medio posuissem, tum denique testem interrogarem.

> You will remember how I myself delivered ('egisse') my accusation in such a way that I explained and exposed the whole charge during the examination of the witnesses, and how I first made the point at issue clear and only then examined my witness.

On a procedural level, Cicero here recalls how he cut short the *Actio Prima* and proceeded directly to the examination of the witnesses – a strategy which he elsewhere claims was not unprecedented.[78] But he also picks up on the advice he had given in the *Divinatio*[79] to explain that the charges were not just established and exposed, they were incorporated within and integral to the orator's overall performance: the force of the 'cum … tum' clause makes this last point especially clear, as does the emphasis on the prosecutor's personal involvement ('me ipsum').

One only needs to read Cicero's later speeches and rhetorical works to realize that the presentation of witnesses notoriously involved a careful degree of 'stage management',[80] and that a number of standard tricks had emerged. Cicero could mock such clichés of performance when it suited his purpose to do so; hence his contrived amazement at the thought that Hortensius might allude to Verres' scars (*Verr.* II.5.32).[81] Yet we also know that he did not shy away from such manipulative performances himself. In a revealing autobiographical remark, Cicero observes that he normally delivered the closing oration whenever several speakers spoke for the defence (*Brut.* 190; *cf. Orat.* 130), precisely because he excelled at emotional appeals.[82] And he reflects on the success of one such

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[78] *Verr.* I.55; commenting on this passage, pseudo-Asconius provides the details of a precedent: L. Lucullus and M. Lucullus in their prosecution of L. Cotta (Stangl, 222).

[79] Compare Cicero's dictum 'dicenda, demonstranda, explicanda sunt omnia' at *Div.* 39 with the reflection here that he had set forth ('proponerem') and exposed ('explicarem') the charges against Verres before introducing the witnesses.

[80] Thus Cicero accused the prosecutors of Fonteius of preparing their witnesses at home (Cic. *Font.* 22); Quintilian also preserves a variety of anecdotes about the kind of tricks used (*Inst.* 6.1.30) and suggests a number of defences that could be used against them (*Inst.* 6.1.46-48). For fuller discussion of 'stage management', see Hall 'Oratorical delivery' (n.35, above) 229-32.

[81] This was a strategy that Marcus Antonius had used to great effect in the trial of Manlius Aquilius by dramatically revealing his client's scarred chest, as Cicero tells us at *Verr.* II.5.3. The technique was part of a broader appeal regarding the defendant's military achievements, used by Cicero elsewhere in his speeches (*e.g. Rab. Post.* 36); *cf.* Quintilian's claim that the 'defendant gains credit from his bravery, scars received in battle, and the ancestry and deeds of his elders' (Quint. *Inst.* 6.1.21: 'Periclitantem vero commendat dignitas et studia fortia et susceptae cicatrices et nobilitas et merita maiorum').

[82] For a survey of Cicero's tactics in the perorations, see the discussion by M. Winterbottom, 'Perorations' in *Cicero the advocate* (n.11, above) 215-32.

appeal in the presentation of his evidence against Verres during the *Actio Prima*: Hortensius had allegedly denounced Cicero's production in court of the young boy Iunius, who stood beside his uncle in his *praetexta* toga as the latter gave evidence testifying to Verres' cruelty (*Verr.* II.1.151-2). The performance was intensified by the fact that the poverty-stricken Iunius was no longer wearing his *bulla*, the childhood locket that symbolized his free-birth: 'the people wept as much as I did, as did you Hortensius, and as did these men who are about to deliver their verdict.'[83]

This first stage of the trial was particularly dramatic to judge from Cicero's version of events. Verres had leapt to his feet when Marcus Annius gave evidence against him (*Verr.* II.2.73). Hortensius had complained that Artemo, the official witness of Centuripa, was behaving more like a prosecutor than a witness (*Verr.* II.2.156). The audience had laughed and the jury was amazed when Cicero cross-examined Heius of Messana (*Verr.* II.4.27); Heius was responsible for delivering Messana's official eulogy of Verres yet Cicero had nevertheless called him as a witness *against* his former governor: a not altogether risky strategy, Cicero admits, as he had done his research (*Verr.* II.4.16). Finally, a particularly heated moment seems to have occurred while the audience was listening to the evidence of Gaius Numitorius, who testified against Verres on the charge of having crucified Gavius of Consa: the audience was so enraged that the presiding praetor, M. Glabrio, had to adjourn the trial while the witness was still speaking.[84] Cicero insists that he had refrained from speaking with his usual vehemence for precisely the same reason: for fear of generating further hostility.[85]

Anecdotes in the *Actio Secunda* thus provide a valuable insight into how Cicero may have presented the evidence against Verres in the *Actio Prima*. Even if we cannot know for sure that these events happened as Cicero describes, nevertheless the published speeches lead us towards a fuller appreciation of the techniques used in oratorical performances, and the kinds of emotions the orator could trigger in his audience. For this reason, we can include instances of emotional appeals in the *Actio Secunda* which furnish further proof of the theatricality and skill involved in an oratorical performance.

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[83] *Verr.* II.1.153: 'Neque erant hae lacrimae populares magis quam nostrae, quam tuae, Q. Hortensi, quam horum qui sententiam laturi sunt.' The reference to tears was a common and persuasive feature in emotional appeals. Other examples include: Cic. *Font.* 46 (the defendant's family); Cic. *Cluent.* 201 (the defendant's); Cic. *Planc.* 104 (the tears of the court-magistrate, the jury, and Cicero's); Cic. *Mil.* 92 (Cicero's); Quint. *Inst.* 6.1.30-2 (the audience's). For further discussion of emotional appeals and the use of tears, see Winterbottom, 'Perorations' (n.82, above) 217-27.

[84] *Verr.* II.5.163: 'repente consilium in medio testimonio dimitteret.'

[85] *Verr.* II.1.163: 'Nolui tam vehementer agere hoc prima actione, iudices, nolui.' Perhaps it was the tendency of the less-skilled prosecutor to deliver unyielding attacks against his opponent and that Cicero's own guidance to steer clear of them should be inferred from his own practice in the *Verrines*. Compare, for example, Cicero's remark at *Verr.* II.5.19: 'I shall not deal with him so bitterly, nor shall I adopt that habit among prosecutors and charge him with having acted negligently if he has acted with clemency, or arouse ill-will and say he has acted with cruelty if he has punished a man rather severely.' ('Non agam tam acerbe, non utar ista accusatoria consuetudine, si quid est factum clementer, ut dissolute factum criminer, si quid vindicatum est severe, ut ex eo crudelitatis invidiam colligam.')

A good example occurs at *Verr.* II.1.90-5, when Cicero denounces Verres' treatment of his own ward, the son of Malleolus. Pity and anger are simultaneously exploited as Cicero apostrophizes Verres directly, asking (II.1.93):

> Cum tibi se tota Asia spoliandum ac vexandam praebuisset, cum tibi exposita esset omnis ad praedandum Pamphylia, contentus his tam opimis rebus non fuisti? manus a tutela, manus a pupillo, manus a sodalis filio abstinere non potuisti?

> With all Asia offered you to harry and plunder, Verres, and all Pamphylia at the mercy of your piratical raids, did such riches as that not satisfy you? Could you not keep your hands from outraging your guardian's duty, your ward, your friend's son?

Cicero's use of *anaphora* ('manus...manus...manus') and the ascending *tricolon* ('tutela...pupillo...sodalis filio') mark the beginning of an elaborate emotional plea. Present at the trial were the young Malleolus, his mother and grandmother, who had presumably been coached so that Cicero could point to the women as they wept with sorrow (*Verr.* II.1.94: 'miserae flentes'). Immediately before Cicero presents their evidence to the court, the plea climaxes with a *prosopopoeia* in which Cicero imagines the elder Malleolus rising from the dead to rebuke Verres (II.1.94):

> Ipsum putato adesse. Homo avarissime et spurcissime, redde bona sodalis filio, si non quae abstulisti, at quae confessus es! Cur cogis sodalis filium hanc primam in foro vocem cum dolore et querimonia emittere? cur sodalis uxorem, sodalis socrum, domum denique totam sodalis mortui contra te testimonium dicere? cur pudentissimas lectissimasque feminas in tantum virorum conventum insolitas invitasque prodire cogis? Recita omnium testimonia.

> Imagine Malleolus is here in person. 'O most greedy and filthiest man, return the property to your friend's son, if not all of what you have stolen then at least that part to which you confess! Why do you make the first words that this boy utters in the forum be full of grief and complaint? Why do you force a friend's wife, mother-in-law, a dead friend's entire household to give evidence against you? Why do you force these chaste and excellent women to come in the midst of such a gathering of men to which they are unwilling and unaccustomed?' Recite all their evidence.

The *prosopopoeia* required great vocal powers and is itself a powerful example of Cicero's command of the forensic stage.[86] But more impressive, perhaps, are the shifting visuals as the audience's attention and emotions are directed, through the eyes of Malleolus, away from the abominable Verres, past the pitiful image of his son making his first appearance in the forum (*i.e.* what should usually be a joyous occasion), to end finally on the modesty of the women as they make an unwillingly entry into the male-dominated law courts. 'Malleolus' uses the word 'sodalis' several times in apposition to himself which has the effect of aligning the audience's perspective with that of the assumed speaker. It is tempting to imagine a pregnant pause after the final 'cogis', before Cicero brings the audience back to the realities of the trial procedure with a sharp jolt: 'Recita omnium testimonia'.

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[86] Quint. *Inst.* 9.2.29 comments on the vocal power necessary to perform such a *prosopopeia*.

Another illustrative example of the ways in which an orator could display his witnesses 'rhetorically' – *i.e.* while fully exploiting all the tricks of emotional manipulation – can be found in the case of Sthenius: a man who had earlier been renowned for his utmost virtue and nobility, but was now famous for his personal ruin and the injustices suffered at the hands of Verres (*Verr.* II.2.83). The downfall of a formerly prosperous man is one of the strategies that Cicero recommends as an effective emotional appeal in his rhetorical works (*Part. or.* 57); but it is the dramatization of his reverse in fortunes which is particularly relevant here: for Sthenius sat beside Cicero in the trial, and we later discover that he appeared 'sordidus', with unkempt hair and disheveled clothing:[87] 'Look, look, members of the jury, at the squalor and disgrace of our allies!', Cicero exclaims as he turns their attention towards the pitiful state of Verres' victims generally, and pointing out Sthenius specifically.[88]

Cicero nowhere mentions in the speech that he has produced, or will produce, Sthenius himself as a witness. There is of course a danger in arguing from silence here but, given Cicero's vociferous references to the testimony of his witnesses elsewhere, it seems unlikely that he would neglect to mention Sthenius' testimony had he indeed provided it. Roman court procedure also allowed for written statements to be deposited and read out in lieu of oral testimony and this effectively spared the witness from cross-examination.[89] Yet Sthenius does not appear to have testified against Verres at all and it may well be that he was regarded as disqualified from giving evidence.[90] If so, the pathetic image of him standing in squalid silence would offer a visual reinforcement to Cicero's narrative.

To dramatize Sthenius' reversal of fortunes effectively, however, Cicero needed to present the height from which he had fallen. Sthenius had become Verres' enemy when he successfully opposed Verres' attempt to remove the public treasures from his city of Thermae. And this aspect of the case is used with great effect by Cicero as he gives a précis, in *oratio recta*, of the speech Sthenius had delivered in the local Senate: 'better to leave Thermae altogether than for the city to endure losing the ancestral monuments, the enemy's spoils, these gifts of a distinguished man, the tokens of alliance and friendship with the people of Rome.'[91] The use of *asyndeton* – whether a feature of Sthenius' original speech or, more likely, Cicero's own – leads to a sense of heightened empassionment, which is further enhanced by 'das Gesetz der wachsenden Glieder':[92] the

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[87] *Verr.* II.2.83: 'Sthenius est, hic qui nobis adsidet, Thermitanus'; *cf. Verr.* II.5.128: 'Sthenius hic Thermitanus cum hoc capillo atque veste …' For the appeal to pity by appearing 'squalidus' *cf.* Quint. *Inst.* 6.1.30.

[88] *Verr.* II.5.128: 'Aspicite, aspicite, iudices, squalorem sordisque sociorum!'

[89] For this strategy see Cic. *Cluent.* 166-68 and *Cael.* 55.

[90] A. W. Lintott, 'The citadel of the allies', in *Sicilia nutrix plebis Romanae: rhetoric, law & taxation in Cicero's* Verrines, *BICS* Suppl. 97, ed. J. R. W. Prag (London 2007) 5-36 (14 n.38) also admits this as a possibility.

[91] *Verr.* II.2.88: 'urbem relinquere Thermitanis esse honestius quam pati tolli ex urbe monumenta maiorum, spolia hostium, beneficia clarissimi viri, indicia societatis populi Romani atque amicitiae.'

[92] See O. Behagel, 'Beziehungen zwischen Umfang und Reihenfolge von Satzgliedern', *Indogermanische Forschungen* 25 (1909) 110-41, and E. Lindholm, *Stilistische Studien zur Erweiterung der Satzglieder im Lateinischen* (Lund 1931).

progressive rhythm produced by the parallelism of clauses of increasing length in a sentence.[93] This use of language has several effects in the delivery: first, the audience is transposed into the original setting of Sthenius' speech, so that they feel the passion of his language and share in the torment as he recalls the importance of these statues. Secondly, the speech reminds the jury of Sthenius' former esteem and influence; for he deeply moved all his hearers and everyone agreed that it would be better to die than let Verres deprive them of their heritage (*Verr.* II.2.88). In short, Cicero's presentation of the case evokes Sthenius' career at both its peak and nadir to excite the audience's compassion. More cynically, however, the performance also directs our attention away from the glaring fact that Verres technically seems not to have done anything wrong – a fact that Cicero grudgingly admits in an aside: Verres was thwarted in his alleged attempt to remove the public statues from Thermae (*Verr.* II.2.88).

The story of Verres' failed 'crime', however, only sets the scene for the following chain of events in Cicero's narrative, which will be used to guide the jury's interpretation of the evidence presented. To provide some context first: following Sthenius' successful opposition to his demands, Verres instigated a prosecution against the Sicilian on the charge that he had corrupted public documents. Moreover, when Verres announced that he would judge the trial himself, Sthenius fled to Rome. The verdict was settled against Sthenius in his absence whereupon a capital charge was also filed against him. Sthenius' case was then taken up at Rome, where the consuls Cn. Lentulus and L. Gellius moved the resolution that men in the provinces should not be prosecuted on capital charges *in absentia*. A decision was not reached and no further discussion followed. Thus Verres proceeded to prosecute Sthenius in his absence for a second time, and on the 1st December 72 BC he was found guilty.[94]

Technically speaking, Hortensius could argue that Verres had still not done anything illegal as prosecutions *in absentia* were clearly not prohibited at the time of Sthenius' conviction; indeed this seems to have been his first line of defence (*Verr.* II.2.101). Yet the matter appears to have been emotionally charged: the tribune M. Palicanus had reopened the case of Sthenius at Rome, when the tribunes had issued an edict banishing from Rome anyone who had been convicted on a capital charge. Cicero himself had successfully pleaded Sthenius' case and the tribunes consequently exempted him. Verres may have made a dangerous decision at this point: to falsify the records and pretend that Sthenius had been present at the second trial. And it is this act of self-contradiction that Cicero exploits in his presentation of the evidence. Four witnesses testified in the *Actio Prima* that Verres had publically and officially stated that prosecutions *in absentia* were legal (*Verr.* II.2.102-03). And as he recalls their testimony, Cicero simultaneously presents the jury with Verres' forged record of the trial: 'Please present the codex; take it round and show it to the court. Do you see how his [Sthenius'] whole name, which says he was present when prosecuted, is written over an erasure? What was written there before? What lie does that erasure conceal? Are you waiting for us to argue this charge,

[93] Cicero himself recognised this as a technique at *De or.* 3.186.

[94] For the full details, see Cicero's long account at *Verr.* II.2.89-100.

members of the jury? We are saying nothing. The documents are among you, and they cry out that they have been corrupted and forged.'[95]

The use of exhibits and the instructions to the court attendant are both performative features that we see preserved elsewhere in the published text of the *Verrines*.[96] But the inclusion of the 'iudices' also brings into play the role of the jury in Cicero's performance. The case of Sthenius illustrates one way in which the jury could be transformed from a passive into an active entity: here their inspection of the evidence and consensus that they have been forged obfuscate the fact that Verres had not actually done anything illegal.

Alternatively, Cicero could make his audience participate in the performance by putting them under the metaphorical spotlight. At *Verr.* II.1.56-57, for instance, Cicero draws a positive exemplum from the juror, Publius Servilius, who had successfully commanded Roman forces against Olympus seven years earlier. In this passage, Cicero establishes a series of contrasts between Verres and Servilius: Servilius was an effective commander, whereas Cicero will argue against Verres' claim to military success in *Verr.* II.5; Servilius had placed the spoils of his success in the *public* areas of Rome, unlike Verres who had used the statues to furnish private estates – either his own or those of his friends; Servilius had also kept precise records of the number of statues he brought back, even including their size, shape and posture. These accounts, which had been deposited in the *Aerarium*, were subsequently presented to the court as evidence of good account-keeping (*Verr.* II.1.57).[97] The identification and inclusion of Servilius in this way is a tactic by which Cicero manages to make his arguments seem more personal and thus effective. At the same time, it forms a part of his wider rhetorical strategy to remind the senatorial class that their conduct, too, is on show.

A more poignant effect, however, is created when Cicero comments on the jury's reaction to the events he narrates. We have already seen how Cicero refers back to the *Actio Prima* to reflect on the emotions he aroused at that stage of the trial. Next, however, we may consider a passage in which Cicero meta-rhetorically evokes the atmosphere of the court as he narrates the famous pirate episode in the *Actio Secunda* (II.5.123):

[95] *Verr.* II.2.104: 'Cedo, quaeso, codicem, circumfer, ostende. Videtisne totum hoc nomen, coram ubi facit delatum, esse in litura? Quid fuit istic antea scriptum? Quod mendum ista litura correxit? Quid a nobis, iudices, exspectatis argumenta huius criminis? Nihil dicimus; tabulae sunt in medio, quae se corruptas atque interlitas esse clamant.'

[96] For other props *cf. e.g. Verr.* II.2.113, where Cicero refers to a bronze inscription recording Sthenius' benefactions, formerly set up in the Senate house at Thermae, which he will use to demonstrate his reputation and achievements. At several points in the speech, Cicero asks the court attendant to read aloud documentary evidence (*e.g. Verr.* II.1.36-37, 79, 83-84, 96, 128; II.2.183; II.3.26-27, 45, 74, 83, 85, 89, 100, 102, 106, 120, 123-28, 154-57; II.4.12, 143-44; II.5.50, 54, 61). A telling example is at *Verr.* II.3.106, where Cicero instructs the clerk to read the evidence again louder so that the larger gathering may hear ('Dic, dic, quaeso, clarius, ut populus Romanus … audiat').

[97] A similar strategy of isolation can be found at *Verr.* II.3.210-11, where Cicero points out that neither Publius Servilius Isauricus nor Quintus Lutatius Catulus had profited financially from their respective corn allowances. Compare, too, Cicero's treatment of C. Claudius Marcellus: at *Verr.* II.3.212 he is praised for his services as a former governor of Sicily, while the memory of his famous ancestor is invoked at *Verr.* II.4.89-90.

> Per deos immortalis! quo tandem animo sedetis, iudices, aut haec quem ad modum auditis? Vtrum ego desipio et plus quam satis est doleo tanta calamitate miseriaque sociorum, an vos quoque hic acerbissimus innocentium cruciatus et maeror pari sensu doloris adficit? Ego enim cum Herbitensem, cum Heracliensem securi percussum esse dico, versatur mihi ante oculos indignitas calamitatis.

> Immortal gods! How do you feel, members of the jury, or how do you react as you sit and listen to this story? Am I out of my mind and being overly upset by the calamity and misery our allies are suffering? Or does the excruciating and bitter grief of innocent men upset you as much as it does me? For my part, when I tell you that a man from Herbita or a man from Heraclea has been executed, the shameful injustice of their fate flashes before my eyes.

By apostrophizing his jury and asking them to correct him if he is wrong, Cicero simulates a common experience of grief which in turn contributes to the performance dynamic. It is significant that Cicero claims to have been personally moved by his own performance; in his later rhetorical works, Cicero suggests the need for the orator himself to feel the emotions he wishes to excite (*cf. e.g. Brut.* 198; *De or.* 2.189-96). But we notice here that Cicero was even more carried away by his own speech than his audience was. In the *De Oratore*, 'Antonius' provides a number of reasons for this phenomenon: the orator's concern with his reputation is one, but his loyalty ('fides'), duty ('officium') and diligence ('diligentia') all feed into his performance (*De or.* 2.192). In the *In Verrem*, however, Cicero may even give away a rare trick of the trade: that the fate of Verres' victims flashed before his eyes ('mihi ante oculos') recalls the rhetorical device of *enargeia*, or vivid description. And it is clear from the context that it was Cicero's own ability to bring a story to life that had prompted him to feel the emotions he desired to impart to his audience.[98]

Space does not permit a full examination of Cicero's presentation of the evidence in the *In Verrem*. But there is enough here from which we may draw a few general observations. Perhaps the clearest point arising from this discussion is that Cicero's presentation of the evidence was an integral aspect of his own performance, and that this performance needed to be convincing. This statement might seem an obvious one to make, yet one train of scholarly thought suggests that truth did not matter in the Roman courts; rather it was the winning that counted.[99] Conversely, Riggsby has argued that the Roman jury *did* believe in their verdicts, with the implication that the jury needed to be convinced by the evidence they saw or heard.[100] To be sure, the volume and gravity of the evidence against Verres suggests that, for the prosecution at least, the task of proving a

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[98] On the role of *enargeia* in the *Verrines* more generally, see B. Innocenti, 'Towards a theory of vivid description as practised in Cicero's *Verrine* orations', *Rhetorica* 12.4 (1994) 355-81.

[99] Thus, *e.g.* J. E. G. Zetzel, 'Review of Craig: Form as argument in Cicero's speeches', *Bryn Mawr Classical Review* 94-01-05 (1994): 'Truth is not an issue in a Ciceronian forensic oration: winning is'. And he questions whether 'the truth of the case made any difference to the judge or the jury or either'.

