

THE CONSTRUCTION OF THE ORATOR
IN THE EARLY IMPERIAL PERIOD

(3 IBC – ADI 38)

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The candidate confirms that the work submitted is his own work and that appropriate credit
has been given where reference has been made to the work of others.

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PARENTIBUS OPTIMIS CARISSIMISQUE

THE CONSTRUCTION OF THE ORATOR IN THE EARLY IMPERIAL PERIOD

(31BC – AD138)

THIS thesis explores the construction of the orator and oratory in Roman Imperial Literature and Social History and engages with theoretical works on gender definition to ask the question ‘What does it *mean* to be an orator in the hundred and fifty years after Cicero’s death’.

Chapter 1 considers the declamations on and around Cicero’s death, and how they are used to construct the figure of Cicero in the first century AD.

Chapter 2 examines how Tacitus’ *Dialogus* can be read as a series of declamations which allow the participants and audience of the *Dialogus* to continue to re-examine the nature of oratory and its place in Roman society.

Chapter 3 focuses on the relation of forensic oratory, declamation, and rhetorical theory. It shows how ‘school exercises’ put rhetorical theory into practice and are a practical preparation for being an orator.

Chapter 4 examines oratory and declamation in the Prefaces to *Controversiae* of the Elder Seneca. It shows that Seneca is not as pessimistic as he has been read and re-evaluates the criticism of declamation in Books 3 and 9: what has been taken as a successful assault on the practice is shown instead to derive from the speakers’ inability to declaim well.

Chapter 5 focuses on Tacitus’ views on orators by examining the use of the term *orator* in the *Annals* and the role of performance in defining an orator.

Chapter 6 looks at Petronius *Satyricon*, particularly Trimalchio’s reading of the zodiac-dish as a hitherto unnoticed allusion to the Platonic criticism of rhetoric, which can be seen to run through the various passages where oratory or declamation are discussed.

Chapter 7 explores Quintilian’s discussion of the orator as the embodiment of the *vir bonus* and its implications for our reading of the ethics of rhetoric in Quintilian. The chapter considers Book 12 of the *Institutio* as a whole, to show that it deals with the orator’s career in an inherently Roman and practical way.

The Conclusion addresses the perceived pessimism of the sources regarding the present state of rhetoric and its future. Instead of reading the period as one of the decline of oratory, due to imperial control and the rise of declamation, it stresses the continuity between Republic and Empire in the way that the Roman elite conceived of themselves and their role in public life as an orator.

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* Image taken from the website of the Dutch National Library (www.kb.nl)

ABBREVIATIONS

The abbreviations used for journals in this thesis generally follow the conventions of *L'Année Philologique*, for Greek authors cited the abbreviations used are those found in Liddell & Scott and for Latin authors those of *The Oxford Latin Dictionary*. The following list of abbreviations is provided for the convenience of the reader.

- AAP* – *Atti della Accademia Pontaniana*
AJAH – *American Journal of Ancient History*
AJP – *American Journal of Philology*
ANRW – *Aufstieg und Niedergang der Römischen Welt* ed. H. Temporini & W. Haas, Berlin, 1974–date.
BICS – *Bulletin of the Institute of Classical Studies*
C – *Codex Justiniani, the Code of Justinian*, ed. P. Kruger, Berlin, 1900
Cl Ant – *Classical Antiquity*
CQ – *Classical Quarterly*
CR – *Classical Review*
CSCA – *Californian Studies in Classical Antiquity*
CW – *Classical World*
D – *Digesta Justiniani, the Digest of Justinian*, ed. Th. Mommsen and P. Kruger, Philadelphia, 1985.
FLP – *The Fragmentary Latin Poets* ed. E.J.Courtney, Oxford, 1993.
G & R – *Greece and Rome (New Series)*
GLK – *Grammatici Latini* ed. H. Keil, Leipzig, 1855–1923, 8 vols.
GRBS – *Greek, Roman and Byzantine Studies*
HE – *Select Papyri*, ed. A.S. Hunt & C.C. Edgar, London & Cambridge MA, 1956, 1959.
HRR – *Historicorum Romanorum Reliquiae* ed. H. Peter, Stuttgart, 1906, 1914.
HSCP – *Harvard Studies in Classical Philology*
JHI – *Journal of the History of Ideas*
JHS – *Journal of Hellenic Studies*
JRS – *Journal of Roman Studies*
LSJ – *A Greek-English Lexicon* ed. H.G. Liddell, R. Scott & H. Stuart-Jones (9th ed. with revised supplement), Oxford, 1996.
MD – *Materiali e discussioni per l'annalisti dei testi classici*
MDAI(R) – *Mitteilungen des deutschen archäologischen Instituts, Römische Abteilung*
MH – *Museum Helveticum*
OCD – *The Oxford Classical Dictionary*, ed. S. Hornblower & A. Spawforth, Oxford, 1996, 3rd edition.
OLD – *The Oxford Latin Dictionary*, ed. P.W. Glare, Oxford, 1981.
ORF – *Oratorum Romanorum Fragmenta* ed. H. Malcovati, Turin, 1955 2nd edition.
PCairo Masp – *Papyrus grecs d'époque byzantine in Catalogue général des antiquités égyptiennes du Musée du Cairo*, ed. J. Maspéro, Vol. III, 1916.
POxy – *The Oxyrhynchus Papyri*, ed. B.P. Grenfell, A.S. Hunt, et al., London, 1898–date.
PTeb – *Tebtunis Papyri* ed. B.P. Grenfell, A.S. Hunt, et al., London, 1902–38.
PCPS – *Proceedings of the Cambridge Philological Society*
PIR – *Prosopographia Imperii Romani Saec.I.II.III.*, ed. E.Groag, A.Stein, L.Petersen, Berlin & Leipzig, 1933–date 2nd edition.
QHAR – *Quintiliano: Historia y Actualidad de la Retórica*, ed. T. Albaladejo, E. del Rio, & J.A. Caballero, Logroño, 1998, 3 vols.

- RE* – *Real-Encyclopädie der classischen Altertumswissenschaft*, ed. A. Fr. von Pauly, rev. G. Wissowa, W. Kroll, K. Mittelhaus, K. Ziegler, Stuttgart, 1894–1980.
- RFIC* – *Rivista di filologia e d'istruzione classica*
- RG* – *Rhetores Graeci*, ed. C. Walz, Stuttgart, 1832–6, 9 vols.
- RhM* – *Rheinisches Museum für Philologie*
- RLM* – *Rhetores Latini Minores*, ed. K. Halm, Leipzig, 1863.
- RSI* – *Rivista Storica d' Italia*
- SVF* – *Stoicorum Veterum Fragmenta* ed. H. von Arnim, Leipzig, 1905.
- SZ* – *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanische Abteilung)*
- TAPA* – *Transactions of the American Philological Association*
- TAPhS* – *Transactions of the American Philosophical Society*
- TLL* – *Thesaurus Linguae Latinae*, Berlin 1900–
- YCS* – *Yale Classical Studies*
- WS* – *Wiener Studien*
- ZPE* – *Zeitschrift für Papyrologie und Epigraphik*

INTRODUCTION

THIS thesis is concerned with construction in the sense of the building metaphor, both as applied to the training of an orator and to the way in which an orator's role is defined by Roman society through our sources; that is as a product of their training and as an ideal.¹ By orator, this thesis means those who engage in public speech in Rome from around the time of the Battle of Actium to the early second century AD,² not only men but also one or two notable women. The thesis treats both forensic and deliberative oratory and their declamatory counterparts, the *controversia* and *suasoria*, as examples of public speech³ and also examines the representation and criticism of speech and speakers in the prose literature of this period, to answer the central question of this thesis: 'What does it mean to be an orator in the one hundred and fifty years following the death of Marcus Tullius Cicero?'⁴ This question has not been explicitly addressed hitherto in scholarly literature and by addressing it this thesis makes an original contribution.

The orator has a defined niche in Roman society and it is a niche which society requires be filled. To this end, the Romans develop (and continue to adapt) a training programme which fits the individual to fill this need or niche. I am interested in the interface between the training programme and the orator's behaviour in society and what this can tell

¹ Cf. the definition of *construct* (n.) in the *Chambers 20th Century English Dictionary*: 'a thing constructed, esp. in the mind: an image or object of thought constructed from a number of sense-impressions or images'.

² At various points the thesis makes use of evidence which falls outside this time frame. The criterion used to justify their inclusion is their relation to matters discussed: a legal document disinheriting heirs in the first degree from Egypt dating from the sixth century AD is included due to the fact that it makes reference to the *Lex Falcidia*, enacted in 40BC, which remains in use throughout the following centuries. As such it is an important piece of evidence for our understanding of testamentary practice and the associated legal cases throughout the period covered by this thesis. Likewise, historical and rhetorical sources which fall outside the timeframe but are relevant are included.

³ Reference is also made in the thesis to epideictic speech, particularly in reference to the activities of the future emperor Nero.

⁴ The timeframe explored by the thesis is dictated by the constraints of time and evidence. While it would be worth expanding the timeframe both backwards and forwards (for a fuller account of its development), the period covered and its literature, from the Elder Seneca to Tacitus and the *Minor Declamations* of Quintilian, provide sufficient material for this study. The Younger Pliny has not been included in detail due to constraints of time and space, although he will be referred to occasionally.

us about Roman society's expectations and the self-definition of the Roman orator as *vir bonus dicendi peritus*.

The last scholarly work to deal *solely* with both the subject and time period of this thesis is that of Cucheval,⁵ as noted by Bonner.⁶ The standard well-known modern treatments of Roman oratory can be found in Kennedy, Bonner and Clarke.⁷ A hypothetical literary historian would usually describe the period covered by this thesis as one characterised by the decline of oratory.⁸ Their thesis is simple: Cicero is the last great Roman orator — when he dies Roman oratory effectively dies with him. This is because the political conditions of the Principate (the loss of *libertas* and the consolidation of power in the hands of one man, the emperor) make such oratory impossible. Once the Senate has been reduced to a rubber-stamp body for the imperial wishes and public meetings (of the *concilia*) discontinued in AD14,⁹ this greatly reduces the opportunity for deliberative oratory. However, there is still evidence for rhetorical training in schools, in the form of declamation, which its critics, both ancient and modern, present as pointless, futile, divorced from reality and of no use for pleading in court. As for making a career out of public speaking, we know from the letters of the Younger Pliny that the Centumviral court was the best place in which to win a reputation for forensic oratory.

It should be noted that the ideas which underpin the standard position are taken from sources of the period, so at one level the picture can be taken as reflecting reality. However, recently, scholars have begun to see through the obfuscation of a literary history

⁵ Cucheval (1893).

⁶ Bonner (1954) 369: 'There has been no survey devoted exclusively to the oratory of the Empire since that of V. Cucheval'.

⁷ Kennedy (1972), Bonner (1949) and (1954) 369–76, and Clarke (1996). Leeman (1963) and Norden (1908) also contain treatments of the literature and period covered by this thesis.

⁸ Bonner (1954) 369 entitles the relevant section of his survey 'The Period of Decline', he does, however, challenge scholarly orthodoxy in his support for Lanfranchi (1938) and Parks (1945) and in his views on the relationship between declamation and law (372). For a survey and discussion of the sources on this issue (in its widest sense) see Heldman (1982).

⁹ The last law thought to have been passed by means of an assembly is the *Lex Iunia Velleia* enacted in AD28 (according to Crawford 1996: 811).

which buys into decline and the hierarchy which places Cicero first, other Roman orators second and declamation a very poor third. This thesis does not accept the statements regarding the decline of oratory as necessarily representing reality, and it will show that much of what passes for criticism of declamation can be seen as motivated by other factors, thereby contributing to the redefinition of this area for scholarly debate (in terms delineated below).

The growing interest in rhetoric and its place within Roman society and as constituent of its literary works is not surprising:¹⁰ the ability to communicate effectively and to persuade an audience was, and still is, fundamental to a society. Rhetoric¹¹ is present in everything from a hypothetical ‘sub-literary’ graffito stating that ‘Marcus has a big cock and knows how to use it’¹² to ‘great’ works of literature and philosophy. Thus, the study of a period which defines itself through the death of Rome’s greatest orator, Marcus Tullius Cicero, has to deal with the question of whether there was a decline in oratory in both qualitative and quantitative terms, and the questions of why and how a society conceptualises itself in such a way, and what this means. The thesis covers a period where the only extant

¹⁰ Wiseman (1979) and Woodman (1988) are key works focussing on historiography, but their influence is nonetheless widespread. Richlin (1983) and (1997), Edwards (1993), Walters (1993), Beard (1993), Luce (1993), Gleason (1999), Habinek (2005) and the works of Gunderson (1998), (2000) and (2003) have all demonstrated the relationship between rhetoric and Roman society in various ways, and have been instrumental in the development of this thesis.

¹¹ Rhetoric is understood in this thesis (as elsewhere) as the art (*ars* or τέχνη) of persuasive speech, cf. Heath (1995) 7: ‘Rhetoric is concerned with the whole process of persuasion in language, from the speaker’s first thoughts about the subject in hand to the delivery of the speech.’ In Chapter 7 it will be noted that Quintilian adopts another definition namely *scientia bene dicendi* (*Inst.* 2.14.5, 2.15.34, 38, 5.10.54) which is derived from Stoic writings on rhetoric (on which see Atherton (1988)).

¹² This can also be read as example of the use of rhetoric to construct an individual’s masculinity insofar as saying something is akin to doing it. The hypothetical author can be seen as making a public statement regarding his virility, his ability to be a man (in a sexual sense). It can also be seen as rhetorical as it is an encomium of the man and his sexual organ.

While my graffito is hypothetical it takes as its basis such graffiti as the one preserved in *Anth. Pal.* 9.644 from a public lavatory in Smyrna, where the standard graffito *bene cacatum hic* is combined with a comment about the digestive benefits of the poor-man’s diet: the claim is that the lower-class individual is happier than the upper-class or rich man because of his status rather than despite it. Bodily function is here linked to identity and social status in a public statement; an encomium of the man and his bowels. Such a statement has broad correspondance with the Roman concern for a return to ‘the simple life’ and the *mos maiorum* as demonstrated by the satires of Horace and Juvenal, which have a role in constructing Roman identity as hard-working, frugal, healthy, tillers of the soil. Further on diet, social class and Roman identity see Gleason (1999) 71–3.

complete speech is the *Panegyric* of the Emperor Trajan by the Younger Pliny (which is not treated).¹³

The thesis will demonstrate that a more nuanced view of literary history is possible than has hitherto been the case. A scholarly position which endorses ‘decline’ casts Quintilian as a front-line fighter in an already lost battle, an author of reactionary literary fiction, a genial school-master telling us more than we ever needed to know about the details of a rhetorical education that it essentially no longer either realistic or useful. Pliny came from an upper class, senatorial family that could be expected to engage in public life at the highest level and Pliny fulfils his potential as a Roman man in this respect. When Pliny’s family came to select someone to train him, they would have chosen the best teacher they could afford to prepare him for his role in public life and they chose Quintilian. Such a choice is inexplicable if Quintilian actually was an educational dinosaur, as scholars think. Thus, this thesis argues that Quintilian’s educational programme must have had relevance to the political climate and functions of his day, which implies that Quintilian’s educational program should be treated as both serious and functional and will be examined in this light.

Quintilian’s interrelation of declamation and oratory in *Institutio Oratoria* 2.10 establishes the place of both in the development of the adult Roman orator. To demonstrate the conceptualisation of the Roman man *qua* orator as *vir bonus dicendi peritus* the thesis examines the Elder Seneca, Petronius’ *Satyricon*, Quintilian’s *Institutio Oratoria* and the Pseudo-Quintilianic *Declamations*, Tacitus’ *Dialogus de Oratoribus*, *Annals*, supported by legal papyri and the *Digest*. In investigating the criteria for defining Roman manhood the thesis

¹³ As a function of epideictic oratory is, for want of a better word, ‘entertainment’ it is interesting to note that declamation had the potential to be used for entertainment, as advised by Quintilian in 2.10.5–8 & 11 and shown by declaimers and orators such as Dio of Prusa, Favorinus, Polemo, Lucian and Aelius Aristides. For the idea that declamation allows a speaker to demonstrate their rhetorical ability and masculinity in the same way as oratory see Walters (1993) 83–5. Equally one must note that such speeches are not in themselves epideictic in genre, cf. [Menander] 331.15–18: *Τῶν δὴ ἐπιδεικτικῶν τὸ μὲν ψόγος, τὸ δὲ ἔπαινος· ἃς γὰρ ἐπιδείξεις λόγων πολιτικῶν οἱ σοφισταὶ καλούμενοι ποιοῦνται, μελέτην ἀγώνων εἶναί φασιν, οὐκ ἐπίδειξιν.*

draws upon Judith Butler's work on the performative construction of gender¹⁴ and modern re-valuations of declamation to show that public speaking is a performative act which is a key aspect of manhood; i.e. both declamation and oratory have a part to play in reaffirming, and in some cases undermining, the masculinity of the speaker. This is best summed up in the words of Gleason:

To ask how an aristocratic male's gender was constructed in the Roman Empire is to assume that it was something fabricated by culture rather than automatically bestowed by nature.¹⁵

In making use of terms such as 'construction' and 'the orator and his place in Roman society' the argumentation of this thesis relies upon the terminology and theories espoused by social and cultural historians. It is presupposed that

Roman politicians and emperors were in the same position, always judged in moral terms but never according a fixed non-negotiable standard. The emperor attempted to play the role of an emperor, but he did not always succeed in winning over the audience to the interpretation of his part.¹⁶

Therefore, the would-be orator must position himself within society and elicit society's collusion to enable himself to lay claim to the status of an orator. And the acquisition and maintenance of such status relies on what Weber defines as 'status situations':

We wish to designate as 'status situations' every typical component of the life fate of men that is determined by a specific, positive or negative, social estimation of *honour*...In content, status honour is normally expressed by the fact that above all else a specific *style of life* can be expected from all those who wish to belong to the circle.¹⁷

This view also equates to the performative construction of gender as delineated by Butler. Performative acts to gain or maintain status are conducted and evaluated by peers within society, whose behaviour we may understand as follows:

¹⁴ She develops the idea that we are what we do (in accordance with, and defiance of, social norms) in Butler (1990) and (1993) but, more recently, has begun to tackle the performative and gendered nature of speech acts (what she terms their 'politics') in Butler (1997).

¹⁵ Gleason (1999) 67.

¹⁶ Morley (2004) 98. On the emperor's use of public meetings, the circus and the games see Aldrete (1999).

¹⁷ Weber (1968) 186–7 as quoted in Morley (2004) 77.

Under the Republic, political life was dominated by the elite's competition for prestige; political office was valuable in itself, of course, but also because it conferred honour on holder and his family. Under the principate, the rules changed, as prestige came to depend increasingly upon the favour of the emperor; but 'status' remains a key term of analysis for understanding elite behaviour.¹⁸

While this statement could be taken as a standard political explanation of decline, rather like that espoused by Maternus towards the end of Tacitus *Dialogus de Oratoribus*, another interpretation is possible, the key to which is in Morley's use of the words 'came to depend' – the process is thus gradual rather than immediate; the favour of an emperor as a means of acquiring and maintaining prestige does *not* mean that the elite will stop competing amongst one another. Thus, what appears at first reading to be a quite a traditional view of the period covered by this thesis is in fact more subtle and nuanced. Consequently, one may stress the continuity between the two periods and see the conception of the orator and oratory in Tacitus and Quintilian as being in many respects the same as that of the late Republic, which is proof of the conservative nature of the upper echelons of Roman society in so far as self-fashioning is concerned.¹⁹

The construction of identity and the claim to status were the prime motivating factors for the engagement of the Roman elite in public life.²⁰ These factors are nowhere more clearly defined than in the phrase which underpins the Roman conception of the orator: *Orator est, Marce fili, vir bonus dicendi peritus.*²¹ This phrase, written by the Elder Cato in what scholars have assumed was his *Rhetorica ad Marcum filium*, represents the textbook definition of the orator and the standard against which orators were evaluated. This is hardly surprising given the status of its author as Rome's greatest moralist and one of its first great orators. The phrase, however, merits close examination. If we consider its context we may note that its author, a new man, like Rome's greatest orator, achieved a reputation through his

¹⁸ Morley (2004) 78.

¹⁹ For Cicero's self-fashioning see Dugan (2005).

²⁰ These ideas are central to discussions such as Gleason (1999).

²¹ On which see specifically the discussion in Chapters 4 and 7, but also *passim*.

oratorical ability and his morality (which pervades his speeches and censorship). The phrase occurs in a work written by a father to instruct his son, the traditional mode of Roman education and acculturation. Cato's definition is exemplified in his own person; thus a paradigmatic Roman provides in himself and his work models for emulation and imitation, ideas which will be shown to lie behind much of the discussion of this thesis.

The phrase *vir bonus* can be understood in several ways: first in terms of social status by comparison with the Greek term *καλὸς κἀγαθός*, secondly in the philosophical sense of the 'good man' i.e. a morally good man (a concept also present in the Greek term), and thirdly in terms of gender as described by Walters (1993):

The full force of this formulation has not, I think been brought out before: it is best made clear if the Latin is translated to read that the ideal public speaker (as well as being skilled at oratory) is not merely a good man, but good at being a man, to bring out the performative element common to both oratory and 'manhood'.²²

While one could treat these three meanings as separate, the three ideas display the wide semantic field of the word *virtus*:²³ they are in fact interrelated,²⁴ as are social status, morality and gender, when it comes considering how elite Roman men saw themselves and their place in society and constructed a public persona in order to lay claim to their status.²⁵ Their status is open to challenge whenever a difference is perceived, or can be claimed, between appearance and reality and norms — i.e. what an individual does or says does not conform to what societal norms say that he should do or say, whether this is in the sphere of context,

²² Walters (1993) 86.

²³ On the etymology of *virtus* see Varro *Ling.* 5.73. McDonnell (2006) 4–12 argues that the wide semantic field of *virtus* is a feature of the late Republic and the Empire, whereas its earlier usage is more circumscribed.

²⁴ As argued by Habinek (2005) 65–7. For a recent reinterpretation of *virtus* see McDonnell (2006), he argues (387–9) that the monopoly of *virtus* in public and martial contexts by the emperors causes the change in emphasis to *virtus*, although he does not discuss the gendered interpretation of *virtus* at all.

²⁵ Also cf. Dugan (2005) 143–5 on the *vir bonus*, stoicism and masculinity. He sees the 'failure' and exile of P. Rutilius Rufus (cos. 105BC) as a refusal to compromise his *dignitas* and Stoicism, or his masculinity. Rufus is used by Atherton (1988) to explore the failure of Stoic rhetoric as *ars bene dicendi*. On oratory and masculinity see Richlin (1983), Walters (1993) and (1997a&b), Edwards (1993) and (1997), Gunderson (1998), (2000) and (2003), Gleason (1995) and (1999) and Connelly (1997), although her extreme feminist position makes her work more of an anti-male diatribe.

content or mode of expression. In other words the ‘who, what, where, when, how and why’ of public speech. These are in rhetorical terms six elements of circumstance which are fundamental to rhetorical invention. Thus the act and its judgement are linked because they are done in exactly the same way: the criticism of performative acts rests on a rhetorical convention.²⁶

Declamation itself is best understood in a cultural sense as a way for Roman men to explore what it means to be a Roman,²⁷ a man,²⁸ and an orator.²⁹ In his groundbreaking anthropological study, ‘Deep Play: Notes on the Balinese cock-fight’, Geertz examines how the playing of games and betting on their outcome can display information about society and its rules. Oratory for the Romans can be seen as a game with the participants being members of the Roman elite or people who wish to gain entry to this social circle and the stake with which they ‘bet’ is their (continued) membership of that social group.³⁰ Public speech acts are of fundamental importance for the attempt to understand Roman society and declamation as a speech act has the same ‘rules of engagement’ and should be seen as more than just an adult leisure activity, because it allows the speaker to lay claim to, demonstrate, and risk losing, status among their peers. Declamation suffers from the fact that it is and is not oratory, yet in order to do it well it is necessary to be educated and thereby have invested

²⁶ In the preliminary exercise known as narration (*διήγημα*) a student ‘would be introduced to the six elements of circumstance [who? what? when? where? how? why?], which will be important in the construction of narrative (*διήγησις*) and of arguments in advanced exercises’ Heath (1995) 13, and Heath (1995) 250: ‘Circumstance (*περίστασις*): The six elements of circumstance (*περιστατικά*) are the basic components of a situation or an event (i.e. person, act, time, place, manner and cause)’, also cf. [Hermog.] *Inv.* 140.10–147.15 (Rabe) (on which see Kennedy (2005) 86–96) and Quint. 5.10.104: *Hoc genus argumentorum sane dicamus ex circumstantia, quia περίστασιν dicere aliter non possumus, vel ex iis quae cuiusque causae propria sunt.*

²⁷ Cf. Beard (1993) and Walters (1993).

²⁸ Cf. Gunderson (2003) and Walters (1993), (1997a) and (1997b). For a review of Gunderson see Furse (2005).

²⁹ Cf. Walters (1993). In general see Walters (1993) 79–81 and Habinek (2005) 60–78 on acculturation through education. This idea is fundamental to the sociological analysis of Bourdieu (1984).

³⁰ See Walters (1993) 82–3 on declamation needing to be taken at more than face value.

a considerable amount of time, effort, and money in the acquisition of cultural capital.³¹ Having acquired the potential to claim membership of a social group legitimately, it is necessary to display one's learning and familiarity with social norms. Such display and its judgement by one's peers represent the defining characteristics of Roman public life; just as peacocks display in order to attract mates, Romans engaged in public life in order to acquire and /or maintain, or unfortunately lose, their status.

Silencing an opponent, reducing him to social nullity, is the intended outcome of an unexpectedly high percentage of speeches. As the Roman legal historian David Daube has noted, ancient city-states were in many ways like Victorian men's clubs (or for that matter, modern fraternities or sororities), and every debate was a debate about membership. Since both Athens and Rome lacked public prosecutors, criminal trials were, by definition, a means of pursuing private ends. At the height of the Roman republic, for example, as many as one in three top officials were charged with crimes that could lead to loss of political rights, with the chance of conviction roughly fifty-fifty.³²

Political rights are the preserve of the male citizen and loss of political rights can be seen as a diminution of male identity. While Edwards (1997) discusses at length how *infamia*, the prohibition of public speech acts, was used to curb the problematic groups of actors, gladiators and prostitutes, this thesis refers throughout to the links between status, gender and speaking as a means of self-regulation among the elite, particularly through the use of gendered criticism and critical language. By adopting such an approach, this thesis recognises that masculinity is a central consideration in public speech acts; as performative as any other aspect of personal identity and one of the stakes for which the Romans are playing. This can be seen as implicit in Cato's comment *vir bonus dicendi peritus* (my emphasis), but explicit in the use of the phrase by the Elder Seneca and Quintilian; a difference of degree rather than substance.

In this respect, the thesis, by engaging with works on sociology and social and cultural history, provides a positive account which stresses continuity over change. This is

³¹ On education as a means of acquiring social status, see Bourdieu (1984).

³² Habinek (2005) 7.

achieved through a consideration not only of the texts central to our understanding of public speech under the Early Empire but also of the conceptual framework which runs through these texts. Gunderson (1998) and (2000) is especially concerned with the projection of male identity through appearance, bearing and gesture (see also Corbeill (2004)). This thesis focuses on textual rather than extra-textual elements of the speech act, other than where these appear in the texts themselves. Unlike Gunderson (2000), who similarly considers public speaking to be an arena of male self-definition, this thesis includes the additional consideration of the technical aspects of rhetoric, as gained through declamation, to allow wider conclusions to be drawn regarding the education, acculturation, public presentation and assessment of members of the Roman elite.

The thesis begins by considering how the figure of 'Cicero', the paradigmatic Roman orator, is constructed in relation to the events leading up to and surrounding his death by means of the declamations of the early empire. Between Cicero's death and Quintilian's *Institutio Oratoria* it becomes possible to advise Cicero to burn his books and live, which indicates that what 'Cicero' means as an *exemplum* and an orator has become negotiable. This type of negotiation enables the *Dialogus*, a dialogue written in a Ciceronian style, to be read as a work which questions the nature and use of oratory in order to affirm its central position in elite ideology, thereby providing an interpretative framework for the thesis as a whole. If oratory were no longer worthwhile, there would be little point in having such a discussion as the *Dialogus* presents. Thus, the thesis will demonstrate, through an examination of parallel passages in rhetorical and philosophical writers and because of the lack of closure at the end of the work, that its speeches are best understood in terms of declamation.

Such opening chapters allow the thesis to consider the works where criticism of oratory and rhetoric is found in its entirety, with the thematic links between these works being easy to trace through the following chapters. Given the thematic coherence exhibited by

the criticism of declamation in the first century AD, this thesis treats all the examples in a similar way, demonstrating their common thread: all critics of declamation can be shown not to declaim terribly well, which limits their ability to criticise it both as a rhetorical exercise and a pedagogical tool and this, in turn, under-cuts the value of their criticism *per se*. The exception is Quintilian whose criticisms of declamation are aimed at the way it is practised rather than at it as a practice (2.10).

While it could be objected that one does not need to be a painter in order to be an art critic, such an idea does not seem to be one which has much currency in the Ancient World; indeed quite the opposite view is held.³³ The idea that one *has* to do something in order to criticise it relates to the Platonic craft analogy as used in dialogues such as the *Apology*,³⁴ *Phaedrus* and *Gorgias*. The Platonic model of criticism appears in Roman literature in Petronius (discussed in Chapter 6) and Cicero, who utilises it to present the ideal orator as an ideal critic.³⁵ It is also worth considering the culture of the *expert* in the rhetorical tradition – Heath (2004b) gives a lucid account of the tradition of technical commentaries on works of rhetorical theory, including that of Menander Rhetor on the speeches of Demosthenes. Here we have a rhetorician of high standing commenting on the speeches of the greatest Greek orator for use in the classroom. It is Menander's rhetorical knowledge that allows him to make worthwhile comments.

This evidence of the idea of the expert as critic allows us to see the criticism of declamation in the literature of the Early Empire as less than valid. Thus, declamation can be seen as a valid practice as both a pedagogical tool and a form of public speech, indeed as valid

³³ The link is not, however, universal. Aristotle did not write tragedies although he did criticise them in the *Poetics*. Likewise Pl. *Resp.* 601C claims that it is the user not the producer who understands what a product should be – a position identical with that of modern post-structuralists whereby meaning is constructed at the site of the reader.

³⁴ A prime example of this is found at Pl. *Ap.* 22C 9–E 4, though the questioning begins at 22B 1.

³⁵ As discussed by Nielsen (1995).

as the forensic and deliberative oratory which had been the main *officia* of the republican orator and remained so throughout antiquity.

It is now appropriate to consider the criticisms of ancient experts that touch on declamation. Seneca's judgement on youths (*Contr.* 1.pr.6–10) is valid in a way that that of the 'critics' is not. His criticism (as discussed in Chapter 4) is targeted at the youths themselves, their problematic lack of masculine *virtus* as demonstrated by their way of life and declamations, not declamation in general or as an activity *per se*.³⁶ Their decline is, however, not irreversible (a fact common to all discussions of decline covered by this thesis). Seneca displays his knowledge of declamation through his text and while he is not a professional rhetorician he is not a dilettante in the pejorative sense. Through this criticism in particular, and the text as a whole, Seneca constructs himself as a paternal instructor, a figure well-known from the Elder Cato and Cicero, implicitly setting himself up to be a 'father' to the entire youth who read his book, just as Quintilian (who laments the loss of his own children in the preface to Book 6)³⁷ has, through his text, the ability to be a surrogate model father, thereby allowing his work to become a textual *tirocinium*, whereby the traditional practice of the orator's final education and entry into public life is supervised by father-like senior orators, as demonstrated in the beginning of Tacitus' *Dialogus* and the *Letters* of the Younger Pliny. The continuity of the pedagogical model means that when Tacitus and Pliny make such a point of showing their own old-fashioned Roman education they too are making a status-claim that links them to Cicero, the paradigmatic Roman orator, the focus of the first chapter of this thesis.

³⁶ On the passage and its relation to invective see Edwards (1993) 81–2.

³⁷ On which see Leigh (2004), who discusses Quintilian's self-presentation in the preface and first two chapters of Book 6.

CICERO'S *NACHLEBEN*

THE figure of Cicero is the fixed point from which all considerations of rhetoric, oratory and orators in the centuries following his death in 43 BC emanate. Thus, a consideration of oratory, declamation and the construction of the orator and his role in Roman society in the post-Ciceronian era must begin with an examination of Cicero's role in rhetorical literature and the construction of the figure of Cicero.³⁸ This chapter begins with an examination of the way Cicero is used as a figure in one of the declamations preserved in the Elder Seneca (*Suasoria* 7), concerning the circumstances of his death at the hands of the triumvirs. It then turns to the two other declamations concerning his proscription³⁹ in the Elder Seneca (*Suasoria* 6 and *Controversia* 7.2) and other declamatory works featuring Cicero. Having explored how Rome's greatest orator is conceptualised (mainly through declamations) the following chapter considers the way in which the orator (in general terms) and his role is constructed in the *Dialogus* as a means of exploring what it means to be an orator in the Principate.

This approach enables us to consider the interpretative framework that builds up around Cicero after his death and thereby investigate this framework's use in and by works on rhetoric dealing with the construction of the orator. As such, this enquiry can be seen as part of the general aim of this thesis to understand rhetoric and its practitioners (within the timeframe specified) within their social, cultural, literary and historical contexts.

³⁸ While the earliest datable source for the reception of Cicero and the events leading up to his death are letters from Brutus (discussed below), some of the declaimers quoted in *Suasoriae* 6 & 7 have been dated by Wright (2001) to the triumviral period, where declamation on Cicero's death seems to have been used by Octavian as anti-Antonian propaganda. Thus, declamations can be understood as part of the formation of an idea of 'Cicero' which can be seen to continue with the later Augustan declaimers quoted in the Elder Seneca.

³⁹ On which see Hinard (1985)

I wish first to examine the way in which Cicero's death is understood and used in Seneca *Suasoria* 7 and to draw some conclusions regarding how Cicero, his death and literary works are understood by declaimers from the Triumviral period down to the reign of Tiberius.⁴⁰

CICERO'S DEATH IN SENECA *SUASORIA* 7

'The dead can often be more powerful than the living' Jacques Derrida, *Specters of Marx*⁴¹

It is noteworthy that, in spite of his *Philippics* and proscription, Cicero did not figure among the venerated heroes or martyrs of the Republic. The reason seems to be that there was nothing in Cicero's character or his death to commend him to the admiration of posterity.

Wirszubski (1950) 128.

The opinion of Wirszubski, quoted above, represents an extreme position and one, I would argue, that is not borne out by the evidence we have for the reception of Cicero in the one hundred and fifty or so years after his death.⁴² I wish in this section to concentrate on a small part of that evidence, the final remaining *suasoria* in Seneca's collection, whose title, *Deliberat Cicero, an scripta comburat promittente Antonio incolumitatem si fecisset*, is in some ways introduction enough.⁴³

The title presents two options to the aged ex-consul: Burn your books and live, or save your work and die; so these were the two sides on which Romans gave their advice. While the *Suasoriae* concerning Cicero are set in 43BC, I will argue that *Suasoria* 7 in particular is a work grounded in the Early Empire, displaying both the concerns of literate men

⁴⁰ For all the sources relating to the death of Cicero and some discussion of them, see Homeyer (1964) and (1977).

⁴¹ Derrida (1994)

⁴² Wirszubski (1950) 128 also claims that the period is just one of romantic devotion to bygone times and of 'a politically harmless hero-worship'. This will be shown not to be the case with regard to Cicero. Wirszubski also downplays the veneration of Cicero in the following dismissive footnote: 'A restrained tribute is paid to him by Quintilian, a professed admirer of Ciceronian style, see *Inst.* 12.1.16' (128 n.7).

⁴³ The text quoted is that of Winterbottom (1974a). References to 'Seneca' refer to the Elder rather than the Younger Seneca.

regarding the production of literature and its dangers, and what Cicero represented to these men.

SUASORIA 7.10

In *Suasoria* 7.10 Seneca states *neminem in alteram partem scio declamasse*, in other words no one argued that Cicero should burn his books and save his life. This comment is similar to one made at 6.12 – *Alteram partem pauci declamaverunt*; whereas a few people urged Cicero to beg Antony's pardon, no one did so when Cicero's works were brought into the equation. Why is it, therefore, that you can debate the merits of being a tyrannicide, or whether the Spartans should fight or flee at Thermopylae,⁴⁴ but advising Cicero to burn his books and save his life is off limits? The question of why no one has yet, to my knowledge, found Seneca's comment rather unnerving and worthy of further study must remain unanswered; perhaps scholars have thought it hardly surprising given the preposterous nature of the subject discussed in *Suasoria* 7. I hope that the following discussion may go some way to rectifying this state of affairs.⁴⁵

It is well known that a central technique of rhetoric from its very beginning was the ability to give both sides of an argument, and this ability lies at the heart of declamations such as *Suasoria* 7. The fact that Seneca reports that this was not the case here is a cause for concern, the arguments are 'conspicuous by their absence'. This is despite the fact that, as will be shown below, arguments do exist which advise Cicero to do so; these are, however, considerably later than Seneca's composition and therefore do not alter the statement that he knew of no-one declaiming *in alteram partem*.

Quintilian states the following as an argument to be used when declaiming on the theme of declamations such as *Suasoria* 7:

Quare et cum Ciceroni dabimus consilium ut Antonium roget, vel etiam ut Philippicas, ita vitam pollicente eo, exurat, non

⁴⁴ Sen. *Suas.* 2.

⁴⁵ On this passage and the reception of Cicero's death in declamations such as *Suasoria* now see also Dugan (2001) and (2005), esp. 71–4.

cupiditatem lucis adlegabimus (haec enim si valet in animo eius, tacentibus quoque nobis valet), sed ut se rei publicae servet hortabimur – hac illi opus est occasione, ne eum talium precum pudeat:

Quint. 3.8.46

This passage is important in that it is an example of an argument which, in the earlier period, declaimers could not or would not give; but this must be offset by the fact that Quintilian's arguments can be read as countered by those presented in *Suasoria* 7. Quintilian's argument exhorts Cicero to save himself in the interests of the state (*ut se rei publicae servet hortabimur*), yet the majority of the Senecan excerpts take as given the fact that you cannot serve *rem publicam* when it does not exist – the role envisaged by Quintilian is one Cicero cannot fulfil at the time the declamations were written.⁴⁶ Additionally, there is the argument that there is no one left for Cicero to live with;⁴⁷ the proscriptions become a senatorial proto-holocaust, leaving only those willing to bow to the new regime. Yet the declaimers' arguments do not hold true for the historical moment in which the *suasoria* is set: in 43 BC the republic is not yet dead; indeed no one could tell what the future had in store at the moment of Cicero's death. The republic cannot be argued to be dead without the benefit of hindsight, nor was the position quite as clear-cut as some of the declaimers would have it.

While these arguments can be seen to reinforce the position that Cicero should give up his books and save his life, they do not explain the actual or feigned reluctance of the declaimers to argue this side, one which by Seneca's own admission was both possible and possibly persuasive. While Seneca's comment, *cum adeo illa pars non sit mala ut Cicero, si haec condicio lata fuisset, deliberaturus non fuerit* (7.10) does not prove the existence of such arguments in his own day, it does show they were neither impossible nor indeed implausible.

⁴⁶ Cf. *Suas.* 7.4 – *Quid autem tibi sub ista pactione promittitur? ut Cn. Pompeius et M. Cato et ille antiquos restituatur rei publicae senatus, dignissimus apud quem Cicero loqueretur.* One must, however, note that arguments of the kind sanctioned by Quintilian, namely saving oneself in the interests of the state, are employed by the declaimer Varius Geminus in *Suas.* 6.13: *Deinde: non pro vita illum, sed pro re publica rogaturum.* While the scenario is different, the argumentation employed would be the same in either case. On *Suasoria* 6 see below.

⁴⁷ Cf. *Suas.* 7.1 – *Pendet nefariae proscriptionis tabula: tot praetorii, tot consulares, tot equestris ordinis viri periere; nemo reliquitur nisi qui servire possit.*

The argument put forward by Quintilian is of the kind described by Seneca, whose argumentation from morality, *honestum* (one of the heads of purpose used to argue deliberative questions), is of the same kind as that used by the declaimers to encourage Cicero to save his books and forfeit his life.⁴⁸ The answer to the question of why the arguments were not used in *Suasoria* 7 may lie in the person of Cicero, his writings and the way these were understood and used in the early principate, and the period itself, insofar as it affects the declaimers' ability to give both sides of the argument.

