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The contexts and occasions of Roman public rhetoric

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Both the vast scale of modern political societies and the overwhelming increase in communication by images or through the intimacy of electronic media explain why the concept of oratory has become alien and archaic, needing a social commentary to explain it to the modern reader. But the difference between Greek civic democracies and Rome also meant that interpretation was needed for a Roman to understand how an *orator* differed from an Athenian *rhētor*. Indeed, his course of study with Greek teachers of rhetoric would hardly prepare him for the divergence between oratory as practised at Rome and its past or current uses in Hellenistic Greece. My concern is with practice, not etymology, but it is still useful to take as guidance the earliest recorded uses of *orator* (from *orare*, 'to pray', 'request', 'plead'): these men are envoys in public life or intermediaries in the private world of comedy between erring lovers or sons and their mistresses and fathers.¹

In classical Athens the *rhētor* was above all the politician, not as elected magistrate but as one with power to persuade the popular assembly. When the herald announced, 'Who wishes to address the people?' (*Ar. Ach.* 45),² the democratic principle entitled any citizen to speak, but reality ensured that officials would be recognized first and foremost. Although the first hearing in Aristophanes' mock assembly is given to ambassadors newly returned from Persia, this would normally go to established political figures. Yet we know that young men tried to become established in politics through speaking. In Xenophon's *Memorabilia* Socrates interrogates a young kinsman of Plato, Glaucon, who has embarrassed his friends by leaping up to speak in the assembly and persisting even when people try to drag him down from the speaker's platform (3.6). Glaucon wants to be a

public speaker (*dēmōgorein*) so as to become a leader, but has no idea of public finances or military needs.³

At Athens and often elsewhere both policy and actual proposals were shaped by informal discussion in the smaller consultative council (*boulē*) but determined by the assembly; yet because the speaker before the people needed to appear spontaneous, there was no acknowledged preparation or later record of his words. None of these speeches seems to have been published before those circulated by Demosthenes in the crisis of Athens' collapse before Macedon.⁴ There were also ceremonial public speeches, especially the official *logoi epitaphioi* at public funerals (such as Pericles' funeral speech as reported by Thucydides), and display speeches at festivals or cultural displays.

Litigants in Athenian civil cases and defendants on serious charges before the huge democratic juries were expected to present their own case, but regularly employed speechwriters (*logographoi*). Socrates, who conducted his own defence in terms that may have ensured his condemnation, supposedly refused the speech offered him by Athens' best contemporary writer, Lysias, as he refused also to make the standard appeal for pity expected of a defendant (reported by Cic. *De Or.* 1.231; cf. Pl. *Ap.* 34c, 37a). These speechwriters were often disqualified from a career as a public speaker by lack of citizenship or weakness of voice. On the other hand, even the most gifted advocate would speak in court only if he himself were a prosecutor, a defendant, or a litigant.

THE SCOPE OF THE ROMAN ORATOR: CICERO AS EXAMPLE AND SOURCE

In republican Rome's more hierarchical world the two main forms of public speaking, political and judicial, were relatively open to members of the governing class, just as they were virtually closed to the ordinary citizen. This discussion will consider roughly three hundred years of public life from the long career of the elder Cato (*cos.* 195 BCE) through the career of Cicero (*cos.* 63 BCE) in the republic to Tacitus (*cos.* 97 CE) and the younger Pliny (*cos.* 100 CE) in the early empire. But evidence for the second century BCE comes mostly from Cicero and his contemporaries. Indeed, modern knowledge of Roman politics and rhetoric of all kinds has been shaped by Cicero's speeches, theory and letters.

Cicero's study of rhetorical education, *De Oratore*, retains the

Greek division of types of public speaking between political, judicial and ceremonial, but acknowledges their unequal importance: he gives priority to the two major contexts of political speaking (i.e., assembly and senate; cf. *De Or.* 2.333–40) – which I shall consider first – while recognizing the importance of at least the major public trials to a political career. Other texts, such as the anonymous manual for Herennius (around 85 BCE), pay far more detailed attention to lawcourt rhetoric, confirming its predominance as (what we would call) a profession in the daily life of Rome and Italy. As for the third category, it was primarily associated with funeral eulogy, but became a miscellaneous catch-all covering military harangues and moral exhortation in many semi-private contexts.

