

CICERO'S *PRO MURENA* AND THE STRONG CASE FOR RHETORIC

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PROLOGUE

My purpose in this essay is to bring together two strands of recent scholarship that have proceeded independently up to this point. The first of these is part of a broad, multidisciplinary effort to reconsider the relationship between theory and practice in the human sciences; in the study of rhetoric and politics this development has fostered interest in concepts such as prudence, decorum, and judgment that are grounded in practice and strain against the bias of abstract, theoretical categories.¹ For the purposes of this essay, I will take Richard Lanham's concept of the "strong defense of rhetoric" as a representative anecdote for this development and use it to direct my own inquiry.²

The other strand of scholarship comes from a much narrower and more technical area of scholarship—the study of Ciceronian oratory. This area is itself only a subfield within the relatively small domain of Ciceronian scholarship, and the work done in it has attracted little interdisciplinary interest. Nevertheless, I believe that the recent literature suggests some important points of affinity between problems involved in reading Cicero's speeches and problems encountered in the effort to understand how prudence and judgment enter into political deliberation. I want to develop these affinities first by examining the origins and characteristics of the currently dominant model of criticism for Ciceronian studies, the "persuasive process" model. And then I will analyze one of the major works in Cicero's oratorical corpus—the speech in defense of Lucius Murena—to see whether and in what sense it is possible to connect Cicero's rhetorical practice with current issues in the study of rhetoric and public policy.

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STRONG AND WEAK DEFENSES OF RHETORIC

Efforts to connect rhetoric and public policy encounter two objections. On the one hand, rhetoric is treated with suspicion because of the fear that it imparts too much power to the agents who wield it. On the other hand, rhetoric is dismissed as a corruption because it drains genuine ethical power both from those who use it and those influenced by it. The first of these objections rests upon an instrumental conception of rhetoric. The art is viewed as a tool or weapon that has the capacity to do much harm, and since nothing in the art regulates its ethically proper use, rhetoric threatens to become a politically destructive force.

The other objection is more fundamental, for it strikes at the nature of rhetoric rather than its applications. Perhaps its best known formulation appears in the *Gorgias*, where Plato defines rhetoric as a species of flattery and warns that the "love of demos" it engenders destroys a genuine commitment to truth and goodness.³ Such categorical attacks against rhetoric recur throughout the Western tradition, and they reach a very strong pitch in the Enlightenment, where rhetoric, as contrasted to either science or poetry, represents "utter heteronomy."⁴ Thus, in another famous indictment of rhetoric as an art of political deliberation, Kant asserts that when he reads even the best speech of a "Roman political orator, a modern parliamentary debater, or a preacher," he experiences

an unpleasant sense of disapproval of an insidious art that knows how, in matters of moment, to move men like machines to a judgment that must lose all its weight with them upon calm reflection. . . . Oratory (*ars oratoria*), being the art of playing for one's own purposes upon the weaknesses (let this purpose be ever so good in intention or even in fact) merits no respect whatsoever.⁵

Corresponding to these objections, there are two familiar defenses of rhetoric, which Richard Lanham has labeled "weak" and "strong."⁶ The weak defense refers to the instrumental conception of rhetoric and makes a distinction between the neutral rhetorical tool and the purposes for which it is used. Aristotle offers one of the oldest and best known versions of this position: "And if it is argued that great harm can be done by unjustly using such power of words, this objection applies to all good things except for virtue, and most of all to the most useful things, like strength, health, wealth, and military strategy; for by using these justly one would do the greatest good and unjustly, the greatest harm."⁷ As this passage suggests, the weak defense distinguishes good rhetoric from bad, but it cannot do so by reference to anything intrinsic to rhetoric. The ethics of rhetoric must come from sources outside the art, since the art deals with persuasion as an instrumental and not as an ethical force.

For most of the past two centuries, rhetoricians have had to settle for this weak defense. In an era dominated by Enlightenment theories about the autonomy of the individual, rhetoricians could reply to Kant only by arguing that, while their art does appeal to weaknesses in human nature, such foibles are an ineradicable part of the human condition and that when directed by noble and non-rhetorical purposes, it is possible for rhetoric to be respectable. But during the past three decades, intellectual fashions have changed, and the epistemological foundations of the Enlightenment have weakened to the point that space has opened for a more aggressive and expansive conception of rhetoric and for what Lanham calls the strong defense.

The strong defense reorders the relationship between theory and practice, giving priority to practice. From this perspective, ethical and political knowledge is not based in a priori, abstract truth but is formed through rhetorical engagement in concrete situations. This shift in attitude characterizes a variety of new approaches to rhetoric, known variously as "rhetoric as epistemic,"⁸ "constitutive rhetoric,"⁹ "generative rhetoric,"¹⁰ and "the rhetoric of the human sciences,"¹¹ and all of them reject the neutral position assumed within the weak defense. Rhetoric, on the strong view, emerges not as ornamentation, nor as an instrument for disseminating truths gained through other means, but as the very medium in which social knowledge is generated.

Since Lanham is a Renaissance scholar, it is not surprising that his version of the new rhetoric recalls features of the old, pre-modern rhetoric. Indeed, his strong defense consciously reflects his conception of the practice (not the *theory*) of Tudor education: "In practice, rhetorical education is education in two-sided argument, argument where truth is decided by the judge or jury, where truth is a dramatic criticism handed down on the forensic drama which has been played out according to rules laid down by a rhetorical education."¹² The key element here is the two-sided, dynamic character of the rhetorical process, and Lanham explains how this principle of opposition and oscillation works through the various layers of rhetorical consciousness. At the surface, there is the play of opposing arguments that always enter into a concrete rhetorical situation. But beneath the surface of any particular argument, there is a continuous tension between the world views of rhetoric and philosophy, which offer opposing means of resolving controversies. The philosopher, on Lanham's account, seeks to purify controversy by achieving a fixed, general point of agreement. The rhetorician seeks only local closure and tries to sustain the fluidity of controversy through time, and thus, ironically, rhetoricians inoculate themselves against philosophical purity by constantly keeping the philosophical other at work within their scheme of argumentation. Moreover, the psyche of the rhetorician becomes a scene for dramatic conflict between mixed and opposed motives. The rhetorician oscillates between play and purpose, between the exercise of lan-

guage for itself—the aesthetic impulse to “look at language self-consciously”—and the pragmatic impulse “to look through language unselfconsciously” in order to intervene in the social world. Left unchecked, either impulse yields a form of ethical corruption, but when they are allowed to interact and to be regulated in particular cases through the “toggle switch” of decorum, they can correct one another and sustain a dynamic equilibrium.¹³ The genius of strong rhetoric, in short, is its capacity to achieve balance in the midst of conflict, to sustain opposition in deliberative engagements rather than to reduce and purify discourse to the point that it loses contact with the complexities of social life.

For Lanham, the disciplined oscillation involved in strong rhetoric can offer a means to revive education in civic virtue, provided that we can “agree on a series of contingent operating premises.” And the most accessible model for this kind of procedure is “the Anglo-Saxon system of jurisprudence. We stage a public drama, empanel an audience whom we call a jury, and offer contending versions of reality. The jury decides on one. The decision then becomes a different sort of reality altogether, a precedent, a referential reality against which further judicial dramas are measured.”¹⁴ The courtroom, then, becomes the model for the schoolroom.

There is nothing new in Lanham’s call for a jurisprudential analogy,¹⁵ and in fact, the main features of his strong defense are typical of efforts to revive rhetoric within the contemporary academy. I have summarized his position at length mainly because I believe that it is an interesting and elegant expression of a general tendency. But there are also some points of emphasis that are unique to Lanham, and these are matters that I want to highlight for my own purposes.

First among these is Lanham’s unflinching effort to connect rhetorical education with civic virtue. As Lanham himself notes, rhetoricians working within the humanistic model often avoid or obscure the political connection. And on the other side of the disciplinary fence, political scientists working in the prudential model only sometimes take notice of rhetoric, and when they do, it is rarely an issue of central importance to them. Moreover, their interest in rhetoric is almost entirely restricted to Aristotle. By contrast, Lanham approaches the nexus between rhetoric and politics through the Latin tradition of the Renaissance, and ultimately that leads back to Cicero.

Secondly, unlike the sponsors of some other versions of the new rhetoric, Lanham is keenly aware of the historical antecedents of a generative rhetoric. Since the main features of Lanham’s strong defense occur frequently in other and less historically conscious positions, it seems that the affinity between the Ciceronian tradition and the new rhetorics may be stronger than is often assumed. Or at least, it seems possible to open space for a much livelier interest in Cicero than is now apparent in the current literature of either rhetorical studies or political science.