[100] A. M. Riggsby, "Did the Romans believe in their verdicts?", *Rhetorica* 15.3 (1997) 235-51.

man's guilt rested heavily upon the evidence presented to the jurors.[101] In the *Actio Prima*, when Cicero justifies his strategy of omitting a long opening speech, it serves his purpose to suggest that the evidence was all that mattered in a court of law (*Verr.* I.27). Yet this is a far cry from proving that the evidence was in itself the most damning aspect of the trial, and there was always the risk that a witness may not be believed. As we have seen from Cicero's own practice, it was rather the *presentation* of the evidence that was integral to the success of the speech.

For guidance in such matters, it is tempting to resort to the rhetorical literature; however, this is centered predominantly on the arguments that can be made for and against the so-called 'non-artificial proofs', among which witnesses and documents are included. Thus the topic is kept quite separate from discussions of *actio* and the emotions.[102] Conversely, we have seen that witnesses spoke in the Roman courts, they could be cross-examined, and they interacted with the advocates in a manner that called for a careful degree of stage management. Only Quintilian hints at the possible relationship between such emotional appeals and *actio* when he comments: 'there are other features that might seem relevant to this part and function [i.e. *actio*]: calling forward the defendant, lifting up his children, introducing his relatives, tearing his clothes, but these have already been discussed in their proper place'.[103] At the same time, however, his emphasis on these actions having a 'proper place' within the rhetorical tradition maintains the distinction: they belong to a discussion of emotions; that is to say, to the 'artistic' proofs.[104]

In Ciceronian practice the lines between 'artistic' and 'non-artistic' proofs are not so clear-cut; in fact, they are alike in the sense that they are material the orator needs to draw on persuasively. But it is precisely here that we return to the problem with which this chapter opened: the rhetorical literature offered very few guidelines on this aspect of staging a prosecution. Thus, in publishing the *Verrines*, Cicero offered a corrective to this gap in pedagogical material: he *showed* his audience exactly how to do it.

Conclusion

As Cicero draws the *In Verrem* towards its conclusion, he ends on a note of caution and reminds the jury that the eyes of the Roman people are upon them (II.5.176):

> Omnium nunc oculi coniecti sunt hoc ipso tempore in unum quemque nostrum, qua fide ego accusem, qua religione hi iudicent, qua tu ratione defendas. De omnibus nobis, si qui tantulum de recta regione deflexerit, non illa tacita existimatio quam antea contemnere solebatis, sed vehemens ac liberum populi Romani iudicium consequetur.

[101] See Butler, *Hand of Cicero* (n.26, above) on written evidence, and Tempest, 'Prosecution techniques' (n.21, above) chapter 8, on the role of witnesses.

[102] *Rh. Al.* 1442b33-1443a5, Arist. *Rh.* 1375a21-1377b12, *Rhet. Her.* 2.9-11, Cic. *Part. or.* 48-49, 117, 133; *Top.* 73; *De or.* 2.173. Quint. *Inst.* 5.3.1-5.7.37.

[103] Quint. *Inst.* 11.3.174: 'possunt videri alia quoque huius partis atque officii: reos excitare, pueros attollere, propinquos producere, vestes laniare, sed suo loco dicta sunt'

[104] On this point, see Hall, 'Oratorical delivery' (n.35, above) 232.

> The eyes of all men are now turned, at this very time, upon each and every one of us, to see how honestly I prosecute, how reverently these men adjudicate, and by what method you will present your defence. As far as each and every one of us is concerned, if there is just one who may stray from the right path, the result will not be that silent disapproval which you have become used to spurning, but a vehement and unrestrained condemnation by the Roman people.

The *topos* of course is a common one; to the modern reader it may even seem hackneyed. But if we remember the performative context for which they were written, these words take on a more dramatic function. An uneasy tension mounts as the spectator's line of vision is directed sharply towards the key participants in the trial: at Cicero, the jury, and finally the defence team. The watchful eye of the Roman people is adroitly exploited as Cicero isolates each of the main parties and puts them under the spotlight of forensic attention. We have heard the people's reactions before, at various stages of the trial: their groans, laughter, surprise, or anger. Now it is their verdict of the senatorial jury that is feared above all. Whether or not the crowd's reactions had much influence over the jury's decision in reality is a matter of debate;[105] yet we must trust that Cicero had created, or envisaged having created, a sufficiently hostile environment in order for his warning in these lines to work, so that the jury at least *felt* that the eyes of the Roman people were upon them. The pitch and intonation of Cicero's voice, the movement of his eyes, body, and his gestures would have all contributed to the way in which he delivered this threat. And by the end of the speech we must imagine that Cicero's performance had worked.

This is precisely how Cicero's ancient reader would have approached the text of a forensic speech, aware that a published text would be unlikely to produce a verbatim account of the words delivered in court, or even aware, as Pliny certainly was, of a theory suggesting the published text was never even spoken.[106] The authenticity of the published text was not a problem to the ancient reader, who may have picked up the speech for any number of reasons. Many were budding orators, hoping to pick up practical hints and tips through study and imitation, and the *Verrines* rapidly became popular as a model of prosecution oratory: an extract of the *In Verrem* (*Verr.* II.2.3-4) is among the earliest Latin papyri to be found in Egypt.[107] Furthermore, writing in the first century AD, Quintilian

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[105] The positive case is stated, with reference to the *Verrines*, by F. Millar, *The crowd in Rome in the late Republic* (Ann Arbor 1998) 14: '(paradoxically) these undelivered speeches evoking the year 70 suggest, more than any other evidence we have, the force of popular opinion as mobilized in the forum and the way in which the *quaestiones* functioned both as representatives of the *populus* and, quite literally, under its gaze.' Millar's central thesis, that the crowd played an integral role in the political processes of the Roman Republic, has been challenged by H. Mouritsen, *Plebs and politics in the late Roman Republic* (Cambridge 2001).

[106] Thus Pliny claims that extemporaneous figures can be found even 'in those speeches which we know were only ever published' (Plin. *Ep.* 1.20.10: 'in iis etiam quas tantum editas scimus'); he is here referring specifically to extemporaneous elements in *Verr.* II.4.

[107] *P. Ianda, V* 90; dated to 20 BC by R. Cavenaile, *Corpus Papyrus Latinarum* (Wiesbaden 1958) 70-71.

comments, as if from experience, on the kinds of mistakes students might make in trying to impersonate the delivery of the speeches.[108]

Yet despite the attested interest in the *Verrines*, the collection has not been systematically investigated by modern scholars under the guiding principle of 'oratorical performance'. To neglect the *Verrines*, however, is to leave aside the further evidence they offer. This evidence appears first in the *Divinatio*, where Cicero initiates a discourse on delivery via his larger articulation of the criteria necessary in a good prosecutor (as discussed in Section I). And, secondly, as I hope to have shown, Cicero's reflections on the art of prosecution oratory in the *Divinatio* combine with the *In Verrem* to produce what is essentially a meta-rhetorical collection of texts: the precepts Cicero has provided in discourse are self-consciously put into practice in the main trial (the subject of sections II and III). The student reading Cicero's *Verrines*, his 'accusationis septem libris', consequently received a two-fold advantage: oratorical performance in the *Verrines* occurs both in discourse and in action.

Cicero thus identifies a number of factors that were considered important for an oratorical performance, such as the correct use of voice, appropriate gestures, emotional appeals, and the presentation of the orator's own *ēthos*. Even if Cicero's comments seem neither new nor surprising to the seasoned reader of his speeches and rhetorical works, it is significant that his prescriptions anticipate the topics covered in his later rhetorical writings. This means that the *Divinatio* contains Cicero's earliest exposition of his views on performance; furthermore, they can be used to supplement his treatment of this topic more generally. For performative aspects work best when we put them back into their original context and imagine how the text might have been delivered. In so doing it is possible not only to picture the live performance, we can even understand how the performative situation was itself part of the orator's orchestration: the comments on his opponent's reactions, his handling of the witnesses and documentary evidence, and his inclusion of the jury were all integral to the orator's overall performance.[109]

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SYNĒGOROI AS 'HEALERS' IN THE SOCIAL IMAGINATION OF THE IMPERIAL AGE

DIMITRIS KARAMBELAS

1. Synēgoroi *and symbolisms of healing in the* Oneirocritic *tradition.*

In the mid second century AD, most probably in Ephesus, or in some other prominent urban centre of the Roman province of Asia, Artemidorus of Daldis explained, in the second book of his *Oneirocritica*, the meaning of dreaming of 'courts of law' (*dikastēria*), 'judges' (*dikastai*), 'lawyers' (*dikologoi*) and 'teachers of law' (*nomodidaktai*), and how an experienced dream interpreter should handle these dream symbols, taking into account the situation of his client – both his physical condition and social status (*Oneirocritica* ii 29 Pack):

> Δικαστήρια καὶ δικασταὶ καὶ δικολόγοι καὶ νομοδιδάκται πᾶσι ταραχὰς καὶ δυσθυμίας καὶ δαπάνας ἀκαίρους προμαντεύονται καὶ τὰ κρυπτὰ ἐλέγχουσι, τοῖς δὲ νοσοῦσι κρισίμους ἡμέρας προαγορεύουσιν, ἐν αἷς, ἐὰν μὲν κατ' ὄναρ νικῶσιν, ἐπὶ τὸ βέλτιον μεταβαλοῦσιν, ἐὰν δὲ λειφθῶσι κατ' ὄναρ, τεθνήξονται. εἰ δέ τις δίκην ἔχων ὑπολάβοι ἐν τῇ τοῦ δικαστοῦ χώρᾳ καθέζεσθαι· οὐ λειφθήσεται· οὐ γὰρ ὁ δικαστὴς ἑαυτοῦ καταδικάζει, ἀλλ' ἄλλων. Πᾶσι δὲ τοῖς δίκην ἔχουσιν ἰατροὶ ὁρώμενοι τὸν ἴσον τοῖς συνηγόροις ἐπέχουσι λόγον.

> Courts of law, judges, lawyers, and teachers of law prophesy disturbances, sorrows, untimely expenses, and the revelation of secrets for all men. They indicate days of crisis for the sick. If the sick are victorious in the dream, their health will change for the better. But if they lose in the dream, it means that they will die. But if anyone who is actually engaged in a trial dreams that he is sitting in the judge's seat, it signifies that he will not lose. For a judge passes sentence not upon himself but upon other men. Furthermore, for those who are involved in a lawsuit, doctors have the same meaning as *synēgoroi*.[1]

[1] All translations of Artemidorus passages are adapted from R. J. White, *The interpretation of dreams. Oneirocritica by Artemidoros* (New Jersey 1975). *Cf.* the French translation and commentary of A.-J. Festugière, *La clef des songes. Onirocriticon d'Artémidore, traduit et annoté* (Paris 1975). White translates both δικολόγοι and συνήγοροι as 'lawyers' (109), while Festugière

The visit, in one's dream, of these eternal protagonists of a court drama was, as in all eras, inauspicious: it predicted 'disturbances, sorrows, untimely expenses', disclosed 'the secrets', while especially in the case of the sick, it prophesied 'days of crisis' regarding the outcome of their disease – their life or death. However, a light of hope shines over this bleak scenery of trouble and anxiety: in the conclusion of his account, Artemidorus indicates that there may be a doctor who has the power to resolve this depressive judicial struggle and prevent the disastrous outcome of a litigant's 'crisis'. This healing role is attributed to *synēgoroi*.[2] In the fourth book of *Oneirocritica*, the same symbolism is expanded and further enhanced with actual dream material. In the light of the double – legal and medical – meaning of *krisis*,[3] if the dreamer is involved in a trial, doctors could be interpreted as *synēgoroi*, benefactors and assistants who have the power to save, liberate, betray, or even convict their clients (*Oneirocritica* iv 45):

Περὶ ἰατρῶν ὅτι πᾶσι τοῖς εὐεργέταις καὶ τοῖς ἀμύνουσι τὸν αὐτὸν ἔχουσι λόγον, εἴπομεν καὶ ἐν τῷ δευτέρῳ βιβλίῳ καὶ νῦν δὲ πιστώσομαί σοι τὸ δόγμα καὶ δι᾽ ἀποβάσεως ὀνείρου. δίκην τις ἔχων ἔδοξε νοσεῖν καὶ ἰατροὺς οὐκ ἔχειν. συνέβη αὐτῷ καταλειφθῆναι ὑπὸ τῶν συνηγόρων· ἡ μὲν γὰρ νόσος τὴν δίκην ἐδήλου· κρίνεσθαι γὰρ ἀμφοτέρους φαμὲν καὶ τοὺς δικαζομένους καὶ τοὺς νοσοῦντας. οἱ δὲ ἰατροὶ τοὺς συνηγόρους ἐδήλουν.

Concerning doctors, that they mean the same as benefactors and all those who help us has been already been shown in the second book. I will now confirm this assertion by showing you the fulfilment of a dream. A man who was engaged in a lawsuit dreamt that he was sick and had no doctors. In real life he was left in the lurch by his lawyers. For the disease indicated the lawsuit, since the term crisis is used both in regard to those who are involved in a lawsuit and those who are sick. The doctors signified the man's *synēgoroi*.

The high degree of *cathexis* transferred to *synēgoria* in the mental life of Artemidorus' dreamers is revealed in the direct way in which the appearance of Asclepius in a litigant's dream symbolizes his *synēgoroi* (*Oneirocritica* ii 37):[4]

(137) translates δικολόγοι as 'jurisconsultes' and 'συνήγοροι' as 'avocats'. In the light of my analysis, I will argue that both translations are inaccurate. A basic bibliography on Artemidorus includes: C. Blum, *Studies in the dream-book of Artemidorus* (Uppsala 1936); R. A Pack, 'Artemidorus and his waking world', *TAPA* 86 (1955) 280-90; S. R. F. Price, 'The future of dreams: from Freud to Artemidorus', *Past and Present* 113 (1986) 3-37; G. Weber, *Kaiser, Traume und Visionen in Prinzipat und Spätantike* (Stuttgart 1999); G. W. Bowersock, *Fiction as history: Nero to Julian* (Berkeley 1994), 79-87; 'Artemidorus and the Second Sophistic', in *Paideia: the world of the Second Sophistic*, ed. B. Borg (Berlin 2004) 53-63; W. V. Harris, *Dreams and experience in classical antiquity* (Cambridge MA 2009) 113-15.

[2] ii 29: πᾶσι δὲ τοῖς δίκην ἔχουσιν ἰατροὶ ὁρώμενοι τὸν ἴσον τοῖς συνηγόροις ἐπέχουσι λόγον.

[3] *Cf.* Festugière, *La clef des songes* (n.1, above) 241 n.54.

[4] In *Oneirocritica* ii 37, Hercules' dream appearance is auspicious for those who are involved in trial, but it is not connected to *synēgoroi*. The appearance of Asclepius in a dream was a possible 'epiphany' with a well-known authoritative force in Greek antiquity, from the incubations of late fourth-century Epidauros to the *Asklepieion* of Pergamon of Artemidorus' era. 'Epiphany-dreams':

ἀεὶ δὲ ὁ Ἀσκληπιὸς τοὺς ἐν ταῖς χρείαις συλλαμβανομένους καὶ τοὺς οἰκονομοῦντας τὸν οἶκον τοῦ ἰδόντος δηλοῖ. ἐν δὲ ταῖς δίκαις συνηγόρους σημαίνει.

Asclepius always indicates those who help in time of need and those who manage the house of the dreamer. In regard to trials, finally, he signifies *synēgoroi*.

In which context should this intriguing symbolism be read? The common-sense assumption that everyone involved in legal proceedings tends to project onto his lawyer his hope of recovering from the 'malaise' of the trial – and, consequently, attributes to him special, supernatural powers, as if he is the only agent capable of saving or condemning the litigant – fails to explain why, following Artemidorus' own distinctions, the same symbolism does not equally include the *dikologoi* or the *nomodidaktai*. These, on the contrary, foretell – along with the 'courts' and the 'judges' – the persecuting atmosphere of judicial judgment. Artemidorus seems to restrict, in more than one instance, the overwhelming power of a 'doctor', 'benefactor', or even a divine healer, only to *synēgoroi*. In this case, did the different terminology of *dikologos* or *synēgoros* really make a difference for the dream-interpreter? Artemidorus' interpretations may serve as an ideal starting-point for a brief survey of forensic professionals and their place in the legal world of the Greek cities of the Aegean coastline in the age of Antonines.[5] In the course of my research, I will return to some celebrated, and yet inexhaustible, texts of the educated elites of the first and second centuries AD – such as Plutarch's *Political advice*, Dio of Prusa's speeches and Flavius Philostratus' *Lives of the sophists* – and I will try to highlight some connections in the way *synēgoroi* were represented in the social imagination of the imperial age.

A preliminary evaluation of the problem lies both on our precise definition of the notion of *synēgoros* and on the character of the operation of local Greek courts in Roman Asia Minor. Despite the decline of their popular democratic character since the late

E. R. Dodds, *The Greeks and the irrational* (Berkeley 1951) 102-34; W. V. Harris, *Dreams and experience* (n.1, above) 23-90. Collected sources: E. J. Edelstein and L. Edelstein, *Asclepius: a collection and interpretation of the testimonies*, 2 vols. (vol. 1: Testimonies, vol. 2: Interpretation) (Baltimore 1945, repr. 1998); L. R. LiDonnici, *The Epidaurian miracle inscriptions* (Atlanta 1995). For dream appearances of Asclepius in the second century AD, in the famous example of Aelius Aristides' *Hieroi Logoi*, see the recent work of A. Petsalis-Diomidis, *Truly beyond wonders. Aelius Aristides and the cult of Asclepios* (Oxford 2010), 122-50 (132 ff.).

[5] Although Artemidorus collected dreams 'in the different cities of Greece and at great religious gatherings in that country, in Asia, in Italy and in the largest and most populous of the islands' (i, *prooem.*), his writings are, to a great extent, rooted in Asia Minor. For anti-Roman sentiments in Artemidorus' dreams, see G. W. Bowersock, 'Artemidorus and the Second Sophistic' (n.1, above) 57-59. It should be noted that, despite Bowersock's argumentation, the possibility of a learned (and not semi-literate) *readership* does not contradict the social diversity of Artemidorus' *material*.

Hellenistic period and their subjection to the members of the local aristocracies,[6] exactly like in civic offices, there was – at least in the 'free' cities (*civitates liberae*) under Roman rule – a continuity well-attested in literary, epigraphical and legal sources. 'Free' cities retained a high degree of judicial autonomy, along with the much-disputed jurisdiction of the Roman governor of the province over non-Roman citizens, and the law applicable to these cases was the 'common' Hellenistic law and its local variants.[7] Legal representation before the local courts – or the court of the Roman governor – was exercised by professional *rhētores*, assisted by a number of other legal practitioners such as *pragmatikoi* and *nomikoi*.[8] Following the end of surviving logographical works – which actually coincides with the end of the Athenian democracy[9] – apart from those members

[6] Ph. Gauthier, 'Les cités hellénistiques', in *The Greek city in the Roman period. The ancient Greek city state. Symposion on the occasion of the 250th anniversary of the Royal Danish Academy of Sciences and Letters*, ed. M. H. Hansen (Copenhagen 1993) 211-31; G. E. M. de Ste. Croix, *The class struggle in the ancient world from the archaic age to the Arab conquests* (London 1981 [2nd corrected impression 1983]) 315-17; S. Mitchell, *Anatolia. Land, Men and Gods in Asia Minor. I. The Celts in Anatolia and the Impact of Roman Rule* (Oxford 1993) 200-201.

[7] L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreich* (Leipzig 1891). Mitteis built his argumentation on the basis of the tension between *Reichsrecht* (imperial law) and *Volksrecht* (the people's law, or local law). A. Lintott, *Imperium Romanum* (London 1993) 154-60, despite his criticism on the 'inevitable' generalisations of Mitteis, accepts the continuing existence of Greek courts and the trying of disputes, at least between Greek, non-Roman, citizens on the basis of local Greek laws. (Lintott, 60ff.). *Cf.* also the useful synopsis of A. A. Schiller, *Roman law, mechanisms of development* (The Hague 1978) 537-41; a recent discussion of judicial procedure in the Greek east is provided by J. Fournier, *Entre tutelle romaine et autonomie civique: l'administration judiciaire dans les provinces hellénophones de l'empire romain, 129 av. J.-C.–235 ap. J.-C.* (Athènes 2010); Kantor's *Roman law and local law in Asia Minor (133 BC-AD 212)* (Oxford forthcoming) examines the interrelation of the Roman law and the legal institutions of Roman Asia Minor, dealing both with the question of jurisdiction and with the law of persons, property and obligations. *Cf.* also: A. Z. Bryen, 'Judging empire: courts and culture in Rome's eastern provinces', *Law and History Review* 30 (2012 forthcoming), who attempts a new methodological approach, using mainly papyrological sources from Roman Egypt.

[8] *Pragmatikoi* exercised practical legal skills, assisted the advocates or the litigants, and provided juridical advice; *cf.* Quintilians' vivid metaphor (*Inst.* 12.3.4): 'Neque ego sum nostri moris ignarus oblitusve eorum, qui velut ad arculas sedent et tela agentibus subministrant, neque idem Graecos quoque nescio factitasse, unde nomen his pragmaticorum datum est' ('I am not ignorant of the generally prevailing custom, nor have I forgotten those who sit by our store-chests and provide weapons for the pleader: I know too that the Greeks did likewise: hence the name of pragmaticus which was bestowed on such persons': trans. H. E. Butler, *Loeb classical library*, 1920-1922). *Nomikoi* (from the second century AD) drafted legal documents and also advised either the judges or the litigants on the application of the law, its textual meaning, or its interpretation in questions probably similar to those known from issue-theory as the legal stasis of 'letter and intent' – (*On issues*, 40, ed. Rabe): 'letter and intent occurs when one party (usually the prosecution) advances the letter of the law while the other appeals to its intent': M. Heath, *On issues: strategies of argument in later Greek rhetoric* (Oxford 1995) 34 – or between laws of different Greek cities. *Nomikoi* in Roman Egypt: A. Z. Bryen, 'Judging empire' (n.7, above) 32-34, and 65-66 for papyrological data.

[9] M. Lavency, *Aspects de la logographie judiciaire attique* (Louvain 1964) 110-11. Although it is true that we have no surviving logography from the period after 322, there are attestations of

of the privileged classes who chose to speak for themselves in court,[10] litigants usually appeared before the judge after hiring the services of a *synēgoros* (according to the standard scholarly terminology) who – in full contrast with the legal framework of *synēgoros* as supporting speaker in classical Athens – represented the litigant in court in return for a fee.[11] This form of professional advocacy is already attested in the early third century BC, while, from the second century on, it had expanded across the Greek east.[12] However, the vocabulary of advocacy varies. In the Roman period, the term *synēgoria* appears several times in the literary sources and seems to refer to 'ordinary' advocacy in private cases;[13] nevertheless, the use of the term could also be a vague reflection of the classical Athenian legal past, which is certainly the case for the presence of *synēgoroi* in Lucian, or in the metaphorical use of the term in the Greek novels.[14] *Synēgoros* as a private 'lawyer' does not appear in the epigraphical or papyrological sources from the Roman period, where the term *rhētor* is used.[15] An overview of honorary inscriptions of

logography continuing as a practice at least into the first few decades of the third century BC (including some now lost works of Deinarchos).