In Roman political life the assembly had less power than in Athens but offered more scope for official eloquence. Public assemblies were summoned to meet in the open *comitium* in the north-east corner of the Roman forum when one of Rome's major magistrates wished or needed to address the citizens. Normally the consul whose turn it was to preside over the senate⁵ would summon the assembly on one of the authorized days⁶ to present senatorial policy or to submit new proposals (*senatus consulta*) for ratification. The same word, *contio* (from *conventio*, 'causing to come together'), described both his speech and the preliminary meeting, but on this occasion the audience could not vote: there was a statutory waiting period of three market 'weeks' before citizens could assemble in their official divisions for the formal *comitia* or voting assemblies. The orator, however, could use his eloquence only at a *contio* and only if he were either the magistrate presiding over the meeting or invited to speak by him. There was no provision for amendment or challenge from the crowd. In such planned and disciplined public meetings stage management was not only possible but normal. Unauthorized public gatherings were illegal, but the consul might have to deal with negative rumours and popular discontent, even potential rioting, by calling an emergency meeting: Cicero did this in 63 BCE to deal with a potential theatre riot at the games of Apollo.⁷ In such a context the magistrate's attendants would have to impose order and designate a meeting place before the consul could make his eloquence felt. It is no accident that one of Vergil's most powerful similes compares Neptune's benevolent intervention to calm a storm to the wise statesman who appears to quell a riot when stones and torches are already flying and soothes the mob by his sheer authority and eloquence (*Aen.* 1.148–53).

We have some idea of the skill this entailed from Cicero's surviving (i.e., published) speeches to different assemblies. When he entered office as consul he faced the challenge of persuading the assembly to vote against an agrarian law that could have benefited many of the voters. Cicero objected to this law both on principle, from conservative disapproval of allocating public land away from its occupants, and also more strongly on pragmatic grounds, for the power and influence it would give the appointed commissioners. His strategy in the *De Lege Agraria* was to convince the crowd that any land they might receive would not be worth farming and that the law was in some mysterious way aimed against Pompey, whose conquests in the East had made him a popular hero. Cicero faced a worse challenge at the end of the year when he had to justify emergency measures against the radical Catiline; it had been relatively easy to obtain senatorial approval for his first measures (*Cat.* 1), but the two speeches to the people (*Cat.* 2, 3) show how he depended on stressing the immediate risk to themselves, their families and livelihoods, and on invoking patriotic religious fervour. By superb stage management he organized the replacement of a damaged statue of Jupiter *optimus maximus* for the evening before his third speech in order to exploit the physical setting of the open-air meeting by pointing out to the people the renewed presence of their protecting god, who was blessing the order restored by Cicero to Rome.⁸

In contrast the senate met within walls, but not always the walls of the senate house. It would often meet in a temple, at times that of Apollo or Bellona, outside the official walls of Rome, to receive reports from foreign envoys or from a returning commander who could not enter the walls while holding military *imperium* and awaiting a triumph. In the Catilinarian crisis of 63 BCE Cicero convened the senators in the temple of Concord. When Caesar was assassinated in 44 BCE, the senate had been summoned to a meeting in the temple attached to Pompey's theatre complex. While speeches to a *contio* in the open forum needed all the speaker's authority and dramatic skill, senatorial speeches were given with less parade; not only was the audience experienced (Cicero calls it a 'wise advisory body', *De Or.* 2.334–7),⁹ but the speaker was only one of many giving his *sententia*, a word denoting both opinion and actual vote. Priority went to the dozen or so ex-consuls who formed the senate's senior ranks, then magistrates in descending order, but after elections each year these followed the incoming magistrates; many senators would have no chance to speak.¹⁰

Thus, all of Cicero's senatorial speeches were delivered as *sententiae* to initiate or respond to a motion. They might take the form of a personal attack, such as his denunciation of the ex-consul Piso or of Mark Antony, which was delivered in the last year of his life, but they had to support or oppose a concrete proposal: that Piso's provincial command be terminated (to be reassigned to an outgoing magistrate), Mark Antony be declared a public enemy, Servius Sulpicius receive a public funeral and monument, or the senate confer special rank on young Octavianus Caesar to command an army against Antony.¹¹ Speeches that seem to resemble each other in content, such as the encomium of Pompey's generalship in 66 BCE and of Caesar's generalship in Gaul ten years later, could be quite different in circumstance. The speech 'On the Command of Gnaeus Pompey', also called 'In Support of Manilius' Law', was delivered by Cicero as one of several magistrates invited by the tribune Manilius to address a public assembly. It was a *suasio*, whose purpose was to ensure the passing of the law conferring an extraordinary command on Pompey. But the speech 'On the Consular Provinces' was a two-part motion proposed in the senate to recall Piso and Gabinius from their commands and to renew the command that Caesar had exercised so successfully in Gaul, honouring him with a public thanksgiving of fifty days.

EARLY DEVELOPMENTS: THE SECOND CENTURY BCE

These examples, taken from the better-known generation of Cicero, can help us to reconstruct political life in the second century around Rome's earliest known statesman-orator, Marcus Porcius Cato. An outsider to Rome, he is said to have begun his career as an advocate in private cases in his own Sabine country before serving in the Hannibalic war. Between 205 and 184 BCE, he held every magistracy from *quaestor* to *ensor*; almost uniquely he made his opinion heard in the senate as an ex-consul for over forty years.