In fact, as one thinks through the main points of Lanham’s strong defense, it is difficult to understand why there has not been an interdisciplinary surge of interest in Ciceronian oratory. Consider the following observations: (1) The practice of teaching two-sided argument is largely derived from Cicero’s authority and example; virtually no one in the Western tradition has been a more prominent advocate of this practice for either philosophical or rhetorical purposes.¹⁶ (2) The productive tension between rhetoric and philosophy is a recurrent and crucial theme in Cicero’s thought, and he establishes the terms of engagement on this issue for later thinkers.¹⁷ (3) In his philosophical and rhetorical treatises Cicero argues for blending the aesthetic and the practical, and in these works as well as in his orations, he illustrates how this blending can be achieved.¹⁸ (4) Cicero not only uses the proceedings of the law courts as the model for his rhetorical theory but also for his conception of philosophical argumentation.¹⁹ (5) Cicero is the undisputed master of Latin forensic eloquence, and he has left us a sizable corpus of oratorical texts, nearly all of them bearing on matters of obvious political consequence.

So, we have reached a moment when rhetoric is being revived, when practice is displacing abstract theory at the center of attention, and when the practice of forensic rhetoric has a privileged status. This would seem to be the moment for Ciceronian oratory to shine. Yet, his speeches still receive almost no attention outside the small circle of scholars who specialize in studying them. Why? There is no simple, single answer to this question, but one part of the problem surely arises from the way that the specialists have approached the Ciceronian texts.

CICERO’S ORATIONS AS PERSUASIVE PROCESS

Traditionally, classicists studied the rhetoric of Cicero’s oratory in terms of a highly formalistic method that gave “theory” precedence over the particularities of the text. The speeches were examined in relation to the rules and precepts contained in the ancient rhetorical handbooks (the source of “theory”), and the texts were then divided, analyzed, and categorized in relation to abstract principles. This approach allowed for displays of precision and erudition, but at the expense of any concern about the practical function of oratorical discourse. As Ann Vasaly has noted, this formalistic method treated the speech as though it were an engine described not “by considering it while functioning but by taking it apart, setting the pieces on the ground, and carefully examining each component, aided by the ‘parts manual’ furnished by antiquity.”²⁰

When critics ventured beyond purely formal analysis, their responses to the speeches dutifully reflected the modern prejudice against oratory. Thus, Cicero’s speeches were dismissed as failed literary efforts, or criticized for their shallow,

unoriginal political ideas, or condemned for their ethical slipperiness. The brunt of these criticisms fell upon the orator's lack of sincerity.

By the late nineteenth century, this scandal was firmly attached to Cicero, and although his writings still were admired stylistically, his oratory was often "called inconsistent and insincere and manipulative."²¹ Even Trollope, who wrote a sympathetic biography of Cicero, had qualms about his rhetorical behavior: "The mind rejects the idea that it can be the part of a perfect man to make another believe that which he believes to be false. . . . [Cicero] has not acquired that theoretic aversion to a lie which is the first feeling in the bosom of a modern gentleman."²² Moreover, this same theoretic aversion lingered in the bosoms of classicists well past the Victorian era. Writing in 1965, R. G. M. Nisbet concluded that Cicero was the second greatest prose stylist who ever lived, and yet "most of his speeches fail to satisfy. Though both eloquent and serious, he was seldom both at once. He championed unworthy causes for short-term results in front of audiences he despised. He turned on spurious emotion so often that it is difficult to know when he is being sincere."²³ And as recently as 1982, and in no less a source than the *Cambridge History of Classical Literature*, L. P. Wilkinson could not avoid passing judgment when he discovered the shocking fact that Cicero's orations were sometimes less than authentically honest. "A history of literature," he tells us, "is not concerned with politics or even morality except insofar as they affect readability. But insincerity is a flaw which lowers our response from the level of sympathetic interest to that of cynical appraisal." Thus, unlike Petrarch (another Italian and only a dubiously modern fellow), Wilkinson cannot acknowledge and respect Cicero's human weaknesses, but can "give only grudging admiration to the accomplished hypocrite."²⁴

Both the Victorian moralizing and the strict formalism have receded in the recent scholarship, and an approach known as the persuasive process model now dominates the study of Cicero's speeches. Largely derived from the work of the German philologists Christoff Neumeister, Wilfried Stroh, and Carl Joachim Classen, this model subordinates formal analysis to functional interpretation of particular speeches, and it sets ethical judgment to the side.²⁵ From this perspective, the oration is a special genre of discourse whose sole end is to persuade a specific audience in some specific situation. Consequently, formal rhetorical devices do not have an independent value but must be accommodated to meet the needs of a particular case. The critic's goal is to understand how the rhetorical components cohere in response to the immediate problems confronting the orator. The ethics of the orator or the political significance of the oration, while they may be of general interest to readers, are not inherent to rhetorical criticism of the text, since the critic's burden is only to show how the speaker attempted to "win over his audience."²⁶

In order to justify the persuasive process model, its advocates had to offer a plausible account of how the existing, published texts of Cicero's speeches could be interpreted as representations of speeches actually delivered before listeners. Their critical method depended on a characterization of the oration as a genre, but the actual objects of study were written texts, not oral performances. And the Ciceronian scholarship contained elaborate arguments that the speeches as published were often very different from the speeches as originally presented.²⁷ How then could modern readers claim to approach these texts as instances of oratorical persuasion rather than as literary artifacts?

Stroh answers this question through a two-step argument. First, he strongly criticizes speculative efforts to reconstruct an original, oral version of the speech from the printed version of the text. Such efforts, he insists, are exercises in fantasy, for at a remove of two thousand years, no one can know what Cicero actually said on any specific occasion; speculations based on the written texts can be multiplied infinitely, and we have no reliable means of deciding which, if any, of these speculations correspond to reality. But, to come to the second step in Stroh's argument, we can make some reasonable inferences about Cicero's motives for publishing his speeches, and Stroh maintains that the primary concern was not to produce either literary works or political tracts, but to offer examples of practical rhetoric for students. And if these texts were to serve this function, they would have to retain the basic features of speeches actually presented to an audience. That is, if the would-be orator was to draw useful lessons from these texts, the texts had to represent the persuasive process more or less as it manifested itself in the law-courts. Of course, the identification of the written text with an actually delivered speech is a fiction, but, for Stroh, it is a justifiable fiction that enables rhetorical criticism to proceed along lines consistent with Cicero's purposes.²⁸

This line of argument has proven remarkably successful. The didactic motive for publication of the speeches is now widely accepted, especially for the forensic speeches and even in instances where the political implications of a legal case are obvious. Thus, Cicero's speech texts are typically approached as instances of oratorical persuasion open to sheerly instrumental readings. This point is explained succinctly by Christopher Craig, an expert practitioner of the method:

We take a published speech as a fictive depiction of an oral persuasive performance before a given listening audience in specific circumstances. Moving through the speech in a linear way, we try to infer the psychological effect on the listening audience of each successive argument, or even each successive sentence. This approach, I must stress, focuses completely upon a reconstruction of the way in which the audience is persuaded. The orator is treated simply as an amoral agent whose own beliefs do not figure in the

process. . . . This model, which has been enormously productive for our understanding of the mechanisms of Ciceronian persuasion, has made such great gains in part because of its conscious exclusion of ethical judgments about the speaker. The value of a speech is measured by the magnitude of the rhetorical challenge and in a judicial speech the greatest challenge is to obtain the acquittal of someone who is obviously guilty.²⁹

In Lanham's terms, what we have here is a clear instance of the weak defense of rhetoric. Against the charges of Trollope, Nisbet, and Wilkinson that Cicero is a scoundrel because he substitutes rhetorical guile for the plain truth, Stroh, Classen, et al. can respond that it is not the forensic orator's business to tell the truth. He is not a moral philosopher and not even a statesman but a practitioner of oratorical persuasion. Persuasion itself is simply a tool, and the rhetorical critic's function, qua rhetorical critic, is to determine how effectively the tool is used. There are, to be sure, morally good and morally bad rhetorics, but good and bad are not properties of rhetorical performance.