WHY DOES CICERO MATTER?

In order to prove the idea that 'Nontrivial questions were at stake in such stock themes as "Cicero Deliberates Whether to Burn His Writings, Antony Having Promised to Spare Him If He Does So"',⁴⁹ we need to dispel the notion that *suasoriae* were simply *προγυμνάσματα*, 'not taken too seriously at school: ... reserved for the young'.⁵⁰ This time-honoured notion is at variance with the fact that some of the most famous and eloquent Romans of their time chose to give Cicero advice on this question (and cannot be explained away by the idea that the extracts in Seneca's collection were just examples for pupils)⁵¹ and also with some of the authorial comments of the Elder Seneca, in particular *Contr.* 10.pr.6–7 (discussed below). It is my belief that Cicero mattered to the people who declaimed on this topic and that their declamations should not be devalued or seen as lacking in literary merit; we should also banish the notion that 'Materials for a proper assessment of the influence of Cicero on the literature of the first century A.D. do not exist'.⁵²

When we look at the two surviving *suasoriae* on Roman themes preserved by Seneca we can see a correspondence between our modern perception of Cicero and the ancient one represented by the arguments of the declaimers. As they are one of the earliest sources for

⁴⁸ For a brief summary of the types of argumentation used in *suasoriae* see Roller (1997) 112–3.

⁴⁹ J. Walker (2000) 98.

⁵⁰ Winterbottom (1982a) 62.

⁵¹ The declaimers quoted by Seneca in *Suasoria* 7

⁵² Winterbottom (1982b) 237.

Cicero's *Nachleben* we can assert that by the time they were delivered the tradition regarding Cicero's death had been codified to a large extent.⁵³

Despite the fact that Cicero's capacity for oratory was ended by the stroke of a blade, when one reads the arguments of the declaimers in *Suasoria* 7 it is clear that the figure of Cicero meant a lot to them; what he represented was something in the past, but something which they felt a need to preserve. While one could argue that, due to the change in political circumstances, there would never be another Cicero this is an argument from hindsight. Rather, we need to ask how the figure of Cicero comes to hold such importance in the minds of declaimers in the generation after his death.

If one accepts a date in the triumviral period for some of the declamations surrounding Cicero's death, they gain in political significance. By making Cicero the hero and Antony the villain of the piece Augustan propaganda is well served, as well as making it easier for Romans to declaim on the subject. In Valerius Maximus 5.3.4 Cicero is described as *caput Romanae eloquentiae* and his abstraction as an embodiment of Roman eloquence together with his position as the single canonical Roman orator is parallel to the process undergone by the other great Republican martyr, Cato. Canons require simplification to work; the particular example is reduced to a category, yet this categorisation shows how Cicero's fame has become part of the way Romans reacted to the changed circumstances in which they found themselves.

WHY VALUE BOOKS MORE THAN PEOPLE?

Seneca states in *Suasoria* 7.10 that *omnes pro libris Ciceronis solliciti fuerunt nemo pro ipso*, which caused Cramer to write 'The florid eloquence of the professors provoked the Elder Seneca to the caustic comment: "All were anxious about Cicero's books, none about Cicero"',⁵⁴ which misses the point somewhat and does not deal either with the question of why Cicero's *libri*

⁵³ This is the line taken by Roller (1997) 115–119, especially 118.

⁵⁴ Cramer (1945) 175.

were such a cause of anxiety, or with what caring about Cicero means. Seneca's remarkably sweeping statement strikes an odd note, especially when allied with the fact that no one spoke for the other side, – why is the account so one-sided, does this matter and is there anything we can do about it?

In addressing the one-sidedness of the account, it is necessary to consider book-burning's significance as an issue, but there is no need for Too's caution in stating that 'Seneca the Elder would have his reader believe [book-burning] is a familiar topic in the Roman rhetorical schools'.⁵⁵ Book-burning was not only a literary trope of the Augustan era,⁵⁶ but also a political reality,⁵⁷ so we would be surprised if it were not treated in examples of contemporary rhetoric.

In the preface to Book 10 of the *Controversiae*, Seneca examines the book-burning phenomenon in the reign of Augustus. Having described the treatment of Scaurus and Labienus, he comments on the punishment of literary cremation as follows:

Bono hercules publico ista in poenas ingeniorum versa crudelitas post Ciceronem inuenta est; quid enim futurum fuit si triumviris libuisset et ingenium Ciceronis proscribere? ... Facem studiis subdere et in monumenta disciplinarum animadvertere quanta et quam non contenta cetera materia saevitia est! Di melius, quod eo saeculo ista ingeniorum supplicia coeperunt quo ingenia desierant!

Contr. 10.pr.6–7

Here Seneca is envisaging the situation where Cicero suffers the same punishment as his contemporaries. While giving thanks that this did not happen, he sees the survival of Cicero's works in terms of the *bonum publicum*, the public good, which has clear political connotations. The public good is the good of the state; therefore can Seneca be seen as recognising the anti-tyrannical stance of the *Philippics* as something worthwhile? It is quite possible that

⁵⁵ Too (1998) 174.

⁵⁶ See Virgil and the *Aeneid* – Suet. *de Poet.* 39; Ovid and the *Metamorphoses* – *Tristia* 1.7; cf. Tacitus on book-burning under Domitian in *Agr.* 2.1.

⁵⁷ Romans who suffered this punishment in the Early Empire include Labienus and Cremutius Cordus, Cassius Severus and Mamercus Scaurus, as named by Seneca and discussed below.

Seneca's comment could refer to Cicero's specific political philosophy, rather than simply to the value of his works in general. Whatever the answer, it would seem that Cicero does not have to be alive to serve the state, as Quintilian was to argue later, but that he can achieve a similar effect through his writings alone. In describing the works to be burnt as *monumenta disciplinarum*, Seneca is both describing literature in a conventional way and also describing it in a way that highlights several aspects important for the present enquiry. The use of *monumentum* reminds us of the commemorative aspect of the literary text,⁵⁸ one which the burning seeks to obliterate; Cicero's works are a *monumentum*, something that makes you remember. Winterbottom translates *materia* as 'victims' but this is misleading because *materia* works on several levels, designating both the fuel for fires and rhetorical *materia*, the subject for future declamations such as *Suasoria 7*; meaning that the fire on which such works are burnt becomes personified, hungry for more food/fuel/*materia*. Against such a bleak vision, Seneca's thanks that the present situation did not affect Cicero are understandable. While this comment is clear evidence for the fictional *materia* of *Suasoria 7*, it also highlights what lies behind the situation that the declaimers envisaged, namely the possibility first that such a thing could have happened then and secondly that it could happen now.

It is noticeable that *Suasoria 7* is suitably vague on what exactly is to be burnt; Cicero's *scripta* may be only the *Philippics*, the immediate cause of his death, or refer to all his works. The lack of detail certainly makes the declaimers assume that the premise refers to the whole of Cicero's corpus, as opposed to just the offending speeches. There is no basis for this assumption, but the added weight of Cicero's other works makes the job of arguing that Cicero should save his *scripta* and forfeit his life easier. However, this does not alter the fact that the opposing argument for Cicero to save his life is made easier if the burning is restricted to the *Philippics*; after all, would the world be greatly worse off without them?

⁵⁸ E.g. Hor. *Odes* 3.30, Livy praef. 10.

Nevertheless, the *Philippics* as an example *par excellence* of Roman oppositional political literature could be mobilised to 'prove' the existence of opposition, which they could not do if they were burned.

The preservation of Cicero's literary *corpus* stands in opposition to, and defiance of, the mutilation of his physical *corpus*. The decoration of the *rostrum* with Cicero's head and hands, which prompted Cassius Severus' memorable line, *conticuit Latiae tristis facundia linguae* (*Suasoria* 6.26), is both a physical demonstration of what can be seen as the 'end of Roman oratory' and of the power of the regime. Antony's actions have a clear message: the hands are used to write speeches, the mouth and tongue (and hands) to deliver them, so if anyone else chooses to abuse him, this is what will happen.⁵⁹ As well as being deprived of life, Cicero is clearly separated from the means of production and delivery of oratory. Yet Antony, having taken revenge on the oratorical parts of Cicero's *corpus*, does not punish Cicero's literary *corpus* as well. On the other hand, the power of the triumvirs and later the emperor is one which gives them control over the *corpus* that is the Roman state as a whole, the *corpus rei publicae* (cf. Menenius Agrippa's parable in Livy 2.32),⁶⁰ the *corpus* of an individual,⁶¹ as shown by their proscriptions, and the literary *corpus* of an author,⁶² as shown by the burning of books in the early empire.

Yet while Cicero lost his life, his works remain. The speeches which caused his death could still be read, his works therefore are at one level guarantors of his continued life and, at another, guarantors of freedom; the connection between the adjective and the noun *liber* was well known.⁶³ I would argue that the declaimers' fixation with Cicero's writings is on the one hand indicative of their loss of *libertas* or *παρρησία*, which they seek to re-create through

⁵⁹ This idea lies behind the description of these events in both Juvenal *Satire* 10 and Martial 3.66 and 5.69.

⁶⁰ Cf. *TLL corpus* 1D; Cic. *de Off.* 1.85; Tac. *Hist.* 1.16.

⁶¹ Cf. *TLL corpus* 4B; *OLD corpus* 9.

⁶² Cf. *TLL corpus* 4A; *OLD corpus* 16; Cic. *ad Fam.* 5.12.4; Vitruvius 2.1.8; Sen. *Dial.* 9.9.6, Quint. *Inst.* 4.pr.7.

⁶³ For evidence see Maltby (1991) 337.

declamations such as *Suasoria* 7, and on the other a response to the passing of a great figure, something like grief but expressed in a way that recreates Cicero and, in a sense, keeps him alive. While it was true that 'The republican opposition still commanded a not inconsiderable number of able pens, wielded by both aristocratic and non-aristocratic hands'⁶⁴ Cicero was more than just a figure of opposition and an anti-tyrannical martyr.

The declaimers do, however, seem aware that Cicero does not need to live in the physical sense still to matter, hence phrases such as 'In exchange for your name being forgotten you are promised a few years of slavery' and 'Let your genius live on after you and allow Antony perpetual proscription' (7.8). It was for this reason that the declaimers were more concerned with Cicero's books and their survival than that of Cicero himself. The man without his works was just a man; it was Cicero's works as the proof of his *ingenium* and his death and mutilation (dying for his art in a way similar to Demosthenes thereby constructing Cicero as the greatest Roman orator) that made him such an important figure.

CONCLUSION

'In the declamatory world of the early empire, the slaughter of Cicero is both a favourite scenario for logorrhoea and the last moment in history the declaimers permitted themselves to colonize with their wild fancies and loose tongues'.⁶⁵ Cicero, as represented in the excerpts of the *Suasoriae*, becomes 'the end of history' as far as the declaimers are concerned; anything more recent is off-limits. Yet the Romans were a people that constructed themselves through their past (as all individuals and societies do); as the greatest figure of Roman politics and oratory of the recent past, he would be expected to have an impact on the self-fashioning of the trainees and practitioners of the political arts in the years after his death.

⁶⁴ Cramer (1945) 158. And also *ibid.* n.5a: 'The *Controversiae* and *Suasoriae* of Seneca rhetor alone contain sufficient evidence to this effect. The constantly mentioned flood of opposition literature in this age also testifies to the literary zeal of this group'.

⁶⁵ John Henderson (1997).

The inability of declaimers to advise Cicero to burn his books shows above all the status of his works in the period following his death; while his death was a loss, the loss of his writings, which display his *ingenium*, was too great for them to consider. It was through Cicero's work that the person we know now as Cicero was created and while the figure of Cicero would no doubt have lived on, enshrined in the pages of Roman historians, our knowledge of Roman oratory, politics, philosophy and upper-class life in the last years of the republic would be so much the poorer for its lack.

What mattered to the Romans of the first century AD was not that Cicero had taken an uncompromising stance and failed in his attempts to use Octavian, but that he died a noble death at the hands of a tyrannical proscription. Cool assessment was not required: it was what Cicero represented through his literary and rhetorical works and what he stood for as a politician and orator – senatorial government and freedom of speech – two things which the declaimers of the early Augustan era constructed themselves as lacking, which mattered.

If we bear in mind the fact that *exempla* formed a major part of Roman education, through their deployment as patterns of behaviour for imitation in life and in speeches,⁶⁶ in *Suasoria* 7, Cicero's stance against Antony (for Antony read any tyrant) allows him to be understood in such a way as to construct a prototype for the 'literary martyrs' of the Early Empire, such as Labienus and Cremutius Cordus.⁶⁷ In introducing the idea of book-burning into the argument of the declamation we can also detect the retrojection of the idea of literary cremation as an instrument of political control, something far more relevant to the Early Empire than 43BC. The Civil Wars produced many martyrs: Cato ending his life rather than shedding citizens' blood, and Brutus and Cassius the 'heroic tyrannicides', are some of

⁶⁶ On the use of *exempla* in moral instruction with particular reference to Val. Max. see Skidmore (1996), on the use of *exempla* in declamation and speeches see Bloomer (1992).

⁶⁷ Cf. also Quint. *Inst.* 12.1.17 where in a discussion of the morality of the orator, Quintilian argues that Cicero had the right attitudes of a good citizen, and proved his point by his death, which he with outstanding courage (*quod probavit morte quoque ipsa, quam praestantissimo suscepit animo*).

the more obvious examples. In *Suasoria* 7 the situation Cicero is placed in prefigures the treatment of declaimers and historians of the early empire, the very men who made Cicero an *exemplum* and a synonym for Roman oratory. Exponents of oppositional literature could then be read as following the example of Cicero, who by virtue of the fact that he preceded them, provides a pattern for them to follow.

Richlin asks why the decapitation of Cicero mattered to Seneca,⁶⁸ a question which she answers by claiming that 'the schoolmen, living in a world conditioned by proscription, made art out of it; you might say they redeployed Cicero's decapitation, to make sense of their own situation, or just to get by. Their necks were still at risk, viz. Labienus'.⁶⁹ Yet the art which they made out of Cicero was sanctioned, it was safe; it did not stain the Imperial purple. The villain of piece was Mark Antony, consort of foreign whores, enemy of the Roman people. Octavian, or later Augustus, was absolved of any blame and could quite happily reminisce in old age and call Cicero *λόγιος ἀνὴρ, ὦ παῖ, λόγιος καὶ φιλόπατρις*,⁷⁰ because at one level it was immaterial: Cicero was patriotic, learned, and dead. The intellectual opposition might choose to see Cicero as a hero, but he was a hero like Cato whose emulation necessarily involved the removal of opposition at a physical level: to act like Cicero was to potentially condemn yourself to death and run the risk of literary cremation, which may prevent any potential 'Cicero' from being an actual figure of opposition, although not from being understood as an example to subsequent generations. Cicero's status, as Augustus' double-edged comment reveals, continued to be problematic.

Thus, Cicero became abstracted to represent *eloquentia Romana*, and therefore his death could be understood as the end of oratory; the mutilation of his corpse serves to prefigure the destruction of the literary corpus of the Augustan victims. The preservation of his memory by the Augustan declaimers may represent a lost freedom (of speech), yet his

⁶⁸ Richlin (1999) 190–211, 190.

⁶⁹ Richlin (1999) 206.

⁷⁰ Plutarch *Cicero* 49.

death is ironically the start of the imperial control of literature. In alluding to, and quoting from, his works the declaimers gain a freedom of sorts, one sanitised by the emperor, a freedom within boundaries, which is punished when they are overstepped, e.g. by Labienus, Cassius Severus and Cremutius Cordus. Yet in their appropriation of Ciceronian freedom of speech, the declaimers defer the end of oratory, a paradox trumpeted by the preface of Seneca *Controversia* 10. Cicero is dead, yet lives on through his work (a factor of which the declaimers of *Suasoria* 7 seem all too aware).

Is the death of Cicero, therefore, an attempt to control meaning, which is self-defeating? It certainly seems to be read as such. During the Augustan period, Cicero was understood as a proto-literary martyr, thereby giving the declaimers a handle on their world.⁷¹ He helped them understand their situation and gave them the starting point of a tradition, which they could both look back to, and enter into, by their own efforts. It would seem that every age reads Cicero in a way to suit them, realising, with the declaimers of the first century that he mattered and mattered an awful lot, and the reason why he mattered was because of what he and his writings had come to represent: Cicero comes to exemplify the adage that the pen is mightier than the sword.

While *Suasoria* 7 presents a highly-coloured view of the orator, his literary work and death, partly due to its date of composition and subject matter, the other declamations relating to Cicero in the Elder Seneca's collection allow us to gain more evidence for how this interpretive framework around Cicero was used and understood in the Early Empire.

SUASORIA 6

Suasoria 6 is another declamation on the events surrounding Cicero's death; here the declaimers are advising Cicero (not) to beg Antony's pardon in the light of the *Philippics* and his subsequent proscription. It allows us to see how Cicero is used and understood when his

⁷¹ On this point see Bloomer (1992) 204.

death and his literary works are taken out of the equation, and thereby (potentially) focuses the argument on Cicero the man and his potential utility to Roman society as an orator and a politician.

The arguments used by the declaimers to dissuade Cicero from begging Antony's pardon are of the same type as those of the argumentation of *Suas.* 7. From a rhetorical point of view the evidence for argumentation for the other side is far more interesting. It reveals how declaimers were able to argue that Cicero should beg Antony's pardon, when Cicero's works were taken out of the equation. The fact that the argumentation *in alteram partem* makes use of Cicero's own speeches to make a convincing case, in a far more widespread and comprehensive way than the *Second Philippic* and *Catilinarians* are used for anti-Antonian invective in *Suasoria* 7, allows us to see how Cicero is used and understood as an orator.

Thus, §§I–II will not be covered. In §§12–14 of *Suasoria* 6, Seneca gives us examples of the arguments made *in alteram partem*, those which advise Cicero to beg Antony's pardon and thereby save his life. In particular this section will focus on the arguments of one declaimer, Varius Geminus, about whom we know next to nothing.⁷² Seneca begins §12 as follows: *Alteram partem pauci declamaverunt. Nemo ꝑaene ausus est Ciceronem ad deprecandum Antonium hortari; bene de Ciceronis animo iudicaverunt. Geminus Varius declamavit alteram quoque partem et ait: Spero me Ciceroni meo persuasurum ut velit vivere.* While the situation is slightly better than that of *Suasoria* 7, we are still dealing with a predominantly one-sided argument, which reflects historical reality. Geminus, however, is a declaimer who speaks for both sides, and will be shown to provide ingenious and persuasive arguments which do advise Cicero to live.

Varius Geminus uses quotations from Cicero's *Fourth Catilinarian* and *Second Philippic* to advance his own position, but he makes a clear distinction between Cicero's grand philosophical statements and the practical constraints of the situation: *Quod grandia loquitur*

⁷² Winterbottom (1974a) 633 refers to a description of him by Jerome as a sublime orator, which is testament to his ability.

.... *non movet me*. Geminus reinforces the point by emphasising Cicero's position as a private citizen and claiming *ego belle mores hominis novi: faciet, rogabit. Nam quod ad servitatem pertinet, non recusabit; iam collum tritum habet; et Pompeius illum et Caesar subegerunt: veteranum mancipium videtis*. While such an interpretation could be seen as anti-Ciceronian, it is a plausible reading of some of Cicero's *Post Reditum* speeches and the *Caesarian Speeches*.⁷³ While a literary critic may take issue with Geminus' point, it is still, in rhetorical terms, a strong and convincing example to press into service.

In Geminus' division, which follows Seneca's quotation of part of his declamation, we see both the overall structure of his speech and how it makes use of the example discussed above. The speech begins by describing the argumentative strategy used by Geminus to persuade Cicero: if he asks Antony's pardon *non turpiter rogaturum, non frustra rogaturum* his action would be honourable, feasible and likely to succeed. He reinforces the point by claiming *non esse turpe civem victorem rogari a victo. Hic quam multi rogassent C. Caesarem, hic et Ligarium*. By claiming that many people have done so, Geminus seeks to prove his argument and the example of Ligarius is particularly apposite; the speech is a rhetorical *tour de force*, with a *deprecatio* and *exordium* that focus on Caesar's *clementia* and Cicero's role as an advisor. Thus, Cicero's own career can be used to advise Cicero to beg Antony's pardon, and what could be more persuasive than an example from someone's own life? Geminus goes on to describe the act of begging Antony's pardon as *ne iniquum*, due to Cicero having proscribed Antony and made him a public enemy. It is thus perfectly right and proper for Cicero, having first been on the offensive and now on the back foot, to apologise to Antony and for the two to make up. Geminus strengthens this point by claiming that this should be done not for Cicero's own sake but for the Roman state, which would obviously benefit more from a live Cicero than a dead one. By arguing that Cicero should save himself for the sake of the

⁷³ On which see Riggsby (2002) and Gotoff (2002) respectively.

republic, Geminus can be seen to make use of the argumentative strategy advised by Quintilian,⁷⁴ in relation to the argumentative strategies employed in *Suasoria* 7. Thus, in *Suasoria* 6, Seneca does in fact provide us with an example of exactly the kind of argumentation which declaimers seem unable to use when Cicero's works were part of the declamatory hypothesis. Geminus' use of the *color* advised by Quintilian is proof of the applicability of such a rhetorical strategy and a sign that while it is easy for a declaimer, or his audience, to get caught up in the amplificatory or pathetic aspects of declamations surrounding Cicero's death, these were rhetorical works which did not forget that their primary motive was to persuade an audience (here Cicero) of a certain point of view or course of action.

In the next section of his speech, Geminus moves on to consider that one's enemies can be won over, which reinforces his earlier point that Cicero can apologise to Antony and find forgiveness. He cites the example of Vatinius,⁷⁵ whom Cicero spoke both for and against.⁷⁶ The fact that Vatinius (and Gabinius) only became Cicero's clients (for him to defend) due to the efforts of Caesar and Pompey respectively provides us with more evidence to take the phrase *iam tritum collem habet; et Pompeius illum et Caesar subegerunt: veteranum mancipium videtis* (discussed above) as referring to the *Post Reditum* and *Caesarian Speeches*; indeed the correspondence between the two is striking and allows us to see a series of examples and an interpretation of Ciceronian oratory which coalesce in this speech to form a unified convincing whole. Here again, Geminus is making use of a wide knowledge of Cicero's political and forensic career in order to come up with persuasive arguments, and his in-depth knowledge of Ciceronian oratory in its political context means that the examples he chooses to support his argument are as convincing as possible. 'Varius Geminus' imaginative grasp of

⁷⁴ 3.8. 46, as discussed above.

⁷⁵ On these speeches see Quint. 11.1.73, who also cites Gabinius who was attacked in *De prov. cos.*, yet defended by Cicero. On Vatinius see Crawford (1994) 301–10.

⁷⁶ On Geminus' reference to Vatinius, see Winterbottom (1974b) 26.

the details of Cicero's career seems to have been exceptional: ...*Cassius Severus aiebat alios declamasse, Varium Geminum vivum consilium dedisse (Suas. 6.11)*'.⁷⁷

Incidentally, while commenting on §11, Fairweather notes that Varius Geminus, while declaiming that Cicero should not beg Antony's pardon and instead flee, alludes to the *Pro rege Deiotaro* and the *Verrines*.⁷⁸ Here we have an example of more in-depth Ciceronian knowledge; the allusion to another Caesarian speech, while it is during a speech for the other side, underlines Geminus' strategy of giving Cicero advice taken from his own career.⁷⁹

Geminus continues his speech by making the point that Antony will be easier to persuade than one might at first think, because Antony can use the act of pardoning Cicero to demonstrate his own clemency. Here Geminus displays considerable political insight in showing that the course of action he is advising Cicero to take is in his opponent's favour as well. Thus, both parties achieve what they want and the greater good is served. Such political sleight of hand would not have been lost on Cicero, had he heard it. Geminus' knowledge and in-depth use of Cicero and his actions as a politician and an orator in a declamation must be taken as evidence of declamation's importance. If this were a worthless game indulged in by men with nothing better to do, there would be no reason to go to the trouble of providing such pertinent and erudite examples. While the emotions of the declaimer's audience were moved by the subject matter, Cicero's situation and Antony's cruel desire for vengeance, Geminus, while not averse to the odd scurrilous jibe, provides us with an example of how such a highly-charged subject can be argued in a rhetorically sound and convincing way on both sides of the argument.

⁷⁷ Fairweather (1981) 87.

⁷⁸ Fairweather (1981) 87. In 6.13 Winterbottom (1974a) 574 deletes the clause *Gaio quoque Verri* after *Vatinio* as an 'ill informed gloss'. Given the evidence of Quint. 11.1.73 (noted above), we might expect Gabinius rather than Verres, whom Cicero never defended as far as we know.

⁷⁹ Advice of a similar nature, namely, drawn from Cicero's own career, can also be seen to be used in pseudoepigraphic works and works whose authorship has been doubted, which will be discussed below.

If we turn now to the next part of the declamation, Seneca gives us an account of historical treatments of Cicero's death,⁸⁰ which is both extremely valuable as the sole repository of these historical and poetic fragments and as a means to understand why Seneca included these historical accounts. Scholars tend to take the authorial comments in §§14 and 16 as referring to the respective status and utility of historiography and declamation as genres. Another interpretation is, however, possible. Given the status of Varius Geminus' advice in speeches both for and against the proposition that Cicero should beg Antony's pardon and his frequent recourse to historical *exempla* drawn from Cicero's political and rhetorical career, the relevance of history is clear. As well as providing suitable *exempla* and material suitable for pathetic amplification, it is the key to dealing with an historical *Suasoria* such as 6 or 7. While Seneca's statement in §14 *adversus memoriam Ciceronis gesserit. Nam, quin Cicero nec tam timidus fuerit ut roget Antonium nec tam stultus ut exorari posse eum speraret nemo dubitat*, may cause us to doubt the historicity of both these declamations at an empirical level; it does not alter the way in which such a declamation *should* be argued in rhetorical terms. Once again the example of Geminus' historically grounded *vivum consilium* is the paradigm which future declaimers should follow. This also accounts for Seneca's problems with Pollio's criticism of Cicero: what Pollio says is untrue and was not included in his history: *ut [tibi] facile liqueret hoc totum adeo falsum esse ut ne ipse quidem Pollio in historiis suis ponere ausus sit*. If Pollio's criticism could be found to have some historical basis it could be judged valid. The purpose of the historical excerpts quoted by the Elder Seneca now becomes clearer: as well as being models for imitation or avoidance and providing historical details which would be useful when composing declamations on Cicero's death, they, along with Geminus' division and *sententiae*, are rhetorical and factual touch-stones against which a good declamation should be measured.⁸¹

⁸⁰ On the historical fragments see Håkanson (1989).

⁸¹ On the learning of Greek history through *progymnasmata* and *suasoriae* see Gibson (2004).

If the Elder Seneca took declamation as seriously as history, judging it by the same criteria, modern scholars should not consider it a sub-literary genre. The advice then in §16 of history being a medicinal draught that must be taken with a honeyed rim on the cup is perhaps best understood as an amusing image which is used by Seneca to reinforce a serious didactic point, rather than a criticism of the declamation-mad youth of the late 30s AD. Likewise the comment at the end of §27 need not be read as serious:

Si hic desiero, scio futurum ut vos illo loco desinatis legere quo
ego a scholasticis recessi; ergo, ut librum velitis usque ad
umbilicum revolvere, adiciam suasoriae proximae similem.

Is it not at least possible that Seneca is making a joke, allowing him to speak directly to his reader in a parody of the didactic tone which he has adopted throughout the book? We can hardly assume that readers would, having got this far through the book, put it down without reading it to the end. Given the importance of historical knowledge and understanding in a deliberative context, no one who wished to give a good account of themselves would miss this section out. The fact that Varius Geminus is admired as a declaimer because the advice he gives is historically grounded, accurate and convincing, allows us to understand why Seneca includes the historical excerpts and why they are useful in a declamatory context. A thorough knowledge of history allows a declaimer to make his advice both more plausible and more convincing.

CONTROVERSIA 7.2

In *Controversia 7.2* we have a third example of a declamation concerned with Cicero's death, although, unlike *Suasoriae 6* and *7* where speakers advise Cicero on a course of action, this declamation is a *controversia*, a mock forensic speech, whose *peristasis* is as follows: *Popillium parricidii reum Cicero defendit; absolutus est. Proscriptum Ciceronem ab Antonio missus occidit Popillius et caput eius ad Antonium retullit. Accusatur de moribus.* (*Contr. 7.2.pr.*)⁸² Because Cicero defended

⁸² For a renaissance illustration of Popillius' murder of Cicero, see fig. 1.

Popillius Laenas on a charge of parricide we would expect a patron–client relationship to exist between them, which should preclude Popillius from killing his patron. The fact that he did is something which would therefore cause Popillius’ defence problems. The patron can be seen as a quasi-father figure, so Cicero is a quasi-father figure who has used his eloquence to get Popillius acquitted, only to be killed by him in an act which is comparable with parricide. Thus, as with the *suasoriae* discussed above, one side is at first sight considerably more straightforward in argumentative terms; however, as we can see from *Suasoria* 6, a talented declaimer can take the potentially difficult side and provide a convincing argument. The presence of Antony in the declamation will allow declaimers to introduce anti-Antonian invective in a similar way to the other declamations relating to Cicero’s death. Turning to the arguments used in the declamation, the arguments used for the prosecution of Popillius Laenas in §§1–7 focus upon Cicero’s death in a similar way to the two *suasoriae* discussed above: much of the argumentation is amplificatory in nature, stressing the cruel nature and circumstances of Cicero’s death, and is thus useful evidence for the reception of Cicero’s death in the declamatory tradition.⁸³ This section will therefore concentrate on the distinctive aspects of the declamation rather than covering the aspects it shares with *Suasoriae* 6 and 7. Therefore more attention will be paid to the arguments made in Popillius’ defence, as those are more useful in understanding the positions taken by the declaimers and how this allows us to reconstruct what Cicero meant to them.

In *Controversia* 7.2.8–14 Seneca gives us examples of arguments *in alteram partem* of the kind wholly absent from *Suasoria* 7 and touched on in *Suasoria* 6.12–4. While Seneca is keen to point out that the *ὑπόθεσις* is a declamatory invention we should not allow this to cloud our judgement. From a rhetorical point of view, the arguments put forward in Popillius’ defence give us a better view of how the declaimers can argue what must be understood as the

⁸³ As the reception of the events surrounding Cicero’s death in the declamatory tradition has already been discussed, the evidence of *Controversia* 7.2 is not discussed in detail as it is generally consistent with that of *Suasoriae* 6 & 7.

more challenging of the two sides. First the argumentative strategy needs to be decided upon: the facts of the case are not in dispute, nor is their definition – Popillius killed Cicero and does not deny this fact; the case is therefore qualitative and logical since the case turns on the interpretation of Laenas’ act. If you consider that his act was not illegal and that it was justified by the proscription you could implement the argumentative strategy known as counterplea (ἀντίληψις); if you consider the act to be illegal you could use transference (μετάστασις) transferring the blame onto a third party, Mark Antony, or plead mitigation (συγγνώμη) due to circumstances beyond Laenas’ control.⁸⁴ The arguments in Laenas’ defence are mostly concerned with transferring the blame to Antony (μετάστασις) and presenting his having to kill Cicero as a punishment rather than something in which he took pleasure, in other words constructing a mitigating circumstance (συγγνώμη), both of which are part of the qualitative category of heads of argument known as ‘Counterposition’ (ἀντίθεσις).⁸⁵

In §8, Seneca comments *Sic autem eum accusant tamquam defendi non possit, cum adeo possit absolvi ut ne accusari quidem potuerit*. The declaimers are so concerned with the emotional impact of Cicero’s death that they make Laenas out to be undefendable, while this is not the case.⁸⁶ As we have seen, the case for Laenas’ defence can be made when the case is considered in an abstract sense. The fact that in Seneca’s eyes Laenas should not even have been charged in the first place should cause us to consider that the charge could be countered by such an objection. This does not, however, make for a particularly entertaining argument, or one that

⁸⁴ The translations of Greek technical terms are taken from Heath (1995).

⁸⁵ In general, this thesis refers to technical terms in relation to declamation using the translations employed by Heath (1995), though the Greek (and occasionally Latin) terms are included for the reader.

⁸⁶ This is similar to the situation in *Suasoria* 7 where no declaimers up to the publication of the Elder Seneca’s work (c. AD 37–40) argue *in alteram partem*, or the general reluctance to do so in *Suasoria* 6 (discussed above). Cicero’s death seems to have had such a deep emotional effect that arguing in favour of it seems fairly rare in a deliberative context. In the forensic setting of *Controversia* 7.2 such argumentation is more possible.

exercises a declaimer's abilities: thus, the declaimers focus on the fact that *Laenas* has killed *Cicero*.

Porcius Latro begins by claiming that *Laenas* killed a man, a citizen, a senator, a consul, *Cicero*, his *patronus*. This series of six terms describes his crime in ever more personal and emotive terms, which seems to be *Latro's* aim: *Hac enim ratione non adgravari indignationem sed fatigari*. In *Latro's* opinion stressing the enormity of *Laenas's* crime can lessen rather than increase the emotional impact of that crime. *Latro* goes on to consider the main point of the case, *Statim illo veniendum est ad quod properat auditor* which is effect the fundamental aspect of the case for *Laenas's* defence. The majority of the case is unproblematic, with the exception of the fact that *Laenas* has killed his *patronus*. *Latro* sees his defence as follows: *patrocinium eius est civilis belli necessitas*, in other words that *Laenas's* act should be mitigated due to external circumstances beyond his control. *Latro* considers the case in terms of law and equity: *Licuit enim in bello et hominem et civem et senatorem et consularem occidere, ne in hoc quidem crimen est, quod Ciceronem, sed quod patronum*. *Laenas's* crime is legal in every way (as *Cicero* had been proscribed) except that he killed his patron, which while it is not against the letter of the law is against its spirit: clients should not kill their patrons. *Latro* reinforces the point by claiming *Naturale est autem ut, quod in nullo patrono fieri oportuit, indignius sit factum in Cicerone patrono*; the fact that the victim is *Cicero*, Rome's greatest orator and an outstanding defence advocate makes this crime worse. Despite the enormity of the crime with which he is charged, *Laenas* had a right to do what he did, but the fact that he killed his patron (to whom he owed a considerable debt, that of his life) cannot be seen as fair, and it is this fact that must be countered by one or both of the counterpositions described above.

The defence advanced by *Romanus Hispo* in §13 treats *Laenas* and *Antony* separately. He defends *Laenas* by claiming that he was forced to kill *Cicero*, in other words transferring the blame onto *Antony*, whom he defends by claiming the necessity of the act of

killing Cicero, in other words the political expediency of the act: killing Cicero could be seen as having beneficial consequences, which is an ingenious use of qualitative argument. Seneca's comment on Hispo *Solus ex declamatoribus in Ciceronem invectus est* must also be considered. While there are several declaimers who are willing and able to defend Popillius Laenas (and Antony), Hispo's position in this declamation is unique: he along with Asinius Pollio and the author of the Ps.-Sallustian *Invectiva in M. Ciceronem*, represents a small group of rhetoricians who argue against the canonisation of Cicero as the greatest Roman orator and as a figure whose death places him in the category of republican martyrs along with Cato and Brutus.⁸⁷

The arguments used by declaimers in *Controversia* 7.2 relate to the declamatory hypothesis which states the Cicero defended Popillius Laenas on a charge of parricide; while Winterbottom (1974a) 51 n.2 sees Cicero's defence of Laenas as imaginary, many of the declaimers and subsequent historians take this scenario as fact rather than a declamatory invention. In §8, Seneca tells us that Cicero's defence of Laenas took place in the context of a private case, that was civil rather than criminal, and that the notion that the charge was one of parricide is an invention on the part of the declaimers.

In the face of such evidence, I wish to consider the sources we have which describe Cicero's death. While the fragment of Livy 120 preserved in *Suas.* 6 is a detailed narrative of Cicero's death, if we compare the abbreviated account contained in the *Periochae* of Book 120 (l.16–9) we read *...et M. Ciceronis. huius occisi a Popillio, legionario milite, cum haberet annos lxxiii, caput quoque cum dextra manu in rostris positum est.* So in Livy's account, presumably published at some time before Augustus' death, Laenas is the name given to the soldier who kills Cicero. Laenas' name is not to be found in the account preserved in the Elder Seneca, although due to the fact that the passages quoted by Seneca are the only fragments we have of Book 120

⁸⁷ No-one to my knowledge has taken Seneca's comment concerning Romanus Hispo's invective against Cicero as having any bearing on the authorship of the anonymous invective ascribed to Sallust. While the two could be congruent, such an attribution could not be based on a single comment by a contemporary author without comparing the prose styles of the *Invective* with that of the passages of Hispo contained within the Elder Seneca, a matter which is outside the scope of this thesis.

we cannot be sure whether Popillius Laenas was mentioned by name or whether the fact that Laenas' name had been so strongly connected to Cicero's death that it found its way into the *Periochae*. In Brutteditus Niger's account of Cicero's death in *Suas.* 6.20 we see similar information, though in a lot more detail than the Livian summary:

sed, ut vidit adpropinquare notum sibi militem, Popillium nomine, memor defensum a se laetiore vultu aspexit. At ille victoribus id ipsum imputaturus occupat facinus, caputque decisum nihil in ultimo fine vitae facientis quod alterutram in partem posset notari Antonio portat, oblitus se paulo ante defensum ab illo.

Niger's account is coloured and amplificatory, in order to evoke *πάθος* in the audience, and deriving from his rhetorical training and background.⁸⁸ The scene is framed with references to Cicero's defence of Popillius Laenas: at the opening Cicero smiles when he recognises a client he has defended successfully, while Laenas is only concerned with the task in hand; at the end Laenas takes the head to Antony, having forgotten that he has just killed his patron.⁸⁹ This stress on Cicero as a successful orator greeting his client only to be murdered by him is fundamental to declamations and historical accounts of Cicero's death.

The sources which show the relationship between Laenas and Cicero, Val. Max. 5.3.4, Sen. *Contr.* 7.2.8 and *Suas.* 6.20, Sen. *De Tranq. An.* 16 and Appian *B.C.* 4.20 simply see Cicero as having been Popillius Laenas' advocate; whereas both Plut. *Cic.* 48.1 καὶ Ποπίλλιος χιλίαρχος, ᾧ πατροκτονίας ποτὲ δίκην φεύγοντι συνέϊπεν ὁ Κικέρων, ἔχοντες ὑπηρέτας and Dio 47.11.1 claim (according to Crawford) claims that the charge was parricide.⁹⁰ While Dio's portrayal of Cicero is generally negative,⁹¹ it is extremely hard to justify Crawford's reading

⁸⁸ Brutteditus Niger was a pupil of Apollodorus of Pergamum (*Sen. Contr.* 2.1.35–6), who also taught the emperor Augustus rhetoric. On Niger's life and career see Rutledge (2001) 204–5, on his fragments see *HRR* 2.90–1.

⁸⁹ This aspect of Cicero's death is central to its categorisation in Val. Max. 5.3.4. For mediæval illustrations of Popillius' murder of Cicero see below fig. 1.

⁹⁰ Crawford (1984) 238.

⁹¹ On which see Millar (1964). Wiseman (1974) 141 n.16 argues that Dio and Plutarch, when showing Cicero in a negative light, share a similar (and possibly common) source. There is evidence for negative views of the *Ciceronis obtrectatores* of the late republic, for which see Sen. *Contr.* 3.pr.8, Quint. 11.1.23, Asconius 93–4C, and Quint. 9.3.94 (*ORF* 371) quotes what may be a reply to

of Popillius as a parricide in Dio: *Ποπίλιος δὲ δὴ Λαίνας τὸν Κικέρωνα τὸν Μάρκον ἀπέκτεινε καίπερ εὐεργέτην αὐτοῦ ἐκ συνηγορήματος ὄντα*. The text clearly states that Cicero appeared on Laenas' behalf and that a patron-client relationship existed between the two men; however, there is no mention of the charge being parricide. Crawford may have inferred this on the basis of the other evidence (some of which does mention parricide) but one cannot claim that Dio's text implies that Popillius Laenas was a parricide.⁹² Thus, Plutarch appears as the only author outside of the halls of the declaimers who sees Laenas as a parricide as opposed to just a murderer.⁹³

On the evidence of Valerius Maximus,⁹⁴ who states that Cicero undertook the defence at the request of M. Caelius Rufus, we at least have a *terminus ante quem* for the case of 48BC.⁹⁵ While any attempt to reconstruct the case or Cicero's speech *pro Popillio Laenante* would be 'sheer guess work',⁹⁶ it is enough for the purposes of this chapter to consider what it meant for Cicero to have been killed by a client and how this can be demonstrated in the declamations.