It is very unlikely that anyone else other than Cato produced written texts of his own speeches during this period. Certainly nobody left behind so many as Cato. Their variety can serve as an index for some of the contexts and types of speech we have not yet considered. As magistrate Cato delivered policy speeches to both the senate and assembly. Outside Rome and Italy he harangued his soldiers as provincial commander in Spain and addressed the

Athenian assembly as a Roman envoy. He would have made many diplomatic speeches, for example, when he was sent to Carthage in his last years to convey Rome's official policy to the assembly; on his return, determined to see this dangerous rival eliminated, he ended his recorded vote on every topic in the senate with the proposal that Carthage must be destroyed. Cato was a master of invective, a mode of speech not limited to any one context. Besides prosecuting and denouncing rival politicians, he resorted to invective as *ensor* in 184 BCE when he demoted an ex-consul, Lucius Flamininus, from the senate for the wanton killing of either a prisoner or a deserter. Livy, who seems to have read Cato's speech with other censorial speeches justifying demotion, declares that Cato's invective was so damaging that if he had made this speech as a prosecutor before Lucius Flamininus was demoted, instead of as *ensor* after the demotion, not even Lucius' famous brother could have kept him in the senate (39.42.6-7). After Cato's campaigns in Greece and the East, there are records of other speeches in the senate and (probably) the assembly reporting the corruption of rival commanders. In 171 he acted as *patronus* for communities of his former province, Nearer Spain, suing former governors for extortion. But he was also sued in his turn: he had been obliged to defend his own governorship of Spain on his return in 195 BCE. He was prosecuted forty-four times in all but was acquitted in each case. For Cato, as for other statesmen, public speeches and court speeches often served the same political purpose.¹²

Indeed, Cato's three most controversial speeches represent each of the three politically important categories: a consular *contio* to prevent the repeal of moral legislation, a senatorial vote on foreign affairs, and a speech to the assembly in its judicial capacity in support of the prosecution of a sadistic and corrupt provincial governor. The first is Cato's public address against the repeal of the Oppian law, a wartime austerity measure limiting women's clothing and vehicles. Agitation against the old law provoked an unprecedented female demonstration in the forum. Livy includes an imaginative reconstruction (34.2-5) of Cato's speech rallying Roman husbands to control their wives as a basis for order in the community.

In 167 BCE Cato rose in the senate to oppose a demagogic motion to declare war on the Greek commercial state of Rhodes, a Roman ally that had tried to mediate between Rome and her enemy Perseus. His argument was that if not only Rhodes but many other states were afraid of Rome's victory, this was no offence against Rome but

brought on by her overweening behaviour. Regarding this warning as of national importance for future statesmen, Cato included this speech in his own narrative history. It so impressed Livy that he openly renounces offering his own version, which would be 'a mere ghost of this powerful man' (43.25), and its main arguments are still quoted three hundred years later (Gell. *NA* 6.3). In his last year of life Cato denounced Servius Sulpicius Galba's massacre and enslavement of a disarmed Spanish tribe, in support of a popular tribune bringing Galba's prosecution before the assembly. This too Cato incorporated into his own narrative history because it embodied principles of imperial morality that he wanted his countrymen and readers to follow.

Cato prevented the unjustified war, but lost his battle in the assembly for the *lex Oppia*, as he did in the judicial assembly when he sought justice for Rome's Spanish enemies. The term judicial assembly (*iudicium populi*) describes the assembly functioning in another capacity: not in election or legislation but in the cumbersome procedures of the popular trial. Until the beginning of the first century BCE, any magistrate could be accused by a tribune of capital offences springing from abuse of power. The assembly itself represented the Roman people as jury; it could also serve as jury in lesser cases brought by the aediles for breach of public order. These potentially huge crowds giving the verdict are the nearest Rome came to the Athenian Heliaea. Eyewitness accounts by Cicero of the last full-dress popular trial include organized heckling by partisans of the presiding aedile Clodius.¹³ This called for oratory, whether in prosecution or defence, of the man under investigation. Thus, when Cato supported restitution of status to the enslaved Lusitani and the prosecution of Sulpicius Galba on his return from Spain, the eloquent Galba secured his acquittal by appealing to the people's pity and parading his son and his ward, threatened with orphanhood (Cic. *De Or.* 2.227-8). We may wonder how much the randomly gathered citizens cared about a Spanish tribe against whom many had fought and more were afraid to fight.

Such trials required three hearings on different days and an adjournment, after which the people were summoned to vote either by tribal divisions in the *comitium* or by class and century on the election grounds of the Campus Martius.¹⁴ The expense, the delay, the risk of disorder, the impossibility of ensuring that the jury consisted of even roughly the same crowd who had actually heard the evidence, all accumulatively brought this procedure into disuse.