Craig is not the only Ciceronian scholar who expresses discomfort with this single-minded instrumentalism,³⁰ but he raises the most straightforward objections to it on ethical grounds. Taking the *pro Sestio* as his point of reference, Craig argues that this speech has received scant attention from critics simply because it does not conform to the privileged categories of the persuasive process model. The case does not raise an obvious rhetorical challenge, since Sestius seems innocent and faces a disorganized and ineffective prosecution, and more to the point, the major arguments of the speech, whatever their status as persuasive appeals, express Cicero's sincere convictions. In respect to the first issue, Craig successfully complicates matters by showing that, even in this apparently simple case, the reader can uncover a rather cunning persuasive design. But the sincerity issue proves more difficult, and Craig can do little more than express his uneasiness. Something must be wrong, he frets, with a critical approach that turns the orator into a purely calculative manipulator, focuses exclusively on the "psychology of the audience," and thus has no means of appreciating the rhetorical force of "heartfelt conviction."³¹

As Craig frames this problem, it seems to defy any solution short of forsaking the persuasive process model. The model reduces and purifies the oratorical text so that it is accountable to a single order of motives, and through an inversion of the Victorian criticism of oratory, it protects the autonomy of oratory by eliminating any consideration of the orator as an ethical agent. Thus, we are left either with sheer instrumentalism or with judgments about sincerity that have nothing to do with the persuasive process.

The problem here is the limitation that the weak defense places on the possibilities of rhetoric. Instead of opening rhetoric to plural, complex, and ambiguous

interests—which are precisely the interests rhetoric serves best—the weak defense yields to the anti-rhetorical impulse to purify our categories and simplify our judgments. Instead of acknowledging the difficulty involved in distinguishing between inferences about an orator's motives in a text and the effects of the text on an audience, the weak defense encourages us to concentrate on only one side of the equation. This may help make textual analysis more tidy, but it sometimes frustrates our sense about what really happens when we react to a text. Instead of identifying a primary goal or a set of goals for a genre of discourse, the weak defense encourages us to essentialize a genre so that it has only one legitimate function and that function retains its chaste singularity even when represented in a different communicative medium. A less defensive attitude toward rhetoric—let us say, to revise Lanham's terminology, a strong case for rhetoric—would accept a measure of promiscuity in the motives and goals informing any kind of discourse. Thus, for example, we might hold that forensic oratory is mainly about winning the case at hand, but we might also understand that it offers an expressive outlet for a certain kind of person, provides aesthetic pleasure to a certain kind of reader, and that it also can function as a vehicle for exerting political influence. In short, the way out of Craig's problem is not to abandon the persuasive process model, but to complicate it. We need to view the persuasive process both as an instrument of influence and as a generative force that reflects and shapes the character of those who use it.

Robert Cape productively complicates the model by thinking again about the didactic function of the published speeches.³² Stroh and others hold that the speeches were published as *exempla dicendi*, examples for students to imitate or emulate. They also assume that these examples were intended strictly to illustrate the persuasive process—that they were unequivocally rhetorical because they demonstrated the means of persuasive action in a particular case. Cape, however, believes that this restriction of purposes is arbitrary. The speeches might equally well have served as another "kind of exemplum: the exemplum of the successful politician."³³ And Cape finds evidence that, at least in some cases, oratorical models (whether performative or textual) were thought to influence the political and ethical as well as the rhetorical behavior of a young person.

The narrow, strictly "rhetorical" conception of the function of these examples arises from a dichotomy between instrumental and ethical action. It is assumed that rhetoric as a species of the former can be encompassed in the particular case, while ethical or political standards must refer to more general or abstract considerations. The strong case for rhetoric, however, would deny any such simple, pure distinction between the instrumental and the ethical, and it would claim that ethical and political standards are themselves grounded in action and in particulars. This thesis would be consistent with contemporary notions of prudence found in both politi-

cal and ethical theory, and it would also be consistent with the complex positions on these matters developed by Cicero in works such as *De oratore* and *De officiis*. In other words, if we move beyond the weak defense of rhetoric, we can view Cicero's orations as examples that serve multiple purposes—purposes that blend rhetoric, ethics, and politics into the texture of particular events.

In a recent study of Cicero's Fourth Catilinarian, Cape provides a reading of the text that usefully combines artistic and political issues and shows how decorum works both as an instrument of textual rhetoric and as a political principle.³⁴ This speech, however, is deliberative, and a revised and expanded version of the persuasive process model requires pursuing matters to the paradigm case on which the model is built—the judicial oration. And so I want to examine a judicial speech in order to show that it can be read intelligently as an instrumental response to a situation and as a model for a political ethic. For this purpose, I have chosen Cicero's *pro Murena*, a text appropriate to my interests because it symmetrically reverses the characteristics of the *pro Sestio* (the text selected by Craig). If the *pro Sestio* is ethically unproblematic but questionable as an example of oratorical virtuosity, the *pro Murena* is an undoubted masterpiece of rhetorical art but, on most readings, highly questionable from an ethical perspective.

PRO MURENA

Cicero delivered the *pro Murena* in 63 B.C.E., the year of his consulship, and in response to an extraordinary set of circumstances.³⁵ The consular election of 63 involved four candidates: Lucius Murena, Decimus Silanus, Servius Sulpicius, and Lucius Catiline. Roman elections were often tempestuous events, but this one bordered on chaos. Catiline's campaign was radical to the point of being incendiary, and charges of corruption and bribery were rife. The election was postponed, and at Cicero's instigation, the Senate enacted a new and very stringent law against bribery (*lex Tullia de ambitu*). Cato, the great-grandson of the dour censor and "something of a chip off the old block,"³⁶ announced in the Senate that the campaign was so offensive to his scruples that he would prosecute the winners, whoever they were.

When the election was finally held, Murena and Silanus emerged as the winners. Catiline, now having suffered his third defeat for the consulship, turned to other means to achieve power and formed a conspiracy to seize the government by force. The plot was detected by Cicero, who checked the conspirators and, in the most famous of all his speeches, denounced Catiline in the Senate. Catiline fled the city, and joined a rebel force that had gathered to the north of Rome. Other members of the conspiracy, however, remained in the City, and Cicero was unable to gather hard evidence against them.

In the midst of this impending insurrection and civil war, one of the losing candidates, Servius Sulpicius, prosecuted Murena under the *lex Tullia*, and in partial fulfillment of his promise, Cato added his formidable moral weight to the prosecution.³⁷ Two other less well-known figures, Servius Sulpicius Rufus and Gaius Postumus were also part of the prosecution. On the other side, Murena gathered an impressive defense team that included Hortalus Hortensius, Marcus Licinius Crassus, and Cicero himself, who, as was his custom, presented the final speech for the defense.

For Cicero this was a difficult and potentially embarrassing case. He was defending an obviously guilty client charged with violating a law that he himself had sponsored. Moreover, the chief prosecutor, Sulpicius, was not only a friend but also the candidate Cicero had supported during the election campaign. And the other major prosecutor, Cato, commanded great authority and was a man Cicero needed as a political ally. Nevertheless, there was a powerful consideration that bolstered the defense. In the face of the Catilinarian crisis, the jurors would hardly be anxious to disrupt the normal functioning of the state by leaving the government with only one consul at the beginning of the new year. Violations of campaign laws might well seem like peccadilloes when compared to the political consequences of a conviction.³⁸

Thus, Cicero's rhetorical challenge, although difficult to execute, seemed clear in principle. He needed to make a sufficiently plausible legal defense for the jurors to vote as their prudential interests inclined them to vote. In order to succeed in this effort, he had to highlight the political implications of the case without violating the decorum of legal argument, and he had to weaken the authority of the two leading prosecutors, while, for political and personal reasons, he could not offend them deeply or permanently.

The speech responds to this challenge through a brilliant mix of playful attacks against the professional and philosophical pursuits (but not the persons) of Sulpicius and Cato, deadly serious emotional appeals about the threat of Catiline, and deft maneuvering around the specific legal issues. Almost all readers attest to the rhetorical power of this blend, but the high marks are reserved for the speech as a persuasive instrument. When viewed from more "substantive" grounds, it is found wanting: the "rebuttal of charges is very slender,"³⁹ "verbal magic" often substitutes for logical coherence;⁴⁰ in at least one instance Cicero panders to the jury insincerely,⁴¹ and at other times he represents things in a way that is inconsistent with his actual opinion.⁴²

Kennedy perhaps best sums up the conventional verdict on the *pro Murena* when he calls it "a purely rhetorical triumph."⁴³ So considered, the speech offers an ideal case for applying the persuasive process approach, since the rhetorical techniques seem dedicated wholly to overcome the resistance of serious substantive and ethical

problems, and appreciation of the text requires an understanding of the "rhetorical tricks" Cicero deploys rather than an assessment of its political implications. And indeed, there are two expert readings of the text from just this perspective; one of them, Christopher Craig's "Cato's Stoicism and the Understanding of Cicero's Speech for Murena," concentrates on a relatively small section of the text but draws conclusions that affect interpretation of the whole;⁴⁴ the other, Anton Leeman's "The Technique of Persuasion in Cicero's Pro Murena," is a magisterial reading of the entire speech.⁴⁵ Both these papers adhere to the persuasive process model, but Leeman is especially clear and insistent in limiting the focus of his attention to immediate, instrumental effect.