The situation is bad enough, but the declamatory invention of Popillius as parricide adds to this because of the way that the patron is seen as a surrogate father. Another factor underlying (or explaining) this declamatory *amplificatio* is that Cicero was hailed as *pater patriae* in the aftermath of the Catilinarian conspiracy, so Popillius is effectively a double-parricide where Cicero is concerned (regardless of whether he killed his own father). This means that the invention of Popillius' parricide could be part of the declaimers' response to Cicero's

Cicero's (now lost) *In toga candida*. Asconius is unsure whether the speeches are by Catiline and C. Antonius Hybrida, or the work of Cicero's enemies.

⁹² This point is also made by Wright (2001) 445 n.31. *συνηγορία* refers to the act of appearing as an advocate as another's behalf. The question of the nature of the case must remain undecided, although it is perhaps more likely that the case was civil than criminal (on the basis of Sen. *Contr.* 7.2.8).

⁹³ This fact allows us to state that Plutarch's source for Laenas as a parricide is likely to be declaimers speaking in declamations such as Seneca *Contr.* 7.2, as these are the only people who link Laenas with both parricide and killing Cicero.

⁹⁴ Val. Max. 5.3.4

⁹⁵ Due to M. Caelius Rufus' death in that year.

⁹⁶ As noted by Gruen (1974) 530.

death. In addition, Popillius is seen as a part of Antony's army and thus is a means to blacken Antony and excite sympathy for Cicero, while leaving Octavian out of the equation.⁹⁷

The very figure of Laenas is problematic: in Appian's account,⁹⁸ the name Popillius Laenas appears as a senator involved in the murder of Julius Caesar, where he detains him before he is killed by the other conspirators; he appears as a soldier involved in the murder of Cicero, where his rank is variously described as being a military tribune, a centurion or a private soldier. Can these two people called Popillius Laenas be one and the same? At first sight the idea of a senator being sent out as a henchman for the proscribing triumvirs seems unlikely, although the political situation may have necessitated such action. It is perfectly possible that Laenas did exist, was defended by Cicero and was involved in Cicero's murder. As Appian is the only source to mention his involvement in Caesar's death, the absence of supporting evidence may point to his being included in another famous Roman death scene some 21 months earlier by an author well acquainted with the declamatory and historical tradition surrounding Cicero's death.

To conclude, what we see in the three Senecan declamations (read in reverse order) is an increasing willingness to debate and discuss. To put it another way, defending Popillius Laenas for Cicero's murder can be seen as easier and more straightforward than advising Cicero to beg Antony's pardon, which is itself easier and more straightforward than advising Cicero to burn his books. In rhetorical terms, no one of these cases is easier than another, and in the late first century AD Quintilian gives clear advice on how to plead a case such as *Suasoria* 7 or 6. The fact that some of the same arguments proposed by Quintilian have been deployed by the declaimer Geminus in *Suasoria* 6 is testament to the skilful use of arguments

⁹⁷ In all the declamations surrounding Cicero's death in the Elder Seneca the figure of Octavian is almost entirely absent from the declamations, occasionally reference is made to the triumvirs as a group, which could perhaps reflect badly on Octavian, but is an order of magnitude away from the invective contained within the Pseudo-Ciceronian *Letter to Octavian*.

⁹⁸ B.C. 2.115–6

based on the heads of purpose (τελικὰ κεφάλαια) in a deliberative context, which is the point of arguing a deliberative declamation. If we want to understand the difference between the declamations and the arguments they do (or do not) use we need to understand them and their subject matter in conceptual and cultural terms rather than just through the technical aspects of the arguments. The hypothesis of *Suasoria* 7 allows us to see the textual construction of ‘Cicero’ in action – Cicero’s *scripta* are more important than his life as they allow later generations to read, study and emulate him in a far greater and more meaningful way than simply adopting his position against the triumvirs and being killed. One reason for this is that as the greatest orator of the late republic he ‘dies for his art’ in a manner similar to Demosthenes, so while his death is tragic, it is his paradigmatic status as the greatest Roman orator which ensures his importance within Roman society, one where the orator still had an important part to play.

OTHER DECLAMATIONS ON CICERO

In addition to the two *suasoriae* and one *controversia* preserved by the Elder Seneca there exist two other works which are declamatory in nature, though not necessarily in form, which deal with Cicero as a political figure and with his death: the *Invective against Cicero* ascribed to Sallust by Quintilian and the manuscript tradition and the anonymous *Epistula ad Octavianum*. These two works are unusual in that the former purports to be a speech made in the Senate attacking Cicero,⁹⁹ whereas every other declamatory work which survives generally takes Cicero’s side; the latter, rather than attacking Antony, the triumvir usually blamed for Cicero’s death, attacks his colleague Octavian. However, before looking at the *Epistula ad Octavianum*, this section will consider how such a work may have come about. In short this thesis asserts that two letters from Brutus to Cicero and Atticus, whose authenticity has been

⁹⁹ Thus the consideration of this letter will also examine whence and how such anti-Ciceronian opinions may arise.

doubted, but which are almost certainly genuine, can be taken as the basis for the position taken by the author of the *Epistula ad Octavianum*.

It is generally accepted that Antony was the triumvir most in favour of proscribing Cicero due to the invective contained within the *Phillipics*, yet if we turn to *Cic. ad Brut.* I.16 & 17,¹⁰⁰ we also have evidence of arguments which do paint either Octavian or his politics in a favourable light. These letters, then, can provide us with a background against which to interpret the Pseudo-Ciceronian *Epistula ad Octavianum*. However, before looking at *ad Brutum* I.16 and 17, the question of their authenticity must be considered. While Shackleton Bailey is an advocate of the letters' falsity, and has laid out his argument in his editions of Cicero's letters,¹⁰¹ Moles' article provides a cogent and well-argued defence of the letters' authenticity.¹⁰² Moles understands the element of 'declamatory rant' therein as a reflection of the temperament and situation of their author (Brutus), rather than a means of identifying them as the product of a first century declaimer. If we take these letters as genuine, they are the earliest documents in which Cicero is given advice, and can therefore be seen as one of the starting points of the tradition of advice and invective which develops through the triumviral period into the declamatory tradition of the early empire as represented by the Elder Seneca and the pseudo-Sallustian declamations.

To demonstrate the widespread use of invective in the triumviral period we can turn to Octavian's invectives against Fulvia and Antony in relation to the siege of Perugia, which

¹⁰⁰ This thesis refers to the letters by their traditional numbering rather than that of Shackleton Bailey's editions (1980) and (2002), in which they appear as 25 and 26.

¹⁰¹ Shackleton Bailey (1980) 10–14 and (2002) 204–5, 286, 304. Caution must however be exercised: cf. Clift (1945) 152 (quoted in Berry (1996)): 'It seems quite unwarranted ... to summon forth the ghost of the "Empire rhetorical school exercise" to account for the authorship of all Republican literature about which there is the slightest cause for doubt'. Additionally, Syme (1939) 184 n.5 claims that 'the authenticity of the letters has been contested on inadequate grounds'.

¹⁰² I am far less convinced that the letters are false, unlike the letters purporting to be from Sallust to Caesar, the *Invectives against Sallust and Cicero*; the argument of Moles (1997) is much stronger than that of Shackleton Bailey. The letters must therefore be seen as the beginning of the declamatory tradition which grows up around the events before and after Cicero's death. This reassessment must be taken into account when attempting to understand the declamations on Cicero.

additionally indicate the political instability of the triumviral period.¹⁰³ These invectives are reciprocated by Antony's accusations of passive homosexuality against Octavian,¹⁰⁴ an exchange into which Octavian's verses insulting Asinius Pollio (a supporter of Antony) can be seen to fit.¹⁰⁵ The whole presents us with evidence for a propaganda campaign as part of the struggle for power and domination. The use of invective in power-struggles is symptomatic of a rhetorical culture, and Wright (2001) sees anti-Antonian invective in the triumviral period as the start of the tradition explored and codified by declaimers and historians.

If, for the sake of argument, the letters from Brutus to Cicero and Atticus were false and the work of a first-century declaimer, they could be treated in depth as an example of the reception of the figure of Cicero and part of the concentration on the events surrounding Cicero's death. The fact that the letters are more likely to be genuine, however, does not preclude their treatment as relevant to the early reception of Cicero because their anti-Octavian rhetoric can be seen as part of the politically motivated invective of the triumviral period.¹⁰⁶ Given the position taken by the author of the pseudo-Ciceronian *Epistula ad Octavianum*, the letters from Brutus to Cicero are the beginning of a tradition in which Octavian takes the place usually reserved for Mark Antony as a tyrannical ruler and the cause of Cicero's death.¹⁰⁷

¹⁰³ Octavian's verse invective is found *apud* Mart. 11.20 = *FLP* fr.1. On which see Courtney (1993) 282–3, Ruffell (2003) 45 and Hallett (1977).

¹⁰⁴ These are found in Suet. *Aug.* 68–9.

¹⁰⁵ On these verses see Macrob. *Sat.* 2.4.21: *Temporibus triumviralibus Pollio cum Fescenninos in eum Augustus scripsisset ait "At ego taceo; non est enim facile in eum scribere qui potest proscribere"*. On the relationship between Octavian and Pollio at this time see Syme (1939) 209–12. Pollio's statement (assuming that it is genuine and contemporary) may well be one of the first examples of the pun on *scribere* and *proscribere* which can be found in the *sententiae* of declaimers in the declamations concerning Cicero's death (in particular *Suasoria* 7, although the comments of Seneca in *Contr.* 10.pr.6 are also relevant).

¹⁰⁶ On Antony's anti-Octavian pamphlets see Ov. *Ex Pont.* 1.23 and Suet. *Aug.* 69. On the former see Gartner (2005) 105 & 107.

¹⁰⁷ On the development of invective and its relation to Greek models and its developments in the late republic and early empire see Dunkle (1967) and (1971) and Corbeill (1996).

In *Letter* 1.16 Brutus' main strategy is to chastise Cicero for his behaviour towards Octavian (referred throughout the letters as Octavius) and to warn him that, in promoting Octavian at the expense of Antony, Cicero is substituting one tyrant for another. Brutus does urge Cicero to resist and not calmly to accept his fate, a point which differentiates this letter from the majority of the declamatory tradition. In *Letter* 1.17 he urges Atticus to persuade Cicero to oppose Octavian as well as Antony, characterising Cicero's future life as one of slavery (something also touched on by declaimers in the Senecan corpus).

PS-CICERO *EPISTULA AD OCTAVIANUM*

This work, whose author is unknown¹⁰⁸ and whose date is not fixed, has been somewhat ignored but, given the status of pseudoepigraphic literature as a sub-literary genre, this is hardly surprising.¹⁰⁹ The letter is, I believe, an important part of the declamatory construction of 'Cicero' and an attempt to blame Octavian rather than Antony, but like the other declamations on the events surrounding Cicero's death this work has a basis both in the works of Cicero (in this case two letters from Brutus) and in contemporary events.

When attempting to provide a date for the *Epistula ad Octavianum*, Lamacchia (1968), who dates it to the third or fourth century AD, is willing to categorise some anti-Augustan works (*ad Brut.* 1.16 and 17) as first-century declamatory works. This in itself (regardless of the question of the authenticity of the letters) suggests that the *Epistula ad Octavianum* could also date from the first century. We are used to the idea of contemporary anti-Augustan poetry, so what is wrong with the idea of contemporary anti-Augustan prose?¹¹⁰

Likewise, Heath (1999) has highlighted the problems inherent in dating Longinus by thematic similarity, so while Lamacchia can also point to anti-Augustan views expressed in

¹⁰⁸ No recent scholar, to my knowledge, has claimed that the author of this letter is Cicero. Its style and content would preclude such an attribution.

¹⁰⁹ On pseudoepigrapha see Clift (1945).

¹¹⁰ See Hardie (2002) 199–202 on the interplay between Ovid, Cicero (as understood by the declaimers) and Augustus: on the use of Cicero in Ovid as a challenge to Augustus see 201–202; on 201 Hardie quotes Vell. Pat. 2.66.5, which includes his epitaph of Cicero.

the third and fourth centuries, this also is not necessarily definitive evidence for dating the work to that period, as similar views can be found in the period from 43–40 BC and throughout the first century AD.¹¹¹ It is hard to provide conclusive proof for the date (and authorship) of the *Epistula ad Octavianum*, but while this question must remain unanswered it is at least plausible, given the evidence of Brutus' letters and the atmosphere of the triumviral period, that the invective found in the *Epistula ad Octavianum*, if it does not date from the period covered by this thesis, is a development of political invective contemporary with the events it describes.

Despite the political sensitivity of the position adopted within the letter (basically that Octavian is a tyrant), the Early Empire was a period when dissent like this was not impossible. We should remember that the cases of book-burning discussed above are both quite extreme and not terribly common, *actiones de famosus libellis* were not an everyday occurrence; the Principate is not the setting for *Fahrenheit 451*.¹¹² This inevitability means that such invective could exist 'as a matter of course' and be treated, at least in retrospect, as 'water off a duck's back', as demonstrated at one level by Plutarch's anecdote in *Cic.* 49, though the anecdote is definitely two-edged.

This anecdote appears towards the end of Plutarch's biography and recounts an incident when Augustus finds his grandson reading a book of Cicero, which he attempts to hide in his toga when Augustus approaches; Augustus takes the book, reads most of it and makes this comment about its author: *λόγιος ἀνὴρ, ὦ παῖ, λόγιος καὶ φιλόπατρις* (49.5). This anecdote may reflect an old man's guilt at the sacrifice of an ally for reasons of political expediency, in which case the comment can be read as a tribute to Cicero's qualities (their

¹¹¹ The subject of anti-Augustan prose and verse is vast and hotly disputed and will not be discussed here.

¹¹² The examples we have of people who suffer literary cremation have gone too far and transgressed the boundaries of acceptable behaviour, for which they are punished. The situation is not terribly clear-cut: one individual can get away with something which another may be punished for.

enmity notwithstanding), which can in turn be interpreted as a desire to reconcile or incorporate the memory of the now long-dead Cicero (while displacing the blame for his death onto Antony). On the other hand, the anecdote and comment can also be understood as evidence for the continued problematic status of Cicero because of the supposed necessity to hide the book and the ambiguity of the comment itself: Plutarch's use of *φάσαι* makes Augustus appear hypocritical. The anecdote provides evidence for the ambiguity of the relationship between Augustus and Cicero, an ambiguity which is exploited by the declamatory tradition which grows up around it. An example of this ambiguity would be the arguments of a declaimer adopting the persona of 'Cicero writing to Octavian after receiving the advice of Brutus (as contained in letters I.16 and 17)'. The Ciceronian position adopted in the pseudoepigraphic *Epistula ad Octavianum* can always be read as relevant and political and thus potentially problematic.

The pseudoepigraphic letter to Octavian is, in essence, an example of invective,¹¹³ though it does have many of the attributes of a letter. The basic position taken by the author adopting the persona of 'Cicero' is anti-Octavian.

From §2 onwards 'Cicero' appears to be quite willing to die, just as the majority of declaimers in Seneca *Suasoriae* 6 and 7 seem unwilling or unable to advise Cicero to beg Antony's pardon or burn his books and thereby save his life. In the *narratio* (§§3–4 and 7)¹¹⁴ 'Cicero' begins by criticising Antony's behaviour, before turning to 'Octavian'. While his early actions are seen in a positive light, it becomes clear in §3–5 that 'Octavian' is acting in a way that mirrors the actions of Antony in declamations such as *Suasoriae* 6 and 7. In §6–7 'Cicero' reproaches himself for trusting in 'Octavian', before turning in §8 to a comparison of Octavian with Antony: while Antony is not seen as good, Octavian is portrayed as even

¹¹³ Lamacchia (1968) 9 understands it as a *suasoria* whose hypothesis could be described as *Deliberat Cicero utrum Octavianum pro republica deprecetur, an una cum re publica moriatur*.

¹¹⁴ Lamacchia (1968) 9–10 analyses the structure of the 'speech' as made up of a *proemium* (§1–2), an *enarratio* (§§3–4, 7), a *conquestio* (§5–6) and a *peroratio* (§8–10).

worse. In §9 'Cicero' attacks Octavian using the standard topics of invective, ending with a list of *exempla* including the Decii, Marius and L. Iunius Brutus, saviours of Rome who would not welcome Octavian's rise to power, before 'Cicero' decides to give up his life.

The presentation of 'Cicero' in this declamatory letter is similar to the position adopted by the majority of the declaimers quoted by Seneca. Rome is seen as in the hands of tyrants and death is a welcome release. In making Octavian the target of abuse rather than Antony the author cuts through the façade by which no blame is attached to Octavian for Cicero's murder.¹¹⁵ This may be due to the work having its roots in triumviral propaganda, a bold declaimer or a later attempt to redress the balance. Its presentation of Cicero strengthens his position as victim.

PS-SALLUSTIAN *INVECTIVE AGAINST CICERO*

The Pseudo-Sallustian *Invective against Cicero* has the privilege of being the only pseudoepigraphic work which is quoted by Quintilian and treated as though it were genuine.¹¹⁶ In less than a hundred years from its probable composition the work had been accepted as part of the Sallustian canon.¹¹⁷ The work is also unusual in that its dramatic date is 54BC and thus it is one of only three extant declamations (the others being 'Cicero's' reply to Sallust and the *Declamatio in Catilinam*) which do not deal with the events surrounding Cicero's death.¹¹⁸ The work is also unusual in that it purports to be a piece of political invective. In a declamatory context, the work can thus be seen as a developed form of the preliminary exercises known as encomium (*laudatio* or *ἐγκώμιον*) and invective (*vituperatio* or

¹¹⁵ It may also reflect the influence of Brutus' letters to Cicero and Atticus in the formation of a declamatory tradition.

¹¹⁶ Quint. 4.1.68 and 9.3.89 quotes and discusses the Sallustian *Invective against Cicero* as if it were genuine, while modern scholars are inclined to understand the work as part of the pseudoepigraphic tradition and the work of an unknown 1st century declaimer. On the *Invective* and other pseudo-Sallustian works, see Syme (1964) 314–51.

¹¹⁷ The ps-Ciceronian invective against Sallust, written in response to this invective has not been covered due to the constraints of time.

¹¹⁸ I do not discuss the *Comm. Pet.* ascribed to Q. Cicero and considered by some scholars to be a product of the rhetorical schools of the Early Empire, generally thought to be part of the anti-Ciceronian movement.

ψόγος),¹¹⁹ which can in turn be developed into comparison (*comparatio* or σύγκρισις). The rhetoric of praise and blame, while being the cornerstone of epideictic rhetoric, is also important and not without its uses in deliberative and forensic contexts, where the same technique can be used to attack and defend proposals, witnesses or speakers, as the case requires.¹²⁰

While it is easy to write off the *Invective against Cicero* as a fake, a product of the schoolroom and lacking in literary merit, we must remember that while we know of the attitude of Asinius Pollio towards Cicero¹²¹ and that Cestius Pius composed speeches in reply to those of Cicero,¹²² the *Invective* is the most complete example of what may be termed an ‘anti-Ciceronian’ point of view.¹²³ The speech begins in the character of one of Cicero’s enemies,¹²⁴ who is replying to Cicero’s abuse of him. In section 2 the author begins by attacking Cicero’s character and upbringing, making the accusation that Cicero has allowed his body to be used for shameful acts, which is a common accusation in both invectives and historiography.¹²⁵ The author then accuses Cicero of having gained his eloquence by sacrificing his chastity to Piso. While this is part of the normal pattern of invective, it may also reflect an Athenian democratic trait of characterising their public speakers as sex-mad, sexually deviant.¹²⁶ The author then widens his focus to include Cicero’s immediate family,

¹¹⁹ Ancient theoretical accounts of invective can be found in Quint. 2.4.20–I and 3.7.19–22, [Hermog.] *Prog.* 15.9, 18.9, 19.18 [Rabe], Theon 109–12, Aphth. 27.12–31.5, which takes Philip of Macedon as an example, Lib. *Prog.* 9.3.1.1–8.13.7 contains invectives against Achilles, Hector, Philip, Aeschines, Wealth, Poverty, Anger and the Vine.

¹²⁰ On which see Pernot (1993).

¹²¹ Sen. *Suas.* 6.14. On Pollio’s anti-Ciceronian polemic, see Gabba (1957) and Millar (1964).

¹²² Sen. *Contr.* 3.pr.15. On the other side of Ciceronian speeches both in terms of those used at the trials and in later declamations see Alexander (2002).

¹²³ The evidence of Sen. *Contr.* 7.2.14 (discussed above) could be taken as providing a possible author for the work in the declaimer Romanus Hispo, although his invective against Cicero may refer only to that particular declamation rather than indicating further examples.

¹²⁴ On the identification of the speaker as Piso see Nisbet (1958).

¹²⁵ Cf the character sketches of Catiline in Sall. *Cat.* 5 and Sejanus in Tac. *Ann.* 4.1 (see Martin & Woodman (1989) *ad loc.*). On the use of such accusations in rhetoric and historiography see Dunkle (1967) and (1971).

¹²⁶ For the association of sexual deviancy and skilled (potentially amoral) speech in fifth-century Athens see the general discussion of O’Kell (2003) 286–8, which includes a detailed examination of

his wife Terentia and daughter Tullia. The author seems to have elided Terentia with her half-sister, Fabia, who was accused of having had an affair with Catiline,¹²⁷ before turning to Cicero's 'beloved' daughter to reinforce the idea of sexual perversion. The author then considers Cicero's background and political career, which he paints in a very negative light.

By considering this standard list of elements used in speeches of this type,¹²⁸ we can see how the author of the speech takes aspects of Cicero and his life to construct a damning assassination of Cicero, his achievements and his character. The work is a clear source for later negative portraits of Cicero, notably that of Dio. We are able to see how Cicero's enemies viewed him; and to examine how and why a negative view of Rome's greatest orator grew up.

While the declamations collected by the Elder Seneca have recognisable deliberative or forensic forms and purposes into which a fair amount of anti-Antonian invective is introduced for amplificatory purposes, to affect the emotions of the audience, the two other declamations discussed above dispense with the standard declamatory framework and adopt the form of a letter (and the argumentation of a speech) or a political invective, which they use to paint a negative picture of Octavian and Cicero respectively. They are unusual in this respect as, with the exception of speeches in historians and the odd fragment of a speech,

Cleisthenes as an effeminate, political speaker and ambassador 286 and n.7. Sexual passivity, oratory and femininity are linked in the insults levelled at *komodoumenoi*: for a complete catalogue of insults and the political activity of their targets, see Sommerstein (1996). For accusations of sexual deviancy (including cunnilingus) aimed at politicians in general see Storey (1998) and for a specific example see Storey (1995). For womanisers being portrayed as effeminate and skilled speakers, see O'Kell (2003) 289 and n.14.

¹²⁷ Asc. *In Tog. Cand.* 91.

¹²⁸ These are a list of personal attributes which may be relevant to either praise or blame, they include: *birth*: nation, homeland, ancestors, parents, *education*: chosen lifestyle, skills, habits, *achievements*, illustrating qualities of: *soul* (courage, practical wisdom etc), *body* (beauty, speed, strength etc), *fortune* (power, wealth, friends etc). On the topics of encomium (*Τόποι ἐγκωμιαστικοί*) see [Hermog.] *Prog.* 15.18–17.4 (Rabe), Aphth. *Prog.* 21, 27 and Hermog. 46.14–18, where they form a major part of the heads known as motive and capacity (*βούλησις καὶ δύναμις*), part of the primary argument of conjecture (*στοχασμός*), where the crime is contested. The prosecution or defence use the circumstances of the case and the defendant's character to provide a plausible argument that he did (not) have a motive to commit the crime, and that he was (not) able to commit the crime or whether this fact matters. Thus the arguments from character used in a preliminary exercise are applicable to political and legal speeches. On this subject see Webb (2001).

they are some of the lengthiest treatments we have of invectives against these figures.¹²⁹ Their size and subject matter allow us to see three of the major figures in the downfall of the republic used as material for declamation.¹³⁰

DECLAMATIO IN CATILINAM

The *Declamatio in Catilinam* is the longest extant declamation on a Ciceronian theme. Its date is uncertain although early editions ascribe its authorship to Porcius Latro, such an attribution is unlikely and thus the work is best attributed to an unknown declaimer of the first or early second centuries AD. The work seems to have escaped the notice of the vast majority of scholars, yet falls into the pattern whereby the two main areas explored by declaimers seem to be Cicero's conflicts with Catiline and Antony and his subsequent proscription by the triumvirs. It is clearly linked to earlier declamations yet a politically safe speech act – it is perfectly acceptable to have a go at Catiline, a bogeyman of the late republic as Rome does not stand for rebellions or coups.

This thesis, while it is aware of the text, does not discuss it in detail because it is evidence for the reception of Catiline rather than Cicero. It does however help to show that the figure of Cicero continues to be of importance up to the Antonine period (when the work has been argued to have been written.¹³¹ In addition, it is further evidence of the

¹²⁹The pseudo-Ciceronian *Invective against Sallust* is the second longest pseudoepigraphic work we possess, the longest being the (Antonine) *Declamatio in Catilinam*. We also have the Ps-Cicero *Quinta Catilinaria* and the *Responsio Catilinae* which are pseudoepigraphic works in the tradition of the *Invectives* against Cicero and Sallust, written in the medieval period at some point in the 11th or 12th century, on the dating of which see De Marco (1991) 31. These works are outside the temporal boundaries of this thesis and therefore are not covered. They are invectives in the tradition of the works discussed above and they make much use of the *Catilinarians* and the ps-Sallustian *Invectives*.

¹³⁰The one exception to the works discussed is the Ps-Cicero *Oratio pridie quam in exilium iret*, written at some point in the 2nd century AD, whose title and presumed date is self-explanatory. The work, more of a justification of Cicero than an attack on Clodius, makes reference to Plutarch, a variety of Ciceronian works and Quintilian. On the dating of this work see De Marco (1991) 5. The choice of event for the speech is unusual compared with the rest of the canon, but as a significant point in the life of Cicero it would allow a schoolboy or adult to demonstrate their historical and literary knowledge, in the same way that the accounts of Cicero's death are seen by the Elder Seneca as necessary to declamations on that subject, or that the advice of Geminus in *Suas.* 6 is singled out for praise.

¹³¹On the work see Zimmerer (1888).

concentration of declamation on two moments of Cicero's life and political career: his opposition to Catiline and Antony.

∞ CHAPTER 2 ∞

THE CONSTRUCTION OF THE ORATOR IN THE
DIALOGUS

GIVEN the importance of the orator as a figure in Roman society both throughout the Republic and the Empire, as exemplified through the person of Cicero, a factor which underlies a great part of the declamations discussed previously, this chapter considers how the figure of the orator, his role and his value in Roman society are constructed within Tacitus *Dialogus de Oratoribus* in a more general sense.¹³² To begin at the beginning, the opening chapter of this work can be understood as a statement of the question of what it means to be an orator under the Empire at the end of the first century AD. I would also like to argue that Fabius Justus' question to Tacitus, asking for an explanation for the lack of oratory in the late first and early second centuries, can best be understood as a modified form of a declamatory hypothesis; a set of circumstances which serve to focus the subsequent argument.

Thus, a consideration of how Tacitus goes about giving his readers answers to this question provides us with a potential way of reading the *Dialogus*. Most scholars are content to read the dialogue teleologically and, therefore, find that the political explanation offered by Maternus in Chapters 36–41 provides the most satisfactory answer to the question, allegedly posed to Tacitus by Fabius Justus, of why there are no longer any orators.¹³³ There is, however, a problem in that Maternus' first speech seeks to justify giving up oratory for the safer option of poetry, which is at variance with the political problems caused by Maternus' tragedies as related in the opening chapters where the scene for the dialogue is set.¹³⁴ If,

¹³² For an overview of scholarship on the *Dialogus* see Bo (1993).

¹³³ Scholars who read the *Dialogus* in this way include Mayer (2001), Martin (1981), Syme (1958), Bartsch (1994).

¹³⁴ G. Williams (1978) attempts to account for this discrepancy by claiming that Maternus' first speech reflects the conditions at the dramatic date of the *Dialogus de Oratoribus* while the second

however, we accept Heath's understanding of the *ancient* concept of unity within a literary text rather than a modern one,¹³⁵ such inconsistencies need not be seen as a problem.¹³⁶ Such a mode of reading is thus in line with the analyses of Levene (2004a) and Luce (1993), which challenge more orthodox readings of the *Dialogus*.

We should, it must be stressed, be wary of seeing Rome under the Flavians, or indeed any emperor, as an 'oratory-free zone', as it was not. The first pair of speeches deal with the question of whether one should be an orator or a poet, which some scholars (e.g. Fantham 1996) have seen as 'irrelevant to the main discussion'.¹³⁷ Yet, in a dialogue which aims to provide answers to its opening question, a discussion of whether one should even be an orator any more will be shown to be highly relevant. It is important to stress at this point the plural 'answers' in the previous sentence: scholars have often (and understandably) floundered when trying to get a coherent, univocal, reading from the *Dialogus*; this reading will stress the multi-vocal nature of the *Dialogus* and the way in which its competing *λόγοι* can reflect multiple opinions within society and contribute to an on-going debate.¹³⁸ While the opening speeches have been dismissed as a preliminary concern,¹³⁹ the question of whether

reflects the conditions at the time Tacitus wrote the *Dialogus* up for publication. Generally scholars find this argument unconvincing and without parallel in other literary works.

¹³⁵ On the ancient concept of unity, which differs from more modern concepts of unity, see Heath (1989). He argues that unity through thematic coherence is a modern concept, whereas ancient readers are willing to accept works which lack thematic coherence and are composed of various elements. This means that the 'individual speeches are there, Luce suggests, to be assessed individually by the reader, rather than treated as stepping-stones towards an authorially-sponsored conclusion' Levene (2004a) 197.

¹³⁶ If one wished to see a discrepancy between the two speeches, this could be understood as a deliberate strategy to undercut Maternus' position. Having adopted an ancient, rather than modern, concept of unity, such considerations are irrelevant, as in such a reading Maternus is not being inconsistent; rather he is engaging in different arguments at different points in the *Dialogus*, which requires him to adopt coherent individual positions that may conflict in whole or part with each other. Maternus' inconsistency may also be due the nature of advocacy itself. In advocating a position, Maternus as an orator uses the most effective arguments at his disposal. This is part of an orator's skill – having discovered which arguments he can use, he then decides which ones make his case to the best effect.

¹³⁷ Fantham (1996) 193.

¹³⁸ For similar approaches, see Luce (1993) and Levene (2004a).

¹³⁹ Reitenstein (1915) 206–13 and Leo (1960) 278–9 see the opening pair of speeches as not related to the central theme of the dialogue. Barwick (1929) and (1954) sees them as subsidiary and

one should even be an orator or not must be settled before proceeding with the rest of the dialogue. The question is in fact central to the argumentation of the *Dialogus*: if there truly were no point in being an orator the rest of the discussion would be of little or no value. This is because it is a fundamental question: if there was no point in being an orator, the rest of the *Dialogus* would be essentially redundant, as it would be pointless except that one could explain the redundancy of rhetoric by, for example, citing the change in political conditions between the republic and the Principate, as in Maternus' final speech (which will be discussed below).

Turning now to the opening exchange between Aper and Maternus, the structure of Aper's speech has been analysed by Luce (1993) 27, as part of his consideration of the argumentation of the *Dialogus* as a whole; but while he has noticed the division of Aper's speech into topics, he does not analyse these in rhetorical terms. Aper outlines his case at 5.4–5:

quo non aliud in civitate nostra vel ad utilitatem fructuosius (vel ad voluptatem dulcius) vel ad dignitatem amplius vel ad urbis famam pulchrius vel ad totius imperii atque omnium gentium notitiam inlustrius excogitari potest. nam si ad utilitatem vitae omnia consilia factaque nostra derigenda sunt, quid est tutius quam eam exercere artem, qua semper armatus praesidium amicis, opem alienis, salutem periclitantibus, invidis vero et inimicis metum et terrorem ultro feras, ipse securus et velut quadam perpetua potentia ac potestate munitus? cuius vis et utilitas rebus prospere fluentibus aliorum perfugio et tutela intellegitur: sin proprium periculum increpuit, non hercule lorica et gladius in acie firmiter munimentum quam reo et periclitanti eloquentia, praesidium simul ac telum, quo propugnare pariter et incessere sive in iudicio sive in senatu sive apud principem possis.

The topics he will cover in his defence of oratory are: *utilitas*, the usefulness of oratory (in rhetorical terms, utility can be understood as the head known as 'advantage' in Greek τὸ συμφέρον); *voluptas*, the pleasure gained by being an orator (which is an aspect of the head known as 'consequence' in Greek τὸ ἐκβησόμενον); *dignitas*, the standing or importance of an

Fantham (1996) 193 describes them as 'a mere preliminary to his main concern'. None of these positions is satisfactory as the speeches can (and indeed will) be shown to be central to Tacitus' concerns.

orator (an aspect of the head known as ‘honour’ in Greek τὸ ἔνδοξον) and *fama*, the reputation gained by an orator (here ‘reputation’ can also be understood as a subdivision of the head known as ‘honour’).¹⁴⁰ Aper’s *divisio* shows that his speech will use three of the ‘heads of purpose’ (τελικά κεφάλαια)¹⁴¹ in order to convince Maternus that he should be an orator rather than a poet.¹⁴² His speech thus conforms to the norms of rhetorical handbooks when discussing ‘the practical issue’ and its application in deliberative speeches.¹⁴³ The fact that his speech is prefaced by a division of the topics covered does allow us to draw a parallel with the practice of Porcius Latro as described in the Elder Seneca.¹⁴⁴ We can thus posit the idea that such an opening strategy would be recognisable to Tacitus and his readers as a clear signpost of the declamatory nature of the speech which follows it and is, in and of itself, a proof that oratory is alive and well: without its techniques it would not be possible to argue the point cogently, or to refute that point. When this idea is also allied with the fact that there are other occasions throughout the *Dialogus* where declamation is alluded to by all of the participants, which will now be discussed, we will be able to conclude that the *Dialogus* is itself a work made up of declamations.

Aper’s *anteoccupatio*, his anticipation of Maternus’ arguments and their rebuttal, is a well-known declamatory strategy, which is regularly criticised in anti-declamatory statements. It is, however, a standard part of rhetorical training, as when speaking first in a declamation it allows the speaker to deal with the kind of objections an opponent might make, as the speaker does not have the chance to speak again and thereby rebut the other speaker’s arguments; countering an opponent’s arguments before they are expressed also has the effect

¹⁴⁰ Fantham (1996) 195 sees the lack of arguments based on *honestum* in Aper’s speech as proof of the fact that oratory is no longer honourable.

¹⁴¹ On the ‘heads of purpose’ as ‘a checklist of topics to consider rather than a structured sequence of steps’ see Heath (1995) 130, which also provides references to treatises in *RG* 4 and 5 where similar statements are made.

¹⁴² Peterson (1893) II *ad loc* questions whether Aper ‘sketch[ed] out his speech so methodically’.

¹⁴³ For an account of the practical issue see Hermog. 76.3–79.16 (Rabe), translated in Heath (1995) 52–3. On deliberative speeches and Tacitus see Levene (1999).

¹⁴⁴ *Sen. Contr.* I.pr. 21 describes Latro’s use of *partitio* in the preamble to his declamations.

of undermining them and is a useful strategy even in contexts which afford the opportunity to speak twice. The strategy is not without its risks: it is obvious that such practices have more use in a didactic setting, where students need to gain experience in dealing with an opponent's objection,¹⁴⁵ than in real life, where such rhetorical strategies have the potential to undermine a speaker and his case. Heath (2004b) 304 examines this very question in his account of declamation and makes reference to Quintilian's discussion of declamation and declamatory training (in Chapters 12 and 13 of Book 5) in an attempt to show the value of declamation as an educational tool and the differences between the schoolroom and the forum: 'differences create dangers, but do not in themselves invalidate the exercise'.¹⁴⁶ While such rhetorical questions are best not used in an actual speech, they are a necessary part of the process of invention.¹⁴⁷ Their use here by Aper is another clear signpost to the reader that his speech is declamatory in nature.¹⁴⁸

Maternus' reply uses the same heads of argument as Aper's speech: it attempts to reply to Aper's argument of oratory's *utilitas*,¹⁴⁹ it also covers *voluptas* (12.1–6) the pleasure gained by being a poet (which is an aspect of the head known as 'consequence'),¹⁵⁰ *gloria* (12.4–6), and *fortuna* (13.1–4), the glory and rank or reputation of a poet (which are aspects

¹⁴⁵ *Rursus est aliud in scholis permittendum semper, in foro rarum.* Quint. *Inst.* 5.13.45

¹⁴⁶ Heath (2004b) 304.

¹⁴⁷ See Quint. 12. 8, where such practices are a key part of the preparation of a case. For a discussion of this passage, see Chapter 7.

¹⁴⁸ Mayer (2001) 99 notes that 'the parody of a trial and the implicit invitation at 4.1 prompt him to adopt the tone of a prosecutor'. As in both real cases and declamations the 'prosecution' spoke first, this is what we would expect. The notion of a parodic, or a mock, trial is most easily understood as making the proceedings akin to those of a declamation. Most scholars who comment on this passage are more used to looking for literary and philosophical influences than understanding the speeches as part of Roman rhetorical culture and thus are less likely to have noticed the 'declamatory' elements within the *Dialogus*.

¹⁴⁹ Aper remarks in 5.7: *plura de utilitate non dico, cui parte minime contra dicturum Maternum meum arbitror.* Aper's *praeteritio* is a rhetorical effect made to strengthen his argument, as he is aware that Maternus cannot reply by showing either the utility of poetry or that oratory is less useful than Aper claims. It is another sign that the participants have used rhetorical invention to make as strong or convincing a case as possible.

¹⁵⁰ In Greek τὸ ἐκβησόμενον.

of the head known as 'honour').¹⁵¹ As well as championing poetry over oratory, Maternus makes comments about orators and oratory. In the opening of his speech, Maternus attempts to undermine Aper's defence of oratory by claiming that one's innocence is a better provider of security than eloquence: *nam statum cuiusque ac securitatem melius innocentia tuetur quam eloquentia*.¹⁵² This line of argument will be shown to be specious and the kind of commonplace we might expect declaimers to use.

A prime example of the questioning of the nature and value of oratory in the period covered by this thesis, which is related to the opening pair of speeches of Tacitus' *Dialogus*, can be found among the declamatory corpus known as the *Minor Declamations*, ascribed to Quintilian (although this attribution cannot be proved beyond doubt).¹⁵³ Regardless of the identity of their original author, these declamations show not only an awareness of Quintilian's rhetorical theory but also of his criticisms and proposed reforms of declamatory practice. The work of Dingel (1988) has argued that part of the purpose of the declamatory collection was to teach students the application of issue theory to a declamatory speech. Declamation, therefore, gives us an insight into the world of rhetorical training through its underlying rationale; and its content and relationship to Roman society indicates the wider concerns of the society that produced it.

¹⁵¹ In Greek τὸ ἔνδοξον.

¹⁵² The opposite point of view is expressed in Nepos *Arist.* 1.2, where Aristides and Themistocles are compared. Other places where innocence and eloquence are compared include Tacitus *Dialogus Apul. Ap.* 5 and Quintilian *Decl.* 268.18.

¹⁵³ On the question of authorship see Winterbottom (1984) xiv: 'There is no doubt that, if he (sc. the author) is not Quintilian, he is an avid reader of the *Institutio*: every page of my commentary is witness to his debt, in language and subject matter'. Yardley (2003) 181 suggests that some of the minor declamations are the work of Justin, the epitomator of Pompeius Trogus: 'At the very least we may say that Justin knew these works; but so close to the *Epitome* are many of the expressions found in them that one might even float the suggestion of Justin having been the author of a number of them'. Yardley notes only one parallel between Justin and *Declamation* 268 (between Justin 24.1.2 *in...alligantur* and 268.5 *in ambitum alligatos*, on which see Winterbottom *ad loc.*).

On the questions of authorship and dating the *Minor Declamations*, I am inclined to err, with Winterbottom, on the side of caution and thereby am not claiming that they are the work of Quintilian. Nonetheless, regardless of the question of authorship, the declamations are, due to their approximate date (some point in the very late 1st or early 2nd century AD) and subject matter, an important source for a consideration of the construction of the orator in the Early Imperial period.