Powerful men could vitiate justice, making fools of the prosecuting magistrate. A tribune or aedile would normally preside from the *rostra*, raised slightly above the assembly, and would be reinforced by attendants to keep order. But in one famous episode of 187 BCE, when tribunes launched a public prosecution of the great general Scipio Africanus, Scipio appeared with a huge escort of friends and supporters and marched up to the dais to speak uninvited. He told the crowd that it was the anniversary of his great victory over Hannibal at Zama, an occasion for thanksgiving to the gods when there should be no petty litigation, and invited them to follow him to the Capitol to give thanks to Jupiter. Scipio was almost certainly guilty of irregularities, both in the expenses of his recent campaign and his negotiations with the king of Syria. But he led the entire assembly away from the *comitium* like a piper, leaving the tribunes and their secretaries and attendant slaves deserted and impotent (Livy 38.50.10–51.7).

It was probably the scandal of Galba's acquittal (or failure to come to trial) in 149 that provoked the new senatorial legislation replacing this kind of popular trial of political figures by a regular standing court. It may have been in the interest of the senate rather than of justice itself that Calpurnius Piso Frugi proposed in this year a permanent court for claims by the provinces against abusive governors, based on a panel of senators serving as jury to award damages under a senatorial presiding officer. This was in every sense a trial by peers. In this new standing court *de repetundis* ('for compensation with damages') the provincials were represented by senatorial orators and their suit was assessed by members of the senate. In addition, the trial was modelled on civil procedure, exempt from appeal to the popular tribunes, so that many aspects favoured the senatorial defendant. As J. A. Crook has pointed out, criminal law is

the most obvious interface of law and politics, since it is bound to impinge frequently on public policy. That was all the more so in the Roman case, in that the statutory criminal law of the *quaestiones perpetuae* arose out of public policy considerations – *repetundae, ambitus, peculatus* and so on.¹⁵

A number of specialized standing courts dealt with other offences of magistrates at home and on military service: abuse of power (*maiestas*), embezzlement, bribery and political violence. Such was the power of these courts, especially the one dealing with provincial governors, that the senate's control of the jury panels was a bitterly

contested issue, dominating the rhetoric of Roman political life until a compromise was arrived at in 70 BCE.

For part of the controversy lay in the expectations of the companies who contracted to farm provincial taxes. In the period when the *equites*, the social class including these tax companies, were serving on the court *de repetundis*, at least one honourable assistant governor, Rutilius Rufus, suffered malicious prosecution by friends of the tax contractors whom he had prevented from bleeding his province. His unwarranted condemnation caused a revulsion that returned the jury into senatorial hands. But senators too were concerned with the profits of tax farming and overseas financial interests and a speaker before them had to tread carefully: he could not assume they would support criticism of the tax companies.

Most important for our immediate concern, these courts increased the demand for skilled oratory and boosted its prestige. Cicero explains the increasing importance and power of judicial oratory at Rome in the period before 130 BCE by two changes: the new permanent courts and the introduction of the secret ballot for large popular trials (Cic. *Brut.* 106). About this time, too, the increasing complexity of private and public law led to a gradual separation between the expertise of legal advisers (*jurisperiti*) and that of advocates.

We have looked so far only at political trials involving either criminal procedure or the civil procedure of the board of assessors (*recuperatores*). But a far larger proportion of Roman legal activity consisted of civil lawsuits in which considerable property or money was often at stake. Rome had originally entrusted to the annual *praetor urbanus* the preliminary hearing of all civil suits *in iure*: first the contesting parties set before him their version(s) of the facts; then he appointed an arbitrator (or a group of judges) acceptable to them before whom they could bring their witnesses and documents (the procedure *apud iudicem*). The *praetor urbanus* officiated in the *comitium* until lack of space led him to move to the other side of the Roman forum by the temple of Castor. Here, in the open, he conducted his hearings, as the *praetor peregrinus* did nearby for lawsuits between Romans and foreigners. By the time of Cicero there was a permanent tribunal, the *tribunal Aurelium*, for the *praetor urbanus*, but his business and the secondary procedure before one or more judges still continued in the open without use of the basilicas now flanking the forum. And by the 70s BCE, the limited forum space was filled by an increasing number of standing courts. In his speech

defending Cluentius against a charge of murder, Cicero seems to be claiming that five other courts are taking place simultaneously in the space between the Regia and the Comitium (Cic. *Clu.* 147).¹⁶ The published prosecution of Verres describes the forum as full of trials (*Verr.* 2.5.143).