It is impossible not to admire the erudition and intelligence that characterize Leeman's paper, and in what follows I will borrow heavily from his scholarship. But, I believe that the text is also open to interpretation at another level. Leeman holds that "the only aim of an orator in a given case" is "to win over his audience"⁴⁶ and that "every word in a judicial speech is intended for the jury or the judge."⁴⁷ Perhaps such single-minded purity of purpose might apply to the assessment of a lawyer actually addressing a jury. But is it a justified assumption when we are dealing with a written text? The reader of the text is not a juror, is not being asked to vote on the guilt or innocence of a defendant.⁴⁸ On Leeman's quite plausible account, the intended reader is a student who seeks to learn how to persuade under the pressure of concrete circumstances. The published text is important for instruction precisely because rhetoric is an art of accommodating to particular cases, and no set of rules can encompass particulars; abstract principles alone cannot impart rhetorical dexterity, and so embodied examples are necessary supplements to the mastery of abstract rhetorical principles.

All this seems reasonable, but what I find less plausible is the assumption that Cicero intended that his texts be read as pure, unalloyed examples of rhetorical manipulation. This assumption would hold good only if: (1) Cicero regarded skill in forensic oratory as a specialized, professional achievement that had no bearing on politics or ethics, and (2) Cicero held, as in the "weak defense of rhetoric," that oratorical persuasion was distinct from ethics because its standards were wedded to action in particular cases whereas ethical judgment referred to standards that were categorically more abstract and more remote from action. But there is no good reason to accept either of these premises. As we know from *De oratore*, Cicero regarded legal oratory as the paradigm for his version of *humanitas* and as the best possible ground for developing statesmanship. Moreover, in his theoretical works he appropriates the strategies and attitudes of legal eloquence for philosophical purposes, and he connects ethics with action through his endorsement of a prudential rather than an absolute standard of moral virtue.

If we abandon the dichotomy between persuasion and political ethics, the *pro Murena* emerges as a complex, multifaceted text. The "toggle switch" of decorum that Cicero uses so adroitly not only makes the speech an example of rhetorical virtuosity but also a case study in how rhetorical virtuosity can be connected with political virtue. It is this connection that I want to develop in reading the speech.

One of the most striking features of the *pro Murena* is the complex, nuanced structure of the text as a whole. The speech is organized according to several principles, some of them working independently, some working in combination, and an understanding of the text demands attention to the various structural devices that Cicero layers into the text. The most obvious of these is the linear division of the speech into the conventional parts of the oration. Normally a Roman forensic speech would consist of five components: an introduction, a narration of the facts of the case, a partition or preview of the main points of the argument, the proof (often divided into constructive and refutational segments), and a peroration. The *pro Murena* follows this pattern with two minor deviations. The speech has no narration, and the proof is cast entirely in the form of refutation of prosecution charges. These deviations are hardly surprising in a final speech for the defense.

When set out in terms of these divisions, the text appears as a rather ordinary forensic oration. The most notable anomaly is the introduction (1-10), both because of its length and its content. The speech opens with a prayer (1-2), and then Cicero makes an extended *apologia pro se*, defending his presence in the case against the complaints of Cato (2-6) and of Sulpicius (7-10). Thereafter things move ahead conventionally. The short partition (11) divides the case into three issues: (1) attacks on Murena's character, (2) the relative merits of the candidates (i.e. Sulpicius and Murena), and (3) the charge of bribery. The first of these issues is treated very briefly (11-14), and the greater part of the body of the speech deals with the merits of the candidates (15-53) and the charge of bribery (54-83). The peroration (86-90) includes a ringing emotional appeal to the jurors about the Catilinarian menace and its bearing on their duty, and this is followed by a rather ordinary appeal to pity and a commendation of the defendant.

Consistent with Cicero's normal practice, the body of the speech is organized not only according to the issues, but also by reference to members of the prosecution. Thus, the long section on the merits of the candidates is addressed largely to Sulpicius. The argument on the charge of bribery begins with a response to Postumus and the younger Servius Sulpicius (54-57), though most of this section was excised in the published version of the speech.⁴⁹ The remainder of the body (58-83) deals with Cato. This procedure serves to personalize and dramatize the argument of the speech, and it establishes a rhetorically nuanced ordering of elements. In the exordium, Cicero also personalizes issues, and he first speaks to Cato,

then to Sulpicius; the body of the speech reverses the order; Sulpicius comes first and then Cato. This chiasmic structure allows Cicero to place his responses to Cato, whom he calls "the strength and foundation" of the prosecution, at the points of maximum emphasis—the first and the last.

At a somewhat more subtle level, the text exhibits an interesting combination of qualitative and repetitive form. Qualitative form is a progression not of arguments but of moods, where one mood appropriately sets the stage for the next. Craig suggests that, in effect, the same qualitative progression appears in the two main parts of the body of the speech. In his analysis of Cicero's effort to diminish Cato's authority, Craig notes that Cicero first presents a conventional argument (58-59), and then "having done what the audience expects, Cicero is free to introduce humorous misrepresentation of Cato's Stoicism." The same sequence of moods occurs in the earlier section directed against Sulpicius, where Cicero begins with a serious, rather conventional comparison between the general and the lawyer (19-21) and then presents a parody of the legal profession and Sulpicius's pretensions about its value (22-30).⁵⁰ Moreover the parallels between the structure of the two sections can be extended: in both sections, after the humorous interlude, there comes an extended stretch of serious argument (31-42, where Cicero returns to a comparison between the careers of the two candidates, and 67-73, where Cicero replies to Cato's specific charges concerning bribery). And both sections end (48-53 and 78-82) with explicit reference to Cicero's trump card in the case—the specter of Catiline.

Perhaps more significantly, Cicero constructs the character of his two opponents along essentially similar lines. In both instances, we are told that they are capable and virtuous men who suffer from a flaw resulting from their pursuits and interests—in Sulpicius's case, his career as a lawyer, in Cato's, his commitment to a austere version of Stoic philosophy. In both cases, this flaw manifests itself as inflexible, rigid adherence to principle that renders these men unable to exercise prudent judgment and adapt to changing circumstances. In both cases, their imprudence leads them to prosecute Murena and to fail to understand the disastrous consequences that would follow from the success of their own efforts.

Of course, this development enables Cicero to advance his immediate instrumental goal, which is to diminish the authority of the prosecutors. But the systematic contrast between Cicero's agility in dealing with circumstances and the rigidity of his opponents also suggests that the orator's rhetorical sensibilities are not just a mechanism to win cases but a kind of political virtue. Moreover, as I now hope to demonstrate, this contrast gets developed in terms that implicitly endorse decorum and prudence as ethical values.

Cicero establishes the frame for assessing his rivals in the introductory apology for his presence in the trial. He explains that he will speak about himself only to

enhance his credibility as an advocate, but the terms of his defense have a general and even somewhat philosophical tone. He begins with Cato, and the initial description is telling; Cato is a man "who reduces life to the fixed pattern of a system" (3). The theme of rigidity is thus established at the outset. The issue at stake is duty, and the specific charges are that Cicero has abandoned his duty because (1) he appears in this case even though he is consul, (2) he is author of the law against bribery, and (3) his leniency toward Murena is inconsistent with the severity he has demonstrated generally in his consulship.

Cicero answers the first charge through an elegant set of analogies and concludes that it is not only appropriate for a consul to defend a consul-elect, but that the safety of the state places a duty on him to ensure that two consuls will be in office at the beginning of the next year. This last point presents the case in a political light and anticipates later twists in the argument of the speech.⁵¹ The second charge is dismissed quickly with the observation that, since Cicero does not believe Murena violated the *lex Tullia*, there is no inconsistency in defending him.

The third charge is more general, and it allows Cicero to draw a contrast between Cato and himself. Cato contends that the consul is inconsistent because he has acted severely toward Catiline but leniently toward Murena. Cicero replies that by nature he is inclined to act mercifully; he was stern with Catiline because his duty as magistrate forced him to behave that way. This change from his normal behavior, then, represented a necessary accommodation to circumstances, and he now can return to a more forgiving attitude. In other words, Cicero's conduct appropriately shifts as the situation warrants, and his flexibility stands in contrast to Cato, the rigid Stoic, who operates according to "a fixed standard."

The theme of propriety also emerges in the response to Sulpicius. Here the claim is that, after supporting Sulpicius in the consular election, Cicero is abandoning his friend by opposing him in court. An accusation concerning friendship, Cicero comments, is a serious matter, but Sulpicius fails to understand that the obligations of a friend change as a function of time and circumstance. In the campaign, as was befitting a friend, Cicero gave his energy and support to Sulpicius, but "that time is past. The case has been altered. . . . For if I favoured you when you were a candidate, it is not my duty now to assist you in the same way when you are prosecuting Murena himself" (7-8). The section concludes with arguments about the obligation of an advocate to assist a defendant, whatever the personal relationships of the parties in a case.