The title of the declamation which I shall now consider is as follows: *Orator medicus philosophus* — *Contendunt orator medicus philosophus de bonis patris, qui testamento eum heredem reliquerat qui se probasset amplius prodesse civibus*.¹⁵⁴ I will leave aside the social realities of testamentary practice and the relationship between fathers and sons to consider the declamation in rhetorical terms.¹⁵⁵

The argumentative strategy required by any speech of this type is the so-called practical issue (*ἡ πραγματικὴ στάσις*), which consists of using the heads of purpose to show that one course of action, or in this case profession, is more just, honourable, beneficial, or feasible than another.¹⁵⁶ In addition, this declamation requires one to compare the three professions (a development of the preliminary exercise known as *σύγκρισις*), while also being a development of the preliminary exercise known as a *θέσις*, a general proposition e.g. ‘Should a man marry?’¹⁵⁷

The declamation which follows the title is that of the doctor, who begins with some general remarks, including the opening strategy in §2 based on the head of utility: that philosophy only helps a few people, rhetoric harms as many people as it helps, but medicine

¹⁵⁴ Quint. 268 Title and Preface. Declamations on the same/similar theme include: Quint. 7.1.38–9, 7.4.39, Calp. *Decl.* 47, Fort. 87.24 (*RLM*): cf. Fort. 97.7 (*RLM*), RG.8.412.

¹⁵⁵ On wills see Champlin (1991). On the relationship between fathers and sons in declamation see Beard (1993) and Gunderson (2003). A discussion of these areas as a measure of the ‘reality’ of declamatory practice and its usefulness in real terms can be found in Chapter 3.

¹⁵⁶ We may also note that in Philodemus *de Rhet.* 5.8 (Sudhaus) the life of the politician is seen as wretched in comparison with that of a philosopher:

...Ἐὰν δ' ἀποτύχωσιν, οὐκ ἀγανακτοῦσιν εἰ καθάπερ ποιμένος πρόβατα καὶ βουκόλου βόεσι οὕτως ἄφρωνες φαύλῳ μᾶλλον προσέχον, ἀλλὰ τοῖς ὀλίγοις ἀρέσκοντα λέγειν αἰροῦνται τὰ τε ἄλλα καὶ τὰ περὶ τῆς τῶν πολλῶν διαθέσειως, ἔργῳ δ' ἀμυνοῦντι πλείστον ἀποδιδόασιν οὐδὲ δουλεύοντες ἀθροῖς αὐτοῖς ἐνὸς ἐκάστου βουλεύονται κυριλλεύειν. Οὐδέτιν γὰρ ὦν ἐπιθυμοῦσιν παρὰ τούτῳ ἔκπορίζεσθαι ἀξιοῦσιν οὔτ' ἐν τῷ βίῳ οὔτε μετὰ τὴν τελευτήν. Ἀλλὰ μὴν καὶ τῶν φιλοσόφων τοὺς ζηλοῦντας μὲν τὰ παρ' αὐτῶν, προσποιούμενους δὲ ἐν μηδενὶ διεξάγειν καὶ φωρωμένους, ὅτι πολλὰ πρὸς αὐτοὺς καλλωπίζονται καταφρονοῦσι μὲν, ἦττον δὲ τῶν ῥητόρων ἡγοῦνται ταλαίπωρους, ὅτι τῶν ἀποτελεσμάτων γε τῶν ἐκείνοις προσκειμένων πολλοὶ τυγχάνουσιν.

¹⁵⁷ These are described by Quintilian 2.4.24; in addition we have Cicero's famous comparison of the soldier and the orator in Cic. *Mur.* 19–43. In Calp. *Decl.* 32 an orator and a soldier vie to defend their father who is accused of desertion/treason; Calp. *Decl.* 47 treats the contest between an orator and a soldier for the consulship, stressing the usefulness of the orator to the Roman people (on which see Sussman (1994) *ad loc.* While these declamations look towards Cicero's comparison as a model, they are all evidence of a culture which questions and affirms the usefulness of an orator to society

helps everyone.¹⁵⁸ The speaker spends the greater part of the declamation attacking philosophy, before turning to rhetoric and then finally to a praise of his own art.

So much for the technical aspects of the speech, although I will return to them in the discussion of the structure of the speeches in the *Dialogus*, here I wish to consider the way in which this declamation questions rhetoric and its use to society. In §§16–20, the doctor gives his views on the use and nature of oratory:

Haec de philosopho dixisse satis est: transeamus ad oratorem. Quem intellego fiducia eloquentiae ad hanc descendisse causam. Multum se valere in iudiciis putant; rapiunt malas aliquando causas. Et sane si iustitia valeat, quid est eloquentia? Quid ergo civitati conferunt? Illa enim sane remittamus, omne circa verba studium et, cum rerum natura beneficio suo ita homines instruxerit ut nulla res non voce explicetur, supervacuum quendam in exornando laborem. Eodem redeant omnia: quid civitati profuisti? Advocatione tua defensus est aliquis: sed laesus qui ex diverso erat. Eripuisti periculo reum: unde scio an nocentem? Innocentia quidem per se valet. Damnatus est aliquis accusante te: unde scio an eloquentiae vitium sit? Quid ego de privatis loquor? Civitatum status scimus ab oratoribus esse conversos: sive illam Atheniensium civitatem, quondam late principem, intueri placeat, accisas eius vires animadvertemus vitio contionantium; sive populi Romani statum excutere voluerimus, nonne gravissimas seditiones, nonne turbidissimas contiones eloquentissimus quisque habuit, nonne illi Gracchi ad evertendam rem publicam his veluti armis succincti accesserunt? Quid ego dicam quantum civitati profuerit eloquentia? Sibi nocuit. Summos utriusque partis oratores videamus. Nonne Demosthenen illum oppressum veneno suo scimus, nonne Ciceronem in illis in quibus totiens placuerat rostris poena sua expositum?

Haec dixisse satis erat: nam si civitati nihil utilitatis adferunt hi cum quibus contendit,

Quint. *Decl.* 268.16–21

The declaimer adopting the persona of the doctor begins by attacking the idea that orators are useful for legal cases by claiming that they carry off the guilty from punishment,¹⁵⁹ before claiming that justice may ensure the right result, leaving no place for oratory. The notion that only the guilty require advocacy stems from a simplified view of criminal law where guilt

¹⁵⁸ The use of the doctor, philosopher and rhetorician in this and other declamations stems from their being used as examples in Plato's *Gorgias*. For further discussion of the Platonic ideas and their relation to Latin literature see Chapter 6. For a Platonic reading of the *Dialogus* see Too (1998) 180 and Rutledge (1996).

¹⁵⁹ This criticism of rhetoric is also quoted by Quintilian at 2.16.2.

or innocence can be ascertained from the facts of the case; in practice this is not the case. Law and legal advocacy do not deal with simple black and white but rather with shades of grey.¹⁶⁰ If a case were that clear-cut there would be little point in having a trial.

Returning to the declamation, the doctor, having made a fairly weak opening point, concedes that rhetoric may not be entirely worthless, before attacking rhetoric for its superfluity in dressing words and thoughts in redundant verbiage.¹⁶¹ The doctor goes on to argue that in helping one side the other one is harmed, to which one could reply that medicine often has to cause a patient pain for them to get better. The doctor continues by asking if a client is saved from danger whether this says anything about the client's guilt or innocence, and replies to his own rhetorical question by seeing innocence as the best way for to someone not to be condemned.¹⁶² Such an argument is perfectly acceptable in theory; however, in practice, even with the aid of advocates trained in advocacy, miscarriages of justice do happen and always have. The doctor then turns his argument around and considers prosecution by asking whether, if someone accused by an orator is found guilty, that is due to their advocacy or (it is implied) that they were just guilty anyway.

The doctor then turns to political questions and oratory's place in the state. His point is that oratory can cause political disturbance and is therefore damaging to the state. His two examples, those of democratic Athens and the Gracchi are part of a standard list of examples used in arguments of this type.¹⁶³ The doctor then turns to the greatest orators of Greece and Rome, Demosthenes and Cicero and the manner of their deaths. Their suicides and in the latter case proscription in the face of what can be seen as their political failure are

¹⁶⁰ The defence of rhetoric against such charges goes back to Aristotle (*Rhet.* 1355a20–30).

¹⁶¹ Quint. 12.10.40–44 also discusses the question of 'natural' eloquence.

¹⁶² Cf. Tac *Dial.* 11.4, where Maternus makes a similar point.

¹⁶³ Athens can also be compared with Sparta, a state not known for its orators and the argument can then be developed by suggesting that Spartan stability was due to the lack of orators, who were part of the downfall of Athens – cf. Quint. 2.16.4, Cic. *Brut.* 50. On the Gracchi cf. Quint. 2. 16.5 and Cic. *Brut.* 224.

taken as proof that rhetoric is not useful.¹⁶⁴ The doctor's speech as a whole attempts to question the utility of rhetoric by considering its place in society in its legal and political contexts. While it is not perhaps the most successful attack, this can be seen as partly due to the constraints of the declamation. The declamatory situation requires the speakers to show their usefulness to the state; as such the declamation can only consider questions of utility, as opposed to the other heads of purpose which can be used in deliberative speeches.

Much of the argumentation in the declamation against rhetoric is of a commonplace nature,¹⁶⁵ which we might expect in a declamation. The arguments used by the doctor arise from a distrust of the persuasive nature of rhetoric in the hands of politicians and advocates. These arguments found their greatest proponent in Plato, with the extended critique of the *Gorgias*, and many of Plato's arguments continue to underpin subsequent enquiries into the nature and use of rhetoric. Given that the criticism of rhetoric can be understood as a series of clichés (which occasionally have a philosophical veneer of respectability added to them)¹⁶⁶ wherein the same worn-out arguments are reused, what do we make of the criticism of rhetoric used by Maternus and the speaker in Quintilian's declamation? The arguments used against rhetoric do not develop a great deal but are continually possible and trotted out to the extent that they become clichés. Therefore, regardless of these objections to rhetoric and the political conditions within which oratory takes place, it can be understood as always having use and value within Roman society: cases will still come to court and political decisions still require debate.

The nature and use of rhetoric and its place in Roman society are a primary concern of Tacitus *Dialogus de Oratoribus* in general and this is made explicit in Aper and Maternus'

¹⁶⁴ On this pairing and their deaths see Juv. 10.114–32, which also challenges the utility of oratory.

¹⁶⁵ Parallels can be found in Plato *Grg.* and *Phaedr.*, Sextus Empiricus *Against the Rhetoricians* or Philodemus *de Rhet.* Quint. 2.16. attempts to prove the utility of rhetoric and argues against the criticisms of rhetoric made by the doctor in this declamation.

¹⁶⁶ In, for example, Sextus Empiricus' *Against the Rhetoricians*, which is discussed (along with Plato, Quint. 2.14 and Philodemus *de Rhet.*) in Barnes (1988). One of the lengthiest critiques of the philosophical assault against rhetoric can be found in Vickers (1988).

first pair of speeches (Chapters 5.4–13.6). While Mayer notes the link between Tacitus and the Quintilianic declamation just discussed,¹⁶⁷ he does not explore this in detail, and Winterbottom (1984) 359 only notes that ‘the comparison in the *Dialogus* is in the same tradition’ as the argument of the declamation. So it is still worth considering how various roughly contemporary texts conceptualise rhetoric, in order to understand how the questions Tacitus asks within the *Dialogus* can be seen as part of a culture where the rhetorically educated are engaged in constant debate, which may then allow us to show that this debate is proof of the relevance of rhetoric and rhetorical education in the late first and early second centuries AD.

In *Inst. Or.* 2.16 Quintilian discusses the utility of rhetoric, a subject of much debate, which is of use when considering the speeches made by Aper and Maternus, who can be understood as representing the pro-rhetorical and anti-rhetorical camps respectively. In 2.16.1, Quintilian criticises the critics of rhetoric who use rhetoric to denounce it. The fact that those who criticise rhetoric are forced to use it in order to achieve their objective problematises their objections. In 2.16.2, Quintilian gives examples of the negative arguments used against rhetoric by its critics: rhetoric saves the guilty from punishment, condemns innocent people, gives wrong advice, excites political unrest and starts wars. These arguments are used by Maternus in his reply to Aper and the ‘Master’ in *Decl.* 268. In 2.16.4, Quintilian uses Sparta and Athens as examples of the curtailing of the dangerous aspects of rhetoric.¹⁶⁸ On the other hand, Greek and Roman examples of how dangerous eloquence can be do not need to be stated because they are so well-known. In 2.16.5–6 the argument

¹⁶⁷ Cf. Mayer (2001) 99 on Aper’s speech:

His comparison of orator and poet (and the similar strategy in Maternus’ reply) reflects a long-standing tradition within rhetorical schools of comparing professions. For instance, one of the minor declamations ascribed to Quintilian, §268, pits a doctor against a philosopher and an orator; a couple of his lines of argument against the latter’s profession are not dissimilar to what we find in our pair of speeches (see Winterbottom’s notes on 268.18 and 22).

¹⁶⁸ This allows us to see the use of the same examples by Maternus in Chapter 40 of the *Dialogus* as a commonplace of attacks on rhetoric.

against rhetoric is countered by Quintilian by means of an analogy: if you condemn rhetoric due to the fact that some of its practitioners are immoral, you would also condemn politicians, generals, doctors and philosophers, as any art which gives its user power over others has the potential for misuse. Examples are then given of 'bad' users of power: Flaminius (who loses the Battle of Lake Trasimene in 217BC), the Gracchi, Saturninus and Glaucia (in power in Rome 102–100BC).¹⁶⁹ Quintilian continues by arguing that doctors can administer poison;¹⁷⁰ there are philosophers that commit dreadful crimes, food can cause illness so it should not be eaten; houses' roofs can fall down and kill those inside; there should be no swords for soldiers because robbers can also use them; fire and water and even the sun and the moon can cause harm. What we are dealing with here is a *reductio ad absurdum*: Quintilian, by claiming that we should not eat food or have fire or water or the sun or the moon, has extended the argument used by critics of rhetoric (including the speaker of *Decl.* 268) to arrive at a situation with which no-one could agree, thereby showing that the premise on which the arguments against rhetoric rest is unsound. Quintilian's argument recognises the fact that anything which is powerful has the potential to be misused: the only way to curtail such misuse is to stop anyone from doing anything and thus the risk which the critics of rhetoric seek to eliminate is in fact inherent in all forms of public life, not just restricted to rhetoric.

In 2.16.8 Quintilian refrains from using Athens or Sparta as examples,¹⁷¹ preferring instead to draw examples from Roman history. While this may be an attempt to reinforce a notion of cultural superiority crucial to Roman self-definition, it may also be a way to signal to his readers that he will not trot out the kinds of clichés they may be expecting, and can

¹⁶⁹ Cf. Cic. *Brut.* 224, where the Gracchi, Saturninus and Glaucia are used as examples of the negative power of oratory.

¹⁷⁰ Quint. 2.17.9 is another attack on medicine. Quintilian argues that we do not need it because it is essentially natural.

¹⁷¹ Quintilian's *praeteritio* draws attention to the commonplace nature of the examples used against rhetoric and its use in political contexts. His refusal to use them may also be due to the fact that they have been used a few sections earlier.

thus be taken as evidence for the status of such examples. It must also be noted that the list of bad examples given in the criticism of rhetoric does seem rather small and repetitive. The fact that there are only a few examples which seem to be used by the critics of rhetoric can lead us to conclude first that there is little evidence to support their position and secondly that this limited evidence, through reuse over time, will rapidly become clichéd.

While scholars have cast doubt on the sincerity of one of the speakers in this passage, M. Aper,¹⁷² it is hard to see what he and Maternus and the other speakers do in the *Dialogus* as anything other than a glorified form of declamation within a literary setting. If further proof were needed of the commonplace nature of the argument between Aper and Maternus in the opening pair of speeches and their relation to rhetorical training of the kind Luce (1993)²⁸ asserts underlies the argumentation of the *Dialogus*, we have the example of pseudo-Hermogenean treatise on *Progymnasmata*. This is a work written less than a century after the *Dialogus* (possibly by the rhetorician Minucianus),¹⁷³ which states: *Τῶν δὲ θέσεων αἱ μὲν πολιτικάι, αἱ δὲ οὐ καὶ πολιτικάι μὲν αἱ ὑποπεπτωκυῖαι ταῖς κοιναῖς ἐννοίαις,*¹⁷⁴ *οἷον εἰ ῥητορευτέον καὶ ὅσα τοιαῦτα.*¹⁷⁵ It should be noted that *πολιτικός* is here used to describe a type of speech requiring no specialist knowledge; it may be engaged in by anyone in the body politic, as opposed to a speech which requires specialist knowledge, as Pseudo-Hermogenes makes clear:

οὐ πολιτικάι δέ, ὅσαι οἰκείαι τινος ἐπιστήμης καὶ προσήκουσαι τοῖς περὶ αὐτὰς ἀναστρεφόμενοις, οἷον εἰ σφαιροειδῆς ὁ οὐρανός, εἰ πολλοὶ κόσμοι, εἰ ὁ ἥλιος πῦρ. αἶδε μὲν οὖν φιλοσόφοις ἀρμόζουσιν, ἐν δὲ ταῖς ἄλλαις τοῦς ῥήτορας γυμναστέον.

[Hermog.] *Prog.* 25.5 (Rabe)

¹⁷² E.g. Fantham (1996) 194 and Mayer (2001).

¹⁷³ While the date and authorship of the pseudo-Hermogenean treatise is in doubt, Heath (2003a) 158–60 favours Minucianus as author and thus a date for the work in the mid to late 2nd century AD, with which I agree.

¹⁷⁴ Common notions (*κοῖναι ἐννοιαί*) in Stoic epistemology are ‘shared by all human beings, using the common opinion of mankind’ (Sharples (1996) 21).

¹⁷⁵ [Hermogenes] *Prog.* 25.4 (Rabe)

Pseudo-Hermogenes' discussion in no way suggests that whether one should be an orator is a *political* question, i.e. one commenting on the nature of politics and government under the Empire; rather the distinction is between questions requiring specialised knowledge and more general questions, the former more suitable for a philosopher and the latter within the capabilities of an orator or declaimer.¹⁷⁶ While the author could have written a piece of advice on any general question (e.g. whether one should marry), opening up the question of whether one should be an orator for defence (or indeed attack) is both a pertinent example for a rhetorical treatise and a way of exploring the nature and value of public speech. While Pseudo-Hermogenes is the first piece of evidence we have where the same question is addressed as in the opening pair of speeches, it falls outside the temporal boundaries of this thesis and will not be discussed further. Nonetheless it is evidence that the topics covered in the *Dialogus*, Quintilian's *Institutio Oratoria* and *Minor Declamation* 268 were part of the rhetorical curriculum at both its earlier and later stages.

Thus, it has been shown that both the topic and the argumentation of the opening pair of speeches in the *Dialogus* would have been immediately recognisable to their immediate audience as being derived from the schoolroom of the rhetorician and relying on

¹⁷⁶ Unless, of course, one wished to engage in the kind of post-structuralist reading where meaning cannot be fully determined and traces of a word's wider semantic field cannot be said to be entirely absent. If one wished to push the point by invoking such a reading, one could argue that we do have the evidence of Cicero (*ad Att.* 9.4.1) whose comments may be seen counter the non-political reading: *sed tamen, ne me totum aegritudini dedam, sumpsit mihi quasdam tamquam θέσεις, quae et πολιτικά sunt et temporum horum, ut et abducam animum a querelis et in eo ipso de quo agitur exercere.* For a political reading of this letter, see Gunderson (2003) 104–6. However, while Cicero is declaiming on the rights of tyrannicide in the light of the power struggle between Pompey and Caesar, it is not clear that in general the question of whether one should become an orator or not would be viewed as political in the same sense. While scholars have taken some of Maternus' arguments in Tacitus' *Dialogus de Oratoribus* as reflecting Tacitean opinions on the decline and death of oratory due to the Principate, very few would wish to advance such a reading at this point in the *Dialogus*.

The clearest description of the nature and use of political questions can be found in Hermog. *Stat.* 28.10–29.11 (Rabe) [Heath (1995) 28]:

ἀλλ' οὐ περὶ τούτων νύνι, περὶ δὲ τῆς τῶν πολιτικῶν ζητημάτων διαιρέσεως εἰς τὰ λεγόμενα κεφάλαια ὁ λόγος γινέσθω· ἔστι δὲ σχεδὸν ὁ αὐτὸς τῷ περὶ εὐρέσεως, πλὴν ὅσον οὐ πάντα ἔχει τὰ περὶ εὐρέσεως.

καὶ πρῶτόν γε, ὅ τι ἔστι πολιτικὸν ζήτημα, ῥητέον· ἔστι τοίνυν ἀμφισβήτησις λογικὴ ἐπὶ μέρους ἐκ τῶν παρ' ἐκάστοις κειμένων νόμων ἢ ἔθων περὶ τοῦ νομισθέντος δικαίου ἢ τοῦ καλοῦ ἢ τοῦ συμφέροντος ἢ καὶ πάντων ἅμα ἢ τινῶν· τὸ γὰρ ὡς ἀληθῶς τε καὶ καθόλου καλὸν ἢ συμφέρον ἢ τὰ τοιαῦτα ζητεῖν οὐ ῥητορικῆς.

commonplace arguments. This observation is not meant to have any negative connotations; it is simply made in recognition of the fact that such exercises formed part of an orator's rhetorical training and were often engaged in by orators as a recreation activity and were a means of displaying their claim to status and gender. The evidence of the above discussion goes some way to proving Luce's assertion that:

It should be clear what kind of argumentation is being deployed in the *Dialogus*. It comes from the courtroom and from the *suasoriae* and *controversiae* as practiced in the schoolroom and the halls of adult declamation. The speaker voluntarily takes up, or is assigned, a point of view or a client, either for defence or for attack.¹⁷⁷

The second and third pairs of speeches in the *Dialogus* can be seen as, in essence, comparisons (*σύγκρισις*) of modern (i.e. post-Ciceronian) and ancient oratory and their conditions of production, which one may choose to see as competing literary histories.¹⁷⁸ Nonetheless their structure and argumentation are not substantially different from the opening pair of speeches or the *Minor Declamation* discussed above.¹⁷⁹ While this position is essentially a restatement of Luce's arguments, it serves to make explicit the idea that the *Dialogus* and its constituent speeches are a rhetorical product and are best understood within the context of a society where rhetorical display and contests are a primary means of defining one's gender, status, ability, and role in public in life.¹⁸⁰

Aper, as we have seen from his opening exchange with Maternus is keen to defend oratory from its critics, and in his second speech he comes to the aid of modern oratory in the face of an audience which prefers the oratory of the late republic. Aper's role in the dialogue is signposted in the opening chapter of the work and in the opening of his second speech. His assumption of the role of an advocate for oratory and in particular post-

¹⁷⁷ Luce (1993) 28.

¹⁷⁸ On which see Levene (2004a).

¹⁷⁹ With the singular exception that while Aper is clearly defending modern oratory he speaks first. If the speeches followed the forensic model exactly we would expect to hear the 'prosecution' first, rather than the 'defence'.

¹⁸⁰ On which see Walters (1993).

Ciceronian oratory, is a sign to Tacitus' readers that what the opening question posed by Fabius Justus takes as given is not necessarily the case; it is a subject up for discussion, and a subject whose discussion is valid. His audience may or may not be convinced of his argument; but this does not affect the validity of his argument. This argument falls into two main sections: in the first Aper takes on the categorisation of the oratory of the late republic as 'ancient' (*antiquus*) and shows that such dating is relative to the person making that judgement and thus that the late republic should be seen as part of the recent rather than the distant past (which allows him to stress a continuum of stylistic and technical development throughout the late republic and early empire); in the second Aper again uses relativism to argue that Cicero had the same problem with his contemporaries as he is having with his colleagues – because any age treats change with suspicion and both Roman society and rhetorical theory were in some ways extremely conservative.¹⁸¹ Messala's immediate riposte to Aper's arguments dismisses them as *nominis controversia* (25.1) and serves to characterise his own forthcoming speech: *mihi autem de vocabulo pugna non est* (25.2). While the term *controversia* can be used of any kind of argument, quarrel or controversy, it is hard not to interpret it as symptomatic of Messala's prejudice against Aper and his passion for declamation and modern oratory, one which has been apparent since his first few words in the *Dialogus*.

Many scholars have come unstuck with Messala's position on declamation: in his speeches Messala has generally been understood as being anti-declimation and highly critical of its nature, value, content and use. This view, a simplification of a more complex position, allows Messala and, by implication, Tacitus to be counted with Cassius Severus and Votienus Montanus in the *Controversiae* of the Elder Seneca and Encolpius (and Agamemnon) in Petronius' *Satyricon* as part of a great literary critical movement against declamation.¹⁸²

¹⁸¹ The nature of rhetorical theory and its development is demonstrated by Heath (1994).

¹⁸² The 'criticism of declamation' in the Elder Seneca will be discussed in greater detail in Chapter 4 and that of Petronius in Chapter 6. For a reading which also problematises the criticism of

However, as will be shown in the following chapters of this thesis, the ‘criticism of declamation’ is not necessarily the simple phenomenon that many scholars have taken it to be.¹⁸³ But before considering Messala’s view on oratory in his speeches, I wish first to examine Messala’s views on the discussion that has taken place in I4.3–4:

‘Me vero’ inquit ‘[et] sermo iste infinita voluptate adfecisset, atque id ipsum delectat, quod vos, viri optimi et temporum nostrorum oratores, non forensibus tantum negotiis et declamatorio studio ingenia vestra exercetis, sed eius modi etiam disputationes adsumitis, quae et ingenium alunt et eruditionis ac litterarum iucundissimum oblectamentum cum vobis, qui ista disputatis, adferunt, tum etiam iis, ad quorum auris pervenerint. itaque hercule non minus probari video in te, Secunde, quod Iuli Africani vitam componendo spem hominibus fecisti plurimum eius modi librorum, quam in Apro, quod nondum ab scholasticis controversiis recessit et otium suum mavult novorum rhetorum more quam veterum oratorum consumere.’

Messala draws a distinction between the discussion he has missed and contemporary rhetorical practice and training, yet, as we have seen, the speeches of Aper and Maternus are declamations whose subject-matter and argumentation would be recognisable to the internal and external audience as such. Given that Messala has not witnessed the opening exchange, how can we take his interpretation as reflecting anything other than his own views on the subject? While Messala may liken their debate to one providing erudition and the delight of literary studies, this says more about how he understands the debate as an example of its general type rather than what an objective view might be. Likewise, while it is tempting to take Messala’s description of his colleagues as *viri optimi et temporum nostrorum oratores* as proof of the existence of orators in answer to Fabius Justus’ question, these may be either the great orators of the mid 70s AD, or representatives of the decline of eloquence. As this speech is Messala’s introduction he is unlikely to insult his companions intentionally, and more likely to paint them in glowing colours as a *captatio benevolentiae*, suggesting they are the former.

declamation see Gunderson (2003) 10–4, he stresses the comic and parodic elements of declamatory criticism.

¹⁸³ The idea of decline has been thoroughly deconstructed by J. Walker (2000).

Nonetheless, Messala's first speech attempts to prove the superiority of past over present oratory, in response to Aper's novel attempt to counter the traditional view of Roman oratory. Maternus interrupts in Chapter 27 to remind Messala that he does not need to state his case, a position with which everyone else agrees, but instead to give reasons for the superiority of ancient oratory over modern oratory.

Messala's speech in Chapters 28–32 sees the difference between the two types of oratory as a result of the education which underpins them. Messala proceeds to give an account of 'old-fashioned' Roman education, which, due to its rose-tinted hue, has led scholars such as Fantham to view Messala as a 'young fogey' taking a stand against the contemporary rhetorician, orator and teacher, Quintilian. Such an interpretation cannot be justified from the text as a whole, because if we examine the educational program of which Messala approves in this part of the *Dialogus* and compare it with that of Quintilian in the *Institutio Oratoria* it is clear that the two positions are far closer than many scholars have been willing to grant. They *only* differ substantially with regard to declamation; otherwise both are interested in the old-fashioned Roman education as a means of acculturation, showing that you are a Roman and a man.¹⁸⁴

The speeches of Messala which occupy the third quarter of the *Dialogus* are best known for their criticism of declamation and praise of both late-republican oratory and 'traditional' pedagogical models. It is hard not to consider Messala's criticism of declamation alongside similar examples and against the defence of declamation in Quintilian 2.10. Such arguments are fundamental to our understanding of the ways in which public speech was understood and used in the period covered by this thesis. Before turning to Messala's

¹⁸⁴ This is perhaps best demonstrated in their use of gendered critical terms which will be discussed throughout the thesis and especially in Chapter 7. Mayer's comment that 'a recent interpretation, that declamatory themes constructed 'a fictional world of "traditional tales" for negotiating, and renegotiating, the fundamental rules of Roman society' would presumably have bewildered Messalla' (Mayer 2001: 198 referring to Beard (1993)) fails to engage fully with the issues underlying the text and promotes the standard conservative reading, eschewing the interesting and illuminating intertexts. Messala appears, in fact, to be fully aware of these issues.

arguments, it should be noted that the arguments of Seneca (and Velleius Paterculus) are the first we have, followed by Petronius, then Tacitus *Dialogus* (according to its dramatic date),¹⁸⁵ then Quintilian's reply to all these criticisms. The *Dialogus* was written last and therefore it is assumed that it is aware of its forerunners.¹⁸⁶

Thus, the arguments used interact with Quintilian's replies and stand, at the end of a century in which declamation became popular, as the culmination of a series of texts which criticise declamation's use and value as a pedagogical tool. From this series of texts it is possible to identify common themes, one of which is that anyone who criticises declamation does not themselves declaim terribly well. This factor limits their ability to criticise declamation either as a rhetorical exercise or a pedagogical tool, under-cutting the value of their criticism *per se*. It will be shown that while many scholars have expressed great admiration for the views expounded in Messala's speeches in the *Dialogus*, his criticism is undercut in the same way as any of the other critics of declamation.

The main problem with the arguments made against declamation by critics both ancient and modern is that they concentrate on its lurid subject-matter,¹⁸⁷ as though this were the main point of declamation.¹⁸⁸ Quintilian himself expressed the desire for a degree of

¹⁸⁵ On the dramatic date of the *Dialogus*, see Koenen (1974), Syme (1970) 117.

¹⁸⁶ The reliance of the *Dialogus* on passages of Quintilian is demonstrated by Güngerich (1951). This thesis takes the date of publication of the *Dialogus* as somewhere in the region of Fabius Justus' suffect consulship, with Syme (1958) 670–3, Woodman (1975) 294–5 (although Brink (1994a) 269–71 dismisses the consular dedication hypothesis), Kappelmacher (1932) argues against a Domitianic date and is the first to favour Justus' consulship as the date of publication. For an earlier date cf. Murgia (1980) who sees it as Tacitus' first published work, published under Nerva. Syme (1970) 118 moots the possibility that the *Dialogus* may have been prepared for publication as late as AD106.

¹⁸⁷ The declamatory themes criticised by Messala can all be found in at least two of the surviving collections of Roman declamation themes: on tyrannicides see Cic. *de Inv.* 2.144, *Ep. ad Att.* 9.4.1, Sen. *Contr.* 1.7, 2.5, 3.6, 4.7, 5.8, 7.6, 9.4, Quint. *Inst.* 5.10.36, 7.2.25, 7.3.7, 7.7.5, 9.2.98, Quint. *Decl.* 253, 274, 282, 288, 329, 345, 374, 382, Calp. *Decl.* 1, 22; on the choice of rape-victims see Sen. *Contr.* 1.5, 3.5, 8.6, Quint. *Inst.* 7.7.3, 7.8.4–6, Quint. *Decl.* 247, 251, 270, 276, 280, 309, Calp. *Decl.* 34, 46, 51; on plagues see Quint. *Decl.* 329, 384, Calp. *Decl.* 44; on incest see Sen. *Contr.* 8.3, Quint. *Decl.* 300, 335, [Quint.] 18, 19.

¹⁸⁸ E.g. Imber (2001), who treats several declamations on rape and the victim's choice as being the same, as a result of a thematic focus, but one can make a very good case for the cases quoted by Imber being very different, due to the fact that they require different argumentative strategies, and are thus

curriculum reform to impart a greater degree of realism to the subject-matter, but both the *Institutio Oratoria* and the *Minor Declamations* (which display strong affinities with Quintilian's work) include declamations of precisely this type, indicating their rhetorical utility. Quintilian uses such declamations throughout the *Institutio Oratoria* to illustrate argumentative points which a speaker should make, thus confirming his awareness of the intrinsic relationship between declamations and their argumentative requirements. Many critics both ancient and modern have overlooked the fact that declamation allows rhetorical invention to be put into practice, thereby contributing to a level of facility which allows the would-be orator to construct plausible arguments on the basis of the case, the charge, and the evidence at his disposal.

In Chapter 10 of Book 2 Quintilian considers the nature and use of declamation before turning to it as the next stage in rhetorical education after the preliminary exercises (*προγυμνάσματα*). From 3.6 to 6.5, Quintilian will give a detailed account of rhetorical invention, which uses declamations as examples, thereby emphasising its use as a pedagogical tool. So, before he begins the more advanced part of the curriculum it is useful to consider both how and why the subject will be taught. Quintilian begins by stating that declamation is the most useful rhetorical exercise and one which many people think is sufficient to make someone an orator.¹⁸⁹ This statement makes it clear that Quintilian understands declamation to be necessary but not sufficient in the production of an orator. While there is every good thing in it, there is a problem: teachers have allowed the declaimers to demonstrate *licentia*

rhetorically different. Other scholars who adopt thematic readings of declamation, such as Beard, Gunderson, Kaster and Connelly, also elide the rhetorical difference in order to point out the thematic similarity and are generally interested in declamation as a reflection of social history. On the other hand Heath (2004b) 10–16 analyses the declamation theme of Sen. *Contr.* 7.8 and Quint. *Decl.* 309 and gives an account of how the theme would have been treated using the system of declamatory invention elaborated by Hermogenes, which he compares with the treatment recorded in Seneca and [Quintilian] to show the development of declamation and rhetorical theory (on which see also Heath (1994)).

¹⁸⁹ On Quintilian and declamation see Winterbottom (1983).

and *inscitia*, and this laxity has had a deleterious effect.¹⁹⁰ This is quite close to Messala's view and this degree of congruency could be used to justify reading Quintilian as anti-declamatory, but his claim in section 4, *Sed eo quod natura bonum est bene uti licet*, clearly indicates that there is a place for declamation within the rhetorical curriculum and no need to throw the baby out with the bath-water. Quintilian is not entirely uncritical of some of the more fantastic elements of declamatory situations, a fact that would seem to ally him quite closely to critics of declamation, but whereas they are willing to reject declamation entirely Quintilian continues to be more cautious. He allows declamation on fantastic themes on the grounds that students need to have some fun. To use a food analogy, these declamations are rather like sweets or junk food which can be eaten (and enjoyed!) in moderation, though if they make up a large part of one's diet the effects are not beneficial.

In Chapter 10 Quintilian is at pains to point out that declamation has two main aims: first, preparation in argument for forensic rhetoric,¹⁹¹ and secondly, for use in more epideictic contexts,¹⁹² where declamation can provide public entertainment and spectacle;¹⁹³ neither of these are condemned, as both are seen as perfectly valid uses of declamation, and can therefore be ascribed a certain degree of equivalency.¹⁹⁴

¹⁹⁰ One can always argue that due to the private nature of Roman education, teachers were simply reacting to market-forces; however Quintilian, Petronius and the Elder Seneca all criticise teachers for allowing declamatory excess.

¹⁹¹ On the relationship between declamation and oratory see Parks (1945), Winterbottom (1982a), Crook (1993) and (1995) 163–7 and Kaster (2001). On the relationship between Cicero's speeches *Pro Roscio Amerino* and *Pro Milone* and declamation see Berry & Heath (1997) 397–406.

¹⁹² On which see Walters (1993), who argues for the equivalency of declamation with 'real' speeches.

¹⁹³ While such activities are often seen as the defining characteristic of the 'Second Sophistic', Dio Chrysostom, Aelius Aristides, Polemo and Favorinus and their ilk must also be seen as part of a tradition that goes back through the professional declaimers excerpted by the Elder Seneca to Hellenistic figures such as Carneades. Once again, traditional literary compartmentalisation can make discrete events from what should be seen as a continuum. For declamation to be entertainment there must be a large enough audience of people with rhetorical training to appreciate the finer points of such a display. It is worth remembering that, due to the public nature of law-courts in the fora and basilicas of Rome, ordinary lower-class Romans, while they may not have had the benefits of advanced education, may still have been able to appreciate a good speech.

¹⁹⁴ This is also the view of Walters (1993).

If we apply Quintilian's views on declamation to the *Dialogus*, the publication of this work (which can at one level be understood as a collection of rhetorical set-pieces) makes the 'private entertainment' of the work accessible to a wider public, coinciding with Quintilian's second aim. This means that we can understand the speeches of the *Dialogus* within the context of the Quintilianic view of rhetorical education in which declamation plays an important part. In the *Dialogus*, Messala criticises declamation as a pedagogical tool and as preparation for a life as an orator and in the context of the invention and delivery of a rhetorical set-speech. Thus, he can be understood as declaiming, and Maternus' criticism of his ability to construct and focus this speech, through his interruptions and reminders, indicates that Messala has failed to acquire the skills in argumentation that are honed by declamation in its primary role as means of putting rhetorical teaching into practice. This undercuts Messala's criticism, which can be seen as evidence of his inability to master the art of declamation, rather than just straightforward criticism of the value of declamation *per se* as an educational tool.

Failure to have mastered the art of declamation and tight, relevant, argumentation will be shown to be a common characteristic of all the other 'critics' of declamation: Seneca's Cassius Severus and Votienus Montanus and Petronius' Encolpius and Agamemnon. This allows us to understand the Roman negative view of declamation as far less extreme than many scholars have taken it. That criticism only comes from speakers whose competence is open to question suggests that our texts provide amusing portraits of 'sour grapes'. While the criticism is self-defeating to an extent, it is open to counter-argument especially in terms of its argumentation, presentation and focus, a fact which reinforces declamation's place in education and entertainment.

Maternus' final speech in Tacitus' *Dialogus* uses the examples of Athens and Sparta in 40.3, where their views on oratory are compared and contrasted, and moves on in 40.4 to use

the Gracchi and Cicero's death – a series of examples that bears a remarkable similarity to the argumentation of Quint. *Decl.* 268 (thereby linking Maternus' first and second speeches – their thematic coherence and 'anti-oratorical' stance are highlighted through the use of recognisable examples). While this could be due merely to the examples' commonplace nature, it could also tell us something about the way in which Greco-Roman society felt compelled to re-examine constantly the nature and use of persuasive speech.¹⁹⁵

If we compare Chamaeleon fr. 35 (Wehrli)¹⁹⁶ *apud* Ath. *Deip.* 660d: εικότως οὖν πολλαὶ τῶν πόλεων καὶ μάλιστα ἡ Λακεδαιμονίων, ὡς Χαμαιλέων φησὶν ἐν τῷ περὶ Σιμωνίδου, οὐ προσίενται οὔτε <φιλοσοφίαν οὔτε> ῥητορικὴν διὰ τὰς ἐν τοῖς λόγοις ὑμῶν φιλοτιμίας καὶ ἔριδας καὶ τοὺς ἀκαίρους ἐλέγχους, we can see that from the third century BC the cities of Athens and Sparta are compared for their differing attitudes towards rhetoric, and this comparison continues to be used throughout rhetorical literature. In part of Quintilian's discussion of the usefulness of rhetoric at 2.16.4, we can see that argumentation of this type – comparing Athens and Sparta in terms of their governance and attitude towards rhetoric – is of a commonplace nature. What critics of rhetoric, who take their lead from Plato, are doing is positing a link between stability and governance and the lack of rhetoric. This example is a generalisation whose use over time will have become clichéd. While it is easy to see Sparta as an 'oratory-free zone' this interpretation overlooks the fact that, while Sparta did not produce famous orators like Athens, they still had political debates and law courts which would require some level of persuasive speech. The generalisation also relies upon the characterisation of the Spartans as laconic: men of a few well-chosen words.¹⁹⁷ The range of *exempla* used in the speeches of the *Dialogus* and other texts dealing with the nature and use of

¹⁹⁵ J. Walker (2000) provides an interesting reading of Maternus' final speech – seeing it as related to Platonic political theory.

¹⁹⁶ Cited from the edition of Wehrli (1957) = fr. 15 Koepke.

¹⁹⁷ As such they were masters of gnomic utterances which approach the *sententiae* beloved of first-century declaimers. Cf. the remarks of Dieneices in Hdt. 7.227: εἰ ἀποκρυπτόντων τῶν Μήδων τὸν ἥλιον ὑπὸ σκιῇ ἔσοιτο πρὸς αὐτοὺς ἡ μάχη καὶ οὐκ ἐν ἡλίῳ.

rhetoric is rather limited. Such limited scope is part of the nature of the argument; there are a few examples which a critic of rhetoric has at his disposal and the argumentative possibilities allowed by the heads of purpose to deny rhetoric a place in society also limit the debate.