How would a professional orator make his name in the courts, winning glory and discreetly indirect financial reward?¹⁷ Minor lawsuits only called for influential men to serve as character witnesses or to use their legal expertise on behalf of their humbler friends; yet arguments about equity could easily be used to confuse a private judge into going against the letter of the law. The evidence of Plautus early in the second century suggests that patrons could find themselves hard pressed to defend the business practices of the wealthy clients they had taken up (*Men.* 576–96):

When they are summoned to court, so are their patrons, since they are obliged to defend the client's offences: they must plead either before the people or in the praetor's court or before the aediles. It was just like that today; a client gave me a bad time and I couldn't get any of my own business done: he hung on to me and held me back so. I pleaded his case before the aediles and offered twisted and knotty terms of agreement. I stated the case neither more nor less than I should to secure an agreement. And what did he do after giving surety? I never saw a man caught so red-handed. There were three sharp witnesses to every one of his misdeeds.

This kind of lawsuit required more legal than oratorical skill, but in major private cases, for example testamentary disputes before the centumviral court with its large jury panels, there was more room for grandstanding and more reason to enlist the most powerful speakers. Indeed, this court continued to be a focus for public excitement in the imperial period, when political life had waned and criminal trials of importance had become less frequent.

Speakers gained the most publicity, however, from criminal trials. In the absence of public prosecutors, any respectable man could go to the *praetor* with a request to prosecute another, and once accepted by the *praetor*, file a charge summoning the accused to appear at an agreed time. Many a young man made his name by accusing a public figure, as Cicero's student Caelius did by his successful prosecution of Antonius Hybrida for provincial misgovernment. Indeed, it was virtually a duty for a young Roman to lay a charge if there was a

family vendetta and to prosecute the man who had laid charge against his father. The reward went beyond the political silencing and exile of his enemy and could include promotion to the defeated enemy's status.¹⁸ Even so, there was a greater reward in prestige and recognition. Yet only outsiders repeatedly used their eloquence to prosecute: men advancing in politics had too much to lose by making enemies, so that their reluctance to prosecute increased the ill odour of those who accused their fellow citizens.¹⁹

The key to glory was to defend the influential and to acquire a share of their influence. This service was expected of the best orators, who might find themselves under pressure to defend in several simultaneous trials. Lesser figures competed to demonstrate association with the élite, with the result that in some show trials of the fifties BCE four to six advocates defended one man. The network of family and career loyalties might bring sworn enemies like Cicero and Clodius to speak for the same personally undeserving defendant, such as Marcus Aemilius Scaurus, whose best feature was his famous father (*Asc. Sc.*).²⁰ But this was just before the breakdown of order led to Pompey's emergency legislation in 52 BCE. This imposed a shortened procedure to get through the mass of charges of public violence, eliminating adjournment to a second session, and fixing a maximum of two hours for the prosecutor's speech and three for the defending counsel (*Asc. Mil.*).

The Roman public played as large a part in these trials as the formal jury. Repeatedly Cicero speaks of the need to move the anger or sympathy not only of the upper-class jurors but also of the surrounding common citizens, whose hostility could affect and intimidate the jury. Quite apart from disturbances in the forum, such as passing funeral processions,²¹ speakers had to cope with the competing noise of other trials and, in 52, squads of soldiers brought in to keep order in face of rioting.

One of Cicero's last speeches breaks all precedent: it is the *Pro Rege Deiotaro* of 45 BCE, spoken before Caesar as sole judge in his private house and in defence of a client king accused by a pretender to the throne of disloyalty to Caesar. This might more properly be called a *cognitio extra ordinem* (private legal hearing) than a court and is very close to the justice of the bedchamber described by Tacitus when emperors like Tiberius and Claudius heard charges of aristocratic disloyalty within their private suite. The chief difference lies in Caesar's shrewdness, as opposed to Tiberius' neurotic suspicions, and the blunders of Claudius, notorious for allowing his wives

and freedmen to manipulate the evidence and falling asleep while hearing it.²²

THE PRINCIPATE: ORATORY IN AND OUTSIDE POLITICAL LIFE

With the principate there came a reduction of independent political oratory, which a traditionalist like Tacitus can both justify and deplore. His *Histories* show how the traditionalist senator Helvidius Priscus challenged a Neronian informer at the beginning of Vespasian's principate, affirming the senate's right to choose the representatives sent to the new emperor. On two occasions the informer put Helvidius in the wrong by accusing him of insulting and provoking the emperor and of trying to dominate the senate in the emperor's presence (4.7–8; 13). The natural insecurity of both senate and emperor led to the silencing, exile and later death of Helvidius.

Imperial power also affected judicial oratory: the new tendency was to move away from the major public courts to more private imperial hearings (*cognitiones*), which demanded a more technical kind of advocacy. The situation in an imperial *cognitio* can be compared with long-standing practice in Roman provinces during the republic: within their own provinces governors functioned autocratically, deciding both civil and criminal cases with a *consilium* that had only advisory capacity. Their absolute power meant that verdicts could be arbitrary personal reactions rather than inferences based on previous edicts or precedent. With a bad governor like Verres advocates could rely only on influence, bribery or appeals to mercy.