[10] Plin. *Ep.* 6.22.1-7; Philostr. *VS* 555, 559, 587, 627.

[11] For the Athenian practice of *synēgoria*, the fundamental work is now: L. Rubinstein, *Litigation and co-operation: supporting speakers in the courts of classical Athens* (Stuttgart 2000). Law on the prohibition of fee: Demosthenes 46.26; L. Rubinstein, *Litigation and cooperation*, 52-53.

[12] *Cf.* the curse tablet from Olbia: *SEG* 37.681, with A. Chaniotis, 'Watching a lawsuit. a new curse tablet from southern Russia', *GRBS* 33 (1992) 67–73; however, there is no indication that these supporting speakers were actually paid.

[13] For example: Ph. *De Agr.*13: καὶ ῥητορικῆς τὸ συνηγορικὸν καὶ ἔμμισθον εἶδος; D.Chr. 46.8: ἢ περὶ τῆς οὐσίας ἐποίησα κινδυνεῦσαί τινα, ὡς Καίσαρι προσηκούσης ἢ ἐν συνηγορίᾳ προύδωκα – for 7.123, see below; Epict. 1.27.16: εἰ καὶ περὶ ἀγριδίου πραγμάτιον εἶχον, ἄλλον ἂν παρεκάλεσα τὸν συνηγορήσοντα. J. A. Crook, *Legal advocacy in the Roman world* (London 1995) 34: '*synēgoria*, on the other hand, ordinary, straightforward advocacy, became the norm'. It is significant that Crook does not collect or discuss the evidence for *synēgoroi* in the literary sources. Rather, after some preliminary remarks (35-36) and footnote comments (*cf.* 35 n.24, on the use of term *synēgoria* by Plutarch, in his *Lives*, as the standard term for the Roman law-court speech), he turns to the presence of *synēgoroi* in inter-state disputes, citing the well-known case of *Syll*³ 953 = *IK Knidos* 221, a text which attests an arbitration carried out by Knidos between Kalymnos and certain citizens of Kos; *synēgoroi* act here as city-representatives in a diplomatic mission, although it must be noted that the representatives sent out by Knidos are also referred to as *synēgoroi* 'for the children of Diagoras' (B lines 34-35). For Egypt: L. Taubenschlag, *The law of Greco-Roman Egypt in the light of the papyri. 332 B.C.-640 A.D.* (Warszawa 1955) 386-88.

[14] Luc. *Pseudol.* 26: καὶ τὸν πώγονα συνήγορον ἐπικαλεσαμένη; *cf.* also *Bis Acc.* 15. *Cf.* the metaphorical use in Charit. 2.9.1, 5.4.11, 5.5.4, 5.10.9; Heliod. *Aeth.* 10.11, 10.14. On novelistic trials, see two recent contributions: R. Fernández-Garrido, '*Stasis*-theory in judicial speeches of Greek novels', *GRBS* 49.3 (2009) 453-72; S. Schwartz, 'Chronotopes of justice in the Greek novel: trials in narrative spaces' in *Spaces of justice in the Roman world,* ed. F. de Angelis (Leiden-Boston 2010) 331-56.

[15] Crook, *Legal advocacy* (n.13, above) 151: 'For equally plain *synēgoros* by itself the inscriptional harvest, for the Roman period, is almost non-existent' (for terminology: 151-63); for a late (fifth-sixth centuries AD) use of the term *rhētor* as advocate: A. and A. Cameron, 'The cycle of Agathias' *JHS* 86 (1966) 10, 15-16.

the imperial age reveals that *synēgoros* signifies the legal representative of a Greek city, or a *koinon*, before the emperor or the governor of the province.[16] It thus equates with *syndikos*, the legal representative of the city before the Roman state (*defensor civitatis*), usually elected to plead a particular case.[17] It is also used for the *advocatus fisci*.[18] In his *Legal advocacy in the Roman world*, John Crook has demonstrated in detail, examining a series of papyri attesting legal proceedings from Roman Egypt, the preference for the term *rhētor* over the term of *synēgoros*.[19] In everyday judicial life, the urban masses, who were constantly involved in legal disputes, resorted to another professional group – namely the forensic *rhētores* who were associated with the marketplace (*agoraioi*; equivalent to the latin *forensis*).[20] These obviously lacked the high technical training of the members of the upper classes, or their stylistic and linguistic refinement. They were a kind of 'second-class' lawyer selling their services at the *agora* to those citizens who had neither

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[16] Standard terminology in the epigraphical record: *IK* 3 (Ilion) 106 (v. 10-13: καὶ πολλὰ [καὶ] μεγάλα τῆι πόλει κατο[ρθώ]σαντα καὶ παρασχόντ[α ἔν] τε τῆ λογιστ[ε]ίᾳ καὶ συ[νη]γορίαις); *IGR* III 778 (v. 11-20: συνήγορον καὶ προήγορον τῆς πατρίδος διηνεκῆ, τετειμημένον πολειτείαις καὶ ἀνδριᾶσιν καὶ προεδρίαις ὑπό τε τῶν ἐν Παμφυλίᾳ πόλεων καὶ τῶν ἐν Λυκίᾳ καὶ τῶν ἐν Ἀσίᾳ ἐπί τε συνηγορίαις καὶ σεμνότητι);, *IGR* IV 783 (v. 11-12: συνήγορον τῆς γερουσίας); *IAph.* 15.332 (v. 9-11: πολλὰ κατορ[θ]ώσαντα τῇ πατρίδι ἐν συνηγορίαις); for Marcus Aurelius Athenaios, *rhētor* and *archiereus* of Asia, see B. Puech, *Orateurs et sophistes grecs dans les inscriptions d' époque imperial* (Paris 2002) [henceforth: Puech] 51=*IEph* VII 3057; *IEph* 614C (v. 7-11: ἀνὴρ ἐν πολλοῖς τὴν περὶ αὐτὸν πρὸς τὴν πόλιν εὔνοιαν ἐπιδεδειγμένος διά τε συνηγοριῶν καὶ ἐκδικιῶν, ἃς ὑπὲρ τῶν κοινῶν διὰ παντὸς παρέσχετο); for Tiberius Claudius Aurelius Zelos, sophist, see Puech 260=*IAph.* 14.18 (v. 7-10: πολλὰ καὶ διὰ συνηγοριῶν κατορθώσαντα τῇ πατρίδι); *cf.* also *IG* II² 3629, *FdXanth* VII 90. However, from the fourth century AD, in the world of Libanius and throughout the next centuries, *synēgoros* becomes the equivalent of the Roman *advocatus*. *Cf.* Puech 118=Les Bas-Waddington 2031 (v. 7: κτῆμα συνηγορίης); L. Robert, 'Épitaphes de Syrie' *Hellenica* XI/XII (Paris 1960) 302-305 (305 n.5); for forensic practitioners in late antiquity and the relevant terminology, see now: C. Humfress, *Orthodoxy and the courts in late antiquity* (Oxford 2007) 9-132; *cf.* also, on 273-84, the catalogue of advocates in the eastern empire (fourth-sixth century AD).

[17] D. Magie, *Roman rule in Asia Minor: to the end of the third century after Christ*, 2 vols (New Jersey, 1950) I, 648-49; S. Dmitriev, *City government in Hellenistic and Roman Asia Minor* (New York 2005) 213-16 (also on *ekdikos*, a yearly magistrate who mediated between the city and the governor). According to Dmitriev, it is impossible (215) 'to draw a fine line between the meanings of *syndikos* and *synēgoros*'; however, 'their meanings were probably quite close, as is also illustrated by inscriptions from the imperial period.' In Philostr. *VS* 540, the two terms are used alternatively for the *syndikoi/synēgoroi* of Smyrna.

[18] Puech 122=*IG* II² 3704 (Titus Flavius Glaucos); *IGR* IV 618 (M. Cn. Licinius Rufinus); *IC* I, XVII 27 (Vedius Alkisthenes); I*Eph* 632 (Marcus Fulvius Publicianus Neikephoros); *IEph* 3053 (Gaius Laberius Paulus); Philostr. *VS* 626 (Heliodorus the 'Arab').

[19] Discussion of papyri: Crook, *Legal advocacy* (n.13, above) 58-118; *cf.* also Taubenschlag, *The law of Greco-Roman Egypt* (n.13, above) 387. Bryen 'Judging empire' (n.7, above) 'brackets here the question of the legal expertise of advocates in provincial courts', as his attention 'is directed to law-making bodies', referring to Crook's work for the material for advocates.

[20] As was pointed out by: E. L. Bowie, 'The importance of sophists', *YCS* 27 (1982) 29-60 (39 n. 38), and discussed more recently by: M. Heath, *Menander: a rhētor in context* (Oxford 2004) 322-31.

the financial ability to hire a notable advocate, nor the social contacts that would allow access to such an advocate. Theorists of rhetoric, such as Dionysius of Halicarnassus or Quintilian, despised *agoraioi*, and Galen wrote a whole volume against them.[21] Flavius Philostratus, the biographer of the highly-esteemed sophists of the era, identifies the sophist Theodotus as follows: 'and indeed he was one of the baser sort'.[22] In his *Life of Apollonius of Tyana*, Philostratus speaks with sarcasm of the low-level 'rhetoric of the *agoraioi*'.[23] It is not hard to see how *agoraioi* can easily be identified with *dikologoi*.[24] Philostratus refers to the father of the sophist Alexander the 'Clay-Platon' as 'one of the *agoraioi* rhetors'.[25] but the *Suda* describes him as an advocate (*dikēgoros*).[26] According to the *Suda*, the *rhētor* Sergius of Zeugma was an advocate (*dikēgoros*) and wrote a defence of the *dikologoi* against Aelius Aristides, who seemed to have launched an attack against them.[27] In Diocletian's *Edict on maximum prices* (301 AD), a clear distinction is made, in respect of their fees, between *dikologoi* and sophists.[28] The same distinction can also be observed from the judge's point of view. Ulpian informs us, in an extract from his *Duties of a proconsul*, preserved in the *Digest*, that '[A proconsul] is duty-bound to watch that he has some system of ranking applications, and in fact to make sure that everyone's request gets a hearing and that it does not turn out that *while the high rank of some applicants* gets its due and unscrupulousness gets concessions middling people do not put their requests, *either having quite failed to find advocates or having instructed less well-known ones, whose position is not one of any standing*' (my emphasis).[29]

[21] Gal. *Libr. Propr.* 19.46.2: πρὸς τοὺς ἀγοραίους ῥήτορας ἕν.

[22] *VS* 566: καὶ γὰρ δὴ καὶ τῶν ἀγοραίων εἷς οὗτος. Heath, *Menander* (n.20, above) 324 – with reference to S. Rothes' *Kommentar zu ausgewählten Sophistenviten des Philostratos* (Heidelberg 1988) 61 ff. – notes that Philostratus' characterization of Theodotus expresses 'moral and political disapproval'. Although Philostratus associates Theodotus with Herodes Atticus' enemies, and chiefly with Demostratus (*cf. VS* 554-55, 559, 563) and criticizes his actions (566), his overall critique of Theodotus' judicial capacity is quite positive (567: τὴν δὲ ἰδέαν τῶν λόγων ἀποχρῶν καὶ τοῖς δικανικοῖς καὶ τοῖς ὑπερσοφιστεύουσιν).

[23] *VA* 6.36: ἐστὶ γάρ τι ἐν ἁπάσαις πόλεσιν ἔθνος ἀνθρώπων, ὃ σὺ οὔπω μὲν γιγνώσκεις, καλοῦσι δὲ αὐτὸ διδασκάλους· τούτοις ἀπὸ τῆς οὐσίας μικρὰ δοὺς ἀσφαλῶς κεκτήσῃ τὰ πλείω, ῥητορικὴν γάρ σε παιδεύσουσι τὴν τῶν ἀγοραίων, ῥᾳδία δ᾽ ἡ τέχνη. For a discussion of this passage, see Heath, *Menander* (n.20, above) 322, 326.

[24] On the variety of terms, see Heath, *Menander* (n.20, above) 323.

[25] *VS* 570: ὁμώνυμος καὶ τοὺς ἀγοραίους λόγους ἱκανώτατος.

[26] *Suda* A 1128: καὶ ἄλλος Ἀ λ έ ξ α ν δ ρ ο ς, Ἀ λ ε ξ ά ν δ ρ ο υ, δικηγόρου, Κίλιξ, Σελευκεύς, σοφιστής, ὃς ἐπεκλήθη Πηλοπλάτων.

[27] *Suda* Σ 246: Σ έ ρ γ ι ο ς, Ζευγματεύς, Ἀφθονίου υἱός, ἀπὸ δικηγόρων τῶν ὑπάρχων, καὶ αὐτὸς ὕπαρχος πραιτωρίων γεγονώς, καὶ ἀπὸ ὑπάτων, καὶ πατρίκιος. Ἐπιτάφιον εἰς τὸν σοφιστὴν καὶ ἀδελφὸν αὐτοῦ Σαβῖνον. ἔγραψε καὶ ἑτέραν βίβλον ὑπὲρ τῶν δικολόγων πρὸς Ἀριστείδην.

[28] *Edict. Diocl.*7.72.

[29] *Dig.* 1.16.9.4 (trans. A. Watson): Observare itaque eum oportet, ut sit ordo aliquis postulationum, scilicet ut omnium desideria audiantur, ne forte dum honori postulantium datur vel improbitati ceditur, mediocres desideria sua non proferant, qui aut omnino non adhibuerunt, aut minus frequentes neque in aliqua dignitate positos advocatos sibi prospexerunt.

However, other important *rhētores* and philosophers took a different stance. Dio of Prusa, writing a few decades before Artemidorus, juxtaposes *synēgoroi* and *agoraioi* in his list of dishonourable professions, from which he invites the urban poor to abstain, even if they are in need (7.123):[30]

οὔκουν οὐδὲ κήρυκας ὠνίων οὐδὲ κλοπῶν ἢ δρασμῶν μήνυτρα προτιθέντας ἐν ὁδοῖς καὶ ἐν ἀγορᾷ φθεγγομένους μετὰ πολλῆς ἐλευθερίας, οὐδὲ συμβολαίων καὶ προκλήσεων καὶ καθόλου τῶν περὶ δίκας καὶ ἐγκλήματα συγγραφεῖς, προσποιουμένους νόμιμον ἐμπειρίαν, οὐδὲ αὖ τοὺς σοφούς τε καὶ δεινοὺς δικορράφους τε καὶ συνηγόρους, μισθοῦ πᾶσιν ὁμοίως ἐπαγγελλομένους βοηθήσειν, καὶ ἀδικοῦσι τὰ μέγιστα, καὶ ἀναισχυντήσειν ὑπὲρ τῶν ἀλλοτρίων ἀδικημάτων καὶ σχετλιάσειν καὶ βοήσεσθαι καὶ ἱκετεύσειν ὑπὲρ τῶν οὔτε φίλων οὔτε συγγενῶν σφίσιν ὄντων, σφόδρα ἐντίμους καὶ λαμπροὺς ἐνίους εἶναι δοκοῦντας ἐν τῇ πόλει, οὐδὲ τοιοῦτον οὐδένα ἀξιοῖμεν ἂν ἐκείνων γίγνεσθαι, παραχωρεῖν δὲ ἑτέροις. χειροτέχνας μὲν γὰρ ἐξ αὐτῶν τινας ἀνάγκη γενέσθαι, γλωσσοτέχνας δὲ καὶ δικοτέχνας οὐδεμία ἀνάγκη.

Neither should our poor become auctioneers or proclaimers of rewards for the arrest of thieves or runaways, shouting in the streets and market-place with great vulgarity, or scriveners who draw up contracts and summonses or, in general, documents that have to do with trials and complaints, and claim knowledge of legal forms; nor must they be learned and clever pettifogging *synēgoroi*, who pledge their services to all alike for a fee, even to the greatest scoundrels, and undertake to defend unblushingly other men's crimes, and to rage and rant and beg mercy for men who are neither their friends nor kinsmen, though in some cases these *synēgoroi* bear a high report among their fellow-citizens as most honourable and distinguished men. No, we shall allow none of our poor to adopt such professions but shall leave them to the other sort. For though some of them must of necessity become handicraftsmen, there is no need that they should become tongue-craftsmen and law-craftsmen.[31]

It is, of course, hard to imagine how such unreliable and 'vulgar' advocates could be related to 'doctors' or 'benefactors'. Artemidorus' symbolisms still remain a puzzle and call for some kind of interpretation. Was there a discourse which circulated in the social imagination of the high empire and attributed to the *synēgoros* (but not – as now seems plausible – to the *dikologos* or the *agoraios*) the merits of a doctor? And if this was the case, what kind of 'diseases' were these social agents responsible for dealing with? Does *synēgoros* have a significance which goes beyond private trials? Logically, an answer to the second question should be attempted; however, this task requires a broadening of our perspective in order to place the need for and the function of such a 'healer' away from the narrow judicial sphere, in its political and social context.

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[30] I do not classify Dio's testimony as a reference to the classical past; for the opposite opinion, see D. A. Russell, *Dio Chrysostom, orations VII, XII, XXXVI* (Cambridge 1992) 147.

[31] Trans. J. W. Cohoon, *Loeb classical library*, 1932.

2. Nosos *and healing in context: Greek political theory in the imperial age.*

Our investigation should begin from the commonplace assumption that, in the high empire, engagement in legal proceedings constituted, for the urban masses as well as for the upper classes, the necessary thermostat of a fragile social balance. Behind the baroque façade of honorific decrees and urban prosperity of an era which still survives in our cultural beliefs as 'the period in the history of the world during which the condition of the human race was most happy and prosperous',[32] leading historians of the period have repeatedly revealed irreducible tensions both between and inside various social groups.[33] Among the leading aristocratic families that monopolized political life, wealthy landowners, and the heterogeneous groups of the lower classes (craftsmen and traders, small-scale farm tenants, cultivators and labourers of all kinds), as well as among urban and rural populations,[34] these tensions lurched between economic exploitation, insecurity, and dependence, even up to the extreme edge of violence.[35] To refer to a classical epitome, thirty-five years ago, in his seminal 1976 Carl Newell Jackson lectures on *The making of late antiquity*, Peter Brown masterfully described the tensions which 'clearly pulled the local community out of shape', while 'urban elites appear to have strenuously mobilized the resources of their traditional culture, their traditional religious life, and for those who had good reason to afford it, their traditional standards of generosity in order to maintain some sense of communal solidarity.'[36] The spectre of continuous lending that haunted both prosperous classes and their weak debtors, the claims on land that divided local landowners, the never-ending disputes between leading members of the provincial urban centres with regard to the control of civic offices, the ambiguous mixture of fascination and repulsion towards Rome: these were familiar themes of everyday life in the eastern Roman provinces, if the contemporary sources of this era are anything to go by, and keep on recurring also in the dream summaries and algorithms of *Oneirocritica.*[37]

[32] E. Gibbon, *Decline and fall of the Roman Empire*, ed. D. Womersley, 6 vols. (London 2005) I 103.

[33] Bibliography on imperial society is vast; see for example G. E. M. de Ste. Croix, *The class struggle in the ancient Greek world* (n.6, above), 300-26, 453-65, 518-37; P. Garnsey and R. Saller, *The Roman Empire. Economy, society and culture* (London 1987) 64-82, 107-25; M. Sartre, *L' orient romain* (Paris 1991) 176-90.

[34] Str. 13.1.25, Gal. 6.749. The wealth of the towns was due to the exploitation of the country. *Cf.* also S. Said, 'La société rurale dans le roman grec ou la campagne vue de la ville' in *Sociétés urbaines, sociétés rurales dans l'Asie Mineure et la Syrie hellénistiques et romaines,* ed. E. Frézouls (Strasbourg 1987) 156-62 (149-71).

[35] Key-passages: Plut. *Prae. ger. rei.* 818a-b. D.Chr. 34.33; 46.6; 46.14; 48.1. *Cf.* R. McMullen, *Roman social relations* (New Haven 1974). *Prae. ger. rei* 814f; 823f-825f. A. D. Macro, 'The cities of Asia Minor under the Roman imperium', *A.N.R.W.* II 7.2. (1980) 659-97 (690-92).

[36] P. Brown, *The making of late antiquity* (Cambridge MA 1978) 33. For the social control exercised by the traditional families, see Brown's analysis on 3-6, 23-26, 30-47. On social stress and its effects on the governing educated classes, see the exemplary study of S. Swain, 'Social stress and political pressure. On melancholy in context', in *Rufus of Ephesus*, ed. P. E. Porman (Tübingen 2008) 113-38.

[37] Artemidorus is sometimes dismissed as a source for the social anxieties of his age (see, for example, S. Swain, *Hellenism and empire* (Oxford 1996) 262 n.35) on the ground that he is in

The persecuting image of the money-lender claiming, over the dreamer's head, the return of his money predicts danger in the case of the sick, or, if the money-lender manages to take his money back, death.[38] Loans are so associated with day-to-day survival that they symbolize, according to Artemidorus, life itself.[39] When someone dreams that he loses his fingers, if he owes money, it means that he will pay back more than necessary, while if he has lent, that he will receive less.[40] A dream that would be interpreted in modern psychoanalytical terms as a typical expression of castration anxiety (or death anxiety) is naturally associated with loans in the *Oneirocritica*: 'I know of a man', writes Artemidorus, 'about to borrow money who dreamt that he had no fingers. This man was given credit by the money-lender, even without a promissory note'.[41] Similar fears were experienced by landowners who had to face endless land disputes.[42] If someone dreamt that beggars entered his house or property, its ownership was about to be contested.[43] Still, neither did the members of the upper classes have an easy sleep. In the heyday of euergetism, to dream that you make public donations from your property predicts 'death for the sick and a squandering and dissolution of their property' and for the healthy ones

essence interested only in allegorical dreams and does not include in his work the interpretation of common, everyday minor dreams (*enhypnia*: *Oneirocritica* i 2), in which one would expect to find, centre-stage, the personal worries and fears of the dreamers. We should go the other way round: given the fact that Artemidorus is interested in dreams of prophetic pretensions, it is even more impressive what a wealth of information on the social climate of his age is contained in his dream symbols. In this light, see also the remark of S. R. F. Price, 'The future of dreams' (n.1, above) 13: 'A web of metaphor connects dream imagery and the real world. The interpretation of dreams was based on normative assumptions widespread in Artemidorus' day, and dreams thus belonged not to a baffling private universe but to the public sphere.'