An examination of various passages within the *Dialogus* can provide further support to Luce's assertion regarding the relationship between the argumentation of the speeches within the *Dialogus* and declamation.¹⁹⁸ Mayer (2001) 39 comments that 'the ethos of the whole dialogue is that of a trial'. While he is not convinced of Aper's sincerity in his second speech, although this has been ably demonstrated by Goldberg (1999), he recognises the fact that the speakers are all orators making speeches. It is at the beginning of Aper's second speech that the forensic frame first becomes apparent: '*Non enim inquit Aper inauditum et indefensum saeculum nostrum patiar hac vestra conspiratione damnari*' (16.4). Aper clearly sees modern oratory as though it were his client, whom he, as an orator, has a duty to defend, and whom has a right to have its own arguments presented, despite the overwhelming opposition of the other participants. But why should modern oratory need to be defended; indeed, why is it on trial in the first place? An answer may lie in the question with which the *Dialogus* opens. If there are no more orators then there cannot be any more oratory, in the sense in which Cicero might understand it.

The idea of Aper as a defendant of modern oratory is clearly signalled in the opening chapter where Tacitus draws attention to the views Aper will adopt in his second speech: '*neque enim defuerat qui diversam quoque partem susciperet ac multum vexata et irrisa vetustate nostrorum temporum eloquentiam antiquorum ingeniis anteferet*' (1.4). Since *diversam* means opposite, Tacitus is using a synonym for *alteram* to show his readers what Aper will do: he will argue *in alteram*

¹⁹⁸ Luce (1993) 28.

partem.¹⁹⁹ This is not itself proof of the declamatory nature of the *Dialogus* and its argumentation, in that it could be understood as relating to the forensic ethos of the dialogue and the rhetorical training of its participants. Yet why does Tacitus feel it necessary to point out the views of one of the participants in one of the speeches? We are well-acquainted with the positive view of contemporary oratory given by Quintilian in Book 10, although this does not rule out the possibility of decline; the idea of rivalling the ancients would presuppose parity between the two. However, Aper is the only one of the participants who speaks who does not concede the point on the decline of eloquence: in fact he believes that it has improved. Such an interpretation is thus aware of the ideas of decline which are a commonplace in literature in general and in rhetoric and literary criticism in particular, and that Aper's attempt to challenge the *communis opinio* is unusual (D. H. *Orat. Vett.* is the only other example). It is this unusual position which lies behind Aper's description of modern oratory as *inauditum et indefensum*: no-one is willing to defend it or put its case forward, as they are all ready to accept the idea of decline and to see the decline of oratory (for whatever reason) as the answer to the question of why there are no longer any orators.

The idea of a 'mock-trial' is also brought out in the end of the dialogue:

ac simul adsurgens et Aprum complexus 'ego' inquit 'te poetas,
Messala autem antiquariis criminabimur'
'At ego vos rhetoribus et scholasticis,' inquit. Cum adridissent,
discessimus. (42.2)

Mayer (2001) 216 notes '*criminabimur* returns us to the notion of a mock trial with which the dialogue got under way.' By this, he means 16.4, but such a view can be seen to relegate the opening pair of speeches to a subsidiary role, which is presumably not Mayer's aim. If,

¹⁹⁹ This should not be understood as having any bearing on Aper's sincerity, which has been ably demonstrated by Goldberg (1999) and Champion (1994). They have argued against the common charge that Aper is playing the part of a devil's advocate like Antonius in *de Oratore* [on which see also Deuse (1975)]. What matters is that Aper stands against the *communis opinio* on the question of whether ancient or modern oratory is better. His opposition towards Maternus' position at the beginning of the *Dialogus* can hardly be seen as controversial. While he may be acting as the advocate of modern oratory in his second speech (and orators need not be convinced of the case which they argue) the point of view adopted by Aper in his speech is consistently attributed to him throughout the *Dialogus*.

however, we examine the end of the *Dialogus* with its theme of 'prosecution' and the light-hearted way in which this is treated by the participants, several points become apparent. Firstly, the participants look forward to revisiting the subject of their discussion on another occasion; therefore the closure of the *Dialogus* is only partial: no-one has had the last word.²⁰⁰ Instead, the debate can, and will, go on outside the narrative frame. Such a treatment of a theme can be seen to tie in neatly with Beard's reading of declamation, where declamation is an open-ended process which can be endlessly re-negotiated.²⁰¹ Secondly, while scholars have rightly stressed the relationship between the *Dialogus* and Cicero's rhetorical works and philosophical dialogues, there are other Ciceronian texts which can elucidate the situation and nature of the *Dialogus*.²⁰²

While the *Dialogus de Oratoribus* is ending, its participants look forward to continuing the debate at another time, presumably taking up the same (or similar) positions and arguing the same case. If they were to do so, we could argue that this is because they have nothing better to do, implying that oratory and the orator's role in Roman society have become so circumscribed as to be almost worthless. Alternatively, the choice of the speakers to expend more of their leisure time in this activity (as opposed to any other) enables the identification of the *Dialogus* as a piece of elite rhetorical entertainment, performed in front of an audience (including Tacitus himself and us as the readers of the *Dialogus*). That such 'entertainment' debates the nature and use of rhetoric and its place in Roman society indicates that such

²⁰⁰ Winterbottom (2001) 153–4 claims that we should 'trust in our sense of closure in the *Dialogus*', and seeks to elide the difference between the literary histories of Pliny and Tacitus. His interpretation is basically an example of the scholarly *communis opinio* although he does go further than many scholars in accepting a large part of the views of Luce (1993).

²⁰¹ Beard (1993) 59–61.

²⁰² E.g. Cic. *ad Att.* 14.22. For other references to Cicero declaiming, see Gunderson (2003) 107 nn.50–2. Scholars tend to dismiss the idea of declamation as a pedagogical tool in the republic, despite its clear inclusion in the *Rhet. ad Herr.* and Cic. *de Inv.* One may also see an awareness of declamation in schools and literature in Plb. 12.25a.5, 26.9; on which see Wiseman (1979) 28–9. For the relationship between Cicero and the *Dialogus* see Michel (1962).

questioning should not be dismissed as navel-gazing but instead realised to be crucial to the reinvigoration of rhetoric, if not a sign of its continuing vigour.

At this point, it should be noted that the decision of Tacitus' speakers to revisit the topic of the *Dialogus* is one that Tacitus has prepared the reader for from the beginning, by reference to the involvement of individual speakers in this debate on previous occasions. In 4.I Maternus describes his discussions with Aper as *frequens et assidua ... contentio*: they discuss the question of whether one should be an orator on a frequent basis. While this could be taken as evidence for an ongoing argument between the pair on the nature and use of oratory, it can also be seen, within the context of the *Dialogus*, as evidence of what we may wish to understand as a frequent declamatory contest between the two. The speeches which these characters make should not therefore be seen as one-off performances, which state their own heartfelt opinions, but instead as a means of producing convincing arguments on a given theme.²⁰³ Such a reading, however, requires us to treat Tacitus' authorial introduction with some suspicion:

cui percontationi tuae respondere et tam magnae quaestionis pondus excipere, ut aut de ingeniis nostris male existimandum <sit>, si idem adsequi non possumus, aut de iudiciis, si nolumus, vix hercule auderem, si mihi mea sententia proferenda ac non disertissimorum, ut nostris temporibus, hominum sermo repetendus esset, quos eandem hanc quaestionem pertractantis iuvenis admodum audivi. ita non ingenio, sed memoria et recordatione opus est, ut quae a praestantissimis viris et excogitata subtiliter et dicta graviter accepi, cum singuli diversas quidem sed probabilis causas adferrent, dum formam sui quisque et animi et ingenii redderent, isdem nunc numeris isdemque rationibus persequar, servato ordine disputationis. (I.3–4)

²⁰³ See Luce (1993) on *probabilis*, also the end of Cic. *De Off.* 1.8 on *probabile* [a sceptical academic view, which derives from rhetoric but is used by Academics and Stoics] (on *probabile* and its use in rhetoric and philosophy see Glucker (1995) who sees *probabile* as equivalent to *πιθανόν* only in Cic. *de Inv.* and *Rhet. ad Herr.* as persuasive or convincing (a quality of speech)). On Cicero's knowledge of Plato see Long (1995). They are speeches we may give our assent to, are convincing (either as pieces of rhetoric (whose aim has been defined to persuade) or as the speeches of the participants within the *Dialogus* – a way of highlighting the fictional nature of the work.)). Glucker sees *probabile* as equivalent to *πιθανόν* only in Cic. *de Inv.* and *Rhet. ad Herr.* as persuasive or convincing (a quality of speech.) speeches we may give our assent to, are convincing (either as pieces of rhetoric (whose aim has been defined to persuade) or as the speeches of the participants within the *Dialogus* – a way of highlighting the fictional nature of the work.

We must be aware that what Tacitus is doing is trying to produce the reality effect – the construction of a realistic dramatic fiction for his readers. The argument is also a means of distancing the views expressed within the *Dialogus de Oratoribus* from the viewpoint of the authorial persona: Tacitus is partially erasing his authorial presence in a way which also highlights the artificial nature of his text.²⁰⁴

The speeches of the *Dialogus* function as a vehicle for Tacitus to demonstrate his own *ingenium* and *iudicium*, the talent and judgement of an orator and a politician, a successful member of the Roman elite. If at the end of the *Dialogus* we are left with a picture which does not have closure or whose views do not fit neatly into a pigeonhole, we have to ask how this situation demonstrates the qualities Tacitus wishes his work to have and how successfully it answers Fabius Justus' question.

While this is not necessarily the most attractive proposition for a modern literary historian, we must recognise that ancient critics would have judged the work by different criteria: the discrepancy between modern and ancient concepts of unity is only one example, but one which must make us as readers aware of the problems of interpretation.²⁰⁵ Likewise, the slippery nature of the 'answer' to Fabius Justus' question throws back the limelight onto the questioner: such a question can be answered only in ways which provide a partial answer to the question. No answer, however plausible, cannot be challenged; no viewpoint is definitive, all are contingent – on the speaker's social background, their view of literary history or other criteria. When faced with what is essentially an unanswerable question, what matters is that new and interesting ways are found to 'skin "rhetorical" cats'.

While such questioning does not take place within the *Dialogus de Oratoribus*, this does not mean that such questioning cannot take place. We, as readers of the *Dialogus*, can challenge the arguments used by speakers within the work, if we so choose. We can judge

²⁰⁴ On which see Levene (2004a) 196.

²⁰⁵ See Heath (1989).

how effective and convincing they are, and, if we wish, supply different arguments for either side in one of the three contests of the *Dialogus*. Thus, the audience can become involved in considering the nature and use of rhetoric and its place within society, which can be seen as the key aim of the *Dialogus* as a literary work. If we as readers approach the question which Fabius Justus allegedly asked Tacitus without the ideological *impedimenta* which hamper a great deal of scholarship on the *Dialogus*, we must find the question ‘why aren’t there any orators anymore?’ a strange one to ask. The opinion of Quintilian 10.1.122 must count for something; also the idea that Tacitus and Pliny or any other upper-class Roman would not consider themselves to be orators is hard to countenance. Both Tacitus and Pliny had a standard rhetorical education and undertook the ‘apprenticeship’ known as a *tirocinium* and were both active as politicians and advocates.

Thus, Tacitus’ modest self-effacing attempt to answer a potentially unanswerable question does fulfil the criteria set out in his introduction. This, in turn, provides him with a literary work which demonstrates his style, talent and judgement. In coming up with a clever question, which allows him to discuss the nature use and place of rhetoric within first and second century Rome, and providing speeches, which are vehicles for Tacitus to display his skill at rhetorical invention, realistic characterisation and his knowledge of rhetorical texts such as those of Cicero and Plato, he can publish a work which demonstrates his literary and rhetorical abilities. There was, after all, a strong tradition of Rome’s leading public speakers publishing works other than their speeches.²⁰⁶

At the end of the *Dialogus* the participants laugh and leave, ready to resume their debate on another occasion. Their laughter need not be Socratic (at Maternus’ ‘imminent demise’), or ironic (at Maternus’ final speech with its ‘persuasive’ *Realpolitik*), it can just be

²⁰⁶ The tradition begins with the Elder Cato and continues throughout the republic, with Cicero as the prime example.

the laughter of friends having enjoyed a good debate, or perhaps the joke is on us, for taking the work a little too seriously.²⁰⁷

In addition, the open-ended nature of the debate within the *Dialogus* and its clear postponement of closure at the end allow us to compare it with declamations, subjects which were also revisited and reworked either in the classroom, the lecture hall or elsewhere, to the extent that Romans refer to declamations as *illam de ...*, in other words, ‘let’s do the one about...’ whichever of the stock characters or situations happened to be chosen.²⁰⁸

One may argue whether the kind of declamation practised by the speakers in the *Dialogus de Oratoribus* is most closely related to that of the Ciceronian era, which, as evident from Cicero’s letters, was done in private;²⁰⁹ however, Tacitus includes an internal audience (in the form of Tacitus and Secundus) and by publishing the *Dialogus* as a literary work it should be clear that this makes the ‘declamation’ happen in the public sphere.²¹⁰ The distinction between ‘public’ and ‘private’ declamation may thus be a false one, encouraged by a misreading of the Elder Seneca’s description of declamation as *rem post me natam* (*Contr.* I.pr.12): while it may be subject to change over time, declamation remains essentially the same.

At the end of the *Dialogus* we are faced with the fact that all the participants of the *Dialogus de Oratoribus*, regardless of the views they express in each of their two speeches, are willing to grant oratory *some* place in the Roman world, while they may differ on points of interpretation as to what that place actually is.²¹¹ None of the six speeches persuades another

²⁰⁷ The positive view of Imperial oratory, endorsed by Quintilian 10.1.122 and present in the *Dialogus de Oratoribus* mostly in the words of Marcus Aper, is thus a perfectly legitimate viewpoint.

²⁰⁸ On the open-ended nature of declamation, see Beard (1993) 59–61.

²⁰⁹ For declamatory antilogy in a private setting like that of the *Dialogus* cf. Plut. *Quaest. Conv.* 9.13.

²¹⁰ The debate on the boundaries between ‘public’ and ‘private’ in the Roman imagination, and in particular how almost all aspects of a Roman’s life can be understood as happening in public, are discussed in Bartsch (2001).

²¹¹ Cf. Goldberg (1999) 237:

‘The real point of the *Dialogus* is thus not to retell an old and presumably sad tale of oratory’s decline. The direction oratory should take—what of the old

participant²¹² and all are willing to continue the same debate at another time with the same participants. While traditional scholars have tended to see this kind of declamatory practice, where well-known themes are explored over and over again, as proof of the corrupt nature of rhetoric in the post-Ciceronian era,²¹³ another interpretation is possible: rhetoric was perhaps more vigorous and useful than many scholars have understood it to be.²¹⁴ Such an interpretation cannot be justified without reference to other texts, and a large part of the following chapters can be seen as an examination which lends support to this position, as well as exploring how orators and rhetoric are conceptualised in authors in the first and second centuries AD.

style was worth restoring and what of the new was right to maintain—was a matter of real interest (and uncertainty) after the death of Domitian.’

²¹² This point is made extremely well by Luce (1993).

²¹³ A prime example of this type of interpretation can be found in the conclusion of Clarke (1996).

²¹⁴ Too (1998) 177–8 discusses the interpretative problems caused by the end of the *Dialogus* she makes the point that ‘Roman rhetoric shows up the impracticality and foreignness of an all-or-nothing stance’ (178).

CHAPTER 3

ORATORY, DECLAMATION AND THE PAPYRI

IT should be taken as given that, from its inception, declamation functioned as the main component of the Greco-Roman higher education curriculum.²¹⁵ Its role was to help to prepare Roman young men for public life,²¹⁶ that is to say for engaging in public discourse, *oratio*, in the forum and the law courts.²¹⁷ This does not, however, mean that declamation was solely related to the preparation for forensic and deliberative rhetoric,²¹⁸ the picture is far more complex. Indeed the use of declamation as what has been seen as an adult leisure activity is not incompatible with its main purpose: to make men think, argue and speak, and in so doing demonstrate their ability to function within a society, its value systems and norms; or as Beard puts it ‘they [declamations] offer an arena for learning, practising and recollecting what it is *to be and think Roman*.’²¹⁹

Traditionally, scholars either accept the criticism of declamation in Seneca’s Prefaces to the *Controversiae* at face value and see little practical purpose to declamation, or see some point to declamation and to its relationship with Roman Law, educational theory or cultural identity.²²⁰

²¹⁵ For this see Marrou (1956) 252–3, 284–7. Cf. also Quint. 2.10.

²¹⁶ Wiseman (1979) 7 sees the argumentation of declamation as exactly the same as that of a real orator in a real court.

²¹⁷ As can be inferred from the example of Votienus Montanus, discussed in Chapter 4, the fact that his inability is more noticeable in declamation than in oratory is pertinent to the present discussion. Declamation requires a greater deal of concision than oratory. The purpose of declamation is, therefore, to encourage precise argumentation, which in turn can be applied to oratory where such points can be made at greater length.

²¹⁸ The applicability of *controversiae* and *suasoriae* to forensic and political oratory is clear; the idea that adult declamation was primarily done for pleasure neglects the fact that public speech (which includes declamation) is a means of reinforcing (or sometimes attaining) the status of a Roman man. Seneca writes to his son Annaeus Mela stressing the use and applicability of declamation even when not applied to the making of speeches at *Contr.* 2.pr.3: *Tu eloquentiae tamen studeas: facilis ab hac in omnes artes discursus est; instruit etiam quos non sibi exercet.*

²¹⁹ Beard (1993) 56 (with original emphasis).

²²⁰ For critical views see Kennedy (1972), G. Williams (1978) and Clarke (1996). For a more positive approach see Parks (1945), Bonner (1949), Winterbottom (1982a), Walters (1993), Crook (1993) and (1995), Beard (1993) and Richlin (1997).

Under the Empire there appear to have been two schools of thought about declamation [cf. Quint. 2.10.4–12]. Some regarded it as having nothing to do with pleading in the courts and being designed solely for display; others saw it as a preparation for practice in the courts. If the former view was accepted, declamation was presumably justified by the pleasure it evidently gave to both performers and listeners. But if it was to be judged by its utility as practical training it was a failure. Critics had no difficulty in showing how poor a preparation it proved for speaking in the courts. We need only quote the remarks of an orator of the Augustan age, *Votienus Montanus*...²²¹

Yet Clarke, having quoted criticism of declamation which he has read at face value in the preceding pages, concludes (98–9) that declamation was not without use or merit and in so doing seems to be having his cake and eating it. On the one hand declamation has little or no practical applicability, yet faced with the awkward fact that declamation continues to be practised into late antiquity he must account for this by stating that it did have its uses.

The idea that for over five hundred years the high point of Roman education was an exercise which was only done for pleasure and of little or no practical relevance is untenable.²²² The longevity of declamation as an educational tool and recreational activity must be found in its ability to develop argumentative skills²²³ and thereby allow its participants to demonstrate their ability to think and act in a way which reinforced their identity as or potential to be Roman men. Likewise Clarke argues that the criticism found in the *Elder Seneca* applies only to the period which it describes: ‘It is probably true that the extravagances found in the pages of *Seneca* were of comparatively short duration; after a time

²²¹ Clarke (1996) 97.

²²² Marrou (1956) 287–8 sounds a note of caution, which it seems few have heeded:

‘Historians of the Roman Empire have been far too keen to class academic eloquence as one of the signs of the “decadence” that they seem able to detect all over the place in the “Silver Age” Can so many generations be accused of blindness? Can a civilisation whose vitality and greatness in the things of the mind is on other counts not open to question, be condemned as unimaginative and decadent?’

²²³ Cf. Heath (2004b) Ch.9, Beard (1993) and Walters (1993) Ch.3. Wiseman (1979) 7 stresses the importance of declamation in stretching the ‘ingenuity and persuasive powers’ of the practitioner: this is done so that the speaker can persuade others.

some of the froth settled down'.²²⁴ While an attempt to tie in the text of Seneca with its historical context is both commendable and rare, it does neglect the fact that such 'criticism' also carries on for a long time, throughout the first century AD and can even be found in the writings of Synesius (at the beginning of the fifth).²²⁵

Crook also doubts that the material treated in *controversiae* and *suasoriae* could really prepare Roman young men for a career in the courts as an advocate,²²⁶ a position taken in response to works such as Lanfranchi (1938), Parks (1945) and Bonner (1949). At one level he is right, but the purpose of declamatory exercises was not to give pupils a grounding in Roman Law. Men such as Cicero and Hortensius were not experts, this was the role of the juriconsults.²²⁷ Rather, they relied for the most part upon force of argument as opposed to arguing a point of law. Thus the purpose of declamation, to encourage Roman men and youths to think and argue,²²⁸ was an appropriate preparation for a career in advocacy.²²⁹

Yet declamation was seen as sufficient to make an orator (*ad formandam eloquentiam*) (Quint. *Inst. Or.* 2.10.2) although this must be understood in a limited sense: it provides an orator with a tool-kit and some idea of how to use it. Real skill must be developed through practical experience.²³⁰ Quintilian also states that no excellence, or at least no excellence of continuous speech, can be found which is not also to be found in this in this type of practice speech – it is both useful and comprehensive. Quintilian criticises teachers of declamation, as well as declaimers, for their licence and lack of knowledge (*licentia atque inscitia*) and sees this

²²⁴ Clarke (1996) 99.

²²⁵ Synesius *De insomniis* 20, also quoted in Russell (1983) 21.

²²⁶ Crook (1993) 68–76.

²²⁷ On these see Crook (1995) and Bauman (1989).

²²⁸ On this idea see Beard (1993) 55.

²²⁹ It should be borne in mind that Cicero's earliest speech in a criminal case, *Pro Roscio Amerino*, makes considerable use of declamation in its argumentation (as indeed one would expect in a case of parricide, a common topic for declamations) and that all of his speeches make use of issue theory. For an analysis of *Pro Roscio Amerino* see Berry and Heath (1997) 396–406.

²³⁰ Quint. 10.5.19–21 describes how a pupil, having learnt the principles of rhetorical invention, should perfect his skills by listening to a real orator's cases, transcribing them and coming up with arguments of his own. In 12.6.5 he reiterates this advice pointing out the dangers of a lack of practical experience.

as a cause of the decline of eloquence.²³¹ Yet this should not be overstated because in the following section (2.10.4) he comments *Sed eo quod natura bonum est bene uti licet* – which implies that declamation *per se* (and regardless of its problems) is a worthwhile pursuit and not devoid of pedagogic value. Quintilian later criticises an aspect of declamatory school practice (7.2.54), but in so doing Quintilian implies that declamation is to be seen as a preparation for forensic oratory:

Verum illa scholarum consuetudo ituris in forum potest nocere,
quod omnia quae in themate non sunt pro nobis ducimus.
Adulterium obicis: ‘quis testis? quis index?’ <Proditionem>:
‘quod pretium? quis conscius?’ Venenum: ‘ubi emi? a quo?
quando? quanti? per quem dedi?’ Pro reo tyrannidis adfectatae:
‘ubi sunt arma? quos contraxi satellites?’

As Heath (2004b) has shown, the themes of declamations such as *Contr.* 1.5 and 7.8,²³² need to be argued not by means of the same *persona* (i.e. as the character types of the innocent female victim of male aggression or the dissolute youth), as Imber (2001) has argued, but by addressing the *στάσις* of each case. In other words, despite the superficial similarities – both declamations involve victims, rapists and a choice – they are in fact different cases, and therefore have to be argued differently:

In (i) two claims, equally legally valid in isolation, are brought into conflict by the special circumstances. Hence the issue is conflict of law. In (ii) the key question is whether the victim is still in a position to make a legally valid choice: has the victim irrevocably exercised her right of choice, or has she up to this point merely been expressing a preference? Hence the issue is definition²³³

²³¹ On this see Russell (2001) 4–5 and Brink (1989). Quintilian’s position is upon examination quite similar to Seneca in the preface to Book I of the *Controversiae*. Both authors criticise excesses in speech (*licentia*) and a lack of knowledge of declamation (*inscitia*), whereas Seneca concentrates on examples of actual declamations, Quintilian concentrates on the technical side of declamation.

²³² The man who rapes two women in one night and whose victims choose death and marriage respectively and ‘A woman who has been raped asks for marriage; the accused denies the rape. He is convicted and agrees to marry her, but she wishes to make her choice’. The theme of the double-rapist is also covered in Hermog. 87.14–6 (Rabe) on which see Heath (1995) 148–9 *ad loc.*

²³³ Heath (2004b) 306. For a demonstration of the utility of issue theory when approaching declamatory invention see Heath (2004b) 10–16, where the theme of Sen. *Contr.* 7.8 is treated with reference to the original declaimers and the theory of Hermogenes.

In Heath's analysis of *Contr.* 1.5, one must argue which of the two women should win, so should the man marry one or be put to death, whereas in *Contr.* 7.8 one must argue whether the woman's original, that is to say pre-trial, request constitutes her exercising the right of choice or not. The declamatory corpus that has survived contains declamations on a wide variety of themes, some of which touch on aspects of Roman civil and criminal law, but all of which are designed to give students young and old practice in rhetorical invention, the art of finding a way to make an argument for one side of a case plausible and thereby persuade an audience.

Such skills would be of use in deciding which strategies of argument to use when making a speech either in court or in a declamation (hence the presence of a formal *division* of the argument in the declamations treated by the Elder Seneca). It is all too easy to see the rhetoric of declamation as simply 'highfalutin' and bombast, with speakers proceeding by bravura, rather than through a skilled analysis of the case set before them. Such an analysis of declamation is very common and persists to this day, but this analysis is both flawed in itself and fails to take into account evidence (in particular ancient sources which present a far more positive picture of declamation and its relation to oratory), which in turn shows that positions such as that of Clarke (1996), (cited above) must be considered as untenable.

In the middle of his discussion of *στάσις* theory, Quintilian discusses the interrelation of declamation and oratory:

Quibus similia etiam in vera rerum quaestione tractantur. Nam quae in scholis abdicatorum, haec in foro exhereditarum a parentibus et bona apud centumviros repetentium ratio est: quae illic malae tractionis, hic rei uxoriae, cum quaeritur utrius culpa divortium factum sit: quae illic dementiae, hic petendi curatoris

Quint. 7.4.11

If Quintilian is right in making the claim that declamation and oratory are linked because they both treat similar problems, and I believe he is, we should be able to examine declamations and examples of legal practice and find points of correspondence and similarity.

both in terms of the subject matter treated and the manner in which it is treated. Quintilian is quite explicit in seeing declamations dealing with disinheritance as involving the same principles as those held in the centumviral court,²³⁴ those involving maltreatment as corresponding to cases where it is necessary to show the party at fault in a divorce case, and declamations dealing with insanity corresponding to those legal cases involving the appointment of a guardian.²³⁵ The three declamation themes chosen by Quintilian are contained within the excerpts of the Elder Seneca and turning to the legal side we have three of the main matters of civil law with which an orator could be expected to deal, inheritance, divorce, and the appointment of guardians for the mentally infirm and women. The view of Quintilian, quoted above, makes the link between declamation and civil law inevitable, but I wish now to turn to several examples of declamation and legal documents in order to demonstrate the validity of Quintilian's claim.

An example of a case complete with analysis can be found in the division of the first *controversia* in Book I.²³⁶ The situation is as follows:

Liberi parentes alant aut vinciantur.

Duo fratres inter se dissidebant; alteri filius erat. Patruus in egestatem incidit; patre vetante adulescens illum aluit; ob hoc abdicatus tacuit. Adoptatus a patruo est. Patruus accepta hereditate locuples factus est. Egere coepit pater: vetante patruo alit illum. Abdicatur.

The strategy of argument used by declaimers to argue the case for the son is that of definition, *ὄρος*, in Latin, *status finitionis*,²³⁷ which 'has the task of describing the facts of the case correctly and objectively in legal terms'²³⁸ in this case 'what is a parent?' and therefore

²³⁴ For details of the centumviral court and the cases held in it see below. On the ubiquitous nature of wills in Roman society see Stern (2000).

²³⁵ E.g. that undertaken by Cassius Severus against the declaimer Cestius Pius, which is described in *Contr.* 3.pr.17, where Severus prosecutes Pius for not swearing that he was less eloquent than Cicero, on the understanding that he must therefore be mad and therefore need a guardian.

²³⁶ This declamation is also discussed by Parks (1945), Levick (1972) and Fantham (2004).

²³⁷ On which see Quint. *Inst.* 3.6.5 and Hermog. *Stat.* 59.10–65.8.

²³⁸ Lausberg (1998) 49.

'should the son be disinherited?' Turning to the arguments contained within *Controversia* 1 I, we can see such a strategy in action in the division of Porcius Latro.

Latro illas quaestiones fecit: divisit in ius et aequitem, an abdicari possit, an debeat. An possit abdicari, sic quaesit: necesse fuerit illum patrem alere, et ob id abdicari non possit quod fecit lege cogente. Hoc in has quaestiones divisit: an abdicatus non desinat filius esse; an is desinat qui non tantum abdicatus sed etiam ab alio adoptatus est. Etiam si filius erat, an quisquis patrem non aluit puniatur, tamquam aeger, vinctus, captus; an aliquam filii lex excusationem accipiat; an in hoc accipere potuerit. An abdicari debeat, per haec quaesit: an, etiam si ille indignus fuit qui aleretur, hic tamen recte fecerit qui aluit; deinde an dignus fuerit qui aleretur

Contr. 1.1.13

It should be noted at this point that the division is not that of Greek rhetoric of the late second century, as exemplified by Hermogenes *On Issues*, or even that found in Quintilian²³⁹ or Pseudo-Augustine. Instead the division represents that found in the early first century AD. That the division contains what may be seen as 'heads of argument' is not surprising. First the term was in use: Quint. 3.11.27 shows that it was used by Theodorus of Gadara and his followers to describe questions which refer to the main one (*quae ad summam referuntur*).²⁴⁰ That such heads correspond to the same heads in the later more developed version of rhetorical theory is likewise not surprising, as the division in Hermogenes is best understood as a codified form of best practice which is generally applicable and suitable for introducing students to issue theory; thus we would be surprised if earlier examples did not correspond with this later system to some extent.

Latro begins by asking whether the son can be disinherited for disobeying his father, is such an action legal?²⁴¹ He then asks whether the son should be disinherited, whether there

²³⁹ Quint. 7.1.40–64 contains a fully worked-out division of a declamation theme (involving disinheritance) which is one of our fullest examples of a systematic exposition of how to treat a declamation theme before the detailed schematisation of Hermogenes.

²⁴⁰ On which see Granatelli (1991).

²⁴¹ Heath (1995) 75 on Hermog. 38.15 (Rabe) states that 'Declamation assumes the father's right to disown a son for unsatisfactory behaviour, subject to judicial review'. Also on disinheritance in declamation see Russell (1983) 31: 'the typical parental act is an unjust or disputable "disowning" (*apokêruxis*, Latin *abdicatio*). This theme has no doubt a background in real life [cf. Bonner (1949)

is any moral justification, whether the act of disinheritance is in the spirit of the law.²⁴² He then sub-divides the first question and asks whether it was necessary for the son to support his father and whether he can be disinherited for something which the law ('Children must support their parents') compelled him to do. Here Latro can be seen as using part of the head of counterplea, namely exception (*παραγραφικόν*), which attempts to call into question the validity of the prosecution. In showing that what the son did broke no law, Latro has thereby argued that there is no case to answer and the son must be acquitted.

In pursuance of this aim he further subdivides the second of the above subdivisions and asks whether a son, if disinherited, ceases to be a son. He then asks whether someone who, besides being disinherited, has been adopted by another ceases to be his father's son. He then asks even if he was still a son, should not everyone who has failed to support his father be punished (marshalling the examples of men who were sick, in prison or held captive).²⁴³ He then asks whether the law can accept an excuse on the part of the son and whether it could in the case as set out by the *controversia*.

Latro argues that it is both against the letter of the law for the son to be disinherited and against the spirit of the law. As the above argument has shown, declamation was of use as a means of applying theoretical training in rhetoric to an actual speech; but was the speech itself of any use? I would like to argue that it was, and for a simple reason.

109, Harrison (1968) 76ff.]' and on the legal background see Wurm (1972). While ἀποκήρυξις was accepted practice in Greek law, Winterbottom (1974a) 26 states that *abdication* 'was not a legal act at Rome', presumably after Bonner (1949) 95–6 who sees the law as Greek and unparalleled before the second century AD. However, disinheritance was possible through *exhereditatio* in a will (on which cf. D. 28.2.25–30). This could be challenged under the provisions of the *Lex Falcidia* and the *querella inofficiosi testamenti* (on which see below). On disinheritance and declamation see also Gunderson (2003) and Fantham (2004), who has independently reached similar conclusions to those I have been developing in this chapter. For Quintilian's views on the argumentation of declamations regarding disinheritance see Quint. 7.4.27–8

²⁴² Winterbottom (1973) xviii notes that 'the contrast between *ius* and *aequitas* is traditional; it is exploited by Cicero, e.g. in the speech for Caecina (51 *seq.*) Here at least there is a solid link between declamation and reality.' The influence of rhetorical argumentation based on *ius* and *aequitas* on later Roman law has been argued for by Stroux (1926).

²⁴³ On these also cf. Quint. 5.10.97, 7.6.5, *RLM* 107.22ff. (Halm).

The fictitious case outlined above deals with a case of a disputed (dis)inheritance. Under Roman law, cases of inheritance, guardianship and probate are known to have been dealt with by the centumviral court.²⁴⁴ We know from literary evidence that the cases it dealt with became famous and were an opportunity for great orators to speak. We know of declaimers who also spoke in court and orators who declaimed and the next chapter will examine the case of Votienus Montanus in detail. Albius Silus, who is also mentioned in the following chapter, is an important example, although he seems to have committed a school-boy error and lost a case. Given that we have thirty declamations in the Elder Seneca alone dealing with wills and disinheritance, I wish to argue that this is for a good reason, namely the cases dealing with such matters formed a large part of an orator's workload as an important aspect of civil law.²⁴⁵ In other words, if the orator is going to spend time arguing

²⁴⁴ Cic. *De Or.* I.173, 180–3, 238, 242, *Brut.* 144, Plin. *Ep.* 1.5, 1.18, 2.14, 4.24, 6.12, 6.33, Tac. *Dial.* 38, Quint. 12.5.6. Also see Kelly (1976). The centumviral court and questions of inheritance are also discussed below in the section entitled 'The Criticism of Declamation' and in the final chapter.

²⁴⁵ Crook (1993) 72 lists the following twenty declamations, which he sees as dealing with their subjects in a law-like manner:

Contr. 4.8—Claim for *operae*, *Contr.* 6.4 *Veneficium*, *Contr.* 9.3—Petition for the return of an exposed son, *Contr.* 10.1—*Actio iniuriarum* for defamatory behaviour, [Quint.] *Decl.* 13—*Damnum* by poisoning, Quint. *Decl.* 264—Inheritance, Quint. *Decl.* 273—Action against a surety, Quint. *Decl.* 308—Will superseded by a later will, Quint. *Decl.* 311—Whether *addictus* counts amongst *servi* in a will, Quint. *Decl.* 312—*Actio depositi* by a heir, Quint. *Decl.* 318—Testament, Quint. *Decl.* 325—*fideicommissum contra bonos mores*, Quint. *Decl.* 332—*Hereditatis petitio*, Quint. *Decl.* 336—*Vindicatio* of a *hereditas*, Quint. *Decl.* 341—Goods not declared for customs, Quint. *Decl.* 353—Evidence of slaves under torture, Quint. *Decl.* 359—Customs duty, Quint. *Decl.* 360—Priority of claims on return of *dos*, Quint. *Decl.* 364—Murder (cf. *Contr.* 10.1), Quint. *Decl.* 388—Identity of exposed child (cf. *Contr.* 9.3).

Crook notes that of the twenty cases listed there two administrative cases (on customs duty) and two criminal (one murder and one poisoning); the other sixteen are all civil. A cursory inspection will show that the majority of these cases concern wills and heirs. This is no accident, rather it reflects the reality of day-to-day life as an advocate: the majority of cases you would be expected to plead would be civil rather than criminal. The importance of i) having heirs either by birth or adoption must not be overlooked nor ii) the intricacies of the law on inheritance (cf. Gardner (1986) 163: 'The law of inheritance is one of the most complicated and elaborate areas of Roman law') and the restrictions

cases on wills and inheritance this is easier if they have practised them at some level at school, and this no less true if the primary function of declamation is to encourage rhetorical invention and thus the abstract nature of some declamations and their tenuous relation to Roman law is not a bar to their utility.

Returning to the situation posed in *Controversia* I.1, and given that what we are dealing with here is supposed to be a fictitious legal case, we must ask the question 'Are we able to isolate any legal problems within it, which could provide us with another possibility for its *raison d'être*?' Under Roman law if children were not being appointed heirs they had to be disinherited either by name or in a general clause, though as we shall see, there were restrictions placed upon this practice.²⁴⁶ Yet as the son mentioned in the *controversia* is the nearest relative to the two brothers he would, if intestacy occurred, stand to inherit either as sole surviving heir or agnate. Owing to the quarrel between the two brothers with which the *controversia* begins and which underlies the disinheritance of the son, he would by all accounts be able to challenge it under the 'complaint against an undutiful will' (*querella inofficiosi testamenti*) on the grounds that he was being denied his inheritance, which was his by right, or that due to the argument the *testator* was not of sound mind when he made his will.²⁴⁷ In both cases the will would be deemed invalid and the young man would inherit his rightful share, as though the testator had died intestate.²⁴⁸ It is also worth noting that both the *querella inofficiosi testamenti* (which ensured that no more than three quarters of an estate could be given to

placed upon testators and the challenges which could be brought against wills. We must remember that then, as now, a great deal of money was at stake, hence the portrayal of the legacy-hunter in Horace, Juvenal, Petronius and elsewhere; on *captatio* (the act of legacy-hunting) see Champlin (1991) esp. 87–102. It is not without reason therefore that disinheritance and wills are the most common topic for declamation as treated in the following thirty declamations from the Elder Seneca: *Contr.* I.1, I.4, I.6, I.8, 2.1, 2.2, 2.4, 2.6, 2.7, 3.2, 3.3, 3.4, 3.9, 4.3, 4.5, 5.2, 5.3, 5.4, 6.1, 6.2, 6.4, 7.1, 7.3, 7.7, 8.3, 8.5, 9.3, 9.5, 10.2, 10.4,

²⁴⁶ Johnston (1999) 45. See also Borkowski (1997) 241.

²⁴⁷ The son in the declamation would in fact have a sound legal challenge to the will as the *querella inofficiosi testamenti* can be invoked when the testator appears not to have been of sound mind when the will was made. This fact is made clear in lines 4–5 of the preface to *D. 5.2.5: resque illo colore defenditur apud iudicem, ut videatur ille quasi non sanae mentis fuisse, cum testamentum inique ordinaret*. The idea of adoption 'motivated by animosity due to family quarrels' can also be found in Demosthenes 44.63.

²⁴⁸ On the challenges to wills and intestate succession also see Johnston (1999) 49–52.

beneficiaries other than the heirs) and the *Lex Falcidia* of 40 BC (which ensures that heirs while disinherited receive one quarter of their intestate share) are products of the late republic and therefore of contemporary legal significance given the timing of the declamations presented by Seneca.²⁴⁹

The law seems to have been enacted to induce heirs to accept legacies by limiting the amount of an estate that can be bequeathed to others to one quarter. This had, in conjunction with the roughly contemporary *querella inofficiosi testamenti*, the effect of making children, even if disinherited, receive a quarter of their intestate share, otherwise the will, or parts of it, could be set aside as undutiful because the deceased could then be considered not to have been of sound mind when making their will. Their heirs would then divide up the property according to the rules for intestate succession.²⁵⁰ Questions of disinheritance have been shown to be of great importance in the case of Agrippa Postumus, disinherited by his grandfather and adoptive father, Augustus.²⁵¹ The problems raised by *postumi* (children born after their father's death) in relation to the law of succession gave rise in AD28 to the *Lex Iunia Velleia*, the last Roman law to be passed by means of the popular assemblies in the manner of Republican *leges*.²⁵² Thus the period between the higher education of the Elder Seneca and the publication of his work was one in which Roman inheritance law underwent massive changes.²⁵³ Therefore, the large number of declamations referring to disinheritance in

²⁴⁹ On the *querella* and the *Lex Falcidia* in general see Gardner (1986) 170–4, 183–90, Johnston (1999) 50 and Paulus (1994). The link between declamation and Roman Law has also been postulated by Dingel (1988) 2–5, and proved to some extent by Crook (1993), following the views of Bonner (1949) and Lanfranchi (1938). On the relationship between declamations dealing with disinheritance and Roman society, see also Fantham (2004) 68–72, 80–2, she does not, however, discuss the legal situation in any great detail.