As Leeman has noted, this *apologia pro se* is a rhetorically effective introduction to the major arguments of the speech.⁵² It certainly advances Cicero's case in relation to the fictive jurors, but it is also notable that the main themes are matters of ethical concern—duty and friendship, and that Cicero ties the specifics of the case

to a rather general consideration of these virtues. And in the process, he establishes a frame for representing three of the major actors in the trial. On one side, the chief prosecutors are rigid and insensitive to the nuances of political and personal circumstances. On the other side, Cicero connects virtue with action and adjusts his behavior to encompass changing situations. This flexibility is not only advocated but is also enacted in the rhetoric of the text and is appropriately punctuated by the final words of the section:

And so every concession that can be made to friendship I shall gladly make and I shall treat you, Servius, as if it were my own brother—he is most dear to me—who was in your present position; what concession must be made to duty, honour, piety, I shall so regulate that I shall remember that I am speaking for one friend in danger against the wishes of another friend. (10)

Apparently, a comparison of merits (*contentio dignitatis*) was a regular feature of Roman trials involving charges of electoral fraud. The losing party would claim that he so far exceeded his opponent in merit that defeat could be explained only by bribery. Sulpicius had made this argument in his speech, and Cicero responded to it in detail, presenting a comparison between Murena and Sulpicius that spanned their lives from birth to the consular election of 63.⁵³

Holding that the two are equal in birth⁵⁴ and in most other relevant qualities, Cicero locates the difference between them, and the true cause of Sulpicius's defeat, in their choice of profession. Sulpicius became a jurisconsult, a legal expert, while Murena became a military leader, a general. The military career, Cicero affirms, has all the advantages in respect to political advancement. Sulpicius, the lawyer, has stayed in the city and lived "according to the whims of others, not his own wishes" (19). Meanwhile, Murena has led an active life, directing armies and traversing Asia in triumph (20). As this contrast proceeds, its initially serious tone begins to shift in a comic direction. At 22, Cicero sums up the differences between the general and the lawyer in a witty set of antitheses, ending in these contrasts: "You are aroused by the call of the cock, he by the call of the trumpet; you begin your pleading, he orders his line of battle; you take care that your clients not be plucked, he that cities and camps not be taken; he understands how to keep off troops of the enemy, you know how to keep out rain water; he is engaged in extending the boundaries of the empire, you in regulating the fences of your clients." The civil law, Cicero then adds, offers no road to the consulship.

The road metaphor is elaborated later, but for the moment Cicero returns to the comparison of pursuits, and he now indicates that the lawyer is inferior not only to the general but also to the orator. The orator, like the general, has the weight and

dignity associated with free action, for oratorical eloquence can sway (*permovere*) the minds of the senate, the people, and jurors. No such power is found in the hair-splitting science of the law (23-24).

This point is elaborated through a full-blown comic scenario in which Cicero virtually enacts a civil case concerning a property dispute. The suit, the orator tells us, might be initiated simply in these words: "'The Sabine property is mine.' 'No, it is mine'—then the trial." But such simplicity is not tolerated in the legal world, and so the lawyer must begin: "A property which is situate in the district known as Sabine," and the proceeding continues in this unnecessarily obscure and technical idiom. Indeed, the whole process is controlled by absurd rituals. The lawyers issue mock summons to call the parties from one place to another, and the presiding judge even has a pointless legal formula to present: "'The witnesses for both parties being there present I formally indicate yonder road. Proceed by the road.' That sage was there to direct them to proceed on the road. 'Return by the road'" (26).

The reader of this passage can easily imagine the bodily action of the orator delivering these lines—the gesture of the hands or perhaps the movement of the feet back and forth in a circle. Earlier Cicero had said that the law is no road to the consulship, and now we can see where it does lead—and that is nowhere. While the general traverses a continent and the orator moves audiences, the lawyer beats around the bush. The civil law lacks dignity and weight, because it does not lend itself to practical action; it walls the lawyer within an artificial language and creates a disposition to attend to formal contrivances rather than real world conditions.

Thus, the liability of Sulpicius's profession is not just that it fails to generate the political esteem generals or orators earn; worse yet, it inculcates habits that disable effective participation in civic affairs. It creates the wrong kind of character for the shifting, turbulent arena of politics. This is the point that Cicero drives home as he explains Sulpicius's defeat.

During the campaign, Cicero tells us, Sulpicius demonstrated a stunningly inappropriate sense of timing. When he should have been making a public display of energy and confidence, he issued threats of legal action against his opponents. He played the part of the "brave prosecutor rather than an astute candidate" (43). Of course, there is virtue in prosecuting wrongdoing, but it is not always fitting to do so: "There is a time for seeking office and a time for prosecution" (44). By failing to understand this distinction, Sulpicius subverted his own campaign. After all, the candidate who threatens prosecution is almost necessarily viewed as someone who despairs of winning, and the voting public does not attach itself to a loser. Moreover, there is also the matter of how one spends time during a campaign. Cicero, who has experience in both political campaigns and prosecutions, can testify: "In no way can the same man conscientiously arrange and prepare a

prosecution and a campaign for the consulship. Few can do one—both, no man.” And so when Sulpicius tried to combine the two tasks, he committed a serious error (46). Thus, Cicero observes, with a final reference to the road metaphor, that Sulpicius’s misguided behavior “paved the road to a prosecution” and “barred him from election” (48).

Finally, and most disastrously, Sulpicius persisted in his inappropriate political behavior at a time of national emergency. Addressing Sulpicius directly, Cicero says: “What an axe do you think you laid to your campaign when you brought the Roman people to fear that Catiline might be elected consul while you were getting up a prosecution, giving up and utterly abandoning your own campaign!” (48). This direct reference to Catiline offers Cicero the occasion to review recent events in a way that highlights his own active role in checking the conspiracy and reminds the jurors of the danger that it still presents to their welfare. But this political digression eventually leads back to the comparison of merits, and Cicero offers some last words to explain Sulpicius’s defeat. As citizens became aware of the threat Catiline posed and observed the gloom surrounding Sulpicius’s campaign, the current of opinion shifted to Murena, who “acted without yielding to threats or threatening anyone” (53).

In the final analysis, Cicero implies, the election was determined not by Murena’s bribery but by Sulpicius’s bad timing. This point is developed over the span of about one-third of the entire speech text, and so Cicero must have regarded the issue as both crucial and delicate. And the rhetoric of the text is quite subtle, involving a chronological progression punctuated carefully by interludes of comedy and serious argument, the whole development gradually leading to a characterization of Sulpicius. He is a generally capable and honorable man, but his profession has left him with a trained incapacity for decorous political behavior, and by implication, it has also lead him to prosecute Murena at a time when prudent judgment would give the welfare of the state priority over the letter of the law.

Every bit of this complex development builds toward a plausible case for acquitting Murena, and so the text is an excellent example of rhetorical instrumentality. Yet, the contrast between Cicero and Sulpicius also might suggest that the orator is making a strong case for his own art—that he is showing how a balanced, prudent, and decorous approach to a crisis establishes a model for political action.

The second major unit in the body of the speech extends from 58 to 82 and consists in the response to Cato. Cicero divides his remarks into three subdivisions: Cato’s own accusation (i.e. the weight of his authority), the charges regarding bribery, and the interests of the state. As I noted earlier, this section displays a qualitative progression similar to the first main argument: there is an alternation between serious and humorous passages, and the specter of Catiline is reserved for the end.

Cicero begins with an expression of concern about Cato’s reputation (58). It is so great, he alleges, that the man’s influence is more to be feared than the charges he brings forward, and in a rather straightforward argument, Cicero attempts to blunt that influence: It would be wrong in principle and contrary to Roman custom for the authority of a prosecutor to prejudice a case. As Craig notes, this argument is “unsurprising. It is, in tactical terms, an acceptable minimum.”⁵⁵

In 60, the tone changes. Cicero now addresses Cato directly, assuming the relation of a teacher to a student. Cicero appraises the younger man and finds him an admirable fellow, one who needs no correction. But perhaps he is in need of some guidance, since he has adopted a philosophical doctrine that is harsh and severe—too much so, Cicero thinks, for “reality and human nature to bear.” Thus, in a disarmingly polite form of criticism, Cicero praises all those qualities in Cato that are innately his and objects only to what he has taken from his teachers, the Stoics.