[38] *Oneirocritica* iii 41.

[39] Suicide because of debts: *Oneirocritica* v 31.

[40] *Oneirocritica* i 42.

[41] *Oneirocritica* i 42: οἶδα δέ τινα, ὃς μέλλων δανείζεσθαι ἔδοξε δακτύλους οὐκ ἔχειν. τούτῳ ὁ δανειστὴς καὶ μὴ γράψαντι ἐπίστευσεν. *Cf.* Creditors and debtors: *Oneirocritica* i 17, 26, 34, 44, 79, ii 3, iv 1 (an actual dream), 41, 80. Procedure in the Athenian courts of the second century AD: *VS* 541. Loans of the elites: D.Chr. 46.5-6. Dio himself seems to disclaim the charge, made by citizens of his native city Prusa, of money-lending: see 46.8. On loans and interest: T. R. S. Broughton and J. A. O. Larsen, in *An economic survey of ancient Rome*, ed. T. Frank, 6 vols. (Baltimore 1938) IV, 491-92, 888-900; R. Saller, 'Status and patronage' in *Cambridge ancient history*, XI, *the high empire, A.D. 70-192*, ed. A. K. Bowman, P. Garnsey and D. Rathbone, (Cambridge 2000) 817-54 (822-38). For wealthy landowners, see M. I. Finley, *The ancient economy* (London 1973) 56-57, 141-45 and for a case-study on estates in Roman Asia Minor, see now T. Corsten, 'Estates in Roman Asia Minor. The case of Kibyratis' in *Patterns in the economy of Roman Asia Minor*, ed. S. Mitchell and C. Katsari (Swansea 2005) 1-51. On economic change in late antiquity: R. P. Duncan-Jones, 'Economic change and the transition to late antiquity' in S. Swain and M. Edwards ed., *Approaching late antiquity. The transformation from early to late empire* (Oxford 2004) 20-52.

[42] *Oneirocritica* i 34, 57, ii 49, iii 53.

[43] *Oneirocritica* iii 53.

'disturbances and scandals'.[44] The undertaking of civic offices invariably means 'anxieties and scandals'.[45] Even the acquisition of Roman citizenship had ambivalent effects: 'I know of someone', writes Artemidorus, 'who dreamt that he was beheaded. He was a Greek and obtained Roman citizenship. In this way, he lost his former name and status.'[46]

In this suffocating social climate, it is another strong belief among modern historians of the era that compliance and the repression of social antagonisms was one of the primary tasks of local aristocracies, through all their political and cultural means. Conflicts had to be suppressed, integrated into the social body and never allowed to surface. Well-known political treatises of the Greek-educated elites describe almost literally this task (Plut. *Praec. ger. reip.* 825a-b):[47]

> ἐπεὶ δέ, ὥσπερ ἐμπρησμὸς οὐ πολλάκις ἐκ τόπων ἱερῶν ἄρχεται καὶ δημοσίων, ἀλλὰ λύχνος τις ἐν οἰκίᾳ παραμεληθεὶς ἢ συρφετὸς διακαεὶς ἀνῆκε φλόγα πολλὴν καὶ δημοσίαν φθορὰν ἀπεργασαμένην, οὕτως οὐκ ἀεὶ στάσιν πόλεως αἱ περὶ τὰ κοινὰ φιλονεικίαι διακάουσιν, ἀλλὰ πολλάκις ἐκ πραγμάτων καὶ προσκρουμάτων ἰδίων εἰς δημόσιον αἱ διαφοραὶ προελθοῦσαι συνετάραξαν ἅπασαν τὴν πόλιν· οὐδενὸς ἧττον τῷ πολιτικῷ προσήκει ταῦτ' ἰᾶσθαι καὶ προκαταλαμβάνειν, ὅπως τὰ μὲν οὐδ' ὅλως ἔσται τὰ δὲ παύσεται ταχέως, τὰ δ' οὐ λήψεται μέγεθος οὐδ' ἅψεται τῶν δημοσίων, ἀλλ' ἐν αὑτοῖς μενεῖ τοῖς διαφερομένοις, αὐτόν τε προσέχοντα καὶ φράζοντα τοῖς ἄλλοις, ὡς ἴδια κοινῶν καὶ μικρὰ μεγάλων αἴτια καθίσταται παροφθέντα καὶ μὴ τυχόντα θεραπείας ἐν ἀρχῇ μηδὲ παρηγορίας.

> But just as a conflagration does not often begin in sacred or public places, but some lamp left neglected in a house or some burnt rubbish causes a great flame and works public destruction, so disorder in a State is not always kindled by contentions about public matters, but frequently differences arising from private affairs and offences pass thence into public life and throw the whole State into confusion. Therefore it behoves the statesman above all things to remedy or prevent these, that some of them may not arise at all and some may be quickly ended and others may not grow great and extend to public interests, but may remain merely among the persons who are at odds with one another. He should do this by noticing himself and pointing out to others that private troubles become the causes of public ones and small troubles of great ones, if they are overlooked and do not in the beginning receive treatment or soothing counsel.

[44] *Oneirocritica* ii 30: ἐπιδόσεις δὲ δημοσίας ἐπιδιδόναι παρ' ἑαυτοῦ τοῖς μὲν νοσοῦσι θάνατον προαγορεύει καὶ τῆς οὐσίας σκορπισμὸν καὶ διάλυσιν, τοῖς δὲ ἐρρωμένοις ταραχὰς καὶ περιβοησίας. *Cf. Praec. ger. reip.* 825e.

[45] *Oneirocritica* ii 30: τοῖς δὲ λοιποῖς ταραχὰς καὶ περιβοησίας σημαίνει.

[46] *Oneirocritica* i 35: οἶδα δέ τινα, ὃς ἔδοξε τετραχηλοκοπῆσθαι καὶ ὢν Ἕλλην ἔτυχε τῆς Ῥωμαίων πολιτείας καὶ οὕτως ἀφῃρέθη τοῦ προτέρου ὀνόματός τε καὶ ἀξιώματος.

[47] This work was written, most probably, between 96 and 114 A.D.: C. P. Jones, *Plutarch and Rome* (Oxford 1971) 110-21; P. Desideri, 'La vita politica cittadina nell' impero: lettura dei *praecepta gerendae rei publicae* e nell' *an seni res publica gerenda sit*', *Atheneaum* 74 (1986) 371-81. Swain, *Hellenism and empire* (n.37, above) 162-83.

According to Plutarch's famous passages, addressing his young friend Menemachus from Sardeis, who aspired to enter the political arena, the statesman had to prevent and suppress the outbreak of conflicts – incipient *stasis* – by managing the needs and interests of the masses and those of the elite in different ways. Sometimes, the upper classes did not hesitate to wave, on top, the fear of Rome, or suggest that internal Greek disputes were futile, since the prevalence of one or the other side no longer reserved any glory or prize for the winner (Plut. *Praec. ger. reip.* 824e-f):[48]

> ποία δύναμις, ἣν μικρὸν ἀνθυπάτου διάταγμα κατέλυσεν ἢ μετέστησεν εἰς ἄλλον, οὐδὲν οὐδ᾽ ἂν παραμένῃ σπουδῆς ἄξιον ἔχουσαν.

> For what dominion, what glory is there for those who are victorious? What sort of power is it which a small edict of a proconsul may annul or transfer to another man and which, even if it last, has nothing in it seriously worthwhile?

Leading traditional families supported the oligarchic structures of the political and judicial system and propagandized them as natural; in the same way, they repelled instability and antagonism by using the catalytic metaphor of *nosos* – disease. In the same context, when divided between conflicting 'private' interests, the body of the citizens was considered *sick*, and was in need of a *cure*. Internal tensions were compared to bodily diseases, which the statesman had to restrain and resolve 'as if they were diseases'*,* using some sort of 'secret political cure'.[49] The medical metaphor is unambiguous (Plut. *Praec. ger. reip.* 815b):

> οἱ μὲν γὰρ ἰατροὶ τῶν νοσημάτων ὅσα μὴ δύνανται παντάπασιν ἀνελεῖν ἔξω τρέπουσιν εἰς τὴν ἐπιφάνειαν τοῦ σώματος· ὁ δὲ πολιτικός, ἂν μὴ δύνηται τὴν πόλιν ἀπράγμονα παντελῶς διαφυλάττειν, ἐν αὐτῇ γε πειράσεται τὸ ταρασσόμενον αὐτῆς καὶ στασιάζον ἀποκρύπτων ἰᾶσθαι καὶ διοικεῖν.

> For when physicians cannot entirely eradicate diseases, they turn them outwards to the surface of the body; but the statesman, if he cannot keep the State entirely free from troubles, will at any rate try to cure and control whatever disturbs it and causes sedition, keeping it hidden within the State.

Although differences would have to be settled in time through 'honourable and gracious compromises',[50] in reality they were referred for resolution to forensic *rhētores* and *pragmatikoi*.[51] A statesman's duty is to act as the physician of his city; otherwise, the 'physicians and medicine' needed will be 'drawn from outside'.[52]

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[48] *Cf.* the exact tone of the threat in *Praec. ger. reip.* 824b.

[49] *Praec. ger. reip.* 815a-b: ὥσπερ νοσημάτων ἀπόρρητον ἰατρείαν. *Cf. Praec. ger. reip.* 824a.

[50] *Praec. ger. reip.* 815b : ... ἀνθυπείξωσι μετὰ τιμῆς καὶ χάριτος ....

[51] *Praec. ger. reip.* 815b νῦν δ᾽ ὅπως μὴ πολίταις καὶ φυλέταις οἴκοι καὶ γείτοσι καὶ συνάρχουσιν ἀνθυπείξωσι μετὰ τιμῆς καὶ χάριτος, ἐπὶ ῥητόρων θύρας καὶ πραγματικῶν χεῖρας ἐκφέρουσι σὺν πολλῇ βλάβῃ καὶ αἰσχύνῃ τὰς διαφοράς.

[52] *Praec. ger. reip.* 815b: τῶν ἐκτὸς ἰατρῶν καὶ φαρμάκων δέοιτο.

The same vocabulary of civil strife (*stasis*) and disease (*nosos*) is used by Dio of Prusa, in his effort to establish concord (*homonoia*) between Nicaea and Nicomedia (38.13-14):[53]

εἰ μὲν οὖν τις ἐρωτήσειεν ἕνα ἄνδρα ἢ πολλοὺς ὁμοῦ περὶ τῶν ὀνομάτων αἰτῶν, ἐν ποίῳ δὴ μέρει τὰ τοιαῦτα κατατάττεται, πόλεμοι καὶ στάσεις καὶ νόσοι καὶ τὰ τούτοις ὁμότροπα, οὐδὲν ἂν μελλήσας ἀποκρίναιτο οὐδεὶς ὅτι ταῦτα ἐν τοῖς κακοῖς τάττεται καὶ οὕτως ὡς ἔχει καὶ νενόμισται καὶ καλεῖται κακά. τὰ δὲ ἐναντία τούτοις, εἰρήνη καὶ ὁμόνοια καὶ ὑγεία, καὶ ταῦτα οὐδεὶς ἂν ἀντείποι μὴ οὐχὶ ἀγαθὰ καὶ εἶναι καὶ λέγεσθαι. φανερᾶς δὲ οὕτως οὔσης τῆς μάχης τῶν κακῶν καὶ τῶν ἀγαθῶν, ὅμως εἰσί τινες, μᾶλλον δὲ πολλοί, οἵτινες τῶν κακῶν τοῖς ὁμολογουμένοις χαίρομεν. καὶ περὶ δὲ τῆς νεὼς πάντες οἱ πλέοντες ἐπιστάμενοι διότι μία αὕτη ἐστὶ σωτηρία, τὸ τοὺς ναύτας ὁμονοεῖν καὶ τῷ κυβερνήτῃ πείθεσθαι, γενομένης δὲ στάσεως ἐν αὐτῇ καὶ ἀπειθείας διότι καὶ τὰ δεξιὰ πολλάκις τῶν πνευμάτων εἰς ἐναντίον τῇ νηὶ περιίσταται καὶ τῶν λιμένων ἀποτυγχάνουσιν ἐγγὺς ὄντων, ὅμως στασιάζουσιν ἔστιν ὅτε ὑπὸ ἀφροσύνης οἱ ναῦται, καὶ τοῦτο ἀπόλλυσιν αὐτοὺς ἐπισταμένους τοῦ ὀλέθρου τὴν αἰτίαν.

At any rate, if one were to question a single person, or a company of persons, about the terms themselves, asking in what category are to be placed such terms as wars, factions, diseases, and the like, no one would hesitate a moment to reply that these are classed among the evils, and that they not only are so but have been so considered and are called evils. And as for their opposites, peace and concord and health, no one would deny that they likewise both are and are called good. But though the conflict between the evil things and the good is so manifest, yet there are some among us – or rather a good many – who delight in the things which are admittedly evil. And take, for example, a ship – though all on board are well aware that the one hope of reaching port in safety lies in having the sailors on good terms with one another and obedient to the skipper, but that when strife and mutiny arise in it, even the favourable winds often veer round to oppose the ship's course and they fail to make their harbours, even when close at hand, still the sailors sometimes foolishly quarrel, and this works their ruin, though they know the cause of their destruction.

In the symbolic vocabulary of the city aristocracies, the metaphor of *nosos* came back even more violently, when it became clear that internal conflicts were impossible to settle through the traditional religious or family networks, as is obvious in another Plutarchean treatise, contrasting the passions of the body and soul (*Animine* 501e-f):

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[53] L. Robert, 'La titulature de Nicée et de Nicomédie: la gloire et la haine', in *Opera minora selecta* 6 (Amsterdam 1989) 211-49. On concord, see C. P. Jones, *The Roman World of Dio Chrysostom* (Cambridge Mass. 1978) 83-94; Swain, *Hellenism and empire* (n.37, above) 219-25; P. Veyne, 'L'identité grecque devant Rome et l' Empereur', *REG* 112 (1999) 554-57. On the vocabulary of disease in Aelius Aristides, see now K. Buraselis, 'Insolence and servility. Aelius Aristides as critic of Greek civic policies in the *Provincia Asia*', *Palamedes* 5 (2010) 160: '*stasis* is compared with tuberculosis (*phthe*) gradually consuming all powers of an organism'.

ὁρᾶτε τὸν πολὺν τοῦτον καὶ παμμιγῆ, τὸν ἐνταῦθα συνηραγμένον καὶ κυκώμενον
ὄχλον περὶ τὸ βῆμα καὶ τὴν ἀγοράν; οὐ θύσοντες οὗτοι συνεληλύθασι πατρίοις
θεοῖς οὐδ᾽ ὁμογνίων μεθέξοντες ἱερῶν ἀλλήλοις, οὐκ Ἀσκραίῳ Διὶ Λυδίων
καρπῶν ἀπαρχὰς φέροντες οὐδὲ Διονύσῳ βεβακχευμένον θύσθλον ἱεραῖς νυξὶ καὶ
κοινοῖς ὀργιάσοντες κώμοις· ἀλλ᾽ ὥσπερ ἐτησίοις περιόδοις ἀκμὴ νοσήματος
ἐκτραχύνουσα τὴν Ἀσίαν ἐπὶ δίκας καὶ ἀγῶνας ἐμπροθέσμους ἥκουσαν ἐνταῦθα
συμβάλλει καὶ πλῆθος ὥσπερ ῥευμάτων ἀθρόον εἰς μίαν ἐμπέπτωκεν ἀγορὰν καὶ
φλεγμαίνει καὶ συνέρρωγεν ὀλλύντων τε καὶ ὀλλυμένων. ποίων ταῦτα πυρετῶν
ἔργα, ποίων ἠπιάλων; τίνες ἐνστάσεις ἢ παρεμπτώσεις ἢ δυσκρασία θερμῶν ἢ
ὑπέρχυσις ὑγρῶν; ἂν ἑκάστην δίκην ὥσπερ ἄνθρωπον ἀνακρίνῃς πόθεν πέφυκε
πόθεν ἥκει, τὴν μὲν θυμὸς αὐθάδης γεγέννηκε τὴν δὲ μανιώδης φιλονεικία τὴν δ᾽
ἄδικος ἐπιθυμία.

Do you see this vast and promiscuous crowd which jostles and surges in confusion
here about the tribunal and the market-place? These persons have come together,
not to sacrifice to their country's gods, not to share in each other's family rites, not
bringing 'to Ascraean Zeus the first-fruits of Lydian harvests' nor, in honour of
Dionysus, to celebrate his mystic festival on sacred nights with common revellings,
but, as it were, a mighty pestilence drives them together here with yearly
visitations stirring up Asia, which must come for law-suits and litigation at certain
stated times; and the overwhelming multitude, like streams flowing together, has
inundated this one market-place and boils with fury and dashes together in a tumult
"of destroyers and destroyed". What fevers, what agues, have brought this about?
What stoppages, or irruptions of blood, or distemperature of heat, or overflow of
humours, have caused this? If you examine every law-suit, as though it were a
person, to discover what gave rise to it and whence it came, you will find that
obstinate anger begat one, frantic ambition another, unjust desire a third . . .[54]

The image of the statesman as a doctor not only runs throughout Plutarch's work,[55] but it
is a common theme of classical Greek imagination and thought. We owe to G. E. R. Lloyd
a thorough discussion of the 'medicalization of the city' and its anthropological
consequences.[56] This is a treatise on how the vocabulary of sickness was applied to the
city-state as a whole, and on how the true politician, or the expert in moral and political
matters, was modelled upon the image of a doctor who can prescribe the right cure for

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[54] Trans. W. C. Helmbold, *Loeb classical library* 1939; this passage describes the judicial conventus
of Smyrna: Jones, *Plutarch and Rome* (n.47, above) 14-15; R. Lane Fox, *Pagans and Christians*
(London 1986) 484-85; Kantor, *Roman law and local law* (n.7, above) 190.

[55] See Swain's discussion in *Hellenism and empire* (n.37, above) 177-79 (177, n.130); F. Fuhrmann,
Les images de Plutarque (Paris 1964) 238-40; M.-H. Quet, 'Rhétorique, culture et politique: le
fonctionnement du discours idéologique chez Dion de Pruse et dans les Moralia de Plutarque', *DHA*
4 (1978) 51-118 (64-65).

[56] G. E. R. Lloyd, *In the grip of disease. Studies in the Greek imagination* (Oxford 2003), who
collects and discusses all relevant sources. See also K. Kalimtzis, *Aristotle on political enmity and
disease*: *an inquiry into stasis* (Albany 2000) 1-13, 193 n.19.

civil strife, the *stasis* which attacks the body politic, most notably in Plato and Aristotle.[57] The genealogy of these powerful metaphors perhaps goes back to the political and social struggles of the seventh century BC between leading aristocratic families, wealthy landowners, and rural masses or regional groups. In this period members of the upper classes, invested with authority and wisdom – lawgivers, tyrants, *aisymnētai* and *diallaktai* – assumed the difficult task of ending, through written legislation, social and economic uncertainty and civil strife.[58]

Finally, it is again Plutarch's thought which offers us, in another set of famous passages, an insight into how the educated members of the ruling classes viewed the role of the *synēgoros*. He was construed essentially as a public figure, or a future politician, in a manner consistent with the use of the term in epigraphical sources. After emphasizing the usefulness of rhetoric for everyone who wants to acquire power and prevail over the mass of citizens,[59] Plutarch proposes, in more than one instance, *synēgoria* as one of the very few ways of pursuing a successful public career left to a Greek member of the upper classes in the early empire (Plut. *Praec. ger. reip.* 805a-b):

> νῦν οὖν ὅτε τὰ πράγματα τῶν πόλεων οὐκ ἔχει πολέμων ἡγεμονίας οὐδὲ τυραννίδων καταλύσεις οὐδὲ συμμαχικὰς πράξεις, τίν' ἄν τις ἀρχὴν ἐπιφανοῦς λάβοι καὶ λαμπρᾶς πολιτείας; αἱ δίκαι τε λείπονται αἱ δημόσιαι καὶ πρεσβεῖαι πρὸς αὐτοκράτορα ἀνδρὸς διαπύρου καὶ θάρσος ἅμα καὶ νοῦν ἔχοντος δεόμεναι. πολλὰ δ' ἔστι καὶ τῶν παρειμένων ἐν ταῖς πόλεσι καλῶν ἀναλαμβάνοντα καὶ τινὶ τῆς πόλεως ἢ βλάβῃ μεθιστάντα πρὸς αὑτὸν ἐπιστρέφειν. ἤδη δὲ καὶ δίκη μεγάλη καλῶς δικασθεῖσα καὶ πίστις ἐν συνηγορίᾳ πρὸς ἀντίδικον ἰσχυρὸν ὑπὲρ ἀσθενοῦς καὶ παρρησία πρὸς ἡγεμόνα μοχθηρὸν ὑπὲρ τοῦ δικαίου κατέστησεν ἐνίους εἰς ἀρχὴν πολιτείας ἔνδοξον.

> Nowadays, then, when the affairs of the cities no longer include leadership in wars, nor the overthrowing of tyrannies, nor acts of alliances, what opening for a conspicuous and brilliant public career could a young man find? *There remain the public lawsuits and embassies to the emperor*, which demand a man of ardent temperament and one who possesses both courage and intellect. But there are many excellent lines of endeavour that are neglected in our cities which a man may take

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[57] On Plato, G. E. R. Lloyd, *In the grip of disease* (n.56, above) 142-57 (for the differences between medicine and politics: 148-9), and on Aristotle, 176-93; on *nosos* as the basic concept governing Aristotle's *stasis,* and *stasis* as a 'wound' over the body politic, see K. Kalimtzis, *Aristotle on political enmity and disease* (n.56, above) *passim*.

[58] On *stasis* as it emerges from Solon's poetry: J. Lewis, *Solon the thinker* (London 2006); on *aisymnētai* and *diallaktai* (*cf.* Arist. *Ath.Pol.* 5.2; Plutarch, *Solon* 14.2): K.-J. Hölkeskamp, *Schiedsrichter, Gesetzgeber und Gesetzgebung im archaischen Griechenland* (Stuttgart 1999); M. Faraguna, 'La figura dell' aisymnetes tra realtà storica e teoria politica', in *Symposion 2001: Vorträge zur griechischen und hellenistischen Rechtsgeschichte,* ed. M. Gagarin and R. W. Wallace (Vienna 2005) 321-38; G. Anderson, 'Before *tyrannoi* were tyrants: rethinking a chapter of early Greek history', *Class. Ant.* 24.2 (2005) 173-222; on *diallaktai* ('conciliators'), see *IG* XII.7.3 (Amorgos, late fourth century), where *diallaktai* were appointed and left written instructions about the resolution of disputes. *Cf.* also Arist. *Ath.Pol.* 38.4.