²⁵⁰ Under the Imperial Constitutions of AD 225 (C.3.28.11) and 293 (C.3.28.19) gladiators and those living immoral lives (two of the categories of *infames*) were expressly forbidden from benefiting from such an action, see Johnston (1999). On the inability of *infames* to inherit or challenge wills see *D.* 3.2.21.pr.5 and 22.5.3.5.7.

²⁵¹ This case is discussed in detail by Levick (1972) and by Fantham (2004).

²⁵² On the *Lex Iunia Velleia* see *D.* 26.2.10.2 and Chapters 2, 3, 5 and 6 of Book 28. For a conservative reconstruction of the text see Crawford (1996) 811–2.

²⁵³ Thus the conclusions of Fantham (2004) 82 need not be considered conclusive. While declamations may have served a social function, they are, in this case, related to a civil law which is

the Elder Seneca may reflect an increased cultural focus on matters of inheritance due to contemporary legal developments. Even if the declamations are considered purely in an abstract sense then they allow the speaker to practise argumentation and characterisation which would be valuable when dealing with cases in court. We should, however, not press the connections between Roman law and declamation too far. What matters is that declamatory situations have points of contact with legal disputes. The technicalities of legal argument are not taught through declamation, but through a knowledge of the finer points of Roman law.

Another source of legal information pertinent to the present enquiry is the huge amount of papyri which have been excavated in Egypt; in the absence of legal speeches after Cicero, these documents and court transcripts are the largest body of evidence we possess which can shed light on Roman law and advocacy in practice.²⁵⁴ These have been examined as a source for legal advocacy.²⁵⁵ I wish, however, to examine records of several cases not for the laws with which they deal but for their relation to declamation. Although the relationship of legal codes and forensic rhetoric to declamation is by no means straightforward. There appears to be a correlation between changes in legal practice and the subject matter considered suitable for declamation.

The first papyrus to which I wish to refer is *P. Cairo Masp.* 67353 (=HE 87). This is a deed of disownment, ἀποκήρυξις, which can be dated to AD 569.²⁵⁶ While its date puts this document outside the temporal confines of the thesis, the continuity of the law in this matter and in particular the reference to the provisions of the *Lex Falcidia*, which was still in effect

still evolving and which remains of primary importance throughout the Empire. Her assertion that 'we need not expect that there were any declamations about *abdication* in the years after Postumus Agrippa's disgrace' is somewhat contradicted by the evidence of this law: we would expect declamations on this subject to be used given that there has just been a legal innovation which would affect such cases.

²⁵⁴ While there are differences between the law operating in Egypt and Rome during the period covered by this thesis, these do not affect any of the cases discussed below. Crook (1995) does not note any differences between Egyptian and Roman law in the papyri he covers.

²⁵⁵ By Crook (1995), who examines 37 substantial papyri in pages 71–109, and Heath (2004a).

²⁵⁶ On which see also Wurm (1972) 48, 79, 92–5.

some 610 years after the law was enacted, make this legal instrument pertinent to the present discussion.

βιασιλείας καὶ ὑπατείας | τοῦθι θειλοτάτου | ἡμιλλῶν | δεσπότου | Φλαυίου Ίουσιτίου |
 τοῦ αἰωνίου | ἀγού | στοῦ | ἀντοκράτορος | ἔτους πέμπτου, Ἀθῦρ ἐκκλει-
 δεκάτη τρίτης ἰνδικ(τίονος). ἐν Ἰαντινὸ | πόλει τῆ | λαμπροτάτη.

..... πρόγραμμα ἀποκηρύξεώς τε καὶ ἀπαγορεύσεως, ἀπαθεῖς ἔχων τὰς φρένας |
 καὶ διανοίας, ὀρθῶ καὶ ἀκριβεῖ λογισμῶ, δίχα παντὸς δόλου καὶ φόβου καὶ βίας | 5
 καὶ ἀνάγκης καὶ ἀπάτης, ἐν δημοσίῳ καὶ πρακτικῶ τόπῳ. καὶ τοῦτο διαπέμποιμαι |
 τοῦθι | πατρολοῖς πατροίλωις μοῦθι | υἱοῖς ἕως ὀνόματιος καὶ μόνου, φημι δὴ Διονυσία καὶ
 Ἰωάννη καὶ Παυλίνη καὶ Ἀνδρέα τοῖς | ἀποβιολιμαίους vestig

οἰόμενοι εὐρεῖν ὑμᾶς βλοηθολῖς | ἐν ἅπασιν καὶ γηροκόμους καὶ ὑποτακτικούς |
 καὶ ὑπηκόους · ἐκ τῶν ἐναντίων | ἐν ἡλικίᾳ γεγένησθαι ἀντίπαλοί μοι ὡς | 10
 καὶ μέγαιροι ὡς ἐκ πείρας ἔσχον τὴν ἄσπλαγχνον ὑμῶν πατροκτασίαν καὶ
 ἀθετητικὴν γνώμην, ἐφ' ὅτι νοσοβαρῆς ἐγελινάμην | παρ' ὑμῶν vestig

ἴ ? ποιότητι καὶ ποσότητι ἀπὸ πολυτελοῦς μέχρι ἀσσιαρῖου ἐνός |
 καὶ ἐνός ὀβολοῦ, εἰ μὴ τὸ ἀπὸ νόμων τυπωθέν μόνον Φαλκιδιῶν ἦτοι δωδεκάτην |
 μοῖραν τοῦ ὑμῶν ἀκλήρου, καὶ οὐκ ἐξ ἑξων ἔτι ὑμῖν τοῦ λοιποῦ ὀνομάσσαι με | 15
 ὡς | πατέρα, ὅσον καὶ ἐγὼ καγὼ ὑμᾶς ἀπεταξάμην καὶ ἐβδελυξάμην εβδελυξάμην ἀπὸ τοῦ ὄνυ
 καὶ ἐπὶ τὸν αἰὲ ἐξῆς | ἀπλαντα παν | χρόνον ὡς ἀποβολιμαίους καὶ νόθους |
 καὶ δουλοχείρονας vestig

vestig κορακοβρωσίαν κορακοβροσίαν γενέσθαι καὶ ὀμματωρυξίαν τούτου | τοῦθι |
 τῆ | πρόπου ὑμᾶς παραχαράττω μηδὲν λήψασθαι μήτε μὴν δοῦναι (ὑπὲρ) | 20
 ἐμοῦ περιόντος τε ἢ καὶ θνήσκοντος |, διὰ τὸ ἐμοὶ ὀρθῶς καὶ δικαίως |
 δεδόχθαι. καὶ ἐξορκίζω πάντα κριτὴν καὶ δικαστὴν καὶ πάντα ἰθρόνον |
 καὶ ἀρχὴν καὶ ἐξουσίαν αἰε φυλάξαι τὰ ἐπὶ τοῖς τοιούτοις ἀπαιδεύτοις |
 υἱοῖς | ὑπὲρ | ἐμοῦ ἀπαγορεύσεως καὶ ἀποκηρύξεως | γρῖα... |

... τόπον. ἐξορκίζω δὲ ἅμα καὶ τὸν | δημόσιον | σκίριβα καὶ | τριβουλλάριον | 25
 καὶ δημέδικον τῆς τε τῆς λαμπριᾶς | Ἰαντινὸ ἑὶν πόλεως |
 κατὰ τοῦ Θεοῦ πρὸ πάντων καὶ τῆς νίκης καὶ διαμονῆς ? θείας καὶ οὐρανίας τύχης τῶν |
 οἰκονομικῶν ἡμῶν δεσποτῶν καὶ βασιλέων Φλαυίου φλαυίων Ίου(στίνου) |
 καὶ Αἰλίας Σοφίας τῶν αἰωνίων | ἀντοκρατόρων | τὴν σινιλήθη | 30
 ἀποδημίωσιν προσθέσθαι τοῖς διατυπωθεῖσι διατυπωνισι παρ' ἐμοῦ ὀρισμοῖς .|. |
 ἀεὶ βραβεύειν καὶ ἐκφωνῆσαι πάντῃ ἀττήτως εἰς ἐκπληξίν μάλιστ' |
 τῶν μελλόντων τὰ ἴσα τούτοις τοῖς ἀσεβέσι διαπράξασθαι. ἔχρην γὰρ | κα-
 τὰ τὸν θεῖον νόμον τοῦ ἑαυτῶν γονεῖς ἄκρωις τιμᾶν. τὸ ἐνάντιον τουναντιωνδὲ |
 οἱ τοιοῦτοι κάκιστοι ἐλοιδώρησαν | καὶ ἀκατεφρόνησαν | ὀν | πα | τ | ρικ | ὄν ? |
 θεσμὸν καὶ τοῦτο ἐξέταξα μετὰ τοῦ προκειμένου φαί κ | ἰδί | οἱ | τῆ | ἐμῆ | 35
 ἰδιαθήκῃ | καὶ εἰς εἴδησιν πάντων κυρίαν οἴσασιν καὶ βεβαῖαν | πα | τ | α | χ | οἴ |
 ἰπροφερομένην | τὴν παροῦσαν ἀποκήρυξιν ἀνέθηκα (?).²⁵⁷

P.Cairo Masp. 67353

The name of the author of the document has not survived but, in the second fragment (1.6 ff.), he gives the details of the disinheritance. Thus far, the document seems sober and exactly what one would expect from this kind of legal instrument. The author goes to great pains to prove that he was of sound mind, that the deposition was made in a public place of

²⁵⁷ I.37 restored from P.CairoMasp 67097.

business (presumably an agora) and that he is not acting under compulsion, under duress, or with malice aforethought. This can be compared to the Roman testatory practice, either comitial, mancipatory, or praetorian, where it is important that the will is made in public, either in the *comitia curiata*, through an act of *mancipatio*, or, in the case of a praetorian will, with seven witness (who seal the will).

In the following fragment (fr.3) the author begins to vent his spleen against his children for their lack of obedience and causing him to fall grievously ill. He then forbids them from receiving even one obol (fr.5). He does, however, comply with the letter of the law by not disinheriting them totally: *εἰ μὴ τὸ ἀπὸ νόμων τυπωθὲν μόνον Φαλκίδιον ἦτοι δωδεκάτην μοῖραν τοῦ ὑμῶν ἀκλήρου* (1.14–15): he allows each of them to inherit one twelfth of his estate, a quarter of what each of his children, as heirs in the first degree, should receive. This is in compliance with the *Lex Falcidia*, and the Falcidian portion (*Φαλκίδιον ... μοῖραν*) mentioned above prevents his will being challenged under the *querella inofficiosi testamenti*. This is restated towards the end of the document where the testator confirms that the act of disinheritance and his compliance with the *Lex Falcidia* can also be found in his will, so that the disinheritance cannot be challenged on a technicality.

In lines 17–18 the father continues the invective of lines 9–12 calling his children ‘outcasts, bastards and lower than slaves’²⁵⁸ and then (in fr.5) seeks to stop them from having anything to with him and his estate and asks the magistrates to uphold this document against his rude (*ἀπαιδεύτοι*) children. As well as appearing in the man’s will it would appear from the end that this was a copy displayed in public, so that the act would be public knowledge.²⁵⁹

²⁵⁸ The invective in fragments 3 and 5 are very close to the kinds of *ad hominem* arguments used by declamatory fathers against their children.

²⁵⁹ It is tempting to rationalise this document in the manner adopted by Fantham (2004) who sees disinheritance and its related declamations as a way of policing wayward youths. We cannot tell whether this disinheritance was a final measure or whether it was later revoked once the children treated their father in a way which pleased him.

As is the case with many of the thirty declamations in Seneca which refer to wills and disinheritance, here we see a family quarrel between a parent and their offspring at the root of the problem.²⁶⁰ What has often been written off as fantastic or a reworking of a plot from New Comedy²⁶¹ does in fact bear a fairly close resemblance to legal practice. The act of disinheritance could have been motivated by any one of several considerations; we cannot tell which in this case. Likewise, the children may well have been able to challenge their disinheritance due to the fact that their father was, contrary to his protestations, not of sound mind when he made the legal instrument or that the will complies with the letter, but not the spirit, of the *Lex Falcidia*, as with the argument of Porcius Latro in *Contr.* 1.1. What has been written off as fantastic in declamations has some relation to everyday life. While the precise nature of the disinheritance covered in *Contr.* 1.1 may seem rather excessive (as the son is facing being disinherited for the second time) we should not forget that the same situation affected Agrippa Postumus. The highly charged aspect of declamations involving inter-familial strife can be seen as present in cases involving anyone from the Imperial family to an unknown inhabitant of Egypt in the sixth century. Thus the nature of the argumentation of declamation cannot be dismissed lightly.

The next papyrus to which I wish to refer is *P.Oxy* 37(=HE 257), the notes (*hypomnēmata*) of the *stratêgos* Ti. Claudius Pasion, dated AD49, and taken from the transcript of a court-case concerning the custody of an alleged foundling, Heraclas.²⁶² The plaintiff Pesouris found the boy on a dung-heap and entrusted the child to a wet-nurse, Saraeus. Pesouris enters into a contract with Saraeus to nurse the child, referred to as the son of

²⁶⁰ On the relationship between fathers and sons in Roman declamation see Gunderson (2003).

²⁶¹ On the relationship between disinheritance declamations and New Comedy see Fantham (2004) 65–70.

²⁶² In the declamations which survive, *Sen. Contr.* 9.3 deals with the return of an exposed son and is thus the closest declamatory parallel to this case. Bonner (1949) 125–7 claims that the law reflects Roman legal practice, and the relation of declamations on this subject and Roman law is also examined in *Quint.* 7.1.14 and 9.2.89. We are therefore justified in looking at this additional example of a legal case which would seem to back up the relation of declamation to the law and advocacy in practice.

Pesouris, for an annual fee of eight staters. Pesouris then takes the child away alleging that it has been starved, Saraeus then enters his house and takes the child back, seeking to obtain custody of Heraclas as her own free-born child. The child subsequently dies and Pesouris then seeks to have custody of Saraeus' own child, no doubt on the grounds that this is fact the foundling and that her own son had died.

The case is useful in that it highlights the importance of having an heir. Having no one in his house capable of breast-feeding the child, Pesouris enlists the help of a wet-nurse. Hence, if the child were brought back to his house there would be no one capable of feeding it and the child would deteriorate. Saraeus would wish to have the child back to feed it, thereby fulfilling her contractual obligations, and forestalling a possible charge of murder through neglect. The alternative possibility is that the child is hers, and she is motivated by maternal concern. The judge clears up the case by deciding that Saraeus' child appears to be her own and that once she has paid back the portion of the second year's wages to Pesouris and given a sworn deposition that the foundling has died all will be well. Pesouris presumably adopted the child in order to have a male heir and in the event of its death tries to take Saraeus' child as his own to ensure that he still has one.

Having a male heir ensures that Pesouris' property remains within his immediate family and helps provide him with security for his old age. It is not surprising, therefore, that he goes to the lengths he does to try to secure an heir. Adoption, inheritance and child snatching have been seen traditionally as lurid or interesting subject matter to encourage boys to debate;²⁶³ however we can see such topics as both reflecting social reality and as part of the day-to-day work of an orator. Given that the papyrus gives a snapshot of provincial middle and lower class life, it is reasonable to assume that in Rome, where in higher social circles the

²⁶³ I am aware of nine declamations dealing with exposed children: *Sen. Contr.* 9.3, *Quint. Decl.* 278, 306, 358, 372, 388, *Himerius* 4, and *RG* 4.686, 5.179.

amounts of money and property at stake in inheritance were considerably greater, such concerns would not be absent; indeed they would be of even greater importance.

Absence of evidence should not therefore be taken as evidence of absence. The topics with which declamation deals are not an exact match with Roman law, but this is not the point. If as an orator you are faced with a case involving adoption and inheritance you are far less likely to be arguing over a point of law than about the interpretation of events through the representation of character and motivation. This is precisely what declamation trains you to do. The use of *στάσις* theory helps in isolating the fundamental questions at issue in a case,²⁶⁴ but this is itself a framework around which one must construct a speech. The framework which rhetorical theory provides in the Elder Seneca is virtually non-existent: the arrangement of one's argument is up to the speaker, his knowledge and his insight. It may (or may not) be logical and convincing; in Quintilian and Ps-Augustine a more developed form of rhetorical invention is represented, but it is only with the developments of the second and third century that what may be termed 'best practice' becomes codified in the division of issues, as exemplified by Hermogenes.²⁶⁵

Returning to the papyri, my next example is again from the Oxyrhynchus papyri, *P.Oxy 237 col.7 l.19–29* (= HE 258), dated AD133, which is an abbreviated form of a legal transcript preserved in the minutes of the prefect Flavius Titianus. The case concerns the abduction of Antonius' wife by her father, Sempronius, at the instigation of his mother, following a quarrel between Antonius and Sempronius. The daughter falls ill through grief, which causes the *epistratêgos*, Bassus, to declare that if Antonius and Sempronius' daughter wished to live together they should be allowed to.

²⁶⁴ Imber (2001) 201 sees the *sermones* of Quint. *Decl.* as 'suggesting the approach the student should take in composing his declamation', in other words describing the *στάσις* to be used. In this respect she is following on from Dingel (1988).

²⁶⁵ Generally scholars of declamation eschew discussing the relationship between rhetorical theory and declamation (as noted by Furse (2005)), the works of Heath are a notable exception.

The father, Sempronius, ignores this initial ruling and accuses Antonius of *vis* (τὸν γὰρ Σεμπρόνιον ἀποσιώπησαντα τοῦτο καὶ τῷ ἡγεμόνι περὶ βίας ἐντυχόντα ἐπιστολὴν παρακεκομμέναι ἵνα οἱ ἀντίδικοι ἐκπεμφθῶσι) and gets the matter brought to trial in a higher court: in front of the prefect at the tribunal in the forum (ἐπὶ τοῦ ἐν τῇ ἀγορᾷ βήματος).²⁶⁶ Antonius restates his claim that his wife, being well-disposed towards him, should not be separated from him. Sempronius then claims that he has good reason for his actions because Antonius intended to charge him with incest with his daughter (τοῦ γὰρ Ἀντωνίου πρὸς ἐνεγκακένου θυγατρομειξίας ἐγκαλεῖν). This may seem like the far-fetched mud-slinging of a declamation, but it is both a counter-accusation and an alleged reason for Sempronius' abduction of his daughter, Antonius' wife. It also shows that situations seen as declamatory excess do bear a resemblance to advocacy in practice. In fact we can here see an argument from declamation influencing law-court practice – advocates are using their rhetorical education to guide their argumentation.

There follows a question whether the father still has power over his married daughter. In any event, the charges of *vis* and incest come to nothing, as the prefect, Flavius Titianus, decides that what is important is with whom the woman wishes to live (Τειτιανός· διαφέρει παρὰ τίνι βούλεται εἶναι ἢ γεγαμένη) and so the case ends. Given that what we have is in effect the record of a domestic argument which has blown up out of all proportion, the prefect applies common sense to provide the solution, echoing the judgement of an earlier magistrate and throwing out the false accusations.

The idea that declamations might be a way of preparing advocates for a life in the courts would appear to be anathema to many scholars, and while the mapping of Roman law onto the declamation is often quite tenuous,²⁶⁷ it does show that declamation was a means by which youths and men could negotiate legal situations comparable to those they might well

²⁶⁶ I.20.

²⁶⁷ The attempt of Bonner (1949) to map declamations onto existing laws is not entirely successful or convincing.

come across in real life,²⁶⁸ which is the claim Quintilian makes in Book 7.²⁶⁹ In addition the purpose of declamation was not to train young men to become juriconsults but advocates. Thus the laws are not solely legal instruments but something which an advocate can use to his client's advantage or which are an inconvenience and must be surmounted by means of argument. The relation between declamation and Roman law is not an exact mapping: the situation provided by declamatory laws and the synopsis of the case provide a framework for argument. Constructing an argument requires a knowledge of rhetorical theory at some level to answer the fundamental question at issue in the case and this provides an opportunity for *inventio* using the stock characters, situations, and examples which are the very basis of rhetoric as inculcated through the preliminary exercises or *προγυμνάσματα* (with which a student began their rhetorical education).

As well as providing a rhetorical exercise, declamation's relation to Roman Law makes it a real, meaningful, way of exploring situations of civil and criminal law that young Roman men could reasonably be expected to come across in their professional life as advocates. Thus Clarke's assertion that declamation was a failure if judged as a practical training, quoted at the beginning of this section, must, on the basis of the judgement of Quintilian, the legal evidence which remains and that of the *Controversiae* themselves and other declamatory texts, be false.

²⁶⁸ Declamations are always somewhat more abstract and simple than the situation underlying a legal case in the forum or senate (or a political speech in the senate) for the basic reason that their purpose was to give a more simplified set of circumstances on which to argue and in which a single issue lies at the heart of the case. This allows the participants to exercise and develop their talents and thereby prepare for the more complicated speech-making of the real world. The abstraction of declamation allows the participants to argue rather than get caught up in abstruse legal matters.

²⁶⁹ Also cf. the legal position in *Contr.* 3.3, where the excerpt for the father follows the letter of the law regarding the rights of a *paterfamilias* to own his property, while his sons, not being *sui iuris*, are under the control of their father. However, the situation of the declamation does not assume *patria potestas*, thus the declaimer changes the legal premise of the declamation in order to make his argument. Thus, we can see a declaimer making a declamation closer to the legal position within Roman society, a reversal of what is seen as the usual state of affairs.

❧ CHAPTER 4 ❧

THE PREFACES TO THE *CONTROVERSIÆ* OF THE ELDER SENECA

THIS chapter examines the conception and use of declamation and oratory in the *Controversiæ* of the Elder Seneca.²⁷⁰ The chapter focuses on Seneca's pedagogical project as outlined in the Preface to *Book* 1 and its interrelation with the rest of the work. Decline as described by Seneca is not irreversible, but can be countered through the emulation and avoidance of pertinent examples. The chapter advances a new reading of the criticism of declamation contained in the Prefaces to *Books* 3 & 9, tying it into the explanation offered in Chapter 2 and anticipating that of Chapter 6.

The prefaces to the *Controversiæ* elucidate Seneca's methodology, provide fascinating insights into the life, character and works of declaimers of the Augustan period and allow us to draw conclusions regarding the nature and status of both oratory and declamation. This involves tackling the issue of decline, which has been a focus of much scholarly attention,²⁷¹ and is in my opinion not as productive a line of enquiry as others. It will be shown that implicit in the figures of both 'the orator' and 'the declaimer' in the Elder Seneca, as elsewhere in the literature of this period, is the construction of masculinity. That is to say, being defined as 'an orator' or 'a declaimer' can reinforce or compromise the status of a Roman man.²⁷²

²⁷⁰ References in this chapter to 'Seneca' refer to the Elder rather than the Younger. All references to Seneca are taken from Winterbottom (1974a). All references to Quintilian are taken from Russell (2001).

²⁷¹ For decline and the Elder Seneca see Atkins (1934), Bonner (1949) esp. Ch.4, Bornecque (1902), Caplan (1944), Clarke (1996), D'Alton (1931), Edwards (1928), Heldmann (1982), León Alonso (1988), Sussman (1969, 1971, 1972 and 1978) and G. Williams (1978).

²⁷² I take as given the performative nature of gender as discussed in Butler (1990), her approach has been developed by both Walters (1993) and C. Williams (1999). The former

Winterbottom summarises many of the widely held views regarding declamation and its value:

Few students of Latin see much virtue in declamation. Their view is perhaps partly formed by familiar passages in the literature of the first century A.D., where Roman writers pointed to its weaknesses without giving much indication of its strengths.... [These writers tend to stress] the unreality of declamatory exercises, the gulf that they tended to fix between school and forum, and the deleterious effect they had on law court oratory.²⁷³

When this is added to the comments of Quintilian that the licence and lack of knowledge of declaimers was a prime cause of the decline of eloquence (2.10.3), it is not difficult to see why declamation has often been written off or given only a cursory treatment. 'The examples which have survived of declamatory exercises have not tended to raise it in the estimation of classical scholars',²⁷⁴ who tend to take its criticism by Seneca, Juvenal, Petronius and Tacitus at face value, rather than analyse it more fully.²⁷⁵

It is my contention that the decline of eloquence, which is alluded to in much of the prose literature of the Early Empire,²⁷⁶ need not be seen purely as reflecting reality and that in particular the criticism of declamation, which forms a large part of this argument, can be shown to be motivated by other reasons.²⁷⁷ There need not be both a quantitative and, more importantly, a qualitative decrease in oratory from the end of the republic;²⁷⁸ rather the non-transmission of post-Ciceronian oratory can be seen as result of the colossal standing of Cicero, whose presence looms large over public speech in the Early Empire.²⁷⁹ We can see the

considers the relation between oratory, declamation and manhood and has been influential in the genesis of this chapter; the latter's views on the Elder Seneca will be discussed below.

²⁷³ Winterbottom (1980) I.

²⁷⁴ Bonner (1949) vi.

²⁷⁵ Cf. Bonner (1949) vi.

²⁷⁶ While it is impossible to deny that Seneca considers decline to have taken place, this chapter argues that Seneca considers the decline to be reversible due to the imitation of proper models.

²⁷⁷ Heldmann (1982) 226 is perhaps too strong when he sees declamation as a deficient modification of eloquence ('eine... defiziente Abart der Beredsamkeit').

²⁷⁸ As argued against by Habinek (2005) and Walker (2000).

²⁷⁹ The construction of 'Cicero' by means of his *Philippics* and subsequent proscription in the declamation of the late republic and early empire has been examined in Chapter I.

notion of 'decline' as a commonplace, a *locus communis*,²⁸⁰ whose use and implications for our understanding of this period and its literature need to be investigated further. Clarke links declamation and its popularity with the political change from republic to empire (no doubt following the argument of Maternus at the end of Tacitus' *Dialogus de Oratoribus*) and notes its rise amidst the fall of the Greek city-states and the Roman Republic:

...instead of fading away it took on a new form. It lost touch with reality and became an independent self-centred activity, strangely out of touch with the movement of history, yet possessed of a remarkable and persistent vitality.²⁸¹

Clarke does not explain the 'remarkable and persistent vitality' of declamation, nor does he stop to ask the question why, if declamation was so out of touch, it continued for such a long time. As Farrell has argued, it is not possible 'for the modern historian naively to endorse as fact an argument by any ancient ... predecessor about the decline of Latin culture.'²⁸²

For far too long, critics have done just this by stigmatising declamation and understanding it as 'rather a futile pursuit', a view which Chapter 3 has shown is somewhat wide of the mark, given the close correlation of declamation and legal cases.²⁸³ On the other hand, while it may be true that declamation was, to some extent, a ludic version of forensic (and in the case of *suasoriae*, deliberative) oratory, we must exercise caution. The simple fact that declamation can be seen as having the status of a game does not predispose it to any less

²⁸⁰ The criticism of Seneca's age is taken as an example of the *locus de saeculo* as described by Quintilian 5.10.20: *Locos appello non, ut vulgo nunc intelleguntur, in luxuriam et adulterium et similia. As certae rei amplificatio*, an amplification of an agreed fact, the idea of decline must be taken as given, as indeed it had been since Homer and Hesiod. That is not to say that such decline had *actually* happened, although it may have been understood as having happened. Instead, an examination of how Seneca and other writers use the idea of decline will allow this thesis to draw conclusions about how and why such a commonplace idea was used.

²⁸¹ Clarke (1996) 85.

²⁸² Farrell (2001) 86.

²⁸³ Bonner (1949) 71. For such views see Friedländer (1908–13) vol. 3, 12ff. and Carcopino (1941) 114–121.

serious consideration than oratory.²⁸⁴ Games are, in other words, a serious business and of primary importance when making an attempt to understand an ancient culture.²⁸⁵

To take an example from modern anthropology, Geertz's analysis of Balinese cock-fighting and the gambling which surrounds it can be applied with some success to the practice of declamation. Both are 'games' where more is at stake than might at first seem the case. First both cock-fighting and declamation require a significant outlay in terms of both time and money to train those who take part. Secondly, the game-play serves several ends: it allows the participants to claim membership of a group and it provides a means for them to affirm their masculinity and status. Naturally, all games have stakes and rewards. When considering Roman declamation and oratory, Roman men, or those with the *potential* to be men – that is boys, young men and to a lesser extent foreigners, especially Greeks – competed in order to display characteristics which allowed them to lay claim to the status of a Roman man. What can be won can of course be lost or at least compromised: losing face though making a mistake, using 'improper speech' can have decidedly negative consequences for the speaker in question.

In the preface to Book 3 of the *Controversiae* Seneca quotes the recollections of the orator and declaimer Cassius Severus. In the passage quoted below, Severus wreaks revenge on the declaimer Cestius Pius.²⁸⁶

Memini me intrare scholam eius cum recitaturus esset in Milonem; Cestius ex consuetudine sua miratus dicebat: si Thraex essem, Fusius essem; si pantomimus essem, Bathyllus essem, si equus, Melissio. Non continui bilem et exclamavi: si cloaca esses, maxima esses. Risus omnium ingens; scholastici intueri me, quis essem qui tam crassas cervices haberem. Cestius Ciceroni responsurus mihi quod responderet non invenit, sed negavit se executurum nisi exissem de domo. Ego negavi me de balneo publico exiturum nisi lotus essem.

²⁸⁴ For this idea see Bloomer (1997b) 199 and on the concept of ludism in general see Dupont (1985) 48 ff. On *oratio* and *recitatio*, recitation as a ludic form of republican oratory and its relation to *libertas*, see Dupont (1997).

²⁸⁵ For game play and its importance for understanding a society see Geertz (1972), reprinted in Geertz (2000) 412–53.

²⁸⁶ On this passage see also Sinclair (1995) 122–5.

Deinde libuit Ciceroni de Cestio in foro satis facere. Subinde nactus eum in ius ad praetorem voco et, cum quantum volebam iocorum conviciorumque effudissem, postulavi ut praetor nomen eius reciperet lege inscripti maleficii. Tanta illius perturbatio fuit ut advocacionem peteret. Deinde ad alterum praetorem eduxi et ingrati postulavi. Iam apud praetorem urbanum curatorem ei petebam; intervenientibus amicis, qui ad hoc spectaculum concurrerant, et rogantibus dixi molestum me amplius non futurum si iurasset disertioem esse Ciceronem quam se. Nec hoc ut faceret vel ioco vel serio effici potuit.

Contr. 3.pr.16–17

Severus' outburst is provoked by Cestius' speech which purports to prosecute Milo and, thereby, to counter Cicero's *Pro Milone*. He takes Cestius' comparison of himself and turns it into a highly amusing *reductio ad absurdum*, which effectively ends Cestius' declamation. He then takes his revenge further by taking Cestius to court on spurious grounds related to the rather broad charges found in declamations. In so doing:

he completely unnerved his adversary, piercing his carefully fabricated social persona, traducing his most closely kept secret (namely, that Cestius' vanity disguised sheer dreck). By rending Cestius' façade in triumph Cassius diverted everyone's admiration towards himself.²⁸⁷

Thus, when we attempt to understand declaimers and orators and their self-presentation we should remember that:

an ethos of combat thoroughly informed and shaped their attitude towards their vocation supplying them with the imagery and terms that determined the way they responded to one another on their way up the social pyramid.²⁸⁸

Severus' attacks on Cestius may seem petty but they are motivated by Severus' desire to deflate a pompous ego. He succeeds in doing so while surrounded by Cestius' own peer group and then takes him to court on a series of trumped-up charges in order for Cestius to admit that Cicero is more eloquent than him, to reinforce and publicise the fact. Forcing Cestius to admit that the man in response to whom he was writing was the more eloquent makes him construct a hierarchy of eloquence where Cicero comes above Cestius. In beating Cestius in the declamation hall and at court, Severus is able to demonstrate his superiority over Cestius

²⁸⁷ Sinclair (1995) 124.

²⁸⁸ *ibid.*

and, therefore, be seen as higher up in the pecking order (and closer to Cicero!). This example, while highly comic, gives a clear demonstration of the competitive nature of Roman public life: we see people 'playing the game', effecting victories and inflicting defeats.

Another example can be found in the case of C. Albucius Silus, who, as the result of the misuse of a figure, loses a case in the centumviral court.²⁸⁹ He never appears in court again as an advocate: *sed iratus calumniam sibi imposuit: numquam amplius in foro dixit* (*Contr.*7.pr.7), in Seneca's eyes imposing on himself the penalty for *calumnia*, that is bringing a malicious prosecution.²⁹⁰ This self-imposed exile from forensic advocacy is also excessive – there was no need for Albucius Silus to treat his mistake in this way. His reaction to his *faux pas* is not only to admit defeat but to admit his inability to continue to compete. It must be noted that the description of Albucius' self-imposed punishment is an authorial comment by the Elder Seneca rather than Albucius' own description. The fact that the punishment Silus imposes on himself is understood by Seneca as resulting in *infamia* means can be understood in gendered terms, potentially compromising his status and public persona.²⁹¹ While it was embarrassing, the self-imposed punishment by no means fitted the crime and thus his excessive reaction to the situation can also be understood in a gendered sense.²⁹²

Given the implications for Albucius' gender, inherent in what Seneca sees as his self-imposed silence and Seneca's critical language, this chapter will use consider how these oratory and declamation affect the masculinity of speakers. Thus, the stakes can be seen to be very high indeed: the status and identity of a Roman elite man. It may be objected that because Albucius Silus (like Cestius) carries on declaiming and thus engaging in public speech he can continue to make the same status claim that he could as an orator, which would

²⁸⁹ On which see also Quint. 9.2.95 and Suet. *Rhet.* 30.5.

²⁹⁰ On *calumnia* and its penalty, *infamia*, see *D.* 3.2.1.pr.4, and esp. 3.2.4.4.1.

²⁹¹ On which see Edwards (1997). In condemning himself to a punishment understood as removing his voice as an orator or witness and thereby being on a par with actors, prostitutes and gladiators, Silus can be seen as less than a man.

²⁹² That is to say Silus reacts in an excessive way, which can be seen as unmanly.

make his self-imposed exile little more than a storm in a teacup. Yet it has and will be shown that public speech, in whatever form, was something that Romans took seriously because it allowed them to demonstrate 'proper' speech and thereby affirm their masculinity.²⁹³

THE PREFACE TO BOOK ONE

The purpose of Seneca's *Controversiae* is outlined in the opening sentences of the work:

Seneca Novato, Senecae, Melae filiis salutem.

Exigitis rem magis iucundam mihi quam facilem: iubetis enim quid de his declamatoribus sentiam qui in aetatem meam inciderunt indicare, et si qua memoriae meae nondum elapsa sunt ab illis dicta colligere, ut, quamvis notitiae vestrae subducti sint, tamen non credatis tantum de illis sed et iudicetis. Est, fateor, iucundum mihi redire in antiqua studia melioresque ad annos respicere, et vobis querentibus quod tantae opinionis viros audire non potueritis detrahare temporum iniuriam.

Contr. I.pr.I

Seneca aims to give his opinion of the declaimers of the past and to collect their sayings together, so that his sons may form their own judgements.²⁹⁴ The dedication to his sons is now recognised as a convenient literary fiction and integral to the didactic purpose of his work.²⁹⁵ Seneca's stance as a father instructing sons, who were far too old to need such instruction at the time the work was written, gives him authority as an author and helps to reinforce his status and position in Roman society.²⁹⁶

After the opening five chapters of the preface, Seneca begins his work proper. In section 6 of the preface Seneca draws a comparison between the speakers of the present and the past; the latter are in Seneca's eyes superior but this fact is, in the first instance, used to make the point that such a difference can be read as beneficial to eloquence. The speakers of

²⁹³ This point is also made throughout Walters (1993) Ch.3.

²⁹⁴ General studies of the preface to Book 1 can be found in Sussman (1971) and (1972) and Heldmann (1982) 92–7.

²⁹⁵ On this see Lockyer (1971) 221. He shows the dedication to Seneca's sons to be a convenient fiction; also in pages 195–9 he examines the instances of paternal instruction in didactic literature from Cato to Cicero and their relation to Seneca. Also cf. Bloomer (1997c) 200 on Seneca's stance as *paterfamilias*. Paternal instruction is found in the writings of the Elder Cato and Cicero and is also shown in the *Controversiae* themselves by the example of Asinius Pollio in the Preface to Book 4 (which is discussed below).

²⁹⁶ These ideas will be discussed in the conclusion to this chapter.

the past can provide models of style, expression and argumentation, which if good are worthy of imitation (and, by extension, if bad of avoidance). In addition the more examples one consults the better one's speech.²⁹⁷ Thus, Seneca sets up a pedagogical example using his sons as model pupils, noting their dissatisfaction with contemporary models and a desire to know about those of the past, which means that this section reinforces Seneca's objectives for the work as stated at the beginning of the preface.

The supposed curiosity of Seneca's sons is meant to instil similar feelings in the reader, encouraging them to read the work to learn from the examples which Seneca collects and thereby improve their own declamation and the standard of public speech in general.²⁹⁸ While learning from the past fits closely with the idea that public speech in Rome has declined, the past is utilised in a way designed to improve the speech of those who do learn from it and thus can not only have beneficial effects but also reverse any decline (or at least prevent it from continuing).

Seneca continues by saying that all that Rome has achieved in oratory that is either equal to or superior to the Greeks reached its peak in Cicero's day. This tying in of the figure of Cicero with the decline of oratory in the first century has already been examined in Chapter I to show that part of the reaction to Cicero's death in 43BC is that he becomes personified as Roman *eloquentia*, so, at one level, his death can be read as that of eloquence. While most scholars have seen this as decline similar to that found in other writers, if we

²⁹⁷ This is an interesting example of *μίμησις* (as discussed in greater length in Quint. 10.1). For a more detailed account of imitation see Quint. 10.2: section 11 deals with the inferiority of a copy to an original, sections 24–6 are concerned with having more than one model.

²⁹⁸ The idea of using and learning from examples can also be seen in another work of this period, Valerius Maximus. In his collection of *Facta et Dicta Memorabilia* he collects examples which are divided thematically, just as Seneca apportions his excerpts under the heading of the *controversia* or *suasoria* to which they pertain. On Valerius Maximus and *exempla* see Carter (1975); Bloomer (1992), who stresses their rhetorical nature and use; Skidmore (1993), who sees them as designed for moral instruction; and the edition of Shackleton Bailey (2000). The approaches taken by Bloomer and Skidmore should not be seen as exclusive: there is no reason why Valerius cannot be seen as useful for both ethics and rhetoric, given the importance of *exempla* for moral instruction and to add weight to points made in a speech.

consider Seneca's remarks in their immediate context, the reason for this decline becomes clear: it is that speakers have focussed uncritically on a single model, to quote Seneca *Non est unus, quamvis praecipuus sit, imitandus, quia numquam par fit imitator auctori. Haec rei natura est: semper citra veritatem est similitudo* (1.pr.6). Therefore, I would argue that someone who just imitates Cicero, regardless of the fact that he is the Roman orator *par excellence*, without knowledge of others, is not good enough.²⁹⁹ First, to do so smacks of antiquarianism and secondly, imitating Cicero is not good enough because he wrote speeches for his own times, designed to persuade a particular audience. Thus mere imitation will not come up to the same level as Cicero because it shows that the speaker is not necessarily making his speech appropriate and persuasive to his audience: he will only be like Cicero insofar as his style, expression or rhythm are Ciceronian, which does not make him Cicero's equal, let alone better than him.

What matters is that those who speak should possess knowledge of the history of rhetoric and then apply this knowledge, as gained from the examples found in Seneca (and presumably elsewhere), to improve their own speech. That this knowledge is provided in part by Seneca's own collection means that his own work is, if used *properly*, a means by which decline can be ameliorated. The idea of imitation is a key part both of rhetorical training and of a Roman man's self-fashioning. Nevertheless the imitation of exemplary characters or great speakers and writers is not unproblematic, but an ideal situation would seem to involve emulating several, as and when the situation demands, and these examples should be first good and secondly appropriate.

Despite the fact that Seneca's work is concerned with declaimers and declamation, Seneca refers in the preface to *eloquentia* and *facundia*. No-one has, to my knowledge, stopped

²⁹⁹ Cf. Quint. 10.2.22–8 where broad imitation is preferred to narrow and especially Theon 137.6–12 (Patillon) where the slavish imitation of a single author (Demosthenes) results in 'weak and unclear composition.' Cribiore (2001) 236. The parallel between Seneca and Theon seems particularly striking: they both take the example of the leading orator to make a serious point about imitation. Also see Hermog. *Id.* 1.10 where students are criticised for attempting to improve their style by copying ancient writers rather than acquiring knowledge of them.

to ask the question ‘what is a discussion of eloquence (and the decline of oratory) doing in a book concerned with what we are often led to believe were mere school exercises or the causes of this decline?’