Having positioned himself in this way, Cicero can enter the comic frame and parody the Stoics. He sets forth a list of Stoic maxims, all of them paradoxical, as for example: “All sins are equal, every peccadillo is a deadly crime. He commits no less a crime who strangles a cock, than the man who strangles his father; the philosopher surmises nothing, repents of nothing, is never wrong, never changes his opinion” (61). Moreover, while others have taken such maxims as exercises for debate, Cato has adopted them literally as rules of life. Thus, his school of philosophy has made him an unflinching absolutist and subject to this sort of intransigence: “I said in the senate I would prosecute one of the consular candidates.’ You were angry when you said that. ‘A philosopher is never angry’” (62). Like Sulpicius, then, Cato’s pursuits and interests have him divorced from political reality and forced into an inflexible attitude.

Had Cato consulted other teachers, Cicero continues, he might have learned a more restrained code of ethics and accepted a view of virtue as regulated by a mean. Such instruction would not have rendered him “braver or more temperate or more just,” but “little more given to kindness” (64). The critique here, though it is, as Craig says, “very gentle,” works quite subtly to develop two themes at once.⁵⁶ First it indirectly but clearly identifies Cato’s foibles as resulting from a lack of prudence. The list of virtues that Cicero attributes to Sulpicius includes three of the four cardinal virtues (bravery, temperance, and justice); the fourth is prudence, and it is conspicuously absent.⁵⁷ And the reference to kindness (*lenitas*) recalls the introduction of the speech and the contrast between Cato’s severity and Cicero’s forgiving disposition (6).

In the remainder of this section, Cicero expresses hope that age will mellow Cato, that he will come to a better, more reasonable understanding of the ethical doctrine of his own teachers, and that like other distinguished Romans, including

his own great-grandfather, he will allow philosophical learning to soften his temperament.⁵⁸ And to sum up this excursion in popular philosophy, Cicero advises Cato to become more adaptable and therefore more agreeable. He should sprinkle his "sternness and severity" with "courtesy and affability," not to make his qualities better—"that is impossible"—but to make them "more agreeably seasoned"(66).⁵⁹

Cicero's remarks in 60-67 take the form of a parody, but they also develop through a coherent logical structure and make a very serious point.⁶⁰ In more direct and economical terms, they recapitulate the complaint made about Sulpicius, and so Cicero diagnoses the same malady in both the chief prosecutors. But in the case of Sulpicius, the diagnosis is almost self-sufficient. The question at issue is: Why did Sulpicius lose the election? And to expose him as a political incompetent is tantamount to an answer to that question. In dealing with Cato, however, Cicero must deal with two delicate issues that cannot be so easily reduced to matters of character and judgment—the concrete charges against Murena and the broader question of duty to the state. Thus, Cato's imprudence is only the starting point for the persuasive process.

At 67-73, Cicero replies to four specific charges that Cato makes concerning bribery. The issues here are quite technical and difficult to sort out, partially because the provisions of the law are not obvious and partially because a significant lacuna appears in this section of the speech. But while the details are elusive, the weakness of Cicero's response is palpable.⁶¹ Basically, he resorts to evasions. He demands proof that anyone in the large crowds that had surrounded Murena was bribed to participate. He maintains that much of what Murena and his supporters did in the campaign was consistent with tradition (though he does not deal with the actual legal status of these matters), and he redefines certain other activities (such as giving away seats to the games and holding feasts) as "liberality" or "generosity" rather than bribery. These replies are transparently thin, and it seems that Cicero inserts them in the text only to maintain appearances; he has to say something about the charges.

This weak argument is followed by a renewed effort to personalize the case. At 74, Cicero recalls some of Cato's more general remarks and continues to portray him as an unbending absolutist. Cato, says Cicero, argues "with me coldly and like a Stoic." And so, in a sharper contest than the humorous student-teacher scenario of 60-67, the issues once again revolve around the contrast between the two advocates. Implicitly, Cicero aligns himself with a prudent and flexible set of values, and Cato with the opposite. But now an additional and especially important distinction comes to the fore. Cato's ethical rigidity is not simply unrealistic, but it also deviates from the Roman tradition, from the custom of the ancestors.⁶²

As Cicero represents him, Cato believes that campaigns should be decided without any flattery or appeal to pleasure. But this position is a fantasy that "experience,

life, custom, and the state itself reject" (74). The Romans have time "for both pleasure and toil," and Cato, in effect, condemns what Roman custom affirms. To underscore this, Cicero tells the story of another Stoic, Quintus Tubero, the nephew of Scipio Africanus. When Scipio died, Tubero was asked to give a funeral banquet, and what he provided was stark and austere, as "if it were Diogenes the Cynic who died and not as if they were doing honor to the superman, Africanus" (75). The result of Tubero's perverse wisdom was that, despite his eminent qualifications, he was defeated when he ran for praetor. "The Roman people," Cicero explains, "hate private luxury, they love public magnificence. They do not love elaborate feasts, much less do they love squalor and boorishness. They recognize differences of obligation and occasion, the alternation of toil and pleasure" (76).

Turning the argument in an *ad hominem* direction, Cicero maintains that Cato's idealism is so unrealistic that even he cannot live up to it. If he were to act consistently on Cato's own premises, a candidate would stand solely on his dignity and not solicit votes. But Cato does campaign and ask for support and assistance. Even more problematic is Cato's use of a nomenclator to remind him of the names of citizens. Surely this is "a trick and a deception." These practices, Cicero observes, are entirely acceptable by the standards of ordinary Roman practice, but if weighed in the scale of Cato's philosophy, "they are found utterly vicious" (77).

This brief section (74-77) is the pivot of the reply to Cato. At one and the same time, it drives home themes presented in the parody of Stoicism at 60-66, deflects attention from the weak argument at 67-73, and sets the stage for the impassioned appeal to the interest of the state that follows at 78-82. Cato emerges as a totally isolated figure. His misguided Stoic idealism does not simply render him an amusing, paradoxical figure; it separates him from the life-world of ordinary Romans, places him in opposition to the venerated customs of the ancestors, and renders him a pathetically self-conflicted character unable to behave in accordance with his own ethical standards.

The emotional significance of this perverse wisdom becomes clear as Cicero addresses the final point in his reply to Cato. Cato says that the interests of the state prompted him to undertake this prosecution. But like Sulpicius in the election campaign—only now with potentially more serious consequences—Cato's judgment is mistaken; "your lack of prudence," Cicero says to him, "is your downfall" (*imprudencia laboris*).⁶³ Speaking as consul, Cicero declares that his actions in the case are motivated not just by friendship for Murena, but for the sake of "peace, quiet, harmony, liberty, and finally the life and safety of us all" (78). He sustains this emotional intensity through the rest of the section as he urges the need to have both consuls in place on January first and vividly depicts the horrors awaiting the Roman people should they fail to respond prudently to this crisis. This sense of urgency and

emotional intensity is carried over into the peroration, where Cicero makes a powerful appeal for the jury to focus on the interests of the state. In effect, he is calling on the jurors to act as prudent deliberators and render a decision based on political grounds.

Clearly, it suits Cicero's rhetorical purposes for the speech to end on a deliberative note. His whole effort seems directed toward hiding the strictly legal issues in the case and highlighting its political implications. To the extent that he succeeds, and most readers find him very effective, he does so by structuring the case around the character of his opponents and their political judgment and by deflecting attention from the specific charges that they make. Cato is the key figure in this development, and there is real irony in Cicero's comment that Cato's reputation is such that his authority is more to be feared than his accusations (58). Leeman has perceptively commented that while Cicero begins by asking the jurors not to let the prosecutor's authority carry weight in the trial, he then "rather illogically, but very efficiently, passes on to weaken this *auctoritas* by attacking his philosophical convictions."⁶⁴ But Cicero does more than weaken Cato's authority. By 74-77, he has overturned it altogether, alienated Cato from the traditions and practices of the culture, and, in fact, made Cato's political judgment an anti-model. And once this is established, he can swing the pendulum in the other direction by portraying the situation in terms of his own political outlook. The ultimate issue, then, no longer appears to depend on the specific legal charges against Murena but on the choice between alternative modes of political judgment.

CONCLUSION

This interpretation of the speech is consistent with, indeed largely derived from, the readings of Leeman and Craig based in the persuasive process model. In my own approach to the text, I differ with them only on some points of emphasis, particularly those that have to do with the importance of the relationship between the character of Sulpicius and Cato and their political judgment. I agree that the speech is a masterpiece of persuasive design and demands and rewards reading in terms of the way its elements cohere in response to the immediate situation. But I want to add that the speech also can be read as the embodiment of a kind of political judgment—a kind of judgment specifically connected with prudence, decorum, and action and where rhetorical skills are seen not just as instruments of persuasion but as equipment for living.