[59] *Praec. ger. reip.* 801e.

up, and also many practices resulting from evil custom, that have insinuated themselves to the shame or injury of the city, which a man may remove, and thus turn them to account for himself. Indeed in past times a just verdict gained in a great suit, or good faith in acting as advocate for a weak client against a powerful opponent, or boldness of speech in behalf of the right against a wicked ruler, has opened to some men an entrance into public life.

The ambitious politician may participate in 'public trials' or 'embassies before the emperor', or as a *synēgoros* in private trials – the use of the term here is a clear reference to the notorious trials of the classical past. The politician may also mediate and offer to one friend 'a case at law which will bring in a good fee as advocate in a just cause, to another introduce a rich man who needs legal oversight and protection, and help another to get some profitable contract or lease'.[60] Here, again, the application of the term is linked to the prospect of a successful political career. *Synēgoria* may also take on a wider, non-professional sense: the politician exercises the role of a mediator, who 'shows himself a kindly counsellor, an advocate who accepts no fee, and a kind-hearted conciliator when husbands are at variance with their wives or friends with one another'.[61]

An overall examination of our sources corroborates the hypothesis that the *synēgoros* in the imperial age was primarily a public figure, active as a public advocate rather than a lawyer in everyday judicial life – a role reserved for the second-rate *dikologoi* or *agoraioi* – and that he was also linked, as the epigraphical data indicates, to the *syndikos* of the city. Given that, in the ideological trend of the ruling classes, politicians were equated to 'doctors' and 'benefactors' of their cities, who prevented the coming of civil strife by 'healing' the intense social conflicts, it is not hard to imagine how the *synēgoros* was elevated too, in the social imagination, to a powerful 'doctor' or 'healer'. The *synēgoros* could 'save' (or condemn) a litigant in court, in the same way as he could 'save' his native city in an inter-state dispute or before the emperor, or play the role of a social mediator between mass and elite. Of course, he could also easily be contrasted with other forensic professionals who took advantage of the legal troubles of the masses. From this point of view, Artemidorus' dream interpretations can themselves be interpreted as a manifestation of a symbolism running deep into the structures of social life in the Greek east and engaging both political and legal representations.

But to further support my survey, I shall now examine some examples of elite figures, politicians and advocates, who acted in accordance with the symbolic role of *synēgoros*, on the one hand as a public figure, on the other hand as 'doctor' and 'conciliator'. But to do so, I must turn to the one field where local politics, rhetoric and advocacy coincide in the heyday of the high empire: the Second Sophistic.

3. 'Healers' in action. Synēgoria *and the Second Sophistic.*

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[60] *Praec. ger. reip.* 809a: τῷ μὲν ἐγχείρισον συνηγορίαν ἔμμισθον ὑπὲρ τοῦ δικαίου, τῷ δὲ σύστησον πλούσιον ἐπιμελείας καὶ προστασίας δεόμενον· ἄλλῳ δ' εἰς ἐργολαβίαν τινὰ σύμπραξον ἢ μίσθωσιν ὠφελείας ἔχουσαν.

[61] *Praec. ger. reip.* 823b: σύμβουλον εὔνουν καὶ συνήγορον ἄμισθον καὶ διαλλακτὴν εὐμενῆ πρὸς γυναῖκας ἀνδρῶν καὶ φίλων πρὸς ἀλλήλους παρέχων ἑαυτόν. *Cf.* also the lost Plutarchean works in the so-called *Catalogue of Lamprias*, nos. 156 and 198.

Although many of the leading sophists of the first and second centuries AD were actually active in legal advocacy, the protagonists in the revival of Second Sophistic studies during the 1960s and 1970s did not devote much attention to their presence in the Greek courts or in the judicial *conventus* of the Roman governor. Glen Bowersock offered a passing remark on the forensic activity of *rhētores*, while unfolding, in a seminal study, the sophists' connections with imperial power and the Roman upper classes, following their paths to the higher Roman offices and placing them once and for all at the centre of Roman history.[62] E. L. Bowie argued, surprisingly, and in an aphoristic way, that 'law-court oratory [was] usually looked upon with contempt by sophists'[63] and B. P. Reardon associated the Second Sophistic with the literary and intellectual tendencies of its era.[64] This attitude started to change in the early 1980s, when Donald Russell provided a synopsis of the sophists' forensic activity in his important work on the *Greek declamation*.[65] A few years later, Graham Anderson observed that the 'very influential, politically-involved sophists seem to have been involved in practice in the courts', emphasizing the role that Nicetes, Scopelian or Polemo played in the courts and their link '[with] the web of civic patronage that links the courts with wealthy satisfied clients'.[66] In recent years, Malcolm Heath has offered a new evaluation of the sophists' competence in legal advocacy, in his monograph on Menander of Laodicea.[67]

In his *Lives of the Sophists*, Philostratus records a number of sophists who acted as advocates,[68] including some of the most successful *rhētores* and public figures of the day, most of whom had also acquired Roman citizenship: Nicetes of Smyrna,[69] Scopelian of

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[62] G. W. Bowersock, *Greek sophists in the Roman Empire* (Oxford 1969) 56-57.

[63] E. L. Bowie, 'Greeks and their past in the Second Sophistic', in *Studies in ancient society,* ed. M. I. Finley (London 1974) 166-209 (169-70).

[64] B. P. Reardon, *Courants littéraires grecs des IIe et IIIe siècles après J.-C.* (Paris 1971).

[65] D. A. Russell, *Greek declamation* (Cambridge 1983) 12-13.

[66] G. Anderson, 'The Second Sophistic: some problems of perspective', in *Antonine literature*, ed. D. A. Russell (Oxford 1990) 101; *cf.* also Mitteis, *Reichsrecht und Volksrecht* (n.7, above) 191-96; Crook, *Legal advocacy* (n.13, above) 186-87.

[67] Heath, *Menander* (n.20, above) 289 ff.

[68] Other testimonies, independent of Philostratus, on sophistic advocacy are ambiguous. In a turn of phrase often cited by scholars on the Second Sophistic, Sextus Empiricus – writing some years before Philostratus – makes the accusation against the sophists that, despite their elevated theoretical and technical training in rhetoric, they are left more speechless than fish in the courtroom (S.E. *M.* 2.17-19: ἀδυνατοῦσι ῥητορεύειν ἐπὶ δικαστηρίων καὶ ἀγορᾶς […] οἱ σοφιστεύοντες […] ἰχθύων δὲ ἀφωνότεροι. Aelius Aristides considered forensic advocacy a standard feature of a sophist's career: (ἐπὶ μὲν τὰ ἄλλα πάντα ἀγωνίσματα τῷ λόγῳ χρώμεθα, […] κἂν τοῖς δικαστηρίοις ἀγωνιζόμεθα: 45.4). *Cf.* also Luc. *Rh.Pr.* 25-26. Sophists other than those attested by Philostratus acted also as advocates or *syndikoi* of their cities in the imperial court. Apart from Lollianus (see n.68 below), see also Puech 35=*SEG* 17.759 (Caius Sallius Aristaenetus of Byzantium, transcripts of court proceedings before Caracalla on 27 May 216 AD; *cf. VS* 591). Recent discussion and bibliography on the 'Dmeir inscription': M. Heath, '*Metalepsis, paragraphe* and the scholia to Hermogenes', *Leeds International Classical Studies*, 2.2 (2003) 19-20; *Menander* (n.20, above) 309-11.

[69] *VS* 511.

Clazomenae,[70] Marcus Antonius Polemo of Laodicea,[71] Iulius Theodotus of Athens,[72] Ptolemy of Naucratis,[73] Publius Aelius Apollonius of Athens,[74] Titus Flavius Damianus of Ephesus,[75] and Lucius Flavius Philostratus the Lemnian.[76] Perhaps four more could also be added to this list. First, Quirinus of Nicomedia, since he was named *advocatus fisci* because 'he seemed better adapted by nature for making speeches for the prosecution in the courts'.[77] Second, Tiberius Claudius Aristocles of Pergamum, if Philostratus' statement that he was more competent in διαλέγεσθαι ('lecturing') than in ἀγωνίζεσθαι ('fighting cases in court') refers to his actual presence in the courts – which, according to this interpretation, proved to be less effective than his proper sophistic declamations – and not to imaginary forensic speeches (*controversiae*).[78] Thirdly, Hadrian of Tyre, who is also attested as powerful 'in forensic pleading';[79] and Heracleides of Lycia.[80]

The Severan biographer usually compares the 'forensic' (*dikanikon*) and the 'sophistic' (*sophistikon*) style of oratory, but it is not certain whether he is referring to the 'judicial' style of actual or imaginary court-speeches. Nicets of Smyrna, the so-called 'founder' of the Second Sophistic, was very successful as a forensic *rhētor* in court.[81] His style is described as a mixture of sophistic and judicial style (*VS* 511):[82]

> τὸ μὲν γὰρ σοφιστικῇ περιβολῇ ἐκόσμησεν, τὸ δὲ κέντρῳ δικανικῷ ἐπέρρωσεν. ἡ δὲ ἰδέα τῶν λόγων τοῦ μὲν ἀρχαίου καὶ πολιτικοῦ ἀποβέβηκεν, ὑπόβακχος δὲ καὶ διθυραμβώδης, τὰς δ' ἐννοίας ἰδίας τε καὶ παραδόξους ἐκδίδωσιν, ὥσπερ οἱ βακχεῖοι θύρσοι τὸ μέλι καὶ τοὺς ἐσμοὺς τοῦ γάλακτος.

> For he adorned the legal style with sophistic amplification, while he reinforced the sophistic style with the sting of legal argument. His type of eloquence forsook the antique political convention and is almost bacchic and like a dithyramb, and he produces phrases that are peculiar and surprise by their daring, like 'the thyrsi of Dionysus' in reference to honey, and 'swarms of milk'.

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[70] *VS* 517, 519.

[71] *VS* 524-25.

[72] *VS* 566.

[73] *VS* 595.

[74] *VS* 600.

[75] *VS* 606.

[76] *VS* 628.

[77] *VS* 621: προσφυέστερος δὲ ταῖς κατηγορίαις δοκῶν ἐπιστεύθη ἐκ βασιλέως τὴν τοῦ ταμιείου γλῶτταν.

[78] *VS* 568: ἡ δὲ ἰδέα τοῦ λόγου διαυγὴς μὲν καὶ ἀττικίζουσα, διαλέγεσθαι δὲ ἐπιτηδεία μᾶλλον ἢ ἀγωνίζεσθαι. On Greek *controversiae*: Russell, *Greek declamation* (n.65, above) 21-39.

[79] *VS* 588: διὰ τὸ ἐρρῶσθαι πρὸς τοὺς ἀγῶνας.

[80] *VS* 613: καὶ τοὺς ἀγῶνας ἀπέριττος.

[81] *VS* 516: πολλῷ δὲ μεῖζον ἐν δικαστηρίοις πνεύσαντα.

[82] Trans. W. C. Wright, *Loeb classical library*, 1921.

Commenting on another famous advocate, Damianus of Ephesus, Philostratus describes his style as 'more sophistic than is usual in a legal orator and more judicial than is usual in a sophist'.[83] But when Philostratus reproduces the same characterization of the sophist Antiochus of Aegae,[84] he immediately supports it by referring to his rhetorical technique and, subsequently, to his famous *imaginary* court-speeches.[85] Antiochus handled some standard themes of Roman and Greek declamation, preserved, among others, by Seneca the Elder and Quintilian, and especially a variation of 'the double rapist'.[86] According to the law, the victim of a rape gets to choose between having the rapist put to death or making him marry her (*VS* 569):

> ὡς ἔκ τε τῶν ἄλλων ὑποθέσεων δηλοῦται καὶ μάλιστα ἐκ τῶνδε· κόρη βιασθεῖσα θάνατον ᾕρηται τοῦ βιασαμένου· μετὰ ταῦτα γέγονε παιδίον ἐκ τῆς βίας καὶ διαμιλλῶνται ταῦτα οἱ πάπποι, παρ' ὁποτέρῳ τρέφοιτο τὸ παιδίον. ἀγωνιζόμενος οὖν ὑπὲρ τοῦ πρὸς πατρὸς πάππου, 'ἀπόδος' ἔφη 'τὸ παιδίον, ἀπόδος ἤδη, πρὶν γεύσηται μητρῴου γάλακτος'.

> A girl has been ravished, and has chosen that her ravisher shall be put to death; later a child is born of this rape, and the grandfathers dispute as to which one of them shall bring up the child. Antiochus was pleading on behalf of its paternal grandfather, and exclaimed: 'Give up the child! Give it up this instant before it can taste its mother's milk!'

Other famous sophists also appeared in court on their own account, such as Herodes Atticus,[87] Hadrian of Tyre,[88] Quirinus of Nicomedia,[89] and Heliodorus 'the Arab'.[90] It is

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[83] *VS* 606: δὲ δικανικοῦ μὲν σοφιστικώτερος, σοφιστικοῦ δὲ δικανικώτερος. *Cf.* also *VS* 511.

[84] *VS* 569: καὶ καθάπαξ τὴν ἰδέαν τοῦ λόγου δικανικῆς μὲν σοφιστικώτερος, σοφιστικῆς δὲ δικανικώτερος.

[85] *VS* 569: καὶ τὰ πάθη ἄριστα σοφιστῶν μετεχειρίσατο, οὐ γὰρ μονῳδίας ἀπεμήκυνεν, οὐδὲ θρήνους ὑποκειμένους, ἀλλ' ἐβραχυλόγει αὐτὰ ξὺν διανοίαις λόγου κρείττοσιν.

[86] On this well-known theme, see Sen. *Controv.* 1.5; Quint. *Inst.* 7.7.3; H. Bornecque, *Les déclamations et les déclamateurs d'après Sénèque Le Père* (Lille 1902) 60-61; S. F. Bonner, *Roman declamation in the late Republic and the early empire* (Liverpool 1949) 89-91; M. Heath, *On issues*, 148-149; *Menander* (n.20, above) 10-16.

[87] *VS* 555, 559.

[88] *VS* 588-89.

[89] *VS* 621.

[90] *VS* 627. P. A. Brunt's list in 'The bubble of the Second Sophistic', *BICS* 39 (1994) 25-52 (31) is inconsistent: he omits Theodotus (566) and Ptolemy of Naucratis (595), while, on the other hand, he includes Hadrian of Tyre (erroneously referring to *VS* 579, instead of 588) and Heracleides of Lycia (613) – without considering the possibility that they excelled in *controversiae* and not in real court-cases – and also the sophist Athenodorus (citing *VS* 595), who died in early manhood and was never active as advocate. He also speculates that 'presumably' Hippodromus of Larissa acted as advocate 'as he became *advocatus fisci*' (621), but it is clear that he confuses him with Quirinus of Nicomedia (621), *advocatus fisci* in the province of Asia in the late second century AD. *Cf.* also the catalogues in M. Heath, 'The family of Minucianus?', *ZPE* 113 (1996) 66-70 (68) and esp. in his *Menander* (n.20, above) 289-90.

significant that only Theodotus is listed by Philostratus as *agoraios*; however, Theodotus was an enemy of Herodes Atticus and his treatment is possibly a product of prejudice, or even conscious slander.[91] As far as Theodotus' high rhetorical skills are concerned, it is well known that, after studying with Lollianus of Ephesus, who excelled both as advocate and declaimer,[92] he was the first holder of the imperial chair of rhetoric in Athens in 174-76 AD, appointed by Marcus Aurelius himself.[93] The biographer clearly connects the characterization *agoraios* with Theodotus' attitude towards Herodes, and tries to diminish his status, commenting that the holding of the rhetorical chair alone 'would not be worth mentioning; for not all who ascend this chair are worthy of mention'.[94] However, when he concludes Theodotus' biography, his critique of his judicial capacity is quite positive.[95] In general, Philostratus carefully distinguishes sophistic rhetoric from the 'vulgar' oratory of the forensic *agoraioi*. He makes it clear that Heracleides, during an *extempore* declamation, broke down before the emperor, 'abashed by the court and the imperial bodyguard', exactly because a sophist could not be 'audacious and self-confident' like the *agoraioi* orators.[96] However, the biographer uses hardly anywhere the term *synēgoros*; in fact, *synēgoros* is applied, apart from Aeschines,[97] to the *syndikoi* of Smyrna before the emperor,[98] to the *advocatus fisci* Heliodorus,[99] and only once, in the case of Marcus Antonius Polemo, to a man who pleaded as the *synēgoros* of a fellow aristocrat before a court in Lydia.[100]

According to this lengthy anecdote, a wealthy Lydian, who was in danger of losing his property, most probably on account of debts, invited Polemo to Sardeis, in order to represent him before a local court, consisting of 'the hundred men who had jurisdiction

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[91] *VS* 566.

[92] *IG II*² 4211 line 7. Lollianus of Ephesus is not recorded by Philostratus as forensic *rhētor*, but for a well-known inscription which attests the opposite, see Puech 149=*IG* II² 4211, lines 6-7 (Publius Hordeonius Lollianus): ἀμφότερον ῥητῆρα δικῶν μελέτησί τε ἄριστον.

[93] I. Avotins, 'The holders of the chairs of rhetoric at Athens' *HSCP* 79 (1975) 313-24 (314, 316, 324).

[94] *VS* 566: καὶ οὐ τοῦτό πω λόγου ἄξιον, οὐδὲ γὰρ πάντες οἱ ἐπιβατεύοντες τοῦ θρόνου τούτου λόγου ἄξιοι ....

[95] *VS* 567: τὴν δὲ ἰδέαν τῶν λόγων ἀποχρῶν καὶ τοῖς δικανικοῖς καὶ τοῖς ὑπερσοφιστεύουσιν.

[96] *VS* 614: Ἐπὶ Σεβήρου δὲ αὐτοκράτορός φασιν αὐτὸν σχεδίου λόγου ἐκπεσεῖν αὐλὴν καὶ δορυφόρους δείσαντα. τουτὶ δὲ ἀγοραῖος μέν τις παθὼν κἂν αἰτίαν λάβοι, τὸ γὰρ τῶν ἀγοραίων ἔθνος ἰταμοὶ καὶ θρασεῖς, σοφιστὴς δὲ ξυσπουδάζων μειρακίοις τὸ πολὺ τῆς ἡμέρας πῶς ἂν ἀντίσχοι ἐκπλήξει;

[97] *VS* 482.

[98] *VS* 540: ἐγένετο μὲν ἐπ' ἄλλοις ξυνδίκοις ἡ πόλις, πονηρῶς δὲ αὐτῶν ἐν τῷ βασιλείῳ δικαστηρίῳ διατιθεμένων τὸν λόγον βλέψας ὁ αὐτοκράτωρ ἐς τοὺς τῶν Σμυρναίων ξυνηγόρους 'οὐ Πολέμων' εἶπεν 'τουτουὶ τοῦ ἀγῶνος ξύνδικος ὑμῖν ἀπεδέδεικτο.

[99] *VS* 626: καὶ μὴν καὶ προὐστήσατο αὐτὸν τῆς μεγίστης τῶν κατὰ τὴν Ῥώμην συνηγοριῶν ὡς ἐπιτηδειότερον δικαστηρίοις καὶ δίκαις.

[100] *VS* 525.

over Lydia'; Polemo's fee was set at two talents.[101] To paraphrase Philostratus' account, Dionysius of Miletus, an ageing sophist, was visiting Sardeis and was anxious to hear Polemo declaim, having heard about his high sophistic qualities and fearing for his own status and reputation (*VS* 524-25):

> ἐγήρασκε μὲν ὁ Διονύσιος ἐν δόξῃ λαμπρᾷ, παρῄει δ᾽ ἐς ἀκμὴν ὁ Πολέμων οὔπω γιγνωσκόμενος τῷ Διονυσίῳ καὶ ἐπεδήμει ταῖς Σάρδεσι ἀγορεύων δίκην ἐν τοῖς ἑκατὸν ἀνδράσιν, ὑφ᾽ ὧν ἐδικαιοῦτο ἡ Λυδία. […] 'ἀνὴρ' […] "πλουσιώτατος τῶν ἐν Λυδίᾳ κινδυνεύων περὶ τῆς οὐσίας ἄγει συνήγορον τὸν Πολέμωνα ἀπὸ τῆς Σμύρνης πείσας διταλάντῳ μισθῷ, καὶ ἀγωνιεῖται τὴν δίκην αὔριον." καὶ ὁ Διονύσιος 'οἷον' ἔφη 'ἕρμαιον εἴρηκας, εἰ καὶ ἀκοῦσαί μοι ἔσται Πολέμωνος οὔπω ἐς πεῖραν αὐτοῦ ἀφιγμένῳ.' 'ἔοικεν' εἶπεν ὁ Δωρίων 'στρέφειν σε ὁ νεανίας ἐς ὄνομα ἤδη προβαίνων μέγα.' 'καὶ καθεύδειν γε οὐκ ἐᾷ, μὰ τὴν Ἀθηνᾶν,' ἦ δ᾽ ὁ Διονύσιος 'ἀλλ᾽ ἐς πήδησιν ἄγει τὴν καρδίαν καὶ τὴν γνώμην ἐνθυμουμένῳ, ὡς πολλοὶ οἱ ἐπαινέται αὐτοῦ, καὶ τοῖς μὲν δωδεκάκρουνος δοκεῖ τὸ στόμα, οἱ δὲ καὶ πήχεσι διαμετροῦσιν αὐτοῦ τὴν γλῶτταν, ὥσπερ τὰς τοῦ Νείλου ἀναβάσεις'.

> When Dionysus was beginning to grow old and enjoyed the most distinguished reputation, and Polemo, on the other, was attaining to the height of his career, though he was not yet personally known to Dionysius, Polemo paid a visit to Sardis to plead a case before the Centumviri who had jurisdiction over Lydia. […] 'A very wealthy man, a Lydian, is in danger of losing his property, and hence he has brought Polemo from Smyrna to be his advocate by the inducement of a fee of two talents, and he will defend the suit to-morrow'. 'What a stroke of luck is this!' cried Dionysius, 'that I shall actually be able to hear Polemo, for I have never yet had a chance to judge of him.' Dorion remarked: 'The young man seems to make you uneasy by his rapid advance to a great reputation.' 'Yes, by Athene', said Dionysius, 'he does not even allow me to sleep. He makes my heart palpitate, and my mind too, when I think how many admirers he has. For some think that from his lips flow twelve springs, others measure his tongue by cubits, like the risings of the Nile'.