The evolving principate continued the growth of decision by decree in the provinces and brought an increase in the emperor's personal hearings at Rome. Indeed, the emperor was the court of first resort for offences committed by his freedmen or officials, the court before which came any offences against the emperor himself, and the court of last resort for appeal against the verdict of a regular magistrate or jury. Given the emperor's absolute authority and busy schedule, the procedure had to become more flexible. Fergus Millar notes that imperial hearings involved 'not only speeches on either side but verbal exchanges between [the emperor] and the parties'.²³ Quintilian cites instances of mutual accusation before the emperor and Suetonius remarks that Nero required disputants to argue point by point, thus eliminating continuous *actiones* (Quint. *Inst.* 7.2.20;

Suet. *Nero* 15; cf. Pliny *Ep.* 6.22.2). Professional advocates could speak for the defendant at any of these hearings, especially when senators were accused of treasonous activity or offences committed as governors; they also conducted the more complex lawsuits, and Crook rightly stresses the mass of low-profile cases in which Romans and provincials alike resorted to advocates to present their plea.²⁴

Advocates were also needed to represent communities and corporations. Athens had been using its cultural leaders as envoys to Rome since at least 155 BCE;²⁵ in the sophistic revival of the second century CE civic ambassadors like Herodes Atticus of Athens or Polemon of Smyrna won fame by their eloquence as advocates as well as by their elegant public lectures. In the imperial province of Egypt petitioners for citizenship or those appealing against tax assessments could represent themselves like regular litigants, but regularly chose advocates to put their case.²⁶ Such private and domestic pleas could be appealed as far as the emperor. We get an inside view of the mixture of business coming before the emperor Trajan from the letters of Pliny, who served as an assessor at his judicial hearings: not only mutual accusations of fraud between officials but even cases of adultery came before the emperor (*Ep.* 6.22), who had to discourage the natural tendency of citizens to appeal to him over the heads of the regular courts.

But judicial eloquence still enjoyed a more public arena in civil and criminal cases, and two vignettes from Pliny's career as a lawyer reflect the negative and positive side of its changing circumstances. In one letter he complains of trivial cases and incompetent speakers 'mostly unknown young men who have arrived in our midst to practise rhetoric', and 'audiences no better than the speakers, being hired and bought for the occasion' (2.14). Another letter describes a cause célèbre: his speech for a daughter contesting her father's will before 180 judges, the grand combination of all four jury panels, with public seating packed with supporters and onlookers, and crowds overflowing the basilica, while spectators hung from the galleries above trying to hear (6.33 1–5).²⁷ Justice has moved indoors but the disturbances continue, like the shouting of the hired claque of Larcus Licinius that interrupted Pliny's pleading. Several of Pliny's letters describe his performance before the senate sitting as court over an offending provincial governor. It was a showcase trial, especially as the emperor Trajan, being consul, was presiding. Both Tacitus and Pliny were prosecuting (for the honour of the senate) and Pliny was allocated four extra water-clocks besides the twelve large ones. He

is proud of speaking for almost five hours, even after Trajan had sent Pliny a message that he should spare his throat (2.11.10, 14–15). The outcome was probably a foregone conclusion, but Pliny polished his speech for publication as if it had the controversial impact of a Verrine oration.

Pliny's proudest day was another performance before the senate: his speech of thanks to Trajan, the *gratiarum actio*, known to posterity as the *Panegyricus*.²⁸ This was given in the first year after the new emperor returned from a campaign in the East to hold office as consul and to inaugurate the year. Trajan's recent return to Rome and Pliny's seniority as statesman and orator²⁹ gave an additional impact to the words in which he ostensibly praised but actually helped to determine the emperor's behaviour towards the senate, his supposed partner in government. But Pliny's extraordinary and elaborate speech³⁰ foreshadows the later imperial panegyrics, two forms of encomium with ancient roots in Hellenistic eloquence: the congratulation of a new ruler on his accession and the welcome given on his ceremonial arrival (the *adventus*) from abroad.