The two practices of oratory and declamation are often considered separately,³⁰⁰ yet from the evidence of the first preface, where he refers only to *eloquentia* and *facundia*, Seneca does not make the distinction between declamation and oratory that is made by some men in the first century (notably Cassius Severus and Votienus Montanus in the *Controversiae*, Petronius and Messala in Tacitus’ *Dialogus*) or modern scholars. The reason may be found in the fact that Seneca considered the two practices to be equivalent.

Much has been written on section 7 of the preface, where Seneca gives three explanations for ‘decline’ and scholars have tried to isolate which of the three reasons is favoured by Seneca. If the first cause, luxury – which would seem to have been attacking Rome ever since the fall of Carthage – is to blame, it is hard to see how Seneca’s work can help: the *Controversiae* and *Suasoriae* do not engender a strong desire for Romans to adopt wholeheartedly the *mos maiorum*: to return to the land, ploughing their fields and eating cabbage soup by the fire in homespun togas. If luxury were the cause of decline there would seem to be little point in teaching the youth of the mid first century how to speak, as they are not likely to use the art given the state of Rome.

Seneca’s second reason, *cum pretium pulcherrimae rei cecidisset, translatum est omne certamen ad turpia multo honore quaestuque vigentia*, proposes that the lack of rewards have made Romans turn towards other ways of gaining money and power. We have already seen that similar arguments are made in the *Dialogus* and that it is not an entirely convincing argument. Scholars, notably Sussman, have tried to see Seneca’s explanation as parallel to that of Maternus in chapters 36–40 of Tacitus *Dialogus de Oratoribus*.³⁰¹ While there may be

³⁰⁰ As, for example, by Clarke (1996).

³⁰¹ Cf. Sussman (1972) 197–8.

superficial similarities, the idea that the art of public speaking in declamation or oratory is valued less can be countered by both internal and external evidence. To take an example from the *Controversiae* themselves, that of Asinius Pollio in the preface to Book 4, we can see that his teaching his grandson Aeserninus to speak well is conduct to which Seneca wishes to draw attention.³⁰² I would argue that Pollio would not be doing this unless it was itself important. Looking outside Seneca's text, the evidence for declamation and oratory and its importance continues throughout and beyond the Roman Empire itself.³⁰³ If we believe that elite Romans had moved away from oratory and therefore had no need for eloquence, there would seem to be little point in writing a work to improve the eloquence of speakers and declaimers. The fact that Seneca is writing this book can be seen as showing that declamation in particular and eloquence in general are important. Such an education was itself the mark of a man of status; it allowed a man to play his part in the intellectual and cultural life of his day and thereby display skills which allowed him to lay claim to the status of a male member of the Roman upper classes.

Turning to the third cause of 'decline', the cyclical nature of fate, we can trace this idea back through Cicero and Lucretius to the beginnings of classical literature.³⁰⁴ Bonner sees this explanation as a commonplace and 'a facile and hardly satisfactory explanation'.³⁰⁵ Sussman sees this explanation as reflecting Seneca's familiarity with Cicero (*Tusc.* 2.2.5) and Velleius Paterculus (I.17) and being caused by man's inability to imitate something he cannot hope to emulate.³⁰⁶ Yet, given that Seneca's work as a whole is concerned with the imitation of examples, if such imitation were no longer possible, his work would have been

³⁰² The preface to Book 4 and the figure of Pollio are examined in detail towards the end of this chapter.

³⁰³ See Heath (2003b) and (2004b) for an examination of declamation in the late antique period, which argues against the conventional picture of decline. Winterbottom (1982) also examines the teaching of eloquence as well as the relation of declamation to the medieval curriculum.

³⁰⁴ These are examined in detail by Heldmann (1982) 63ff.

³⁰⁵ Bonner (1949) paraphrased in Sussman (1972) 206.

³⁰⁶ Sussman (1972) 206–7.

doomed to failure; because I find it hard to believe that Seneca would undercut his project at the outset, in my opinion Bonner's explanation of this cause as a commonplace the most persuasive reading.

Given the fact that all of the three 'causes' can be seen as commonplaces which are often found in prefatory and methodological statements in ancient authors,³⁰⁷ section 7 of the preface can be understood as a literary motif and a standard rhetorical figure, the *locus de saeculo*, one which occurs several times in the extracts quoted by Seneca.³⁰⁸ It will, however, be shown that Seneca puts what is normally a condemnation to a novel use, which is integral to the didactic purpose of his work.

Having talked of examples and decline Seneca turns to the youth of his own day:

Torpent ecce ingenia desidiosae iuventutis nec in unius honestae rei labore vigilatur; somnus languorque ac somno et languore turpior malarum rerum industria invasit animos: cantandi saltandique obscena studia effeminatos tenent, [et] capillum frangere et ad muliebres blanditias extenuare vocem, mollitia corporis certare cum feminis et inmundissimis se excolere munditiis nostrorum adulescentium specimen est. Quis aequalium vestrorum quid dicam satis ingeniosus, satis studiosus, immo quis satis vir est? Emolliti enervesque quod nati sunt in vita manent, expugnatores alienae pudicitiae, neglentes suae. In hos ne dii tantum mali ut cadat eloquentia: quam non mirarer nisi animos in quos se conferret eligeret. Erratis, optimi iuvenes, nisi illam vocem non M. Catonis sed oraculi creditis. Quid enim est oraculum? nempe voluntas divina hominis ore enuntiata; et quem tandem antistitem sanctiorem sibi invenire divinitas potuit quam M. Catonem per quem humano generi non praeciperet sed convicium faceret? Ille vir vir quid ait? 'Orator est, Marce fili, vir bonus dicendi peritus.' Ite nunc et in istis vulsis atque expolitis et nusquam nisi in libidine viris quarite oratores. Merito talia habent exempla qualia ingenia. Quis est qui memoriae studeat? quis est qui non dico magnis virtutibus sed suis placeat? Sententias a disertissimis viris iactas facile in tanta hominum desidia pro suis dicunt, et sic sacerimam eloquentiam, quam praestare non possunt, violare non desinunt. Eo libentius quod exigitis faciam, et quaecumque a celeberrimis viris facunde dicta teneo, ne ad quemquam privatim pertineant populo dedicabo.

Contr. I. pr. 8–10

Many scholars take this section of the preface as a key part of the argument for decline in oratory as outlined in section 7 of the preface. Gordon Williams sees Seneca losing his

³⁰⁷ Cf. Jansen (1964).

³⁰⁸ At *Contr.* I. pr. 6–9, I. 2. 20, I. 7. 5, 2. pr. 2, 2. I. 10–13, 2. 5. 7, 2. 7. 1, 2. 7. 8, 7. 5. 3, 9. 6. 6, 9. 6. 19, 10. 4. 17–18 and *Suas.* 6. 10.

temper and berating the young men of the present for their lax morals,³⁰⁹ which is compatible with his view of Seneca as a critic who privileges the moral argument for decline over the other two mooted in the preface,³¹⁰ and is part of a book which wishes to advance the idea of moral decline in the literature of the first century AD. Sussman, on the other hand, reads this passage as showing that Seneca believed that a combination of all three factors was the cause of decline and that §§ 8–10 are an expansion of the decline of morality and the inexorable nature of the cycle of rise and fall, as represented by ‘the misuse of imitation’.³¹¹

However, if, instead of assuming that what we are dealing with here is a cause of the decline of eloquence, we consider what Seneca is saying, how he says it and most importantly why he is saying it, we can begin to shed some light on the preface’s purpose, and what this so-called ‘rant’ is doing in it.

Richlin sees the above section of the Preface as containing ‘standard accusations made by invective against effeminate homosexuals’.³¹² She sees them as debauchers of other men’s wives (*alienae pudicitiae*),³¹³ who allow ‘themselves to be used as women (*suae*)’.³¹⁴ The lack of care shown for one’s own *pudicitia* need not be seen solely as engaging in the *stuprum* of *muliebra pati*. Such a reading relies upon seeing masculinity as reliant upon being the unpenetrated penetrator, but this standard model of classical male sexuality (posited by Dover, 1978) is not the whole story. As Davidson (1997) has argued,³¹⁵ against Dover, Foucault and others, action or passivity and penetration are not the defining conditions, rather sexuality can be analysed in terms of control over others and particularly over oneself. Additionally, as Craig Williams has shown, masculinity can also be constructed in terms of control. Lack of care for one’s own *pudicitia* is a complex nexus of ideas – that can be

³⁰⁹ G. Williams (1978) 8.

³¹⁰ G. Williams (1978) 9.

³¹¹ Sussman (1972) 208–9.

³¹² Richlin (1983) 3.

³¹³ *ibid.*

³¹⁴ *ibid.*

³¹⁵ Especially in 167–82.

manifested through engaging in practices such as fellatio and passive homosexuality, which have traditionally been seen as compromising masculinity, but also through any act which represents a loss of control either over oneself or over others, as this too has the ability to compromise one's status as a man.

Richlin also argues that 'the Elder Seneca blames the style of life he deems effeminate for a decline he perceives in the quality of oratory';³¹⁶ one can equally (from the evidence given in the Preface to Book 1) blame the inability of students to follow a wide range of examples, i.e. declaimers and their styles, in making their own speeches. In addition, the idea that a man's life affects his oratory is contradicted by Seneca himself particularly in his presentation of Cassius Severus (in the Preface to Book 3) when he states *Nec enim quicquam magis in illo mirareris quam quod gravitas, quae deerat vitae, actioni supererat* (3.pr.4).

In his ground-breaking work on Roman masculinity, Craig Williams illuminates the construction of masculinity: 'Despairing of the new generation of orators, the elder Seneca moralizes in explicitly gendered terms';³¹⁷ his analysis of the passage is pertinent to the present discussion. He notes that a man's literary style and his life reflect each other, quoting Seneca in the same way as Richlin (see above) but, unlike Richlin, suggests that their effeminacy stems not from their penetration of others or their being penetrated but from their disregard for social norms.³¹⁸ The criticism of the Romans of Seneca's own day is both clearly gendered and bound up with the notion of the decline of eloquence; the main thrust of Seneca's argument is that you need to be careful not to compromise your masculinity either through word or action.

Thus, Bloomer argues that Seneca

sets the approved virile style, to be learned from his collection against the reigning effeminacy of his day. This highly useful *topos* delivered by an old man helps to elevate

³¹⁶ *ibid.*

³¹⁷ C. Williams (1999) 149.

³¹⁸ *ibid.*

Seneca's circle from the general opprobrium directed against declamation. Seneca also styles himself as a dedicating magistrate or a Roman censor.³¹⁹

Bloomer makes a rather apposite comment on virility and style, which can be seen in rhetorical works spanning nearly two centuries. His reading presupposes that the criticism of declamation is to be taken at face value; his evidence for 'opprobrium' is the criticism of the prefaces to Books 3 and 9, which will be discussed in detail below (and found to be less 'critical' than many scholars have supposed), and while reading Seneca as a censor or magistrate may link him with the figure of Cato I believe that other more fruitful readings are possible.

Turning to the next section of the preface, Craig Williams rightly notes that there 'is a deliberate paradox here: the only way these soft and decadent creatures behave like active, dominant men is in asserting their lusts, but since they do so in inappropriate and uncontrolled ways, they show themselves to be, in the end, not men at all. The rhetorical question posed earlier by Seneca, "Who is sufficiently a man?", now finds its answer: none of them since they are "men in no way men except in their lust"'.³²⁰ What matters here is not that the young men whom Seneca is castigating penetrate and are penetrated but rather that their lack of self-control and continence in matters sexual can be seen as reflecting a general lack of control, which problematises their public image and ability to speak well. While a degree of sexual desire is to be encouraged, the fact that their only claim to masculine *virtus* is that they have the same lusts as men *nusquam nisi in libidine viris quaerite oratores* is neither necessary (in terms of degree) nor sufficient to make the claim to be either an orator or a man.

³¹⁹ Bloomer (1997c) 214. There is no need to agree with Bloomer that Seneca sees himself as a censor. While he is interested in 'restoring virtues to their proper men' such a restoration need not be seen as for purely moral reasons, rather that he is interested in his 'pupils' being good at being men.

³²⁰ Williams (1999) 149.

Richlin has shown how the charge of effeminacy is a standard weapon in the armoury of political invective³²¹ and I wish to argue that Seneca's 'tirade' can be read as a piece of rhetoric, an example of the *locus de saeculo* as exemplified in Seneca's work by the declaimer and Stoic philosopher, Fabianus,³²² whose implications for the didactic purpose of the work have not been fully considered. If we take a step back for a second and consider that if the youth of his day, the 'nadir' of decline as Gordon Williams would have it,³²³ are this bad, this corrupt, why is Seneca bothering to write a book containing extracts of declamations, the very thing that in Williams' opinion causes decline, with an explicit didactic purpose?

Returning to §8 of the preface, Seneca notes that the *ingenia* of lazy young men are inert: *Torpent ecce ingenia desidiosae iuventutis*. They are in other words failing to apply their creative faculty to the task in hand, failing even to stay awake to work on a respectable pursuit (*nec in unius honestae rei labore vigilatur*), that is one which is proper and fitting for a member of the elite. We should not at this point characterise the young men of the mid first century as chronic narcoleptics; rather Seneca is making the point that the study of eloquence requires effort and that a lack of care and work can only yield bad results. The rest of §8 is taken up with examples of behaviour which, as we have seen, have the power to compromise the (potential) masculinity of the young men.³²⁴ This lack of effort and unmanly behaviour which has normally been taken as a characteristic of decline serves an important purpose, it is an example of what not to do if you want to become a good orator.³²⁵

³²¹ We have seen examples of this in the declamations discussed in Chapter 1.

³²² Thus this section of the preface can be seen as parallel to the previous one where the causes of 'decline' are outlined; both are perhaps best understood as examples of the *locus de saeculo*. Examples of Fabianus' criticism of his own age can be found at *Contr.* 2.1.10–13, 25, 2.3.5, 2.5.7, 2.6.2. It is worth noting that these examples represent a substantial proportion of his excerpts as preserved by the Elder Seneca.

³²³ Williams (1978) 9.

³²⁴ See Richlin (1983), Bloomer (1997b) and Williams (1999), quoted above. The topic is also treated at greater length by the Younger Seneca (*N.Q.* 7.31.2).

³²⁵ The use of the critical vocabulary employed by Seneca is widespread. On the idea of youth seen as *desidiosus* (lazy, indolent idle) and *effeminatus* (cf. Quint. 1.8.2) see Tac. *Ann.* 15.67, Val. Max 9.1.ext.7, Cic. *Phil.* 3.12.; for the use of *emollitus* (*OLD* 2b) cf. Celsus 1.9.6, Sen. *Ep.* 92.10, Tac *Agr.* 11.5, Sen.

At the beginning of §9 Seneca asks ‘which of your contemporaries, what shall I say, has enough talent, works hard enough, no indeed who is enough of a man?’ Having shown the importance of *studium* and *ingenium*, Seneca wishes to stress the importance of proper manly behaviour. In the previous section we have been given examples of unmanly behaviour, which Seneca now expands upon in order to show, not the depths to which Rome has sunk, but how not to be a good public speaker. Seneca then prays that such men should not be eloquent, as he would not care for it if eloquence did not choose those on whom it conferred itself: *In hos de dii tantum mali ut cadat eloquentia: quam non mirarer nisi animos in quos se conferret eligeret*. Such men should not be seen as eloquent, as eloquence is one of the ways in which a proper man can seek to affirm his masculinity.

Seneca then introduces the Elder Cato, from whom he quotes at the end of the section. Cato the Elder is a proverbial figure, a stern moralist, a censor and an archetype of Roman manhood. Seneca sees Cato’s pronouncement as an oracle, a moment of divine revelation to mankind and such religious overtones must be designed to add force to Seneca’s pronouncements.³²⁶ Seneca, continuing his rhetorical purple passage, claims that Cato’s dictum is meant to censure men rather than teach them: *per quem humano generi non praeciperet sed convicium faceret*. This is, perhaps, best understood as an ironic comment. In a work with a clear didactic purpose the possibility of censuring bad behaviour should not be discounted, but nor can the important lesson which is taught by Cato’s advice to his son or its relevance to the youth of Seneca’s own day. I would also like to advance another reading of the end of §9, *Ille ergo vir quid ait? “Orator est, Marce fili, vir bonus dicendi peritus.”*, for which I draw on Walters (1993):

Contr. 6.8 (of women rather than men); for the use of *enervis* cf. Val. Max. 3.5.3, Tac. *Dial.* 18.5, Sen. *Ep.* 74.33.

On the phrase *expugnatores... alienae pudicitiae* cf. Cic. 2 Ver. 1.9. and Quint. *Decl.* 329.9, where the phrase is used to describe the tyrant of the title of the declamation. On the character type of the tyrant and its use in rhetoric and historiography see Dunkle (1967) and (1971).

³²⁶ Indeed, such status makes it virtually impossible to argue against Cato as employed by Seneca.

The full force of this formulation has not... been brought out before: it is best made clear if the Latin is translated to read that the ideal public speaker (as well as being skilled at oratory) is not *merely* a good man, but *good at being a man*, to bring out the performative element common to both oratory and "manhood".³²⁷

Walters goes on to cite Quintilian, Tacitus and the *Rhetorica ad Herennium* in support of his argument.³²⁸ It must be noted that being good at being a man is a necessary but not a sufficient condition for being a *vir bonus*; yet scholars have generally not stressed the importance of gender in the construction of a Roman man's public persona. Given the clearly gendered nature of the critical language employed by Romans, proper speech can be seen as linked with proper behaviour in general as well as masculinity.

When we also consider that in the Preface to Book 1 Seneca juxtaposes examples of behaviour which compromise masculinity with Cato's famous dictum, such a conclusion seems inevitable.

If Seneca's quotation of Cato is considered within its context, such a reading makes a great deal of sense. Having 'criticised' the young men for unmanly behaviour, which can compromise their masculinity, he states Cato's dictum to reinforce the message that to be a proper man you need both eloquence, which takes talent, effort, hard work and a wide

³²⁷ Walters (1993) 87 [My emphasis]. On this point also see Richlin (1997) 90, who stresses the importance of gender in understanding Roman oratory and culture. Connelly (1998) 130 also stresses the idea of manliness inherent in *virtus*, as do Farrell (2001) and Habinek (2005).

³²⁸ Walters (1993) 87 n.10 & 11: 'Quintilian *Inst.* 1.2.3 'I believe that one cannot be an orator without being a good man; nor, if it were possible, would I have it so.' *Inst.* 2.20.4 'what we are seeking to instil, what is appropriate for a good man an is true oratory is *virtus*.' *Inst.* 1 pr. 9 'Since we are training the finished public speaker, who must be a good man, we demand from him not only an exceptional skill in oratory, but a complete set of *virtutes*.' For the political nature of the orator's manhood, cf. Quintilian *Inst.* 1 Pr 10: '*vir vere civilis*' which Butler in the Loeb edition well translates as 'the man who can really play his part as a citizen', a translation which is adopted by Russell (2001). *Rhet. Her.* 3.22 uses the phrase 'a manner of speaking worthy of a man' of the correct orator's vocal range, which is contrasted with 'yelling like a woman' and with slavishness.

For the possible Stoic origins of *vir bonus dicendi peritus* see Kennedy (1963) 293 and also Rademacher (1893), Schöll (1902), Morr (1926). The great modern treatment of this phrase is Winterbottom (1965). For a detailed examination of the Platonic, Aristotelian and Stoic influences on the citation in Quintilian 12.1.1 see Garcia-Castillo (1997).

knowledge of the subject, and to be able to display proper manly attributes rather than mincing around: to be a man in Rome it is necessary to be seen to be one. Having earlier asked the rhetorical question ‘Which of you is enough of a man?’ (*quis satis vir est?*) – presumably to be an orator – Seneca then answers it, stating ‘Go now and look for orators among the hairless and refined, men in no way other than their lusts. Quite properly they have models as depraved as their *ingenia*’ (I.pr.10). Two things are worth noticing: first, this clearly gendered criticism, while it looks back to the examples in §9, only makes sense when read in relation to Seneca’s quotation of Cato; so we must posit that Seneca himself understood Cato’s definition as pertaining to an orator’s masculinity, and that unmanly behaviour and unmanly speech can compromise the ability to claim the status of a Roman man and member of the social elite.³²⁹ What Seneca seems to be doing is innovating by making explicit what lay implicit in earlier uses of the phrase. Secondly, returning to the didactic purpose of the work, when Seneca states that the youths have models as depraved as their *ingenia*, we are reminded of his discussion of *exempla* in §6 of the preface. Reading §10 of the preface in the light of §6, it is clear that the wayward young men have taken models of behaviour and speech which have compromised their ability to call themselves men; they need to be made aware of, look at and imitate more examples of good manly oratory and avoid bad ones, both of which are naturally provided by Seneca’s collection, in order to turn them back into proper men and *ergo* proper orators. Thus we can see some thematic coherence and unity in the Preface to Book I.

Having shown how speech and masculinity can be compromised, Seneca asks which of these young men ‘cares for his future renown’³³⁰ (*Quis est qui memoriae studeat?*). While

³²⁹ Cf. Walters (1993) 112: “‘Manhood’ in Roman culture was a state that was not unchallengeably attained once and for all. It was therefore performative: those who had asserted their right to it had to demonstrate in action their continuing suitability for the status.’

³³⁰ Winterbottom (1974a) 11.

Sussman has taken this as referring to the mental faculties of the young men,³³¹ and thereby contrasting them with his own abilities, I believe that the translation adopted by Winterbottom (1974a) (quoted above) is right. The question does not look back to the previous sections where the youths are criticised but forward to the next section where Seneca seeks to ensure the *memoria* of the declaimers he will quote in his work. Care for one's memory, for one's reputation, to be a fitting successor to one's ancestors is a primary motivating factor ensuring that Romans, particularly those of the upper class, are seen to compete and succeed in the public arena.³³² Thus, in caring for their own reputation (in the same way that Seneca seeks to safeguard that of the men he quotes in his collection) young men are reminded of what is required to succeed in the competitive world of the Roman elite.

What has been seen by most commentators as a state of moral decline which Seneca is lamenting can, therefore, be viewed in other ways. Given that masculinity can never be completely achieved, it is necessary to maximise the possibility of being read as masculine and to minimise the possibility of being read as anything less than a proper man. In this context, it is worth noticing that Seneca is addressing youths, not men: youth is seen in the ancient world as a liminal period when you are neither a boy nor a man.³³³

In order to comprehend further the purpose of Seneca's positive attempt to reform Roman youths and turn them into good men I wish now to consider the formation of character and adolescence.

The theme of *lubrica adulescentia* is a key element in Cicero's defence of Caelius. Youth is a *tempus infirmum*, exposed to the *multas vias adulescentiae lubricas* which nature herself offers. Nevertheless, under proper guidance, the instability of youth will settle down into stable maturity. So the behaviour that is natural

³³¹ Sussman (1972) 205: 'Instead, from Seneca's other comments on memory, it seems he is offering evidence of the younger generation's laziness', i.e. that they have not trained their memory.

³³² On the relationship between Romans and their ancestors see Flower (1997). The fact that in an upper class house the *imagines* of one's ancestors line the *atrium* and in a sense observe what goes on there should not be overlooked.

³³³ On this see Kleijwegt (1991) and Eyben (1993) who stresses the idea that wayward youths do grow up into proper members of society.

in youth should not necessarily be taken as what will come in adulthood [Cf. Cic. *Pro Cacl.* 10, 41, 42–3, 76–7]³³⁴

The idea that the development of the adult character depends not only on innate qualities but also on upbringing and the influence of individuals and of society at large is apparent in these and many other Latin passages, and is strikingly illustrated in the stock theme of *adulescentia as lubrica aetas*.³³⁵

Gill's reading of such passages of Latin literature can, I would argue, provide us with an interpretative framework within which to construct an alternative to the line of argument taken by most scholars when reading §§8–10 of the preface which categorises them as a 'rant'. While the passage is an example of the *locus de saeculo* and thus superficially a rant, it is, I would argue, an example of a piece of literature whose form does not match its content or, most importantly, its purpose.

If we take Gill's interpretation of the development of character and adolescence, then Seneca's use of examples of degenerate youth can be seen as serving both to excuse their behaviour, because youth is itself understood as an unstable liminal period,³³⁶ and more importantly to encourage the youth of his own day to behave in a way which does not have the potential to compromise their masculinity. Such a protreptic function is not as outlandish as it might at first seem, given that we are dealing with a work on declamation and oratory whose purpose is to provide models for imitation and avoidance (cf. *Contr.* I.pr.6). By using proper speech to reinforce their masculinity and status, the young men will be turning from unstable youths into proper men as Cicero claims they can under proper guidance,³³⁷ guidance found in the form of examples of speech and behaviour to imitate or avoid. As such, Seneca's 'criticism' can be read as an example of the *locus indulgentiae*, like that of Fabianus at

³³⁴ Gill (1983) 476.

³³⁵ *ibid.* For examples cf. Plin. 4.2.1 *erat puer...refert*, Pers. 5.34–5 *cumque iter...in compita mentes*, Hor. *AP* 161–3 *imber bis iuvenis...cereus in vitium flecti*.

³³⁶ This can also be inferred from the argument used for the other side of *Contr.* 5.6, where the teenager raped while wearing men's clothing has the cross-dressing explained as an adolescent prank *sed hoc iocis adulescentium factum est*. Such argumentation presupposes the fact that youths will behave in this way.

³³⁷ Cic. *Pro Cacl.* 10, 41, 42–3, 76–7.

Contr. 2.4.10, where he states *adulescens est, expecta, emendabitur, ducet uxorem*, here he sees the boy born to a profligate youth and a prostitute as capable of growing up to be a proper Roman man, under the guidance of his grandfather.³³⁸

The guidance to turn Roman youths into proper Roman men is provided by Seneca by means of the *Controversiae* and *Suasoriae*. Thus, under the guise of paternal instruction with which the preface starts, Seneca is setting himself up as a surrogate *paterfamilias* for any Roman youth who reads his work, ensuring, rather than denying, the possibility of proper manly oratory in the future. This idea is highlighted at the end of §10, where Seneca dedicates to the people the eloquent sayings of famous men: *et quaecumque à celeberrimis viris facunde dicta teneo, ne ad quemquam privatim pertineant, populo dedicabo*.

Such a dedication need not, as Bloomer has taken it, be that of a magistrate, rather (under the guise of a father replying to a request from his sons) Seneca makes them public instead of keeping them to himself (or his family) – as befits a work with a didactic purpose. This is presumably because the work he has written has a broad use: the preservation of the *memoria* of the declaimers,³³⁹ the provision of examples where none have existed before, and the counteraction of forged versions of declamations which have, according to Seneca, been circulating.³⁴⁰ The existence of forgeries is itself testament to the popularity of declamation, but the comment also relates to the previous section of the preface, where Seneca had castigated those who attempt, through plagiarism, to pass off as their own the work of others. Being unable to match the models they are set, these individuals pander to the crowd with an eloquence which is not their own, and such a lack of eloquence (together with the hard work required to attain it) has the potential to damage the art itself. The speakers attempt to hide their own lack of *virtus* (be it talent, virtue or manliness) by appropriating

³³⁸ Other examples of the *locus indulgentiae* can be found at *Contr.* 2.6.11, *Juv.* 8.163 and *Cic. Pro Cael.* 39ff. For a discussion of this theme in Roman social history see Eyben (1993).

³³⁹ Beard (1993) 53 sees Seneca constructing an 'heroic image' for rhetoricians as well as reflecting their position in society.

³⁴⁰ *Contr.* I.pr.11

something tried and tested instead but Seneca also lays the fault at the door of the audience who hear the *sententiae* but do not recognise them as plagiarised. Thus, Seneca's work has a dual function in that, as well as helping speakers, it has the potential, though its dissemination, to help educate the audience listening to declamations and stop such plagiarism from being possible.³⁴¹

Instead of being works which bemoan the death of eloquence and the descent of Roman manhood into depravity, the *Controversiae* and *Suasoriae* are best understood in terms of the exemplary tradition common to rhetoric and ethical instruction and as a proptretic, which recognises the fact that there has been a decline during Seneca's lifetime but stresses the idea that decline is *not* a one-way street: things can get better, through the consultation, imitation and avoidance of models of speech and behaviour. These models are provided by Seneca to a readership who do not have his experience of Rome's rhetorical culture in the triumviral period and the reigns of Augustus and Tiberius, but who can benefit from Seneca's knowledge and experience.

THE CRITICISM OF DECLAMATION IN THE PREFACES

'Nothing is more common in ancient discussions of declamation...than complaints about the fatuity of declamation'.³⁴² Passages in the Prefaces to Books 3 and 9 of the *Controversiae* have been cited (though rarely discussed at great length) in support of a particular kind of literary history employed by modern scholars, whom I believe to have misread the text in order to reach the conclusion at which they wished to arrive. I wish instead to explore a possible range of meanings contained in these texts, employing a caution similar to that of Heath (2004b), who argues that 'the extent of ancient criticisms of declamation should not be exaggerated'.³⁴³

³⁴¹ On plagiarism in the Elder Seneca see M'Gill (2005).

³⁴² Bloomer (1997b) 136.

³⁴³ Heath (2004b) 303.

In the Preface to Book 3 of the *Controversiae*, Cassius Severus, Seneca's example *par excellence* of the good orator who cannot declaim *controversiae* as well he makes speeches in the law court, is the first example of the critic of declamation, a position taken up by several writers in the first century AD. In reply to Seneca's question of why he does not declaim as well as he speaks in court Severus claims in §§ 8–9 that it is impossible to expect people to be good at everything, quoting examples such as Cicero's poetry and Virgil's prose. He is therefore making a distinction between oratory and declamation and treating the two practices as separate, unlike Seneca in the Preface to Book I, where they are seen as one and the same.

Bloomer sees the speech as reflecting an embarrassing reality which demands an apology;³⁴⁴ but perhaps self-justification or defence is closer to the mark. It is still worth asking why Severus needed to justify, or defend, his inability to declaim as well as he speaks in court cases. The answer lies in the fact that his inability to declaim to a similar standard as when he speaks in court can be read as casting doubt on his ability as a speaker (especially at the level of game-play, where only his status, as opposed to his and his client's is at stake), which could be seen as compromising him as an orator and, therefore, as a man. Equally one argue that Severus only plays the game when the stakes are high – he is a 'high-roller' or in Geertz's terms engaged in 'deep play'.

In §§ 10–11 Severus marshals the examples of the orators C. Sallustius Passienus Crispus and Pompeius Silo, who also do not declaim as well as they make speeches, to attempt to prove that his inability is not unusual and certainly nothing to worry about. He continues by claiming that declaimers look to please an audience, whereas he looks to persuade a judge (*adsuevi non auditorem spectare sed iudicem*).³⁴⁵ This line of argument, as we shall show later, is not borne out by the evidence of the declamations themselves; in addition, the

³⁴⁴ Bloomer (1997c) 207.

³⁴⁵ *Contr.* 3.pr.12

idea that an orator has never played to the gallery could be seen as contrary to one of the laws of rhetoric: to use amplification to engender an emotional response in your audience. This response is designed to affect an audience capable of making a decision, yet Severus sees people desiring to please the audience rather than the judge – their efforts are misdirected.³⁴⁶ He then claims to have avoided what is superfluous as well as evidence which is contradictory, which has meant that he has avoided declamation as it is superfluous in itself:

non minus devito supervacua dicere quam contraria. In
scholastica quid non supervacuum est cum ipsa supervacua sit?
Contr. 3.pr.12

This piece of Severus' argument shows us that we are being given one side; Severus is not mentioning anything which might weaken his case (if we apply his own statement to his speech as a whole). Given that we only have one side of the argument, it would be ill-advised to take Severus' criticism as the truth without considering why Severus has not given us the other side. Heath (2004b) 303 notes that 'what is most overwhelmingly common in ancient discussions of declamation is advice on how to do it', and discusses Antiochus and Aelius Aristides,³⁴⁷ who express views similar to those of Severus. If Severus expressed the positive view of declamation found in Books 2, 5 and 10 of Quintilian's *Institutio Oratoria*, it would force him to admit that declamation had a point, that it was useful and thus that his own rhetorical skills (or lack of in the case of declamation) could be the reason why he does not declaim well, rather than a deficiency in declamation itself. Such an argument would thereby invalidate his criticism of declamation.

In addition, as will be shown below, in the case of Votienus Montanus, the idea that declamation is a soft option by comparison to oratory can be easily countered. The physical constraints of a declamation require that the argumentation and expression should be tight,

³⁴⁶ Seneca comments on the careless nature of declamatory audiences in *Contr.* 1.pr.10 and *Suas.* 2.19, on which see McGill (2005).

³⁴⁷ Heath (2004b) 302.

so in fact, contrary to Severus' assertion, oratory allows more room for superfluity than declamation.

In §13 Severus compares declamation and oratory using a gladiatorial metaphor. Declamation is seen as sparring with a *rudis*, whereas oratory is akin to fighting: *Deinde res ipsa diversa est: totum aliud est pugnare, aliud ventilare*. The implication is that declamation is training; it merely involves going through the motions as opposed to doing the real thing (although such practice fighting can still result in serious injury, in the same way that declaimers can lose face). He continues the metaphor by seeing the declamation school as a gladiatorial school, the forum as the arena. Given the fact that military prowess is one of the two traditional ways for members of the Roman elite to gain a public reputation as a member of that elite and thereby lay claim to masculinity, such a comparison is to be expected. It highlights the fact that manhood can be achieved through speech. The fact that gladiators represent a problematic paradigm of masculinity could be seen to denigrate declamation and promote oratory as the proper way of displaying manly prowess, but it is important to realise that both have the *potential* to be read as masculine.³⁴⁸ In the rest of the section Severus contrasts 'soft' declaimers with 'hard' orators who are not closeted inside, but who speak in the forum in all weathers. Such a comparison is, therefore, intended to present oratory as proper manly speech, conceptualising declamation as something for children (and trainees) and not for men.

Severus then blames the audience, who prefer declaimers to orators:

Utrum ergo putas hoc dicentium vitium esse an audientium?
Non illi peius dicunt, sed hi corruptius iudicant: pueri fere aut
iuvenes scholas frequentant; hi non tantum disertissimis viris,
quos paulo ante retulli, Cestium suum praeferunt sed etiam
Ciceroni praeferunt, nisi lapides timerent.

Contr. 3.pr.15

³⁴⁸ On the problematic status of gladiators as being on the one hand hyper-masculine yet also emasculated and controlled see Edwards (1993 and 1997) and Walters (1993 and 1997).

The audience, who are to be criticised for their choice, do not prefer declaimers because their speech is better but because, in Severus' eyes, they are not able to judge properly. This fact is put down by Severus to the audience being comprised of boys and young men who have yet to develop the critical faculties to make the right judgement. He expands upon this by claiming that they value the declaimer Cestius Pius over Cicero. He continues by saying that they learn Cestius' declamations by heart but only read those of Cicero's speeches for which Cestius has written speeches arguing the other side: *quo tamen uno modo possunt praeferunt; huius enim declamationes ediscunt, illius orationes non legunt nisi eas quibus Cestius rescripsit*. We have already seen that Severus and Cestius have had memorable bruising encounters, so his choice of Cestius as a declamatory whipping-boy is integral to Severus' self-presentation in this preface. Severus shows that he, like Seneca, can identify a potential model and his faults; in going on to criticise the audience, who do not have this ability, he reinforces the comments of Seneca in the Preface to *Book I* on the need for educated audiences as well as speakers.

In order to reply to his critics, Severus resorts to a well-known line of argument, namely that attack is the best form of defence. By attempting to undermine the credibility and usefulness of declamation *per se*, Severus' inability to declaim as well as he speaks in court can be seen as less of an issue. It is of little consequence that his declamations are worse than his speeches in court because, in his eyes, declamation itself does not matter. This line of argument and in particular the view of declamation as a worthless practice, something beneath a man of talent, is paralleled in the case of Votienus Montanus³⁴⁹ and has been shown to be the case with Messala in Tacitus' *Dialogus de Oratoribus* and will also be demonstrated in Petronius' *Satyricon*.

³⁴⁹ On Votienus and the criticism of declamation see also Heath (2004b) 302, 304–5.

In what remains of the preface to Book 9 of the *Controversiae* Seneca recalls the orator Votienus Montanus and in particular his views on declamation.³⁵⁰ These have been taken as ‘an assault on declamation’ parallel to that of Cassius Severus in Book 3,³⁵¹ and a dramatic and harsh examination of the differences between oratory and declamation.³⁵² These two views are typical of the standard scholarly position regarding the Preface to Book 9 which I shall show relies upon a cursory reading of the text of Book 9 and does not reflect Seneca’s text as a whole.

Montanus Votienus adeo numquam ostentationis declamavit causa
ut ne exercitationis quidem declamaverit. Rationem quaerenti mihi
ait: Utram vis? honestam an veram? Si honestam, ... , «si veram», ne
male adsuescam.³⁵³ Contr. 9.pr.I

Seneca’s quotation of Montanus is preceded by the claim, made by Seneca, though also one with which Montanus would agree, that he never declaimed either for show or exercise *Montanus Votienus adeo nusquam ostentationis declamavit causa ut ne exercitationis quidem declamaverit* (9.pr.I), which Sussman takes at face value: ‘Montanus refused to have anything to do with declamation at all’.³⁵⁴ Having discussed Montanus’ criticism of declamation I shall return to this claim, as it requires more in-depth comment than it has hitherto received. Montanus claims that the true reason why he does not declaim is to prevent him from falling in to bad

³⁵⁰ We learn from Tac. *Ann.* 4.42.1–3 that Votienus Montanus was charged with making offensive remarks against Tiberius (*contumelias in Caesarem dictas*), found guilty of treason and exiled ‘apparently to the Balearic Islands where he died in (?) 27’ (Martin & Woodman (1989) *ad loc.*). Tacitus’ opening comment on Montanus, *celebris ingenii viro* (4.42.1), when taken in the context of the charges, indicates Montanus’ undisputed oratorical ability (*ingenium*), which is not in itself a guarantee of a lack of faults.

³⁵¹ Winterbottom (1974a) 209 (Vol. 2).

³⁵² Sussman (1978) 50.

³⁵³ Winterbottom (1974a) reads *Si honestam, ... , «si veram», ne male adsuescam*, the phrase *si veram* being the emendation of Thomas. Håkanson (1989) also reads this but quotes the emendation of Morgenstern: *Si honestam, ne «gloriari videar, si veram», ne male adsuescam*, which, while unsubstantiated by manuscript readings, does make sense and could be what Montanus said at this point and is followed by Heath (2004b) 305.

³⁵⁴ Sussman (1978) 50.

habits (*ne male adsuescam*).³⁵⁵ This will be shown to be undercut later in Book 9 by the example of Montanus' shortcomings as an orator and declaimer, together with the criticism of both Seneca and Scaurus.

Despite Sussman's comment (noted above) on Montanus as a non-practitioner of declamation, each of the six *controversiae* presented in the book contains quotations of Montanus, *sententiae*, divisions, *colores* and sections of narration.³⁵⁶ This presents us with an apparent paradox: Seneca quotes Montanus and they both claim that he declaimed neither for show nor practice, yet Seneca's text preserves fragments of Montanus' declamations. This position is inconsistent: is Montanus being inconsistent, saying one thing while doing another; or is the fault Seneca's; or are they both at fault? There is the possibility that, due to a lacuna in the text,³⁵⁷ we do not possess text which could supply a reason why he did declaim, other than *ostentatio* or *exercitatio*. This would remove the inconsistency which effects Montanus' credibility.

It is difficult to see the inconsistency being on Seneca's part: why would he include a statement that is not borne out by the evidence, one which would undermine his authority as an author? Heath (2004b) 305 sees Montanus' reason for not declaiming as so that he does not fall into bad habits (*ne male adsuescam*), yet this section will show that Montanus already had some bad habits which compromise his ability to speak well. Thus Seneca may be making a statement which is inconsistent with his own text in order to point out the fact that Montanus is not without his faults. However the inconsistency is not Seneca's alone; Montanus must share part of the blame.

³⁵⁵ Indeed the irony of a man claiming not to wish to show off when his declamations are in fact subjected to serious criticism (for which see below and also cf. Heath (2004b) 305) should not be overlooked.