However, after attending the trial and listening to Polemo's speech, Dionysius commented that 'this athlete possesses strength, but it does not come from the wrestling'.[102] After hearing this ambiguous remark, Polemo challenged Dionysius by coming to his door and asking to deliver a declamation before him. From the above story, it becomes obvious that sophistic advocacy has to be placed in the general framework of sophistic declamation. Polemo's court-speech was considered a sophistic performance,[103] as is clear from the fact

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[101] On 'one hundred men who had jurisdiction over Lydia': Mitteis, *Reichsrecht und Volksrecht* (n.7, above) 91; C. Habicht, 'New evidence on the province of Asia', *JRS* 65 (1975) 64-91; Fournier, *Entre tutelle romaine et autonomie civique* (n.7, above) 35 n.12.

[102] *VS* 525: 'ἰσχὺν' ἔφη 'ὁ ἀθλητὴς ἔχει, ἀλλ᾽ οὐκ ἐκ παλαίστρας'.

[103] As recent scholarship has repeatedly pointed out – following the path-breaking work of M. W. Gleason, *Making men. Sophists and self-presentation in ancient Rome* (New Jersey 1995) – the core of sophistic declamation was 'performance'. As Tim Whitmarsh has put it, in his elegant summary of the place of the Second Sophistic in imperial culture, performance was 'the stuff of the sophistic mission' [*The Second Sophistic* (Oxford 2005) 24; on this topic, 23-40]. *Cf.* also

that Dionysius attended Polemo's court appearance in order to ascertain whether the younger sophist deserved his 'rapid advance in to a great reputation', while the older sophist's place in the sophistic canon seemed to be in danger.[104] Dionysius' remark possibly meant that Polemo's strength came 'from another source', and not from proper sophistic charisma. The unique Philostratean use of *synēgoros* in a private case is perhaps linked to Polemo's own status as a conspicuous public figure who acted, possibly many times, as *syndikos* of Smyrna,[105] even if this anecdote actually goes back to the very beginning of his career.

What was the symbolic role of the sophists as *synēgoroi* and, also, as political figures in the life of the Greek cities during the Principate? Notable members of the local elites,[106] most sophists were constantly involved in civic politics, and their biographer feels obliged to explain why some of his subjects abstained from internal affairs.[107] If one returns to Plutarch's advice to the young Menemachus, it appears that the sophists followed all three recommendations for a successful political career: apart from participating in 'public trials', they served as ambassadors to the emperor,[108] and acted as advocates and mediators in private cases. Although current research is more concerned with the 'politics' of sophistic language and style, or the sophists' ideological construction of a 'Hellenic' identity, through the practice of strict Atticism and the uses of the classical Greek political past,[109] in order to work out their ambiguity towards Rome, it is worth bearing in mind

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M. Korenjak, *Publikum und Redner: ihre Interaktion in der sophistischen Rhetorik der Kaiserzeit* (Munich 2000); T. A. Schmitz, 'The Second Sophistic', in M. Peachin ed., *The Oxford handbook of social relations in the Roman world* (Oxford 2011) 304-16 (308); J. Connolly, 'Reclaiming the theatrical in the Second Sophistic', *Helios* 28 (2001) 75-96, (84-92). On sophistic performance as a source of rivalry and hostility, see G. W. Bowersock, 'Artemidorus and the Second Sophistic', 59-60. Artemidorus attacks performers as 'liars' (iii 4), and sophists are equated to performers: 'Actors and players who mount the stage are obviously not to be believed by anyone, since they play parts. Sophists, poor men, priests of Cybele, castrated men, and eunuchs are also untrustworthy' (ii 69). *Rhētores*, in general, are considered frauds and deceivers; Artemidorus casts them among adulterers and forgers (i 51). Performance was, of course, an essential characteristic of public life and politics, especially in the Hellenistic age (see A. Chaniotis, *Theatricality and public life in the Hellenistic world* [Θεατρικότητα καὶ δημόσιος βίος στὸν ἑλληνιστικὸ κόσμο] (Iraklion 2009) 41-139, 171-197], and the image of politician as performer and actor from the very moment of his entrance into politics (*Praec. ger. reip.* 805d) is another well-known Plutarchean metaphor: Swain, *Hellenism and empire* (n.37, above) 177-78. Fuhrmann, *Les images de Plutarche* (n.55 above) 241-44. Quet, 'Rhétorique, culture et politique' (n.55, above) 65-66.

[104] *VS* 525: καὶ ὁ Διονύσιος "οἷον" ἔφη "ἕρμαιον εἴρηκας, εἰ καὶ ἀκοῦσαί μοι ἔσται Πολέμωνος οὔπω ἐς πεῖραν αὐτοῦ ἀφιγμένῳ." "ἔοικεν" εἶπεν ὁ Δωρίων "στρέφειν σε ὁ νεανίας ἐς ὄνομα ἤδη προβαίνων μέγα".

[105] *VS* 540.

[106] Bowersock, *Greek sophists* (n.62, above) 21-23.

[107] *VS* 511, 568, 600.

[108] Bowersock, *Greek sophists* (n.62, above) 46-47; Bowie, 'Greeks and their past' (n.63, above) 36-37, 55-57.

[109] *Cf.* the works of Swain and Whitmarsh cited earlier (n.37 and 103, above) On the view that the cultural activities of the civic elites symbolically mirror and justify the real power structures by

that the sophists were 'practically' involved in politics through the holding of civic offices, richly attested in the *Lives of the sophists* and the epigraphical record.[110] But here, my primary interest is the *symbolic function* of the sophists' political and forensic activities, as illustrated in some interesting anecdotes preserved in Philostratus' narrative.

It is worth turning, first, to the life of the Flavian sophist Scopelian of Clazomenae. He was a student of Nicetes and himself a famous teacher of rhetoric in Smyrna, where he taught numerous students from all over Asia, 'Ionians, Lydians, Carians, Maeonians, Aeolians also and Greeks from Mysia and Phrygia (...) Cappadocians and Assyrians (...) Egyptians and Phoenicians, the most illustrious of the Achaeans, and all the youth of Athens',[111] having refused the proposal made by his home city Clazomenae to open a school there, since 'the nightingale does not sing in the cave'.[112] Scopelian had been a very successful advocate, and perhaps the only way to win a case against him was by bribing the jury, as had happened in a trial over the will of his own father (*VS* 517):

καὶ τῆς τοῦ Σκοπελιανοῦ δεινότητός τε καὶ τῆς ἐν τοῖς δικαστηρίοις ἀκμῆς κρείττων ἔδοξεν ἀγωνισάμενος μὲν περὶ τῶν διαθηκῶν πρὸς αὐτόν, ἀντεκτείνας δὲ τῇ ἐκείνου δεινότητι τὸν ἐκείνου πλοῦτον· ἀπαντλῶν γὰρ τῆς οὐσίας καὶ μισθούμενος ὑπερβολαῖς χρημάτων γλώττας ὁμοῦ πάσας καὶ δικαστῶν ψήφους πανταχοῦ τὴν νικῶσαν ἀπηνέγκατο.

The surprising thing is that he showed himself more than a match for the oratorical talent of Scopelian, and his high reputation, in the law courts; for he went to law with him over the will, and used Scopelian's own fortune to counteract the latter's talent. For by drawing deeply on the estate and bribing with extravagant sums the tongues of all men, and at the same time the votes of the jury, he won a complete victory on every point.

controlling the classical past and elaborating complex forms of public speech: T. Schmitz, *Bildung und Macht: zur sozialen und politischen Funktion der zweiten Sophistik in der griechischen Welt der Kaiserzeit* (Munich 1997).

[110] Eponymous *archon*, Athens: Herodes Atticus (126/7 AD: *VS* 550; *IG* II² 3190); Theodotus (Puech 252-53); Apollonius of Athens (205-10 AD; *VS* 600; Puech 21-24). Hoplite general, Athens: Lollianus of Ephesus (twice: 117, 138 AD. Philostratus knows only one service: 526. Puech 149-50); Apollonius of Athens (*VS* 601; Puech, 149-50); Philostratus himself (200/1 AD; J. S.Trail, 'Greek inscriptions honoring Prytaneis', *Hesperia* 40 (1971) 324); *agoranomos*, Athens: Herodes Atticus (125 *AD*; *IG* II² 3602); *stephanephoros*, Smyrna: Heracleides (*VS* 613); *archiereus* of Asia: Scopelian (*VS* 515); *archiereus* of Lycia: Heracleides (*VS* 613). On the many sophists who served as *stephanephoroi*, *agonothetai*, *tamiai, etc*, see the catalogue in Puech 23-27, and also the collection of epigraphical sources in Puech 60-61, 131-32, 138, 167, 173, 205, 226, 227, 252-53, 260.

[111] *VS* 518: Σκοπελιανοῦ δὲ σπουδάζοντος ἐν τῇ Σμύρνῃ ξυμφοιτᾶν μὲν ἐς αὐτὴν Ἴωνάς τε καὶ Λυδοὺς καὶ Κᾶρας καὶ Μαίονας Αἰολέας τε καὶ τοὺς ἐκ Μυσῶν Ἕλληνας καὶ Φρυγῶν οὔπω μέγα, ἀγχίθυρος γὰρ τοῖς ἔθνεσι τούτοις ἡ Σμύρνα καιρίως ἔχουσα τῶν γῆς καὶ θαλάττης πυλῶν, ὁ δὲ ἦγε μὲν Καππαδόκας τε καὶ Ἀσσυρίους, ἦγε δὲ Αἰγυπτίους καὶ Φοίνικας Ἀχαιῶν τε τοὺς εὐδοκιμωτέρους καὶ νεότητα τὴν ἐξ Ἀθηνῶν ἅπασαν.

[112] *VS* 516: δεομένων δὲ τῶν Κλαζομενίων τὰς μελέτας αὐτὸν οἴκοι ποιεῖσθαι καὶ προβήσεσθαι τὰς Κλαζομενὰς ἐπὶ μέγα ἡγουμένων, εἰ τοιοῦτος δὴ ἀνὴρ ἐμπαιδεύσοι σφίσιν, τουτὶ μὲν οὐκ ἀμούσως παρῃτήσατο τὴν ἀηδόνα φήσας ἐν οἰκίσκῳ μὴ ᾄδειν....

How does Philostratus describe Scopelian's practice of advocacy? The biographer explains that Scopelian was a generous advocate and notes that he supported without a fee those who were facing the death penalty (probably in the court of the Roman governor). Scopelian not only defended his clients for free, but also confronted those who delivered 'abusive' speeches, in order to restrain social antagonisms. Thus, his role as a social mediator worked both towards Rome, and internally in the Greek cities (*VS* 519):

> τὸ δὲ ἐν τοῖς δικαστηρίοις ἦθος οὔτε φιλοχρήματος οὔτε φιλολοίδορος· προῖκα μὲν γὰρ ξυνέταττεν ἑαυτὸν τοῖς ὑπὲρ ψυχῆς κινδυνεύουσι, τοὺς δὲ λοιδορουμένους ἐν τοῖς λόγοις καὶ θυμοῦ τινα ἐπίδειξιν ἡγουμένους ποιεῖσθαι γραίδια ἐκάλει μεθύοντα καὶ λυττῶντα.

> In the law courts he displayed a temper neither avaricious nor malevolent. For without a fee he would champion the cause of those who were in danger of their lives, and when men became abusive in their speeches, and thought fit to make a great display of indignation, he used to call them tipsy and frenzied old hags.

Scopelian was constantly co-operating with the political elite in the government of Smyrna: 'during the period before a declamation he was generally in the company of the magistrates of Smyrna transacting public business'.[113] He used his sophistic charisma to control and suppress the political conflicts which arose in the popular assembly, a field where conflicts between the elite and the masses could burst at any time (*VS* 519):

> παρήει δὲ καὶ ἐς τοὺς δήμους ἀνειμένῳ τε καὶ διακεχυμένῳ τῷ προσώπῳ, καὶ πολλῷ πλέον, ὅτε ξὺν ὀργῇ ἐκκλησιάζοιεν, ἀνιεὶς αὐτοὺς καὶ διαπραΰνων τῇ τοῦ εἴδους εὐθυμίᾳ.

> Even when he appeared in the public assembly it was with a cheerful and lively countenance, and all the more when the meeting was excited by anger, for then he relaxed the tension and calmed their minds.

Another famous advocate, Damianus of Ephesus, acted in the same way as a social mediator who helped those who were in need, also by defending them without a fee (*VS* 606):

> ἔπειτα αὐτοῦ τοῦ ἀνδρὸς τὸ ἐν τῇ ἀγορᾷ ἦθος οὐ πᾶν ἀσπαζομένου κέρδος, οὐδὲ ἐπαινοῦντος τὸ ἐξ ἅπαντος λαμβάνειν, ἀλλ᾽ οὓς αἴσθοιτο ἀποροῦντας προῖκα τούτοις τὴν ἑαυτοῦ φωνὴν διδόντος.

> The man's own disposition, as he showed it in legal affairs, was that of one who did not embrace every chance of making a profit or approve of taking what he could get from any and every one. On the contrary, whenever he saw that people were in difficulties, he would offer to speak for them himself without payment.

However, the most revealing case is that of Marcus Antonius Polemo – the eminent sophist, *amicus* of the emperors Trajan, Hadrian and Antoninus Pius, *synēgoros* for members of the upper classes, and also famous benefactor of Smyrna – a man of whom it was thought that

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[113] *VS* 518: πρὸ τῆς μελέτης καιρὸν ξυνῆν ὡς ἐπὶ πολὺ τοῖς τῶν Σμυρναίων τέλεσιν ὑπὲρ τῶν πολιτικῶν.

'he conversed with cities as his inferiors, emperors as not his superiors and the gods as his equals'.[114] According to his biographer, Polemo used the powerful medical metaphor of *nosos* and the threat of punishment in order to control the political and social equilibrium in Smyrna, and he also interfered directly in the administration of its legal affairs. Polemo repressed the social conflicts in Smyrna by imposing 'concord', especially between the urban and rural population (*VS* 531):

> ἔπειτα ὁμονοοῦσαν καὶ ἀστασίαστον πολιτεύειν, τὸν γὰρ πρὸ τοῦ χρόνον ἐστασίαζεν ἡ Σμύρνα καὶ διεστήκεσαν οἱ ἄνω πρὸς τοὺς ἐπὶ θαλάττη.

> He brought about a harmonious government free from faction. For, before that, Smyrna was rent by factions, and the inhabitants of the upper district were at variance with those on the sea-shore.

Polemo accused in public of the most severe moral disease (*hybris*) anyone surpassing the measure of political 'balance'.[115] Furthermore, according to Philostratus, Polemo 'did not allow' the Smyrneans to have their private disputes judged 'outside' their city, and saw to it that they were 'settled' there – *i.e.* he did not allow them to file an appeal before the court of the Roman governor.[116] Polemo attempted, on the one hand, to prevent the intervention of Rome in the 'private' affairs of the Smyrneans, while he ensured, at the same time, that jurisdiction in private disputes would remain in the local courts which were controlled by the leading aristocratic families of the city. It is possible that citizens of the lower classes often preferred to be judged before the Roman governor rather than by the courts of their cities, fearing that they would probably be judged by fellows of their socially-powerful opposing litigants. Polemo's authoritative command reflects the desire of the ruling classes to keep the masses under their jurisdiction.

By contrast, Polemo urged the citizens of Smyrna to 'take out of the city', as we can read in the Greek text below, and transfer to the jurisdiction of the Roman governor who held the *ius gladii* the power to enforce capital punishment in disputes such as those concerning 'acts of adultery, sacrileges and homicides', which constitute the most dangerous *nosos* for the city – ἄγος, 'pollution' (*VS* 532):

> ... τὰς γὰρ ἐπὶ μοιχοὺς καὶ ἱεροσύλους καὶ σφαγέας, ὧν ἀμελουμένων ἄγη φύεται, οὐκ ἐξάγειν παρεκελεύετο μόνον, ἀλλὰ καὶ ἐξωθεῖν τῆς Σμύρνης, δικαστοῦ γὰρ δεῖσθαι αὐτὰς ξίφος ἔχοντος.

> ... for those against adulterers, sacrilegious persons and murderers, the neglect of which breeds pollution, he not only urged them to carry them out of Smyrna but even to drive them out. For he said that they needed a judge with a sword in his hand.

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[114] *VS* 535: ὡς πόλεσι μὲν ἀπὸ τοῦ προὔχοντος, δυνάσταις δὲ ἀπὸ τοῦ μὴ ὑφειμένου, θεοῖς δὲ ἀπὸ τοῦ ἴσου διαλέγεσθαι.

[115] *VS* 531: καὶ μὴν καὶ τοῖς ἁμαρτανομένοις δημοσίᾳ ἐπιπλήττων καὶ κατὰ σοφίαν πλεῖστα νουθετῶν ὠφέλει, ὕβριν τε ὁμοίως ἐξῄρει καὶ ἀγερωχίαν πᾶσαν.

[116] *VS* 532.

Polemo's second command can be read in two ways: on the one hand, as a defensive denial of reality, if Rome retained anyway jurisdiction on capital crimes;[117] on the other hand, as another instance of elite politics. The ruling classes opted for the expulsion of all social or legal conflicts which risked destabilizing the political *status quo* – hence the threat of *miasma*. If social or legal disturbances – symbolised as 'pollution' – could be transmitted and expanded, affecting the political equilibrium, it is obvious that local elites – as already seen in Plutarch's view of internal politics – preferred to have them expelled from their cities by referring them to Roman judgment.

In the light of the above extract, it is not hard to understand how many of the prolific *rhētores* and sophists of the first and second centuries AD, acting as politicians, *synēgoroi*, advocates and, above all, social mediators and *diallaktai* – in addition to their various public offices and benefactions – could be elevated to the status of 'doctors' or 'healers' in the social imagination of the urban masses, manifested in Artemidorus' dream interpretations. They protected in the courts those who were in need, or indeed 'cured' civil strife and social antagonism by interfering directly in the administration of justice and by 'taking out' of their cities the 'pollution' which threatened their fragile political and social balance.

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[117] Fournier, *Entre tutelle romaine et autonomie civique* (n.7, above) 71, 331-33. Kantor, *Roman Law and Local Law* (n.7, above) 273-74 does not exclude the possibility that Smyrna still had jurisdiction in capital trials.

THE EXPLOITS OF HONORIUS:
EVIDENCE FOR ROMAN ADVOCACY
IN THE TIME OF JUSTINIAN[1]

J. G. F. POWELL

This chapter will move into a period in the history of Roman oratory which is comparatively little known: the sixth century AD. The most distinguished legacy of that period to the modern world was doubtless the codification of Roman law under Justinian. We can emerge from a reading of the Institutes and the Digest with a highly detailed knowledge of the rules of the Roman legal procedure of that time; and yet from those sources we get hardly any idea of what day-to-day life in the Roman courts was like at this period. This contrasts with the state of our knowledge in regard to the Ciceronian period, where the legal framework under which the courts worked must be reconstructed as far as it can be from scattered evidence, but there is (comparatively speaking) a good deal of historical information about cases in court and the behaviour of advocates.

The limitations of the evidence make it difficult to test or refute what I suspect has still tended to be the common assumption, that in the Republic what mattered in the courts was oratorical performance, whereas in later times advocacy became more workaday and businesslike and bore a greater resemblance to what we largely find in our own courts today (whether in Britain, Europe, or America). The two complementary narratives of the decline of oratory and the rise of Roman 'legal science' do, of course, have some basis in the evidence, but an oversimplified view of them has been encouraged by the accident of what happens to have survived.

The texts which I shall present in this chapter cast an admittedly all too brief light on the actual practice of advocacy in late antiquity. One possible objection should be dealt with immediately at the beginning. The texts in question are fictional narratives with more than a dash of comedy. Can such writings be used as a historical source at all? The answer to this is reasonably simple. If by a historical source one means a source of precise information about real persons, institutions or events, the answer is evidently that at the very least one must be extremely careful and the enquiry may, in the end, yield nothing at all. But if one means a source which may contribute to our understanding of the habits and ethos of a particular society or of a sub-culture within it, such as that of the legal or oratorical profession, then the answer is at least potentially much more positive. The usefulness of any literary (especially comic) source is naturally a good deal greater when it is possible to compare it with other kinds of evidence. But even where such evidence is

missing, one can still attempt to assess, on grounds of probability, when such a source is exaggerating or fantasizing and when it is reflecting some real feature of its background; and one should also remember that every culture or profession has its own recurrent fantasies which are just as much part of its ethos as are the everyday facts of its existence. An authority on the ethos of the English bar, David Pannick, comments with reference to Horace Rumpole, the fictional hero of John Mortimer's stories: '… on a visit to the robing room of any Crown Court in south-east England it is impossible to tell whether the barristers to be found there served as the raw material for this work of supposed fiction or whether they have modelled their professional performance on Rumpole's example.'[2] As a matter of general probability, it is at least possible that the ancient stories which form the material of this chapter are to be read in the same spirit. Certainly, their hero – an advocate named Honorius – bears more than a passing resemblance to Mortimer's creation in the unorthodox methods he sometimes uses to obtain a verdict.

These texts, published for the first time in 1862,[3] are still not at all widely known. They do not figure at all in the otherwise excellent account of the history of Roman advocacy by J. Crook, although they would have provided some corroboration for Crook's argument that advocacy remained important in the Roman courts.[4] They were published again by L. Mondin in the proceedings of a conference on Late and Vulgar Latin where they were unlikely to be read by anyone except specialists on Latin linguistics.[5] The present chapter attempts to explore their interest for historians of law and rhetoric.

Their central character Honorius appears in them as an advocate, as a judge, and as one to whom others turn for advice when in a tricky legal situation. He is explicitly designated as an orator, and at one point he is addressed by another character as *scholastice*, this being a word applied in late antiquity to those who were trained as advocates in the courts, rather as the word 'learned' is formally applied to barristers in England today.

The text as we have it comprises five short stories, preserved in just one manuscript of the eighth century AD (the so-called Salmasianus, which is among other things our main witness for the text of the Latin Anthology).[6] Unluckily, a page has dropped out of the manuscript before our text of the stories begins; so the first of our stories has lost its beginning. The items in the manuscript are numbered, and from the numeration it appears that there was at least one other item on the missing page, which may or may not have been another Honorius story. The text is written in a clear and attractive script of the kind called 'half-uncial', which is thought by some palaeographers to have originated in the

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[2] D. Pannick, *Advocates* (Oxford 1992) 230.