Let me end by focusing on the individual orator statesman in the period we have discussed. Pliny was atypical of his time: he represents the literary side of oratory and worked as hard on the written versions of his speeches after delivery as he had before the event, expanding them to clarify their context to an external audience and inviting his friends to criticize successive drafts. But this was not how the Romans judged oratory. Cicero echoes Demosthenes: performance was the first, second, and third most important factor of any speech (*De Or.* 3.213; *Orat.* 56). The good orator needed powerful lungs to make himself heard in the open, a commanding presence and eloquent gestures to convey his meaning to those at a distance, and a sense of theatre. The first-class speaker would know his client's case with both its strengths and weaknesses: he would have prepared not only an outline but most probably a verbatim text of at least his introduction and his final appeal; yet he would know how to deliver a prepared speech as if it were spontaneous and to improvise in response to the unexpected, turning a gesture or a witness's incidental comment against his opponent (*De Or.* 1.149–53; 2.99–103). Once in front of his audience he would play on it like an instrument, sensing its mood, entertaining it with humour or placating it with sympathy if the jury were weary from the ranting of the prosecution; he would conciliate it at the beginning, seize its attention by a clear and lively narrative of the facts, and wait until it was under his control

before pulling out the stops of indignation or compassion (*De Or.* 1.153; *Brut.* 192–3, 322).

Two passages from Cicero's *Brutus* convey the scene in the forum, first when there is a poor speaker (200):

The intelligent critic can often judge an orator at a glimpse in passing. . . . If he sees the jurors yawning, talking to each other, even getting up and walking round, asking to know the time and urging the presiding officer to adjourn, he will know without hearing a word that the case has no pleader who can apply his speech to the jurors' hearts, playing on them like the strings of a lyre.

Then the ideal. 'This' says Cicero, 'is what I wish for the orator' (290):

When people hear he is going to speak, every place on the benches is taken, the judges' tribunal full, the scribes earning goodwill by assigning or giving up seats, a huge listening crowd, the jury eager and alert; when the speaker rises the whole crowd will ask for silence; then there will be frequent 'hear hears!' and cries of admiration; laughter when he wants it, or tears, so that the distant onlooker . . . will know a real star is on stage.

When Pliny commented that even the passer-by could be sure that 'the man who raises most cheers is the worst speaker' (*Ep.* 2.141), he was contrasting the taste of his own times with the age of Cicero. Both his and other voices suggest a coarsening of taste and a loss of critical attention.³¹ Commenting on the death of the unscrupulous and flashy prosecutor Regulus, Pliny regrets that courtroom orators and audience alike now seem only concerned to get the case over; such is the disrespect for oratory and the defendant's fate (*in-reverentia studiorum periculorumve*, *Ep.* 6.2). The modernist orator Aper in Tacitus' *Dialogus de Oratoribus* claims that sophisticated contemporary audiences could not sit through the leisurely flow of Cicero's generation, but needed the stimulus of striking turns of phrase, the ancient equivalent of the sound-bite.³² There were no burning political issues, only hope of entertainment. Even his adversary Maternus seems to agree that eloquence is becoming superfluous (*Dial.* 41.4):

What need is there for long senatorial speeches when the best policy is quickly agreed? What need for many harangues to the people when it is not the ignorant crowd that determines matters of state but a single wise man? What need of spontaneous accusations when offences are so few and so modest? What need of excessive and odious defence speeches when the mercy of the judge reaches out to those at risk?

Scholars have long debated how far Tacitus endorses Maternus' ironic portrait of a paradise where no voices need be raised or his vivid denunciation of the disordered public life of the crumbling republic, where the glory of eloquence was fostered by individualism beyond control.³³ For better or for worse this world with all its complexities could not be recalled. Pliny's world, if not more honest, seems at least nearer to our own, and certainly offered scope for workmanlike advocacy, but already the grandeur of high eloquence had little public function beyond the adorning of ceremonial. Henceforward all oratory would be in the service either of gods or the emperor. And in its dissemination and persistence the Christian sermon would outlast even panegyric.³⁴

NOTES

- 1 Cf. Plaut. *Amph.* 38; *Mostell.* 1124–5; *Poen.* 358, 384; *Stich.* 291, 495 with Plautus' older contemporary Naevius using *orator* in the Greek political sense of *rhetor*: 'There was a crop of new-style speakers, silly young men' (Naev. fr. 107 [Warmington 1937: 110]).
- 2 For the *rhetores*, the regular speakers, cf. *Ach.* 38, 680.
- 3 Glaucón is not yet twenty years old.
- 4 The 'speeches' preserved in the corpus of Isocrates were texts in speech form composed for dissemination in writing, while the speeches of statesmen in Thucydides (as in other historians) are either pure invention or reconstruction. On 'improvised speech' in the assembly, see Williams 1951.
- 5 Regular meetings of the senate were presided over by the consuls of the year in alternate months, but could be held by a praetor. More exceptionally tribunes of the plebs could also summon the senate to present it with decisions of the assembly.
- 6 Days lawful for voting assemblies were fixed in the calendar and marked as *comitiales*: meetings were probably freer but not allowed on days that excluded public business (*nefasti*), public holidays, or whenever the senate was in session. All adult male citizens could attend assemblies, but in practice they were chiefly attended by politicians and their humbler partisans.
- 7 This is the context of Cicero's (now lost) speech *Pro Othone* in defence of the magistrate who had legislated privileged seating for the equestrian