When I refer to political judgment and ethics here, I do not mean judgment and ethics as they are treated in systematic philosophy. The *pro Murena* is not a work of that kind and to read it as philosophical in this sense is to cause confusion. But

political ethics and judgment are not just matters for systematic philosophers; they also exist in the ordinary practices of our lives, and they are enacted in our daily decisions; they are part of our social knowledge and of our culture. It is at this level that Cicero speaks to matters of ethical judgment in the *pro Murena*, and it is in this respect that I believe the text offers a strong case for rhetoric.

Consider how Cicero isolates and attacks Cato's form of judgment at 74-77. Cato's systematic philosophy yields a rigid, purified ethic that would suppress pleasure to the demands of reason. Cicero retorts that the Roman people inhabit a different, more comfortable ethical world, one in which values oscillate, where pleasure and toil alternate, where duties are understood in relation to a realistic assessment of occasions and situations. This is a political ethic conveyed through tradition and connected to a living culture. Sulpicius cannot recognize it, and Cato would overthrow it. Cicero celebrates and incarnates its values.

In articulating these views, Cicero positions himself in a law court, works in the medium of its two-sided exchange about specific issues, relies upon the presence of Cato as the philosophic other to sustain controversy beyond the mundane details of the case, produces a text that itself demonstrates the oscillation of discursive motives, as play and purpose alternate in various passages, and presents a masterful display of decorum by blending these motives to serve his immediate rhetorical purposes. If we recall Lanham's "strong defense" of rhetoric, the *pro Murena* seems a paradigm case of what Lanham has in mind.

One of the great achievements of the persuasive process model is that it allows us to appreciate the complex and often multiple functions of Ciceronian rhetoric. For example, earlier scholars viewed the alternation of serious and comic sections of *pro Murena* as an inconsistency that they explained by claiming that the published text was a conflation of two actually delivered speeches, one of them presented when Cicero was in an optimistic mood, the other when he was more solemn. Leeman can offer the much better explanation that these passages are part of a carefully designed mix and that they work effectively toward a single persuasive end.⁶⁵ And, in a similar spirit, Craig can show that *pro Murena* 60-67 is a comic interlude that develops within the frame of a logically coherent structure and that the rhetorical power of the passage is connected to this creative oscillation between a lampoon and a legal argument.

I want to enlarge this perspective so that the critic can respond not just to the technical artistry in the text but also to the ethical and political concerns that animate it. This enlarged perspective rests upon a strong conception of rhetoric—a conception that regards the rhetorical text as an instance of ethics in action and regards political ethics as constituted, in some part, through rhetorical action. This perspective does not displace the persuasive process model with an "ethical" alter-

native, for the issue is not either one or the other, but both persuasion and ethics as constituents of forensic rhetoric. Such an impure, practical mix of interests, I believe, is hardly inconsistent with Cicero's own attitude on these matters. His writings consciously blend oratorical eloquence into the philosophical medium and philosophical considerations into oratorical texts, and we can almost never peg him comfortably within a single category. But I lack either the skill or the patience to make a case about Cicero's motives that would satisfy the philological specialists who study his speeches. I can only suggest a supplement to their established methods of reading. More generally, however, it would seem a shame to hide these texts under a philological bushel, for at a time when students of political discourse badly need to locate concrete instances where prudence and rhetoric meet in action, Cicero's speeches deserve renewed and sustained attention.

NOTES

1. In political theory, important contributions to this project include: Larry Arnhart, *Aristotle on Political Reasoning* (De Kalb: Northern Illinois University Press, 1981), Ronald Beiner, *Political Judgment* (University of Chicago Press, 1983), Peter Steinberger, *The Concept of Political Judgment* (University of Chicago Press, 1993), and Richard Ruderman, "Aristotle and the Recovery of Political Judgment," *American Political Science Review* 91 (1997): 409-20. Rhetorical studies following this same general trajectory include: Thomas B. Farrell, *Norms of Rhetorical Culture* (New Haven: Yale University Press, 1993), Robert Hariman, "Prudence/Performance," *Rhetoric Society Quarterly* 21 (1991): 26-35; *Political Style: The Artistry of Power* (University of Chicago Press, 1995), and James Jasinski, "The Forms and Limits of Prudence in Henry Clay's (1850) Defense of the Compromise Measures," *Quarterly Journal of Speech* 81 (1995): 454-78. Located at the boundary between rhetorical and political studies are Eugene Garver's *Machiavelli and the History of Prudence* (Madison: University of Wisconsin Press, 1987) and *Aristotle's Rhetoric: An Art of Character* (Chicago: University of Chicago Press, 1994). The connection between rhetoric, politics, and prudence is a theme of considerable interest in Renaissance studies. See, for example, Victoria Kahn, *Rhetoric, Prudence and Skepticism in the Renaissance* (Ithaca, N.Y.: Cornell University Press, 1985), *Machiavellian Rhetoric: From the Counter-Reformation to Milton* (Princeton, N.J.: Princeton University Press, 1994), and Quentin Skinner, *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge: Cambridge University Press, 1996).
2. See Richard Lanham, "The 'Q' Question," in *The Electronic Word: Democracy, Technology, and the Arts* (Chicago: University of Chicago Press, 1993), 154-94.
3. For a detailed account of the Platonic attack against rhetoric and a response to it, see Brian Vickers, *In Defense of Rhetoric* (Oxford: Clarendon Press, 1988), 83-147.
4. Beiner, *Political Judgment*, 100.
5. *Critique of Judgment*, trans. J.C. Meredith (Oxford: Oxford University Press, 1952), 193; quoted in Beiner, *Political Judgment*, 100.
6. Lanham, *The Electronic Word*, 156.
7. *Rhetoric*, 1355a, trans. George Kennedy, *Aristotle on Rhetoric: A Theory of Civic Discourse* (Oxford: Oxford University Press, 1991).

8. See Robert L. Scott, "On Viewing Rhetoric as Epistemic," *Central States Speech Journal* 17 (1967): 9-17.
9. See James Boyd White, *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (Chicago: University of Chicago Press, 1984).
10. See Margaret D. Zulick, "Generative Rhetoric and Public Argument," *Argumentation and Advocacy* 33 (1997): 109-19.
11. See John S. Nelson, Allan Megill, and Donald N. McCloskey, eds. *The Rhetoric of the Human Sciences* (Madison: University of Wisconsin Press, 1987). Some idea of the nature and magnitude of the shift involved in this project and the others I have listed here can be gained from reading Peter Munz's reaction to *The Rhetoric of the Human Sciences*, "The Rhetoric of Rhetoric," *Journal of the History of Ideas* 51 (1990): 121-42, and the responses to Munz by McCloskey and Vickers, 143-59.
12. Lanham, *The Electronic Word*, 161.
13. Lanham, *The Electronic Word*, 189.
14. Lanham, *The Electronic Word*, 188.
15. The jurisprudential model is basic to the argumentative theories of both Chaim Perelman and Stephen Toulmin, and through their influence it has had considerable influence. See Don Abbott, "The Jurisprudential Analogy: Argumentation and the New Rhetoric," *Central States Speech Journal* 25 (1974): 50-55. But there are dissenters who believe that the legal model is inappropriate in other rhetorical contexts. See, for example, David Cheshire, "Concord and Controversy: Some Implications of Using Biology and Law as Metaphors for Social Oppositional Argument," in *Argumentation and Values: Proceedings of the Ninth AFA/SCA Conference on Argumentation*, ed. Sally Jackson (SCA: Annandale, VA, 1995), 101-13; R.H. Gaskins, *Burdens of Proof in Modern Discourse* (New Haven: Yale University Press, 1992), and Fred Kauffeld, "Presumptions and the Distribution of Argumentative Burdens in Acts of Proposing and Accusing," paper presented at the Ontario Society for the Study of Argumentation, May 1997, and in press for *Argumentation*. For Cicero, forensic oratory was clearly the privileged genre of rhetoric, and his conception of eloquence was intimately tied to the law courts. See my paper "Genre and Paradigm in The Second Book of *De oratore*," *Southern Journal of Speech Communication* 51 (1986): 308-25.
16. Concerning the importance of arguing *in utramque partem* in Cicero, see Thomas Conley, *Rhetoric in the European Tradition* (New York: Longman, 1990), 37. Concerning the general significance of this concept for rhetorical education, see Thomas O. Sloane, "Reinventing inventio," *College English* 51 (1989): 461-73.
17. See Jerrold Seigel, *Rhetoric and Philosophy in Renaissance Humanism* (Princeton: Princeton University Press, 1968), and Nancy S. Struver, *The Language of History in the Renaissance: Rhetoric and Historical Consciousness in Florentine Humanism* (Princeton: Princeton University Press, 1970).
18. On the interaction between the useful and the pleasant in Cicero's conception of eloquence, see Elaine Fantham, "Varietas et Satietas: De oratore 3.96-103 and the Limits of Ornatus," *Rhetorica* 6 (1988): 275-90. For a more general overview, see A. Desmouliez, *Cicero et son Gout: Essai sur une definition d'une esthetique romaine a la fin de la republique*. Collection Latomus 150 (1976).
19. Paul MacKendrick, *The Philosophical Books of Cicero* (New York: St. Martin's Press, 1989), and Philippa R. Smith, "A Self-indulgent misuse of leisure and writing? How not to Write Philosophy: Did Cicero Get it Right?" in *Cicero the Philosopher*, ed. J. G. F. Powell (Oxford: Clarendon Press, 1995), 301-24.