[3] Reprinted in M. Haupt, *Opuscula*, 3 vols, Leipzig 1875-76, iii 150-55.

[4] J. Crook, *Legal advocacy in the Roman world* (London 1995).

[5] L. Mondin, 'Quelques textes peu connus du Codex Salmasianus (Par. Lat. 10318, VIIIe–IXe s., pp. 207-211' in *Latin vulgaire – latin tardif V: Actes du Ve Colloque international sur le latin vulgaire et tardif, Heidelberg, 5–8 septembre 1997*, ed. H. Petersmann, R. Kettemann (Heidelberg 1999) 459-68.

[6] M. Spallone, 'Il Par. lat. 10318 (Salmasiano): dal manoscritto alto-medioevale ad una raccolta enciclopedica tardo-antica', *Italia Medioevale e Umanistica* 25 (1982) 1-71.

late-antique law schools, especially that of Berytus (Beirut).[7] I do not venture to assert, though am tempted to believe, that the stories also originated in some such milieu.

The content of at least three of the stories is paralleled elsewhere. The first story is a version of a widely diffused, mainly Jewish and Oriental folktale.[8] Although the other attestations are mainly early modern, it is most unlikely that they derive from the Honorius story itself, and the evidence points to a common source in the late-antique Near East.[9] The second of the stories is barely altered from the anecdote of an encounter between Alexander the Great and one of his tutors, Anaximenes of Lampsacus. The fourth is of a type familiar in the world of Roman law: a missing son turns up to claim his inheritance and his identity is disputed.[10] For the other two I have not yet been able to find any direct parallel.

Two items of evidence suggest that Honorius was based on a real person. First, in the manuscripts of Iordanes the sixth-century Greek historian, there survives an elegant Latin epigram, attributed to 'Honorius scholasticus' and addressed to 'Iordanes episcopus', asking for instruction in the Christian religion, and comparing it with Seneca's moral teachings to the latter's disadvantage.[11] The appearance of the poem in a manuscript of the historian Iordanes seems to support the notion that the Iordanes addressed in the poem was the same man.

Secondly, next to the Honorius anecdotes in the Salmasianus, we find, hiding under the clearly false name of the 'chronicles of Julius Caesar', a geographical work,[12] whose subscription advertises it as a version (seemingly a pirate version) of an exposition by someone called 'Julius Honorius', taken down and circulated by one of his pupils. Cassiodorus (*Inst.* 1.25.1) refers to the author of this same treatise as 'Iulius orator'; and the same work is referred to also in the *Getica* of the historian Iordanes (sect. 6–7).

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[7] B. Bischoff, trans. D. Ó Cróinín and D. Ganz, *Latin palaeography: antiquity and the middle ages* (Cambridge 1990) 74.

[8] A version of it occurs notably in Voltaire's Oriental novel *Zadig*, chapter 10; commentators on Voltaire (*e.g.* G. Ascoli, revised by J. Fabre, Paris 1962, 80-81) mention a number of possible sources, including a seventeenth-century French collection of Indian (Muslim) stories; Mondin (n.5, above) refers to Arabic versions, and it figures also as a Jewish story in which the stone is replaced by a tree and Honorius' role is taken by a rabbi: see M. Gaster, *The exempla of the Rabbis* (London and Leipzig 1924) 133, no. 358. There is some similarity also to the story of Susanna in the Old Testament Apocrypha.

[9] The story itself contains an indication that its setting was in the Eastern Mediterranean. The peculiar rock formation on which the story hinges is described as 'the remains of the fallen feather', which exactly mirrors Juvenal's paraphrase for Egnatius Celer's origin 'ripa nutritus in illa / ad quam Gorgonei delapsa est pinna caballi' (Juv. 3.118). The legend of Pegasus' feather falling to earth was associated with Tarsus, although Egnatius was born at Beirut; perhaps he was educated at Tarsus, or else the legend may have been associated with both places.

[10] There was a well-known Augustan case of this kind, in which Asinius Pollio appeared for the testamentary heirs of a lady called Urbinia against a man who claimed to be her son (Quint. *Inst.* 7.2.26, Tac. *Dial.* 38); see C. Steel, 'Lost orators of Rome' in *A companion to Roman rhetoric*, ed. W. Dominik and J. Hall (Oxford and Malden, MA 2007) 246.

[11] F. Buecheler ed., rev. A. Riese, *Anthologia Latina* (Leipzig 1984-1897) no. 666.

[12] A. Riese ed., *Geographi Latini minores* (Leipzig 1978).

Unless some or all of these indications are erroneous, this could add up to a coherent picture: an orator called Julius Honorius, living in the sixth century AD, and acquainted with Iordanes, bishop of Croton and historian.[13] He would have been known principally as an advocate, hence the tendency for courtroom stories to gather round him. But the interests of such a man could well also have extended to literature, moral philosophy, and general knowledge, enabling him to lecture on geography, to study the teachings of Seneca, and to write accomplished Latin elegiacs to the bishop at a time when he turned to religion. Incidentally the Salmasianus manuscript also contains, after the Honorius stories and the geographical work, two items on moral philosophy, one of which is a collection of 'sententiae sci. Syxti episcopi e filosophi', and the other is the oldest extant source for the rehash of Senecan material which became popular in the Middle Ages under the title 'De Remediis Fortuitorum'. These are not explicitly linked with Honorius, but might also reflect his interests.

This, however, is all we can know or guess about him. If it is accepted that the Honorius of the stories was indeed based on a sixth-century orator and advocate, then at any rate the stories in their current form are not earlier than that. We have no *terminus ante quem*, other than the date of the manuscript itself (eighth or ninth century). But still, with some caution, we can take them as (on the face of it) providing evidence for attitudes to orators, advocates and advocacy in or just after the sixth century AD.

That is enough by way of introduction, and it is time to turn to the stories themselves. The first concerns a merchant who is joined on a journey by a *parasitus* or con-man. At a certain point on his journey, marked by a boulder of peculiar size and shape, the merchant falls ill and is left for dead, after first handing over his baggage to his companion, who makes off with it. Then the merchant, restored to health, successfully pursues his former companion and sues him for the return of his property – a straightforward claim under Roman law, provided it was proved that the goods were entrusted for safe keeping and intended to be returned on demand (the story uses the correct legal term *depositum*). However, he has a hard time of it, as there were no witnesses to the handing over of the goods: the con-man simply pretended not to know him. I continue in the words of the original story (my translation):

> The dispute between the two came before Honorius. The rich man, with no witnesses to support him, demanded the deposited goods back from his companion the trickster; on the other side the claim was vigorously denied. The rich man, as a sign of his truthfulness, described with the accurate memory that goes with reliability[14] the rock lying on the road, and his sudden pain; but no evidence could by any means make the bandit confess. But his treacherous spirit was taken aback when the clever judge examined him and said to him: 'Go quickly post-haste, and bring into court that rock you two companions met on the road. I would like to ask the stone a few questions in private; you understand that I can get confessions even

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[13] W. Kroll, *RE* Suppl. iii *s.v.* Honorius 6 and 7.

[14] Latin *credulitatis*: but it is clear from the occurrence of this word in the fifth story that *credulitas* for the writer of the manuscript (if not for the composer of the stories) meant 'credibility', not 'credulity'.

from inanimate objects.' This confident and unexpected question threw the guilty man's mind into confusion. He forgot to keep his knowledge secret,[15] and blurted out that the rock was too large to be brought there even by a team of four horses. In that way he gave open testimony of his guilt, which he had stubbornly denied, and condemned himself out of his own mouth.

The other stories are short enough to be told as they were written.

2.   A certain person who had been proved guilty of a capital crime and convicted on clear evidence, before sentence of death was passed by the severe judge, as his fate hung in the balance for a short time, bethought himself of the assistance of Honorius, and persuaded him to help in his extremity. The judge, seeing Honorius sitting in front of the tribunal and about to burst out into speech, thought he was about to beg for mercy for the defendant, and swore by the safety of the State and the prosperity of the empire that whatever Honorius asked for would be refused. Then Honorius, taking the opportunity he had desired, pleaded that the defendant should be executed, so far as that was consistent with the terms of the oath. By that device the defendant was saved from capital punishment and was allowed to go free.

3.   A certain very noble Roman lady had been caught in public washing away her menstrual blood in the public water supply at the Claudian spring. Being guilty of the grave charge of having polluted the spring waters with the uncleanness of her blood, she was being led out to be stoned to death. Bound hand and foot, she suddenly caught sight of Honorius through the columns of the accusing crowd, and cried out to him, 'Help me, learned man (*scholastice*), and come to the defence of my family! Say anything you can!' Honorius, in response to this final appeal for help, replied to her: 'You had better confess that you washed away your blood in the Claudian spring, so that the whole Roman people will be liable to be held guilty of pollution.' At this unexpected pronouncement, the mood of the crowd went to the other extreme: they were afraid that the news of this disgrace might reach neighbouring nations. The lady was saved, and a shout went up from her accusers that she had not done it after all.

4.   A certain man on his death left a surviving wife and infant son. The wife, so that she might enjoy alone and with greater freedom the possession of his great wealth and resources, trampled family affection underfoot and ordered her attendants to cut the throat of her son. But by the kindness of the servants he was left alive in the forest, and in due course arrived at the mature strength of a young man, without the knowledge of his mother. The fact that he was the noble offspring of that family could not remain concealed, and the young man summoned into court his mother, who in her greed for wealth pretended that she did not recognize the child of her body. While the whole court and assembled ranks of the Bar were applauding counsel for the rich woman,[16] the only representation left to the boy was that of Honorius. On the day when the case was due to

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[15] This is the meaning of the Latin *conscientiam suam tenere non potuit*; it does not refer to 'conscience' in the modern sense. Honorius' question does nothing to excite the con-man's moral sense, but merely tricks him into revealing his knowledge of the place.

[16] Reading *divitis* for *divitiis*.

come on, the mother attended court, the courtroom was crowded with barristers, but the boy's advocate alone was absent – clearly on purpose. The search for him went on for a long time, and eventually because of his absence a verdict in favour of the woman was hanging on the judge's lips. What, indeed, could the eloquent tongue of an advocate have done for the boy, when his mother denied him? However, the good orator hid himself only for a short time, and at last he came in through the door of the court, bathed in sweat. Everyone asked the reason for his prolonged absence. He replied that he had been spending a long time looking for the mother of the boy, and, so far, was still looking. At once the woman forgot herself because of this surprise attack. She gave away the truth which she had been trying to hide, and said that she, the mother of the boy, had been in court all the time. In this way she unintentionally admitted that the young man, whom she pretended was not hers, was in fact her son.

5. A very noble lady had woven by the arts of Pallas two fine linen shawls from one roll of cloth with delicate embroidery. The fine subtlety with which the valuable work had been finished was such that those who came to admire them appeared like a stream of spectators coming to see a famous wonder.[17] But while the lady was appearing at public gatherings wearing this notable piece of *haute couture*, a certain other woman of good family, who could not bear such beauty in another's clothes, imitated the ethereal artistry of the threads, got the pattern by eye, and made one piece of work woven exactly like it. Then (in the way chance has of keeping a malevolent eye on anything of high quality) it happened that by a stroke of ill luck the lady who had two had one somehow snatched away from her. But after she had lost the garment, she saw the other lady, her rival, wearing the spitting image of her own shawl, transparently woven with very similar skill. This she took with great ill-will; she accused the other woman – who was, in fact, a model of chastity – of having acquired the famous shawl as the price of adultery with her husband, and to enhance her credibility she showed her the companion-piece of the one she had lost through mischance. The lady who had made the one shawl in honest envy asked Honorius for his opinion. While the case stood on a knife-edge, and the other lady averred that her husband had taken that one of the pair as a reward for his new mistress, Honorius advised that the threads should be counted in the two pieces of cloth that were held to be a pair. The inspection was duly carried out, and revealed that the arrangement of the threads was different; so because of the numerical discrepancy the dispute was resolved.

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A striking feature of all these stories is that although Honorius is characterized in one place as *bonus orator*, none of his effects is achieved by oratory as such (*i.e.* the making of continuous speeches). The unwary might, therefore, be inclined to take the stories as evidence that the role of oratory in court proceedings had declined by the relevant period, and that its place had been taken by quick-fire cross-examination and other non-oratorical methods, more similar to the kind of thing that happens in a modern court in one of the Anglo-Saxon jurisdictions. It might be that the word *orator* applied to advocates was by this time no more than a convention.

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[17] With some hesitation I have followed Mondin's interpretation of this clause (see n.5, above, 462).

For example, in the first story, although Honorius is here playing the role of the judge, he displays what in modern times is often considered pre-eminently the advocate's gift – the art of eliciting a confession by deft cross-examination. One may think of modern stories like the one told of F. E. Smith (Lord Birkenhead), defending a bus company against a claim for compensation after a road accident. The young claimant said that as a result of the accident he could only lift his arm up to a certain height, and gave an apparently painful demonstration of this to the court. Smith asked him to show how far he could lift his arm before the accident. The boy's arm shot up and the case was over.[18]

However, I do not think the stories can be made to support any such thesis. Rather what they illustrate – and illustrate very neatly – is the fact that, in virtually all times and places, an advocate's performance in court includes a good deal more than just speechmaking. To be successful, an advocate needs both to be able to make continuous presentations of a case and to be able to seize the opportunities of the moment.

I have suggested elsewhere that this may have been true even in the Ciceronian period, but that our evidence has given a possibly exaggerated view of the importance of speechmaking, for a number of related reasons:[19]

(a) The speeches of Cicero and a few others were published after the event as literary artefacts; most of those that have survived into modern times are Cicero's. In these cases, the speeches have outlasted all or most of the evidence for whatever else went on in court, and we tend to assume by default that they were the decisive factor in winning the case; whereas, in fact, the speeches represented by the written versions constitute only a part of the actual court proceedings, and we have no means of knowing whether they were the most decisive part, however proud of them their author may have been.

(b) Much of our evidence for Roman court practice comes from spokesmen for rhetorical education. It is more than likely that these authors tended to exaggerate the importance of what they could teach, *i.e.* the composition and delivery of speeches, relative to what they could not reasonably expect to teach, *i.e.* practical experience of conducting cases and the ability to think on one's feet.

(c) The fact that we happen to have no written versions of Latin courtroom speeches from any time after Apuleius certainly does not in itself indicate that speeches were not made or that those that were made were less important. Most of the speeches made by Republican and early imperial orators have also failed to be preserved.

That oratory in the classical manner does, in fact, still form the backdrop to the Honorius stories is illustrated by one particular passage in them. In the fourth of the stories, as is typical of Roman civil procedure, the trial is divided into two halves, in both of which there was scope for advocacy. In the first of these, the boy summons his mother to court; and 'the whole court and the assembled ranks of the Bar were applauding counsel for the rich woman' – 'cumque divitis patrocinio mulieris tota forensis curia et toga plauderet'. What, then, were they applauding? It is difficult to think that they were not applauding an oratorical performance by the woman's advocate, doubtless the best available. Then, when the case comes on again *apud iudicem*, there is an authorial

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[18] L. Page, *First steps in advocacy* (London 1943) 101.

[19] J. G. F. Powell, 'Court procedure and rhetorical strategy in Cicero', in *Form and function in Roman oratory*, ed. D. Berry and A. Erskine (Cambridge 2010) 21-36.

comment: 'what could the eloquent tongue of an advocate have done for the boy?'. The implication is that oratory would have been expected from Honorius too and that he would have been capable of providing it. The point of the story, however, is that oratory does not necessarily carry the day. The advocates on the other side had made an impressive case by means of oratory, which Honorius was able to subvert by alternative means.[20]

To return now to the first of the Honorius stories (the stone as witness): Honorius here is a judge, and it was never the judge's job to make speeches. Nothing can therefore be deduced from it about the importance or unimportance of speechmaking. What it does show is a judge who takes an active role in asking questions and is not just a passive listener and arbitrator; but this is a rather different issue.

The second story is borrowed from one of the founding fathers of Greek rhetoric. After his victory against the Persians, Alexander determined to punish the town of Lampsacus which had been on the 'wrong' side. The rhetorician Anaximenes was detailed to plead the cause of the town, relying on his influence as one of the king's former tutors. Alexander opened the discussion with the discouraging remark that he would refuse whatever Anaximenes asked for; Anaximenes replied by asking Alexander to destroy Lampsacus, thus saving the town. The sources for this story (Pausanias 6.18.2; Valerius Maximus 7.3 ext. 4) quote Anaximenes himself as the source. Whether or not he had actually done what he claimed, it clearly indicates that from a Hellenistic rhetorician's point of view as well, an effective one-liner could be worth any amount of speech-making. The very persistence of the story over time tends to cast doubt on the idea that it is evidence for a change in attitudes. It could, in fact, have been told at any time; any time, that is, at which decisions of life and death were customarily made by a single person. It could not work in a system of jury courts, such as that of classical Athens, Republican Rome, or modern England. And this suggests that what is really at issue may not be primarily a change in the role of oratory in advocacy, but rather a change in the nature of the tribunals before which the advocates appeared, which in turn affected their manner of performance.

In the third story, Honorius achieves his effect by playing on the public's fear of pollution. Put like that, the story seems at first sight alien to modern ways of thought, but translate it into more modern terms as a matter of public hygiene and its point becomes immediately apparent. One needs only to read Ibsen's *An enemy of the people* to realize that when the economy or reputation of a region depends on a clean water supply, people may even in modern times be only too happy to cover up untoward happenings upstream. Honorius' psychology may not be so antiquated after all. And here his training as an orator must have come into play in another way: voice projection and crowd control. Even a brief intervention of this kind needed to be heard clearly by at least some of the crowd, and the words chosen to maximize the psychological effect.

The fifth story introduces a different point: Honorius' intervention involves detailed inspection of material evidence. Now this procedure would be routine in a modern court; any modern defence lawyer of any competence would demand an inspection of the cloth to establish whether it actually was the item it was alleged to be (indeed, the inspection

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[20] If the speech of Pollio for Urbinia (n.10, above) was still known in Honorius' time – as it may have been – the anecdote gains an extra point, but this is only a speculation.

would surely have taken place at the stage of police investigation and the case might never have come to court in the first place). But the drift of the story is that such an inspection is something unusual in the context in which Honorius is working. If anything, this could be taken not as an indication of a shift towards modern forensic methods, but rather as support for the opposite thesis, that the legal system of Honorius' time was still firmly ancient in its general tendency to underestimate the value of material evidence.

However, one should be wary of constructing such a conclusion on the basis of this piece of evidence. Probably the real point is to be found elsewhere. The case turns on a *discrimen numerorum*, a numerical discrepancy of the kind one would normally expect to find in an account-book and which would usually be a ground for suspicion. But here it occurs in an area which a Roman advocate never normally had to deal with, *i.e.* the technique of weaving, which was so much associated with female identity that it could certainly be assumed to be a closed book to most Roman males. (The idea of an advocate taking up spinning or weaving, as a sign of latent effeminacy, is a satirical fantasy in Juvenal's second satire.) Any Roman advocate would no doubt be perfectly happy to deal with material evidence, for example, in the form of documents: Cicero in the *Verrines* has no trouble in unmasking forgeries and alterations in Verres' accounts. The novelty comes in Honorius' application of a familiar principle – do the numbers match or not? – in an area that was unfamiliar to most of the male denizens of a Roman court. One of the advocate's perennial skills is the ability to gather knowledge of out-of-the-way subjects in order to outwit the opponent: in modern times often specialist scientific knowledge, as in Norman Birkett's famous question about the coefficient of expansion of brass.[21]

The Honorius of the stories is evidently not in all respects presented as a typical advocate of his time, and can hardly be used as evidence for the generality of forensic practice. He attracts attention, in fact, precisely because of his unorthodox methods. Evidently, he is a well-known figure, and has a reputation for being able to help where nobody else can. So much is implied by the appeal to him by the lady who is about to be lynched in the third story. Furthermore, in the second story it is clear that the judge knows Honorius well: he has only to see him 'sitting in front of the tribunal and apparently about to break into speech' to know that something is afoot.

In the fourth story Honorius appears alone for the young man claiming his inheritance. The phrasing 'sola puero est Honori defensio derelicta' seems to imply that Honorius was a last resort when no respectable advocate was available.[22] In point of fact, taking cases that nobody else would touch was not necessarily the prerogative of the maverick or unsuccessful advocate: Cicero takes pride in it for example in the *Pro Roscio*, and Pliny the Younger laid down that cases of this sort were especially likely to enhance one's reputation as a *patronus*. But there was a narrative advantage in pretending that the boy's engagement of Honorius as his counsel did not at first appear to improve his chances; so it had to be suggested that Honorius' unorthodox methods had perhaps led to some loss of reputation, although an advocate of that level of ingenuity could be expected in any real

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[21] H. M. Hyde, *Norman Birkett* (1964) 307-09.

[22] It should be noted that the word *defensio* in Latin can be applied to either side of a case, not just the defence; in fact the boy is the plaintiff, hence my translation 'representation' above.

situation to be very much in demand. The same point is made in a modern context by Pannick[23] in connection with the fictional Horace Rumpole.

Apart from their pure entertainment value, one may ask whether there are any ulterior points or morals to be drawn from the Honorius stories. In the first story, Honorius' job as judge is to elicit the truth in order to decide the case, while in the second and third stories his intervention ends unambiguously in a victory for his client, without regard to considerations of justice. In the second, he obtains acquittal for a defendant clearly guilty; in the third, he saves the noble lady from a lynching, but leaves the city of Rome with an apparently polluted water supply.[24] In the fourth, however, Honorius has justice on his side. The fifth story is perhaps the most interesting. At first, one is tempted to sympathize with the opposition. Honorius' client is envious of the other lady's finely woven garment, and at first seems to suffer a sort of poetic justice, because her envy leads to the charge of adultery. In the same way, we are disposed to regard the other lady's suspicions as reasonable in the light of what she knows of the facts at the time: how else is she to explain the appearance of what she thinks is her shawl on the shoulders of the other woman? But legally Honorius' client is absolutely blameless. This fact is stressed in the phrase 'honesto livore' (honest envy). Such a comment may well have a didactic aim. At least, in modern times it is very much part of the advocate's ethos that one must look to the rights and wrongs of the case regardless of whether one finds one's client's behaviour morally attractive. This attitude is to such an extent a logical consequence of the nature of advocacy that it would be surprising if it did not figure at least some of the time in the ancient world as well. This story can be taken to suggest not only that a similar attitude obtained, but that the author of the story was concerned to inculcate it. It is true that (as we learn from Cicero and Quintilian) some Roman advocates were fastidious about taking on cases and liked to satisfy themselves beforehand of the respectability of their clients and the soundness of their cases; but this clearly was not true of all.[25]

Honorius' title *scholasticus* may put us in mind of a standard type of joke in Greek, of which no fewer than 103 are preserved in the collection called *Philogelos*, attributed to Hierocles and Philagrius.[26] In these jokes, the *scholastikos* is generally a butt, not a hero, and his howlers have had a long afterlife as stories about abstracted academics such as Dr. Spooner, or, in a Middle Eastern context, the Mulla Nasrudin, a 'wise fool' whose general character in some ways resembles that of Honorius (he too sometimes figures as a legal official).[27] The word *scholasticus / scholastikos* means one who frequents the schools of rhetoric (and later, no doubt, also those of law) as teacher or student, and this

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[23] See n.2, above, 230-4.