- upper class. When Cicero called the rioting audience away from the theatre to address them in the nearby temple precinct of Bellona, he must have used his lictors to stop the performance; see Coarelli 1968.
- 8 See Vasaly 1993: 81–7 (*signum Iovis*).
 - 9 Cicero does not add that most senatorial debates would be preceded by private factional lobbying that would determine their outcome.
 - 10 See Greenidge 1901: 269–70. The clearest evidence for this is the senatorial debate of December 63 reported by Sall. *Cat.* 50–3.
 - 11 Cicero's corpus of fourteen *Philippic Orations* included one that was not delivered (*Phil.* 2).
 - 12 See Malcovati 1975: 16 no. 4, 20–1. Cato's advocacy of the Spanish provincials' claims for compensation is described in Livy 43.2.1–12. For the forty-four prosecutions see Pliny *HN* 7.100.
 - 13 See Jones 1972: 1–39. For eye-witness accounts see Cic. *QFr.* 2.3.3, 2.5(6)4 (Jones 1972: 8–9).
 - 14 For the physical context of these assemblies, see David 1992: 18–41.
 - 15 Crook 1995: 47.
 - 16 For this and much of the ensuing discussion, see David 1992: 18–41.
 - 17 Direct reward for a speaker from his client was forbidden at Rome by the *lex Cincia*, but during the republic speakers would be rewarded for their services by 'loans' and legacies from grateful clients. By the time of the emperor Claudius (41–54 CE), the only issue was the scale of reward permitted.
 - 18 See Alexander 1985.
 - 19 Gentlemen did not prosecute; cf. Cic. *Off.* 2.49–51 and *De Or.* 2.220–3 on the ill-famed prosecutor Brutus. In Cicero's only prosecution – that of Verres when he was a 35-year-old candidate for the aedileship – he presents his role largely as defensive, championing the victimized Sicilian provincials and vindicating the honour of the senate.
 - 20 His six *patroni* were Cicero, Hortensius, Milo, Faustus, Memmius and Clodius. Only the first two were orators, and Cicero and Clodius were sworn enemies. In *Brut.* 108 Cicero points out the flaws of a system in which a defending counsel might not have heard either his fellow advocates or the accusers.
 - 21 See Cic. *De Or.* 2.225 and 288 for speakers' witty exploitation of these solemn distractions.
 - 22 Cf. Sen. *Apocol.* 12; Tac. *Ann.* 10–12 (the surviving Claudian books of Tacitus).
 - 23 Millar 1977: 236–40, 517–27, here 236.
 - 24 Crook 1995: 53–4, 60–1.
 - 25 In that year the Heads of the Academic, Peripatetic and Stoic schools were sent to Rome to represent Athens' case against Oropus before the senate and people (Cic. *De Or.* 2.155, Gell. *NA* 6.14).
 - 26 On papyrus evidence for advocacy, see Crook 1995: 58–118; on traditional legal documents see Crook 1995: 119–71. A bilingual inscription in *SEG* 17 no. 759 (discussed by Crook 1995: 91–4) records in Latin the dispute of the people of Gohara in Syria with their tax collector before the emperor Caracalla, but both sides employ Greek-speaking advocates, whose speeches are recorded in Greek (cf. Millar 1977: 535).

- 27 The case, a *querela inofficiosi testamenti* ('protesting an undutiful will'), was an élite scandal, since the 80-year-old father had left his estate to a new young wife.
- 28 The recent study of Bartsch 1994: 148–87 shows how difficult the previous practice or necessity of insincere praise had made Pliny's task.
- 29 Pliny would not be the first to thank Trajan for his honour, since all incoming consuls now offered thanks to the emperor who had nominated them, just as they had once thanked the gods for their election.
- 30 Pliny's *Epistles* (3.13, 18) show that the written text is a deliberate expansion of the original performance with an eye to posterity, remodelled and tested by the orator in a series of private readings to his patient friends.
- 31 For William Dominik's more favourable estimate of the change that had taken place in both audience and speaker since the rise of the declamation schools and the loss of occasions of relative political substance, see Chapter 4.
- 32 The *Dialogus* is a subtle and complex discussion of the changes in the orator's career and the public role of oratory since the coming of the principate; its dramatic date in Tacitus' youth conceals a later date of composition, probably just after the assassination of Domitian. Murgia 1980 suggests 97 CE (after Quintilian's *Institutio Oratoria* but before the *Panegyricus* of Tacitus' friend Pliny).
- 33 See, e.g., Köhnken 1973; Williams 1978: 26–49; Heldmann 1980: 12–19; Fantham 1989a: 282–6; Luce 1993; Bartsch 1994: 106ff.
- 34 I would like to thank Gualtiero Calboli and Emmanuele Narducci for the stimulus I have received from their work and in discussion with them.

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