20. *Representations: Images of the World in Ciceronian Oratory* (Berkeley: University of California Press, 1993), 5.
21. Mary Rosner, "Cicero in Nineteenth-Century England and America," *Rhetorica* 4 (1986): 166.
22. Quoted in Rosner, "Cicero in Nineteenth-Century England," 171.
23. "The Speeches," in *Cicero*, ed. T. A. Dorey (London: Routledge & Kegan Paul, 1965), 47-80.
24. "Cicero and the Relationship of Oratory to Literature," *The Cambridge History of Classical Literature: Volume II, Part 2, The Late Republic* (Cambridge: Cambridge University Press), 78.
25. Chr. Neumeister, *Grundsätze der forensischen Rhetorik gezeigt an Gerichtsreden Ciceros* (Munich: M. Huber, 1964), W. Stroh, *Taxis und Taktik: Die advokatische Dispositionskunst in Ciceros Gerichtsreden* (Stuttgart: Teubner, 1975), C. J. Classen, "Ciceros Kunst der Überredung," in *Éloquence et Rhétorique chez Cicéron*, ed. W. Ludwig (Vandoeuvres-Geneve: Fondation Hardt, 1982), 145-92, and *Recht-Rhetorik-Politik* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1985). Vasaly, *Representations*, 5-10, presents a useful summary of this line of scholarship. See also Christopher P. Craig, *Form as Argument in Cicero's Speeches: A Study of the Dilemma* (Atlanta: Scholars Press, 1993), 3-8.
26. A. D. Leeman, "The Technique of Persuasion in Cicero's Pro Murena," in *Éloquence et Rhétorique chez Cicéron*, ed. W. Ludwig (Vandoeuvres-Geneve: Fondation Hardt, 1982): 193-236. Leeman's paper is perhaps the most thorough and useful essay in the tradition of the persuasive process model in English.
27. Especially influential in this respect is J. Humbert, *Les plaidoyers écrits et les plaidoiries réelles de Cicéron* (Paris: Presses Universitaires de France, 1925).
28. Stroh, *Taxis und Taktik*, 31-54.
29. "Cicero's Pro Sestio: Persuasive Analysis and Ethical Judgment," paper presented at the meeting of the American Society for the History of Rhetoric, San Diego, Calif., November, 1996, 6. I am indebted to Professor Craig for sending me a copy of this paper and for his help in understanding background issues in the Ciceronian scholarship.
30. Vasaly, *Representations*, argues for an expansion of the critical model to consider the orations as performances and to incorporate semiotic and other cultural considerations. See 11-13 for an overview of her position. Robert Cape, "The Rhetoric of Politics in Cicero's Fourth Catilinarian," *American Journal of Philology* 116 (1995): 254-77, attempts to bring political issues into the criticism of Ciceronian oratory. Jerzy Axer argues that the communication context of the written text is necessarily distinct from that of the oral performance and recognition of this fact should encourage a revision of the goals and methods of criticism. See, "Remarks on the 'Historical Reading' of Cicero's Legal Speeches," *Index* 17 (1989): 205-15, and "Cicero's Court Speeches: The Spoken Text Versus the Published Text. Some Remarks from the Point of View of the Communication Theory of Text," in *Rhetoric as Pedagogy: Studies in Honor of James J. Murphy*, ed. Winifred Bryan Horner and Michael Leff (Mahwah, N.J.: Lawrence Erlbaum, 1995), 57-64. David Konstan, "Rhetoric and the Crisis of Legitimacy in Cicero's Catilinarian Orations," in *Rethinking the History of Rhetoric*, ed. Takis Poulakos (Boulder: Westview Press, 1993), 11-30, works entirely outside the persuasive process model and considers broad social/political themes as the ground for critical analysis.
31. "Cicero's Pro Sestio," 18-19.
32. Cape, "On Reading Cicero's Catilinarian Orations" (Ph.D. diss., University of California, Los Angeles, 1991), 28-32.

33. Cape, "On Reading Cicero's Catilinarian Orations," 28.
34. See note 30.
35. A detailed account of the background of the speech can be found in the introduction to C. MacDonald's translation of the speech in the Loeb series *Cicero*, Vol. X, *In Catilinam I-IV, Pro Murena, Pro Sulla, Pro Flacco* (Cambridge, MA: Harvard University Press, 1976): 169-84. The older Loeb edition of these speeches was published in 1937 and the translations are by Louis Lord. In the text of this paper quotations from the *pro Murena* are taken from Lord's translation unless otherwise indicated.
36. Lord in the introduction to his translation of the speech, 146.
37. It is only partial fulfillment, since Cato did not see fit to prosecute the other victorious candidate, his brother-in-law Silanus. See Leeman, "The Technique of Persuasion," in *Éloquence* (note 26), 222.
38. About two years after his speech for Murena (in *Pro Flacco*, 98), Cicero said that the key to his success was the argument that two consuls needed to be in place at the beginning of the next year to protect the state against Catiline. Critics, dating as far back as Quintilian (6.1.35) agree. For recent opinions, see Leeman, "The Technique of Persuasion," in *Éloquence*, 224-25, and Christopher Craig, "Cicero's Stoicism and the Understanding of Cicero's Speech for Murena," *Transactions of the American Philological Association* 116 (1986): 230.
39. MacDonald, *Cicero*, Vol. X, 182; see note 35.
40. Leeman, "The Technique of Persuasion," in *Éloquence*, 202.
41. Compare *pro Murena* 61 to *De finibus* 4.74.
42. Cicero's parody of the law at 23-29 is hardly consistently with the views he presents in *De oratore*. See Leeman, "The Technique of Persuasion," in *Éloquence*, 210. Moreover, the attitude toward Stoicism in *pro Murena* is very different from the respect and serious interest he evinces in his philosophical works. See Craig, "Cicero's Speech for Murena," 234.
43. George Kennedy, *The Art of Rhetoric in the Roman World: 300B.C.-A.D. 300* (Princeton: Princeton University Press, 1972), 182.
44. See note 38.
45. See note 26.
46. Leeman, "The Technique of Persuasion," in *Éloquence*, 199.
47. Leeman, "The Technique of Persuasion," in *Éloquence*, 220.
48. See Axer, "Cicero's Court Speeches," 59-63, note 30.
49. Testimony from ancient sources indicates that this part of the speech was never published. The cause of this deliberate omission has prompted some debate, but the consensus is that the argument was so thin and weak and that Cicero would have been embarrassed to include it in the published text. Leeman, 215, comments: "Cicero wanted to be admired and studied, not to be found out—at least not as easily as that."
50. Craig, "Cicero's Speech for Murena," 231-32.
51. Leeman's comments, 203, are very perceptive on this point.
52. Leeman, "The Technique of Persuasion," in *Éloquence*, 205.
53. On the structure of this part of the speech, see Donald M. Ayers, "Cato's Speech Against Murena," *The Classical Journal* 49 (1954): 247.

54. Leeman, "The Technique of Persuasion," in *Eloquence* 207-208, explains at length that the equation between the two in terms of birth and social status is highly dubious and constitutes one of Cicero's uses of verbal magic.
55. "Cicero's Speech for Murena," 231. On this point and many others concerning the response to Cato, I follow Craig's meticulous and thoughtful analysis of the text.
56. Craig, "Cicero's Speech for Murena," 236.
57. Also noted in Craig, "Cicero's Speech for Murena."
58. The reference to the Elder Cato as gentle and pleasant is rather peculiar. For commentary on this, see Craig, "Cicero's Speech for Murena," 237; Leeman, 216-17; and MacDonald, 269, note e.
59. MacDonald's translation.
60. This point is developed carefully by Craig, "Cicero's Speech for Murena," 231-37.
61. See Leeman, 217-23.
62. On this point, I follow Craig, "Cicero's Speech for Murena."
63. Craig, "Cicero's Speech for Murena," 238, also notes the importance of "imprudentia" in this context.
64. Craig, "Cicero's Speech for Murena," 216.
65. Craig, "Cicero's Speech for Murena," 195.