[24] It can be assumed without difficulty that the story is set in Rome and that the *fons Claudius* is the source of the Aqua Claudia; I do not follow the arguments of Kroll (see n.13, above) and Mondin (see n.5, above) against this interpretation. The fact that *lapidatio* is not a Roman legal penalty is irrelevant, since no legal process is in question: Honorius in this story is merely a bystander who is called upon to intervene to save the lady from an angry crowd.

[25] J. Powell and J. Paterson ed., *Cicero the advocate* (Oxford 2004) 24.

[26] B. Baldwin trans., comm., *The philogelos or laughter-lover*, London Studies in Classical Philology 10 (Amsterdam 1983).

[27] I. Shah, *The exploits of the incomparable Mulla Nasrudin* (London 1966).

academic status could be viewed either positively, as a qualification to practise advocacy in the courts, or negatively, as a sign of lack of experience of the world outside, leading to absorption in trivialities and deficiency in common sense. It is mostly of course the latter aspect which appears in the joke-book.

In fact, in two of the *Philogelos* items the *scholastikos* is specifically an advocate. One of them concerns a young *scholastikos*, a student of rhetoric, writing home to his father – 'P.S. I hope you will be on trial when I get back, so that I can show you how good an advocate I am'. Another presents the *scholastikos* as an advocate who insists on rehearsing his speech in public before the trial, thus apparently giving away his line of argument to the opposition (although this turns out to have been a deliberate deception). Honorius the 'scholasticus' clearly has something in common with the *scholastikos* of the joke-book, in his fondness for unexpected twists of logic. Calling a stone as a witness, for example, may be conceived to be precisely the sort of thing that the copybook *scholastikos* would try to do. One may be tempted to wonder whether the Honorius anecdotes might have been devised against a general background of mockery of *scholastikoi*. The legal and rhetorical mind sometimes appears twisted to the outsider; the Honorius stories, in showing how its agility can be turned to advantage, may have served to some extent as propaganda for the advocate's profession.

Despite the temptations of literary fame and academic prestige which awaited a Cicero or a Quintilian, the orator's profession was and is ultimately a practical one, and the art of persuasion has always comprised more than just making speeches. Even in great ages of oratory, where published speeches are read and admired, we may underestimate the extent to which a sharp question, an adroit piece of play-acting, or a sudden appeal to crowd psychology, can sway the outcome of a trial or debate. No treatment of the methods of ancient or modern speakers can be complete without paying at least some attention to these aspects as well. If the Honorius stories can do nothing else for historians of oratory and advocacy, they can at least remind us of this principle, and caution us against an approach which elevates the set speech above other aspects of the orator's performance. Furthermore, they can indicate that even in the world that produced the *Digest*, there were still advocates whose success in their profession depended as much on rhetorical skill in the widest sense as on expertise in the law.

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THE RHETORIC OF THE COMMON LAW

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What is rhetoric? A working definition is 'the art of persuasion by means of speech'. I will speak of different styles of rhetoric. Rhetoric may of course be practised in different spheres. There are two principal spheres: law and politics, but we should not forget religion. Not only fire and brimstone in the pulpit, but also, and much more important, those quiet sermons in time of grief, and others that capture a moment of joy. They go to show that our working definition – the art of persuasion by means of speech – is only a paradigm. Rhetoric's aim may also be to comfort, or simply to give pleasure.

I will not say very much about political or religious rhetoric. My comfort zone is in the law courts. It is true however that both in ancient Rome and in nineteenth and early twentieth-century England (though I think more in Rome than in London) there were speakers – rhetoricians – who excelled in politics and law alike: Cicero of course in Rome in the first century BC; in England, F. E. Smith, first Earl of Birkenhead, is as good an example as any. He bestrode the forensic stage in the first quarter of the twentieth century, but he was also an important politician as Lord Chancellor, and then as Secretary of State for India, in the years immediately following the First World War.

In the later years of the last century, however, the glittering pathway from legal practice to high political office became a less and less frequent *cursus honorum* here in Britain. No doubt the reason was – at least this is I think the received wisdom – that the professions of law and politics had become too complicated for anyone to excel in both at the highest level.

As regards politics and religion, there is a very interesting instance from the fourth century AD of a rhetorician who was concerned with both: Themistius, the pagan orator who advised Christian emperors. He first came to prominence in the time of Constantius II, who was of course son of Constantine the Great; and we last hear of him in the time of Theodosius I, after the battle of Adrianople in 378 when the Roman arms succumbed to the Goths and the Emperor Valens fell. Themistius, I think, served all the emperors between Constantius and Theodosius, thus including Julian the Apostate, the only non-Christian. Quite a number of his speeches survive. They are a curious mixture of flattery and sound advice to the emperor, and are an interesting record of a time (at least before Theodosius) when the relationship between Christianity and paganism, as we would now call the ancient religion, was not firmly shaped.

But I shall very largely confine myself to the comfort zone: rhetoric in the law courts. I have not the scholarship to say very much about ancient models of practice and precept, though I shall plough into Pliny the Younger in a minute. It is to my mind a great misfortune that most of our advocates today, certainly in this jurisdiction, are not exposed to any such ancient models, for they have lacked either the good sense or more often the opportunity to study the classics. In introducing the little I have to offer you I should first say, quite firmly,

that I prefer the term *rhetoric* to *oratory*. No doubt the two are close to being the same thing. But *oratory* has a whiff of being more about the speaker than the subject. The other day I was watching that great movie, *The man who shot Liberty Valance*, with James Stewart and John Wayne. There is a very lively scene of an election meeting, at which attempts are made to persuade the James Stewart character to run for the Senate. They are opposed by a local dignitary who addresses the assembled throng in tones of indescribable self-satisfaction, his thumbs in the lapels of his frock coat, the orotund phrases rolling from his lips, false compliments to the audience in abundance, false points in the argument even more so. It gets him nowhere; James Stewart runs for the Senate, and as we learn at the end of the movie, he is three times elected Governor of the State, and serves as Ambassador to the Court of St. James into the bargain.

The local dignitary's pomp and circumstance was of course a caricature. But like many caricatures it has something to teach. It was the worst sort of oratory – over-the-top, and therefore deeply subject to the law of diminishing returns. In the movie the context was political rather than forensic: on the face of it, outside my comfort zone. But putting your case too high is a rhetorical sin in any context. Principally, however, the scene in the film (the movies are great educators) illustrates why I prefer the term rhetoric to oratory. Rhetoric is less self-regarding.

I said I would speak of different styles of rhetoric, and within the comfort zone of the law I shall do so. I will tell you about the nature of rhetoric in the common law tradition; what is the essence of it.

But first – and if it is an eccentric introduction you will forgive me – I will start with Pliny the Younger, to my mind the ancient world's champion nerd. I cannot resist this quotation (which also appeared in my concluding chapter in *Cicero the advocate*):[1] Pliny is writing to Tacitus,[2] considering the difference between a speech as delivered and its written version. The letter has some interesting observations about the nature of advocacy – and therefore rhetoric – which I will look at in considering the common law tradition. Pliny says this:

> ... I feel convinced... that, though some speeches may sound better than they read, if the written speech is good it must also be good when delivered, for it is the model and prototype for the spoken version. That is why we find so many rhetorical figures, apparently spontaneous, in any good written speech, even in those which we know were published without being delivered [and he gives an example from Cicero]. It follows then that the perfect speech when delivered is that which keeps most closely to the written version, so long as the speaker is allowed the full time due to him; if he is cut short, it is no fault of his, but a serious error on the part of the judge. The law supports my view, for it allows speakers any amount of time and recommends not brevity but the full exposition and precision which brevity cannot permit, except in very restricted cases.

[1] Sir John Laws (Lord Justice Laws), 'Epilogue: Cicero and the modern advocate', in *Cicero the advocate,* ed. J. G. F. Powell and J. J. Paterson (Oxford 2004) 401-16.

[2] Pliny, *Letters* I. 20. The translation is by Betty Radice, published in the *Penguin Classics* series.

What, one wonders, would Pliny have thought of the practice of the Supreme Court of the United States, which generally allows counsel half an hour and no more? The Court of Justice of the European Union at Luxembourg does the same. It is said that there is one Supreme Court Justice at Washington who will cut counsel off not merely at the end of a sentence, but in the middle of a word: and a word of one syllable at that.

The truth is that had he come before a modern English judge Pliny would have been a complete nightmare. Not only because he would stick doggedly to a prepared text, and consider himself wronged if he were cut short – and no doubt equally wronged if he were interrupted, perhaps by a sharp question digging at the heart of his argument – but because that very attitude stifles or denies the dialogue between Bar and Bench that is the stuff of modern advocacy in the common law world.[3]

From Pliny there is more to come. But first, in order to focus what I am going to tell you, I should say a word about the different traditions of the common law and the civil law in connection with the conduct of court proceedings. For it is of course the civil law tradition that is the direct descendant of Roman law jurisprudence, or at least the descendant of the codification and reforms of the Emperor Justinian in the sixth century.

As is well known, the method of the common law, born in England but exported wherever the British flag went, is adversarial: that is, it settles disputes by requiring one side to prove its case over the other, with the judge acting (I summarize it crudely) as a kind of referee. And despite the greatly increased use in recent years of written procedures, this process still essentially takes place in the public courtroom with advocates on either side. It applies not only in first instance trials, civil and criminal, where the facts have to be established; but also in appeals, where sometimes there are factual issues but, more often than not, the issues are issues of law. The common law's received wisdom is that decisions of fact or of law are likely to be firmer, better, or more reliable if the rival contentions have been tested on the anvil of live face-to-face dispute: argued law is tough law. Thus the principle of our common law procedures is the principle of contest.

The civil law system, on the other hand, is inquisitorial: the proceedings take the form of an enquiry conducted by the judge. The judge is much more than a referee. In first instance trials he decides what witnesses should be called, what documents are relevant, and so forth. There might or might not be a jury – systems differ. On appeal, and generally in cases where the issues are legal rather than factual, the scope for oral advocacy is quite severely curtailed, and the advocates themselves, the lawyers instructed for the parties, have an altogether more anodyne, more bloodless role. In some jurisdictions they make set speeches with little or no interruption from the Bench. Pliny, I think, would have got on much better in such a courtroom.

I am a child of the common law, so it will be no surprise that the common law is where my loyalties are. This is of course not the place to debate the two systems' respective merits – itself a subtle debate, since many of the more rigid differences between the two are in different jurisdictions breaking down. My purpose in describing

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[3] And also in the Roman courts in, or even before, Pliny's time. The speaker Maternus in Tacitus' *Dialogus* (39) complains that the judge often asks questions almost before the advocate has started. Such conditions, Maternus argues, do not make for great oratory. [Eds.]

the contrast is to show that the rhetoric of the common law involves distinct and separate values, or faculties, because it is in the nature of a dialectical, argumentative exchange. Of course in both civil and common law systems the ultimate goal of the lawyer/advocate is to persuade the tribunal of the correctness of his client's case. As Cicero said: 'The best of orators is one who by his speech informs, entertains, and persuades the minds of his audience. It is his duty to educate; and of necessity he must persuade.'[4] That *obiter dictum* fits the common law very well. Note the reference to entertainment. If as an advocate you can entertain the judge or jury, you may be well on the way to persuading them too. It is, however, unlikely that such an outcome blessed the efforts of one member of the Bar appearing in a claim for damages for personal injuries, who called a doctor as an expert witness. The doctor was utterly destroyed in cross-examination by the other side. The contest went very badly for him. His expert testimony as to the claimant's medical condition was completely blown apart. After the cross-examination counsel for the claimant had only one question for the witness in re-examination: 'Doctor, do you think you can find your way back to the railway station?' Entertaining, certainly, but rueful rather than persuasive; the battle to persuade had been lost.

Pliny, then, would have been a nightmare in a common law court; but it gets worse. In the same letter to Tacitus he says:

> Regulus once said to me when we were appearing in the same case: 'You think you should follow up every point, but I make straight for the throat and hang on to that'...
> I pointed out that it might be the knee or the heel he seized when he thought he had the throat. 'I can't see the throat,' I said, 'so my method is to feel my way and try everything – in fact I "leave no stone unturned".' On my farms I cultivate my fruit trees and fields as carefully as my vineyards, and in the fields I sow barley, beans and other legumes as well as corn and wheat; so when I am making a speech I scatter various arguments around like seeds in order to reap whatever crop comes up. There are as many unforeseen hazards and uncertainties to surmount in working on the minds of judges as in dealing with the problems of weather and soil.

This is quite dreadful. A common law judge hearing such an advocate would at once conclude that the advocate did not know the difference between a good point and a bad one – in a word, that the advocate had no judgment. Pliny's scattergun approach, far from being an advantage, is a serious drawback. The judge will have to find the good points for himself – if there are any, and faced with the scattergun he will suspect there are none. But the common law dialectic requires co-operation between Bar and Bench. That is how the contest works. The referee can only judge wisely, or accurately, if each side puts his case clear and spare.

I suffered a Pliny experience myself shortly before giving this talk. I was hearing an application for permission to appeal to the Court of Appeal from a decision of a High Court judge. Such applications are typically heard by a single Lord Justice of Appeal with a time estimate of thirty minutes. Counsel appearing for the applicant before me produced a skeleton argument – spectacularly misnamed, for it ran to well over one hundred

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[4] *De optimo genere oratorum,* 1.3.

paragraphs and was sixty or seventy pages long. The case had some complexities and the judge at first instance had produced a detailed careful judgment. It was criticized in this supposedly skeleton argument at every turn. Complaints, large and small, of what the judge had said poured from every paragraph. I said to counsel for the applicant that I could hardly believe that someone who had reached the rank of High Court judge could make so many mistakes in a single case. It was pure Pliny: the appellant 'scatter[ed] various arguments around like seeds in order to reap whatever crop comes up'. The law of diminishing returns is very powerful.

But Pliny got one thing very right – and in the same letter to Tacitus. Here is my last quotation from it:

> [E]veryone is prejudiced in favour of his own powers of discernment, and will always find an argument most convincing if it leads to the conclusion he has reached for himself; everyone must then be given something he can grasp and recognize as his own idea.

There is a deep truth here. If you want to sell an argument to a judge, you may do very well if somehow you can get him to believe that it was his own idea. *Amour propre* is no less powerful than the law of diminishing returns. Pliny, nerd though he was, got this piece of psychology dead right.

Now, all these aspects – take only the good points; be sensitive to the tribunal and adjust what you have to say accordingly; a judicious use of humour; attribute your argument as if it were the judge's own – are all tips for modern day advocacy in the common law courts. They are good tips because of the nature of modern advocacy – a dialectic, requiring co-operation between Bar and Bench. Because it is a dialectic, the process has an intellectual rigour which is not demanded of every form of rhetoric. Indeed it has not always been demanded of rhetoric in the common law courts, at least at first instance trials: or at least, other factors have been in play. In particular in some eras, some situations, emotion has played a much greater part in the rhetoric of the common law than it does today. I said at the outset that I would speak of different styles of rhetoric within the common law tradition. The differences, I think, tend to illuminate the subtleties of the contest. They will also bring us a little closer to something I have not so far mentioned – the ethics of the advocate's profession.

Many of the great common law advocates of the first half of the twentieth century made great play with emotional effects. This was by no means entirely spurious. The idea that rhetoric might properly appeal to the listener's feelings is an old one, and is by no means of necessity tawdry, or superficial, or dishonourable. Let me give you a flavour of this era of the English courts. One of its greatest advocates was Sir Edward Marshall Hall KC, who died in 1927, and was at the height of his powers from the Edwardian decade onwards. It is difficult now, in these more antiseptic days, to grasp the colour and bustle of the courts at that time. A biography of Marshall Hall by Nina Warner Hooke and Gil Thomas and published in 1966 makes a fair stab at it.[5] Here is one passage:

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[5] *Marshall Hall: A Biography* (London 1966).

The day-to-day course of those forensic battles was followed with breathless interest. Press reports were snatched from bawling newsboys, heads wagged over the latest skirmish in a cross-examination and bets were laid on the outcome of the case. Intricate points were argued as fiercely in clubs and pubs as they were in court. There was public rejoicing when the verdict was a popular one, angry demonstrations when it was not. The closing speeches for the prosecution and defence, with their emotional exordiums and thundering perorations, were read and quoted everywhere. Those times are past. The law has become a dull dog so far as the general public is concerned. There are still many fine lawyers but no advocates of the stature of Marshall Hall, of whom it could have been said – as it was once said of his eighteenth-century prototype Lord Erskine – 'When he rose to speak every look was fixed on him, breathing was suspended, and as often as he paused a flake of snow would have been heard to fall'.[6]

Over-the-top, no doubt; but so was the subject-matter. It is perhaps interesting that this earlier era of forensic rhetoric was described in quite such glowing terms in 1966, when these romantic ideas of advocacy were probably regarded in many quarters with an even more cynical eye than they are today. However that may be, a comparison between those heady days, when famous barristers like Marshall Hall were the celebs of the time, and our more clinical practices of today illuminates, I think, what I proposed to describe: the nature of rhetoric in the common law tradition; what is the essence of it.

For however devoted we are to the objective dissection of evidence and the patient analysis of legal principle, we cannot, I think, deny that the best advocacy has a quickening effect. It engages the spirit as well as the mind. The words you choose can lift an argument from the merely persuasive to the inspiring. The ancients well understood this. At least Cicero did – I am not sure about Pliny. Quintilian (and I am no expert on the *Institutio Oratoria*) might have been suspicious of such an idea, given that his great book can be seen as a reaction against the 'silver Latin' style, which favoured ornate embellishment over clarity and precision.

So we have something of a tension in the common law, a tension perhaps replicated in many rhetorical contexts. It is between cold and hot rhetoric; between the head and the heart; between what makes you think, and what makes you laugh or cry. Most law cases, nowadays at least, only need cold rhetoric. But sometimes a fact – in a murder case, it may be the uncertainty of a relationship – or just an idea – in a public law case, the freedom of the citizen from government's received wisdom – can take wing, and demand that the advocate should not merely persuade, but create an empathy with his audience.

It means that forensic rhetoric requires not only judgment, but imagination; not only intelligence, but a sense of other – even a moral sense. This itself is an ancient idea, and it brings us closer to the ethics of the advocate's profession. It is very much a theme of Quintilian, who believed that only a good man could be an orator: which is rather more extreme than Cicero's injunction that an orator should be a good man. While I think both of these are a jump much too far, the advocate – the rhetorician – needs to understand what people regard as good – and bad. He needs an ethical insight. If he lacks it, he will

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[6] Warner Hooke and Thomas, *Marshall Hall* (n.5, above) 2.

lack judgment: he will 'scatter various arguments around like seeds in order to reap whatever crop comes up'. And he may lose the case in consequence.

There is another sense in which ethics has a critical part to play in the adversarial contest that is the rhetoric of the common law. The contest is conducted according to strict professional rules, to ensure that its outcome is directed to the doing of justice. The most important rule is that you should never deceive the court. But another rule is the advocate's duty of disclosure – the disclosure of relevant documents and materials by one side to the other. In his column in the *Times* on 4 November 2010, David Pannick told a very striking story.[7] He had recently met Gabriel Bach, who had been a Justice of the Israeli Supreme Court. Many years before, Bach had been the deputy prosecutor of Adolf Eichmann at his trial in Jerusalem in 1961 for war crimes and crimes against humanity. Eichmann had been right-hand man to SS Obergruppenführer Reinhard Heydrich, a principal architect of the holocaust. He – Eichmann – had been captured in Argentina in 1960 and returned to Israel for trial. In the course of preparing the case Bach came across some documents which might be thought helpful to the defence case. Bach handed over the documents to Eichmann's lawyers. Eichmann was astonished; but Bach had studied law here, and as David Pannick says, 'Bach's training at Lincoln's Inn had taught him that the rule of law so required'.

High principles like this make the profession of advocate a high calling. There are other precepts and principles no less important: chief among them, perhaps, the need for fearless independence, in particular, independence from the State. I like to think that Cicero, not a naturally courageous man, stood up for this value in magnificent style at the beginning and at the end of his career: in his defence of Sextus Roscius of Ameria, when you can picture Sulla's thugs skulking in every Roman doorway, and in his wonderful polemic against Mark Antony, followed not long after by his murder.

These then are the precepts of the rhetoric of the common law: take only the good points; be sensitive to the tribunal and adjust what you have to say accordingly; a judicious use of humour; attribute your argument as if it were the judge's own; above all honour the rules of the contest, and always be stoutly independent. The lines between these precepts and the injunctions of the ancients are blurred, and sometimes rubbed away; but sometimes they are clear and continuous: then as now, rhetoric is the alchemy of persuasion.

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[7] http://www.thetimes.co.uk/tto/law/columnists/article2792372.ece [Eds.]

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INDEX

Compiled by Jenny Winter

The cover image shows the speakers' platform, *bēma*, at the Pynx in Athens.
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This volume brings together six papers relating to oratory and orators in public *fora* of Classical Greece and Rome.

Edwards and Bers explore aspects of oratorical delivery in the Athenian courts and Assembly, including the demands placed on orators by the physical settings. Tempest examines the conceptions of oratorical competence and incompetence, particularly in respect of performance, as they are implied in Cicero's criticisms of the rival prosecutor in the trial of Verres.

Papers by Karambelas and Powell look at evidence for the importance of advocacy in the Second Sophistic and the late Roman Empire respectively.

In an introduction, the editors discuss recurrent themes connected with the orator's competence and performance, while the final paper of the volume, by Lord Justice Laws, reflects on the continuing relevance of rhetoric in the modern, highly professionalised practice of the law in England.

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