³⁵⁶ Montanus is quoted in the following places in Book 9: 9.1.3, 10, 12, 9.2.11, 13–16, 18–19, 22, 9.3.5, 10, 9.4.5, 11, 14–16, 9.5.3, 6, 14–17, 9.6.3, 10–11, 18–19. For references to Montanus elsewhere in the *Controversiae* see Winterbottom (1974a) 634 (Vol. 2).

³⁵⁷ Recognised and partially emended by Thomas (and Morgenstern) – see Winterbottom and Håkanson *ad. loc.*

This being the case, we must ask why Montanus felt it necessary to claim that he did not do something which he clearly did. Here, as with Cassius Severus in the preface to Book 3 and Messala in Tacitus *Dialogus de Oratoribus*, a likely reason is that attack is the best form of defence. The speakers who criticise declamation have an ulterior motive for so doing, namely their inability to declaim effectively, which in turn compromises their criticism of the practice itself and also their status as men, through their inability to be skilled at speaking. This, therefore, provides an explanation of Montanus' inconsistency: his self-presentation necessitates his convenient 'forgetting' of the fact that he declaims, as he cannot otherwise criticise it. If he is seen as standing outside declamation he can criticise it; if he states that he does declaim and that he does not declaim well his arguments would be undercut in the same way that Severus' are in Book 3. If, however, we consider the following passage from Book 9 more possibilities become apparent. Montanus' ability as a speaker and a declaimer is subjected to criticism:

Montanus Votienus, homo rarissimi etiamsi non emendatissimi ingeni, vitium suum, quod orationibus non evitat, in scholasticis quoque evitare non potuit, sed in orationibus, quia laxatior est materia, minus earundem rerum adnotatur iteratio; in scholasticis si eadem sunt quae dicuntur, quia pauca sunt notantur.

Memini illum pro Galla Numisia apud centumviros tirocinium ponere. Ex uncia heres erat patris sui Galla: obiciebatur illi veneficium. Dixit rem disertissimam et omnibus saeculis duraturam, qua nescio an quicquam melius in eiusmodi genere causarum dictum sit: uncia nec filiae debetur nec veneficae. Non fuit contentus; adiecit: in paternis tabulis filiae locus aut suus debetur aut nullus. Etiamnunc adiecit: relinquis nocenti nimium, innocenti parum. Ne sic quidem satiare se potuit; adiecit: non potest filia tam anguste paternis tabulis adhaerere, quas aut totas possidere debet aut totas perdere, et plura multo, quae memoria non repeto; ex eis quaedam in orationem contulit et alia plura quam dixerat adiecit. Nihil non ex eis bellum est, si solum sit; nihil non rursus ex eis alteri obstat.

Idem in hac declamatione fecisse eum memini. Erras, inquit, pater, et vehementer erras: quos perdidisti non quaeris, quem quaeris non perdidisti. Deinde: puer iste «si» invenitur perit. Deinde: quisquis puero favet ne inveniatur optet. Deinde: puer, nisi avum sequitur, fratres secuturus est; desine quaerere quem si inveneris sic perdes ut invenire non possis. Et deinde: rapuit istum avos ne raperet noverca. Et deinde: unum tantum pater ex liberis suis quaerit qui salvus est. Glycon hunc sensum semel dixit, sed genere corrupto: τούτο τὸ παιδίον ὅταν εὔρεθῆ τότε ἀπολείται. Habet hoc Montanus vitium: sententias suas repetendo corrumpit; dum non est contentus unam

rem semel bene dicere, efficit ne bene dixerit. Et propter hoc et propter alia quibus orator potest poetae similis videri solebat Scaurus Montanum inter oratores Ovidium vocare; nam et Ovidius nescit quod bene cessit relinquere. Ne multa referam quae Montaniana Scaurus vocabat, uno hoc contentus ero: cum Polyxene esset abducta ut ad tumulum Achillis immolaretur, Hecuba dicit:

cinis ipse sepulti

in genus hoc pugnat.

Poterat hoc contentus esse; adiecit:

tumulo quoque sensimus hostem.

Nec hoc contentus est; adiecit:

Aeacidae fecunda fui.

Aiebat autem Scaurus rem veram: non minus magnam virtutem esse scire dicere quam scire desinere.

Contr. 9.5.15–17

Montanus is described as a man of the rarest, though not faultless, talent, a description which may provide a reason for Seneca's inconsistent description of a man who does not declaim: his self-presentation, which is reinforced by Seneca, allows the reader to make the connection between Montanus' dislike of declamation and the faults shown by the above example, thereby showing the potential utility of declamation as a pedagogical tool and allowing the reader to discover this point themselves. Seneca also comments that the faults he displayed in his oratory were also found in his declamations,³⁵⁸ which he expands upon by saying that repetition is noticed less in speeches than in declamations due to the fact that the former are broader in scope and larger in size. In other words declamations need to be tightly argued and concise, and are thus, if anything, harder to get right than forensic speeches which are more lengthy. Thus, what Montanus implies in his criticism of declamation in the preface to Book 9, is shown by Seneca's own opinion, and that of others, not to be the case – if Montanus were a better declaimer he might have been a better orator!

³⁵⁸ This has also been noted by Heldmann (1982) 218, n.45: 'Votienus machte den Fehler, dieselbe Stilfigur allzu oft zu wiederholen sowohl in Reden wie in Deklamationen'. He then quotes *Contr.* 9.5.15 in support, but he does not analyse the passage as a whole in any detail. He also takes the passage as evidence of the difference between declamation and oratory; it could equally show how closely the two practices are related, as from the context it is clear that Seneca only differentiates between declamation and oratory in terms of the space given for argument: more in speeches, less in declamation. Thus Heldmann is wrong to see a stylistic difference between the two 'Der stilistische Unterscheid zwier genera' as the difference is one of length, which may affect the style, but this is not necessarily the case.

Seneca goes on to quote Montanus' *tirocinium*, his first speech before the centumviral court.³⁵⁹ Montanus spoke for a woman, Galla, who was accused of poisoning her father, who had left her one twelfth of his estate in his will. Galla is challenging the will under the *Lex Falcidia* (because her share, as the only *suus heres*, should be a quarter rather than a twelfth) and the *querella inofficiosi testamenti*.³⁶⁰ The idea of unequal treatment plays a role in Montanus' argumentation: if the will is set aside as undutiful Galla will inherit the entire estate and other beneficiaries will have no claim on their inheritance. Gardner (1986) 184 concludes by claiming that Galla is proceeding under the *querella* in order:

to oust the extraneous heirs entirely. They for their part were making allegations of poisoning, probably in an attempt to argue that her father's treatment of her was justified. They may have been offering her the 'Falcidian fourth' to settle, but Votienus on her behalf was holding out for the full amount.

The charge of poisoning (something found in the deed of disinheritance *P. Cairo Masp.* 67353, discussed in Ch. 3) is an attempt, by means of a counter-accusation, for the other beneficiaries to show that Galla is getting what she deserves and thus the will is not undutiful. Before quoting Montanus' *sententia*,³⁶¹ Seneca comments that Montanus 'spoke something very eloquent and bound to last through every age, that I do not know if anything better could have been said in this type of case' (9.5.15). Given that Seneca's purpose in writing the *Controversiae* was to collect the *dicta* of declaimers and comment upon them, here we have a prime example of what his work is all about.

Montanus' *sententia* is that 'one twelfth is due neither to a daughter, nor to a poisoner', which Winterbottom explains in a note '[a]s a daughter she should have got more;

³⁵⁹ On the centumviral court see Ch. 3, where its function and possible relation to declamation are discussed.

³⁶⁰ As discussed in detail (and in relation to declamation) in Ch. 3.

³⁶¹ Cf. Sinclair (1995) on *sententiae*.

if she was a budding poisoner she should have been left less³⁶² Montanus' *sententia* is succinct (as they should be) and very hard to argue against. It effectively polarises the debate; he is adopting the 'all or nothing' approach – Galla is trying to gain her father's entire estate and resist the other beneficiaries' attempts to brand her a poisoner. His *sententia* also helps prove Galla's innocence by suggesting that she had no motive to commit the crime – if she stands to inherit only one twelfth of her father's estate, less than a daughter would expect to receive, why would she kill him?

Seneca goes on to give an example of Montanus' pleonasm in the *controversia* on which 9.5 focuses (the boy seized by his grandfather from his step-mother) where Montanus makes a good point and then repeats it twice. In §17 Seneca comments that Montanus' *vitium* was spoiling his *sententiae* by repetition: he is not content to say something well once, so he ends up not saying it well at all. Montanus' use of redundant *sententiae* spoils a good point well-made. At this point Seneca brings in the orator Mammercus Aemilius Scaurus who was accustomed to call Montanus the 'Ovid among Orators' as they both shared this same fault. In a highly witty reversal, Seneca then quotes a 'Montanism' in Ovid *Met.* 13.503–5 where the same point is repeated twice. He ends the *controversia* by quoting Scaurus again, 'Indeed Scaurus said something true "It is no less a virtue to know how to stop as to know how to speak!"'

In introducing the judgement of his peers after quoting two lengthy examples of Montanus' failure as a stylish speaker, Seneca is giving his readers both a clear lesson in how to construct and use a *sententia* to its full effect, and a clear example of how this can go wrong. Scaurus' remark not only highlights Montanus' deficiency as an orator, but also his patent lack of *virtus* in not knowing when to stop, which in turn compromises his masculinity, due

³⁶² Winterbottom (1974a) 323 (Vol.2). Although even as a poisoner she would be entitled to her twelfth, providing it was a quarter of her intestate share, and thus the will was not undutiful.

to the fact that his non-observance of boundaries and propriety show that he lacks masculine self-control and indulges in an effeminate, or feminising, excess. The fact that the judge Seneca chooses to cite was one of the foremost orators of the principate of Tiberius is worth noting as it lends authority to the criticism.³⁶³ Scaurus' criticism also shows the interrelation between rhetoric and literary criticism which scholars often posit; pleonasm in poetry, oratory or declamation has the same result – it obscures what you wanted to say in the first place.

In terms of the examples used and the judgements passed on them it is clear that oratory, due to its nature, gave speakers a chance to expound their arguments at length; what declamation required was smaller in scope – the speeches are shorter, therefore every word counts, so repetition allows you to say less and has a deleterious effect on what you do say. For this reason Montanus' fault is all the more visible in declamation; the fact that he provides a clear example of what not to do in a speech, where such faults should be less visible, only compounds his error.

This error has an effect on Montanus' ability and judgement. Thus, when in the preface to Book 9 we read Montanus criticising declamation for rejecting argument in favour of pleasing *sententiae*, writing to please rather than to win and enabling that error to go unpunished (9.pr.1–5), arguments which on their own could stand as valid criticisms, we must exercise caution. By the end of the fifth *controversia* of Book 9 we have examples of Montanus' speeches where he repeats *sententiae*, either to please or to win (his motive is unclear); it is also clear that his *vitium* is more noticeable in declamation than in oratory, thus (whether he knows it or not) declamation is a harder art for Montanus to master; additionally, his error in making redundant *sententiae* does not go unpunished either at the time when the speech is made or later on. Thus, Montanus' criticisms of declamation are

³⁶³ For a discussion of Scaurus as an orator see Ch. 5.

clearly undercut by his own example. His shortcomings show that some of those things which he criticises are the same things that compromise his standing as an orator. What critics such as Sussman, Heldmann and Clarke have taken as criticism of declamation is in effect a means of self-justification and an attempt to cover up his own shortcomings.

Thus, as was the case with Cassius Severus in the preface to Book 3, what masquerades as criticism is in fact an attempt to cover up an inability to master an art. In addition, whereas Severus is happy to admit the fact that he declaims and attempts to explain why his declamations fall short of his speeches, Seneca endorses Montanus' claim that he is so concerned not to be seen as showing off that he does not declaim even for exercise. In the end, he is shown up as a man who can do neither as well as he should (and one who is not concerned with self-improvement). In the process of Seneca's unmasking of Montanus' faults it becomes clear that he displays the same fault in both oratory and declamation and that his fault has a similarly negative result in both disciplines. Thus it would seem hard to deny the fact that there must be a strong connection between declamation and oratory.

ASINIUS POLLIO AS PARADIGM IN THE PREFACE TO BOOK 4

Given that Seneca sets himself up in the preface to Book I as a father giving instruction to his children, it is worth considering the example of Asinius Pollio in the preface to Book 4, as a provider of advice on speaking to his grandson, and their interrelation, but Seneca introduces Pollio by noting that he was known for not declaiming in public, which would seem to sit uneasily against Seneca's own position. Seneca gives the view of Labienus and then his own explanation:

Et inde est quod Labienus, homo mentis quam linguae amarioris, dixit: 'ille triumphalis senex ἀκροάσεις [tuas id est declamationes] suas numquam populo commisit': sive quia parum in illis habuit fiduciam, sive – quod magis crediderim – tantus orator inferius id opus ingenio suo duxit, et exerceri quidem illo volebat, gloriari fastidiebat.

Contr. 4.pr.2

Labienus' use of '*commisit*' and '*triumphalis*' can be seen as implying a military metaphor which would see Pollio as noted victorious commander guilty of cowardice in the sphere of declamation which stands in marked contrast to his behaviour as an orator, a soldier and a writer. Such a claim can be seen as designed to cast doubt on the manly virtue which Pollio exemplifies. The first explanation offered for his behaviour is that Pollio lacked confidence in his own declamations, an explanation which Seneca dismisses. The second is that, given his position as a leading Augustan orator, he thought the practice beneath him and that while he was willing to use it for exercise he would not practise it to show off. We should not forget that as a leading orator of the late republic and early empire Pollio's reputation was assured: the status enhancing potential of declamation is something of which he does not need to take advantage. What may be termed the epideictic aspect of declamation – that they are delivered for the pleasure of the audience and for the speaker to show off his skills – was something which did not fit in with the old-fashioned persona Pollio,³⁶⁴ although this does not account for Pollio's public recitation of his own literary works.³⁶⁵ Even if the latter reason were to be accepted despite the fact that Seneca clearly prefers the former explanation, it still shows that declamation was a useful source of exercise for an orator; that is, something which could provide a means for Pollio to hone his skills as an orator, as has been demonstrated in the previous chapter. Seneca then states that he heard Pollio declaiming, presumably in private, and then later instructing his grandson, Marcellus Aeserninus in the art of declamation (4.pr.3). As has already been noted, the idea of paternal instruction is central to Seneca's project in particular and Roman education in general.³⁶⁶ The parallel between the two men is clear: Seneca is setting up a paradigm of the traditional Roman man as orator, father and

³⁶⁴ Indeed it has the potential, at one level, to undermine the speaker's claim to masculinity as performing for the pleasure of others is ideologically linked with actors, gladiators and prostitutes, a group of people who were *infames* on which see Edwards (1997).

³⁶⁵ On Asinius Pollio and recitation see Dalzell (1955) and Dupont (1997). Dalzell sees Pollio's innovation as formalising the practice of recitation in the *Atrium Libertatis*.

³⁶⁶ On this see Bloomer (1997c) 200–5.

author in order to advance his own project and status. Returning to Pollio, his instruction of his grandson is described in the following passage:

Audiebat illum dicentem, et primum disputabat de illa parte quam Marcellus dixerat: praetermissa ostendebat, tacta leviter implebat, vitiosa coarguebat. Deinde dicebat partem contrariam.

Contr. 4.pr.3

Seneca describes Pollio's pedagogical practice – he shows Marcellus what he has missed out, fills out what he has only touched on lightly, shows him where he has gone wrong and then argues the other side. If we compare this example of the teaching of declamation with advice from Quintilian,³⁶⁷ we can see that Pollio's method of teaching corresponds to the second one described by Quintilian at 2.6.2: *alii, cum primas modo lineas duxissent, post declamationes quid omisisset quisque tractabant, quosdam vero locos non minore cura quam cum ad dicendum ipsi surgerent excolebant*. Quintilian later recommends this type of teaching for the more advanced student as opposed to the beginner.³⁶⁸ What was often provided to a teenage boy by a *rhetor* is here being provided at home by a member of the family, in the manner of old-fashioned Roman education. Given the rise in the use of professional teachers in the late republic and early empire, Pollio's actions cannot be seen as other than an attempt to provide an education which is firmly rooted in the traditions of the past, as with Tacitus' presentation of his own education in the opening of the *Dialogus de Oratoribus*. As such it is a clear signal that the participants are engaging in behaviour designed to demonstrate their claim to status; just as members of the modern English aristocracy sent their sons to Eton, Oxford and Cambridge.³⁶⁹

Pollio is also providing his grandson with good models of speech for him to imitate, as Seneca recommends in the preface to Book I (discussed above), in order to equip Aeserninus with the tools necessary for public life, just as Seneca's work aims to do this for

³⁶⁷ As found in Quint. 2.6.1–7.

³⁶⁸ Quint. 2.6.6.

³⁶⁹ Cf. Bourdieu (1984) on the acquisition of status through education.

the Latin-speaking public at large. Pollio is behaving like an old-fashioned *paterfamilias* in order to teach his grandson how to speak and argue properly in order for him to be an orator, as this is what upper-class Roman men do. In so doing, they seek to maintain their status through proper speech and behaviour.

Having described Pollio's educational practice, Seneca gives us his criticism of Pollio as a declaimer:

Floridior erat aliquanto in declamando quam in agendo: illud strictum eius et asperum et nimis irato ingenio suo iudicium adeo cessebat ut in multis illi venia opus esset quae ab ipso vix inpetrabatur.

Contr. 4.pr.3

It would seem that Pollio's speeches in court were more plain; whereas in declamation he was not self-critical enough. His declamations were not so flowery as to mark them out as compromising his manliness,³⁷⁰ but they do represent a slight lapse of self-control which would be best avoided.

However, Pollio's self-control is highlighted in the following sections which deal with men declaiming shortly after the death of their sons:

O magnos viros, qui fortunae succumbere nesciunt et adversas res suae virtutis experimenta faciunt! Declamavit Pollio Asinius intra quartum diem quam filius amiserat: praeconium illud ingentis animi fuit malis suis insultantis.

Contr. 4.pr.6

Seneca begins his comment on Pollio's declamation with an apostrophe and the *magnum os*, a suitably rhetorical flourish to reinforce the point Seneca is making about Pollio. Winterbottom notes that 'Seneca dwells on this fortitude in a way characteristic of rhetoricians',³⁷¹ though displaying his talent in a set piece is not the whole story; because the first *controversia* in Book 4 deals with a father dragged from his son's grave Seneca's example

³⁷⁰ On Asianism and effeminacy see Richlin (1997) 106–7.

³⁷¹ Winterbottom (1974a) *ad loc.* 427 [Vol.I]. He also quotes *Suas.* 2.15, *Sen. Ep.* 99.6, *Marc.* 14ff. and *Val. Max.* 5.10 as other examples where paternal fortitude in the face of their son's death is highlighted.

can also be read as providing material for those about to declaim on this subject, in the same way that Valerius Maximus' work provides examples for those making speeches in general. Given the fact that thus far in the preface to Book 4 Pollio has been set up as a model *paterfamilias*, instructing his grandson and ensuring that his speech is proper and manly, the purpose of highlighting Pollio's declamation is to make him an example of proper manly behaviour (which can be used immediately afterward). The fact that he does not dwell on his son Herius' death, but instead gets on with life shows us the importance of fortitude to a Roman – they do not succumb to grief but display their *virtus* when faced with adversity.

The figure of Asinius Pollio can be seen as compared with that of his fellow-senator and declaimer, Q. Haterius. In §6 of the preface Haterius' reaction to the death of his son at the time of his death and for many years after is the exact opposite of Pollio, and while Haterius' grief is useful for exciting pathos in his audience, Seneca is not necessarily saying that both reactions are equally valid. In §§ 7–10 Seneca discusses Haterius, his style and his faults, which are best summed up in a remark by Augustus: *Haterius noster sufflamandus est* (*Contr.* 4.pr.7). He does not know when to stop (a fault he shares with Votienus Montanus and many other declaimers). Thus, his oratory is still worthy of imitation, but only if its faults are recognised and corrected: *Redimet tamen vitia virtutibus et plus habebat quod laudares quam cui ignosceres, sicuti in ea qui fleuit declamatione* (*Contr.* 4.pr.II). As Seneca has outlined in his opening preface the declaimers he quotes provide models for imitation *and* avoidance.

Thus, throughout the majority of the preface to Book 4 Seneca gives us an example of a traditional Roman father, educating his family and showing proper manly attributes.³⁷² This is the same as the *persona* Seneca constructs for himself in the preface to Book I. By comparing himself with a noted literary figure and example of traditional Roman values

³⁷² Pollio's public recitation of his literary works can be seen as not traditional, yet Seneca notes that the recitations were directed at his literary reputation: *nec illi ambitio in studiis defuit* (*Contr.* 2.pr.2). Winterbottom (1974a) 424 *ad loc.* notes that 'Recitation was well-known in Rome before this'.

Seneca is attempting to give himself and his work the *gravitas* which will ensure that its didactic purpose is realised.

CONCLUSION

What is Seneca's purpose in writing the *Controversiae*, why does he collect the work of the declaimers of his lifetime? His purpose is clear: his writings have a didactic function, both in terms of rhetorical teaching and moral improvement. There is no need, therefore, for Fairweather's caution in claiming that Seneca's 'approach is only didactic to the extent that his declamatory extracts are intended to provide his readers with a wide range of models for imitation'.³⁷³ The interrelation of imitation theory, moral improvement and rhetorical teaching can be seen from an examination of the preface to Book I; rather than condemning the youths and seeing the period he is writing in as one of decline Seneca can be read as offering models for imitation and avoidance with positive effects on one's life and speech as befits a didactic work. The fact that the 'corrupt' state of Roman youth addressed by Seneca in his opening preface is not necessarily irreversible allows a more positive reading of the situation. In addition, the gendered language of criticism which pervades the work allows us to judge the ability to speak in the same terms as other aspects of a man's life. Thus, it is clear that speech and behaviour are linked and that the Romans constructed masculinity performatively.

This chapter has shown that declamation and the works of the Elder Seneca deserve a more serious consideration than has often hitherto been the case. In addition the idea of decline, one of the most cherished sacred cows of the literary-critical establishment, can be problematised due to the fact that the motives of the critics have not been analysed sufficiently. Such an analysis flies in the face of scholars such as Heldmann, but is an attempt

³⁷³ Fairweather (1984) 530.

to show that we can, if we so desire, construct a new literary history which can, in turn shed light on Roman social history.

Declamation, as represented by Seneca is both part of the training for a would-be orator and the pastime of members of the elite, men who made their reputation either in the forum, or the school and recital-hall and indeed a way of gaining (and maintaining) elite status.³⁷⁴ As such, it is necessary to attain and maintain manhood through showing your ability to both think and act in a fashion which allows you to claim the status of a Roman man.

³⁷⁴ Cf. Walters (1993) 79: 'Declamation is a form of oratory, and oratory, the making of set speeches was central to the public, political life of the Roman citizen. Public speaking, and the correct performance of this activity, was thus of enormous importance to the elite group of males who participated in that life (Tacitus (*Dial.* 6.1 ff) notes the high social status of orators and oratory). Without the ability to construct and deliver formal speeches, membership of the political elite, as symbolised by public office, was impossible (Seneca (*Contr.* 2 pr 3) brings out the connection between public office (*civilibus officiis*) and public speaking).'

ORATORS IN TACITUS' *ANNALS*

WHILE there are many speeches in Tacitus' *Annals* as well as many orators,³⁷⁵ the use of the word *orator* is not as common as one might at first think,³⁷⁶ nor has its use in Tacitus' historical works been treated hitherto in any way.³⁷⁷ It should be noted that the word is not used in the extant portion of the *Histories*; hence its use can only be studied in the *Annals*. The fact that this has not caused any disquiet in discussions of Tacitus' works requires further comment. The main purpose of this chapter is, however, to consider Tacitus' use of the word *orator* in the *Annals*, to describe characters who do or do not speak, or when orators (especially those of the past) are referred to in speeches, by means of discursive interpretations of such passages to form some conclusions regarding Tacitus' use of the word and its implications for our understanding of the nature of orators and oratory in the period covered by the *Annals*.³⁷⁸ The fact that a word is uncommon in Tacitus' historical works, works written by a writer with a propensity for using nouns with the termination *-tor*,³⁷⁹ makes its infrequent use significant and worthy of comment. The chapter does not seek to give a comprehensive account of oratory under the Julio-Claudians, but instead explores the relationship between members of the senatorial elite and the emperors in various contexts, how orators under the Empire relate to those of the Republic. It considers the Emperor Nero and stresses the importance of performance in the assessment of oratorical ability.

³⁷⁵ For a catalogue of speeches in the *Annals* see Walker (1952) Appendix I, 259–62 and for an analysis of the speeches in Tacitus, in particular their length and use of *oratio recta* and *obliqua* see N.P. Miller (1964).

³⁷⁶ There are fifteen occurrences within the *Annals*.

³⁷⁷ Syme (1958) Ch. 25 'Roman Oratory in the *Annales*' looks at orators, some of whom are also covered here, however, this study also includes men given little or no treatment in Syme.

³⁷⁸ Cf. Syme (1958) 667: 'Oratory under the Julian and Claudian Caesars may be studied through the works of the elder Seneca and of Quintilian – and perhaps best through the *Annales* of Tacitus'.

³⁷⁹ For evidence see Goodyear (1968) 30.

The first occurrence of the word *orator* is at I.19.5 in the description of the mutiny of the legions in Pannonia. Here the legionary commander Junius Blaesus' son, Q. Iunius Blaesus, is chosen to argue on behalf of the mutinous soldiers who wish to have a shorter term of service and improved pay and conditions:

sed subire miles quod filius orator publicae causae satis ostenderet
necessitate expressa, quae per modestiam non obtinisset. (I.19.5)

The use of *orator* to mean 'an ambassador or spokesman'³⁸⁰ is attested as early as the other, more common meaning;³⁸¹ yet it seems to be used either of foreigners coming to Rome or of Romans going abroad. The idea of sending a Roman nobleman to plead a case in front of the emperor seems strange unless the soldiers in their mutiny are to be seen as something other than Roman, i.e. that their status has become that of foreigners. Given that the boundaries between mutiny, civil war, and external war are more fluid than we might at first think, this idea is attractive and plausible.³⁸² Later, Iunius Blaesus junior is sent to Rome again (at I.29.2); yet Drusus, who was sent out to put down the mutiny, leaves the army (having executed the ringleaders of the conspiracy and effectively put an end to the mutiny in Pannonia) without awaiting the return of the delegation of which Blaesus is an important part (I.30.5). This leaves us with two questions, first, whether Drusus' actions condemn Blaesus to failure, as we do not hear of him again, and secondly, whether he managed to plead his case in Rome or gain approval for the soldiers' demands.

In Tacitus' narrative Blaesus does not speak; his speech is promised by his being chosen as *orator* on behalf of the soldiers and being sent to plead their case before Tiberius, and this silencing of a character designated as an *orator* seems to be deliberate. In the *Annals* his speech goes unrepresented and unremarked, and whether he did speak to the emperor is

³⁸⁰ s.v. *OLD orator* 1, also cf. Ennius *Ann.* 207, Cato fr. 95 (Splendorio) = Mayer fr. 46 = Jordan 44.1, Caesar *B.G.* 4.27, and Livy I.15.5, 5.15.3. It is used to describe ambassadors at Tac. *Ann.* 13.37.4.

³⁸¹ s.v. *OLD orator* 2. cf. Ennius *Ann.* 269, Cato *Fil* 14 (Jordan).

³⁸² Cf. O'Gorman (2000) 27–39 and Keitel (1984).

also left unknown, but the episode leaves the reader in no doubt that his embassy failed and that his speech was part of that failure, so the question remains whether he was able to speak at all. While there is no evidence that either Blaesus or his father, who is described as claiming that complaints can be brought to the emperor's attention by the art of speaking *arte dicendi* (1.19.2), suffered from a speech impediment, their *cognomen* can be seen as encapsulating this kind of failure and lends itself to punning. Given Tacitus' predilection for verbal puns,³⁸³ it is worth considering Tacitean word play in this passage: the *cognomen* Blaesus means 'the man with a lisp' or 'who mispronounces his words'.³⁸⁴ This pun is important: a man whose name implies an inability to speak effectively is first described as an *orator* and then shown to be unable to put his case in front of the Senate with any degree of success. So, while Blaesus in *Annals* I is not characterised as possessing a speech impediment,³⁸⁵ the fact that his *cognomen* contains the possibility of defective speech, a *vitium* which could compromise both his ability to get his point across and his status as an orator, can be read as condemning him to failure.

It is also significant that the first person to be called an orator in the *Annals* belongs to a class for whom such a job would be important to his perceived role within Roman society and who does not succeed in his aim to perform that role – a fact, which in turn can be seen as undermining Blaesus and his position. These facts make it hard for us to read the events narrated by Tacitus in anything other than a negative light. Blaesus, as the first individual given the title *orator* in the *Annals* is a failure, who is hampered in his efforts by a member of the Imperial family: Tiberius' son, Drusus, who has a stronger claim to the title of *orator* due to his effective speech at 1.29.1. The scene is set as follows: *Drusus orto die et vocata contione, quamquam rudis dicendi, nobilitate ingenita*. Drusus is a clumsy, graceless,

³⁸³ On word-play in Tacitus see Woodman (1998) 221–2, Maltby (1991), Sinclair (1995) 259 and O'Hara (1996) 16, 42–3.

³⁸⁴ s.v. *OLD blaesus* 1; I owe this reference to Prof. A.J. Woodman.

³⁸⁵ On which see the Appendix to this thesis.

unsophisticated, or untrained orator,³⁸⁶ yet his inborn nobility, or ‘natural dignity’, as Miller translates the phrase,³⁸⁷ allows him to *be* an effective speaker, one who can not only call a public meeting but also put his point across. Thus, in several ways Drusus, who is *rudis dicendi*, succeeds: first, in gaining an audience and, secondly, by actually saying what he has to, in stark contrast to Blaesus. Thirdly, and most importantly, he succeeds where Blaesus fails: he is persuasive. The fact that Tacitus makes a point of stressing Drusus’ lack of rhetorical training can be seen as problematic – what is the point of rhetorical training if it is not required to be successful?

DELATORES AS ORATORS

certabant orationibus, et memorabantur exempla maiorum, qui iuventutis inreverentiam gravibus decretis notavisset, donec Drusus apta temperandis disseruit; et satisfactum Corbuloni per Mamercum, qui patruus simul et vitricus Sullae et oratorum <ea> aetate uberrimus erat. (3.31.5)

Towards the end of a case between Domitius Corbulo and L. Sulla over the latter not giving up his seat for the former at a gladiatorial show, for which Sulla ‘incurred odium through disrespect shown to a senior statesman of praetorian rank’,³⁸⁸ Mamercus Aemilius Scaurus is referred to as an *orator*.³⁸⁹ Scaurus’ involvement in the case of Corbulo and Sulla was due to the fact that he was both Sulla’s stepfather and uncle. While it is easy to see Corbulo as making a mountain out of a molehill, the petty quarrel seems to have been taken seriously, with reference being made to Republican decrees on youthful irreverence.³⁹⁰ While Scaurus conveys the message to Corbulo, it should be noted that he is not the author of the conciliation between the two parties: Drusus brings about the reconciliation; Scaurus is just seen as a messenger. Tacitus’ description of Scaurus as *uberrimus* – ‘possessing a copious, rich

³⁸⁶ s.v. *OLD rudis* 2,3,5.

³⁸⁷ Miller (1959) 151.

³⁸⁸ Syme (1986) 261.

³⁸⁹ For a detailed account of Scaurus’ life and oratory (including a detailed list of references to primary and secondary sources) see Rutledge (2001) 186–8.

³⁹⁰ It is tempting to take the incident as indicative of the decline of senatorial debate, yet at the same time respect for one’s elders and for tradition was clearly still important in Rome.

style' is similar to comments made by the Elder Seneca (*Contr.* 10.pr.2–3), where he is noted for his grand language, old-fashioned style and that his expression, mien and presence gave his oratory *auctoritas* as befits an orator – in other words the last of the Scauri both looked and sounded like republican orators. Tacitus' comment may be slightly backhanded – in other words, orators of a former age had an even richer, more copious style – or it may be genuine praise of a man with rhetorical talent. This may be simply a matter of literary taste, though Seneca's comments show that Scaurus' talent and vocabulary were those of a great orator, but his speeches belied the promise of his abilities because they were only good in parts rather than good as a whole. The mention of the examples of ancestors, which are used in the arguments in the Senate before Scaurus is sent to sort the case out, are applicable to Scaurus himself, as he is in many ways an *exemplum maiorum*, in the sense that he looks and sounds like not only his own ancestors but the Romans of the past in general. He plays a part in bringing about reconciliation between the two parties, a factor which suggests he merits the title of *orator* afforded him by Tacitus. On the other hand, the fact that the reconciliation has its origin in Drusus to a certain extent undermines Scaurus' claim: once again, while Drusus is not given the title of orator, he acts like one and has more claim on the title than at least two of the people who are so designated.

Afer primoribus oratorum additus, divulgato ingenio et secuta adseveratione Caesaris, qua sua iure disertum eum appellavit; mox capessendis accusationibus aut reos tutando prosperiore eloquentiae quam morum fama fuit, nisi quod Aetas extrema multum etiam eloquentiae dempsit, dum fessa mente retinet silentii impatientiam
(4.52.4)

Domitius Afer is the second *delator* to be referred to as an *orator* in Tacitus' *Annals*.³⁹¹

Having successfully prosecuted Claudia Pulchra, Agrippina's second cousin, he gains a reputation as a leading orator.³⁹² We can follow Furneaux in translating *suo iure disertum* as

³⁹¹ For details of Afer's prosopography see Syme (1986) 327–8 and Rutledge (2001) 220–3.

³⁹² For a discussion of Domitius Afer and his place in the history of Roman Rhetoric cf. Kennedy (1972) and Syme (1958) 327–8 and 338.

'one who could claim the title by right',³⁹³ which, while it is not the same as calling him an orator means the same thing.³⁹⁴ The passage is, however, not entirely positive. This is after all Tiberius' comment on Afer, and such an imperial seal of approval would not necessarily share Tacitus' endorsement. In addition Tacitus criticises the fact that Afer's reputation was based on eloquence rather than his character (given his reputation for delation)³⁹⁵ and that he did not know when to retire. This is a point also made by Quintilian (12.11.3), who also describes him as a *summus orator*.

Turning to references concerning Afer in Quintilian and Tacitus' *Dialogus de Oratoribus*, he is described by Quintilian at *Inst. Or.* 10.1.118 as *dissertus* and 'superior in art and in his whole style of oratory',³⁹⁶ in other words the best orator that Quintilian ever heard. At *Inst. Or.* 12.10.11 Afer is praised for his *maturitas* ('the full development of mental qualities, maturity of judgement').³⁹⁷ If the passage is compared with Tac. *Dial.* 26.1, where *maturitas* is used to describe the style of L. Crassus (which may itself be an allusion to Cicero *Brutus* 161, where Cicero claims that Roman oratory reached its maturity under him) Quintilian can be seen as making what is potentially a great claim on Afer's behalf, one which would truly place him in the first rank of Roman orators. In the *Dialogus de Oratoribus*, Afer is referred to twice: at 13.3 as an example of a successful orator, and at 15.3 as an example of modern oratory in comparison with Cicero and Asinius Pollio. While these references are not as gushing as those in Quintilian, they are evidence of his being seen as an important orator. From a practical point of view, Afer is important as an orator who is practising his art, as it is his oratorical ability which gains him the commendation of Tiberius, which in turn leads to

³⁹³ Furneaux (1907) 552.

³⁹⁴ Cf. Cic. *Brut.* 55, where *dissertus* is used to describe Appius Claudius and Catul. 49.1, where it is used to describe Cicero.

³⁹⁵ A fact which would compromise his claim to be an orator, as a *vir bonus* would be expected to be of a suitable character.

³⁹⁶ Russell (2001) 317.

³⁹⁷ s.v. *OLD maturitas* 3

his social and political advancement, the status recognition which is one of the goals of an orator.

When the two *delatores* described as orators in the *Annals* are considered together, it is clear that they both possessed considerable talents, and their rhetorical talents, something akin to the rhetorical talents of the great republican orators, help them to attain and maintain their status. Their participation in *maiestas* trials, the closest thing under the empire to the 'late republican "gladiatorial" version of rhetoric centered on judicial oratory',³⁹⁸ can therefore be seen as giving them a claim to the status of an *orator*: they are doing what republican orators did.

AN ISOLATED CASE?

Preserved in the *Annals* is a *sententia* by C. Sallustius Passienus Crispus,³⁹⁹ 'the only public speaker to be set implicitly on the same level as the classic speakers of the republic, Cicero, Hortensius, Pollio and Messala Corvinus'.⁴⁰⁰ Having stated that the future emperor Caligula had married Junia Claudilla and accompanied his grandfather to Capri, Tacitus comments as follows:

unde mox scitum Passieni oratoris dictum percrebuit neque
meliorem umquam servum neque deteriolem dominum fuisse
(6.20.1)

The *sententia* is made up of a pair of balanced clauses which contain references to stock-characters of New Comedy, which was the starting point for the formation of character types in both Roman rhetorical invective and historiography.⁴⁰¹ In following Tiberius so closely, Caligula is the best slave Tiberius could wish for; while the worst master for Rome can either apply to Caligula, which relates the *sententia* to its immediate context in Book 6, with its

³⁹⁸ J. Walker (2000) 108.

³⁹⁹ Cf. Syme (1958) 328.

⁴⁰⁰ Mayer (2001) 89.

⁴⁰¹ On this point see Dunkle (1967) and (1971).

theme of prophesy and foreknowledge,⁴⁰² or to Tiberius as Rome's worst master, which shows Crispus' ability to 'read' Caligula as parallel to his ability to 'read' Tiberius and recognise him for what he is. The ambiguity of the *sententia* is fundamental to its effect: the fact that Crispus' *sententia* becomes immediately widespread and that he is described here as an *orator*, is testament to his skill and power as an orator and his political skill in judging emperors such as Caligula and Tiberius. He sees through their dissimulation and unmasks the tyrants 'warts and all' using his rhetorical skill, which shows how effective Crispus was at displaying his skill as an orator and member of the political class, or to quote Sinclair '[a] brilliant *sententia* like this points to one's capacity to know and define another human being in terms of the image which elite society projects – knowledge that translates directly into power'.⁴⁰³ Crispus' identification with the great speakers of Rome's past, as noted by Mayer (2001, 89: quoted above), is, therefore, not misplaced, as the *sententia* Tacitus preserves reinforces Crispus' identification as an orator.

A LINK WITH THE PAST?

In the following three examples, speakers either refer to orators, especially those of Rome's past, or speak in the presence of these orators. While the speakers themselves are not referred to as orators, several of them are related to great orators of the republic and thus serve as a locus where the nature of orators and oratory can be explored by Tacitus. The first of these examples concerns M. Hortensius Hortalus,⁴⁰⁴ the grandson of the lamprey-loving rival of Cicero, Hortensius, and his attempt to secure financial assistance from Tiberius.

nepos erat oratoris Hortensii, inlectus a divo Augusto liberalitate decies sestertii ducere uxorem, suscipere liberos, ne clarissima familia extingueretur. igitur quattuor filiis ante limen curiae adstantibus, loco sententiae, cum in Palatio senatus haberetur, modo Hortensii inter oratores sitam imaginem modo Augusti intuens, ad hunc modum coepit: 'patres conscripti, hos, quorum numerum et pueritiam videtis, non sponte sustuli sed quia princeps monebat; simul maiores mei meruerant ut posteros haberent. nam ego, qui

⁴⁰² On which see O'Gorman (2000) and Moles (1998).

⁴⁰³ Sinclair (1995) 142.

⁴⁰⁴ Cf. Syme (1958) 324–5.

non pecuniam, non studia populi neque eloquentiam, gentile domus nostrae bonum, varietate temporum accipere vel parare potuissem, satis habebam, si tenues res meae nec mihi pudori nec cuiquam oneri forent. iussus ab imperatore uxorem duxi. en stirps et progenies tot consulum, tot dictatorum. nec ad invidiam ista sed conciliandae misericordiae refero. adsequentur florente te, Caesar, quos dederis honores: interim Q. Hortensii pronepotes, divi Augusti alumnos ab inopia defende.’

(2.37.1–5)

Hortalus is described as the grandson of the famous *orator* and as having been persuaded by Augustus to re-marry and have children ‘so that a most famous family would not become extinct’, his palm having been crossed with a considerable amount of silver. At a meeting of the Senate in the Library in a portico of the Temple of Apollo on the Palatine,⁴⁰⁵ the impecunious senator tries to gain an imperial subsidy for a second time. As Hortalus begins his *miseratio*, complete with small children at the door, Tacitus notes that he fixes his gaze (*intuens*) on the *imagines* of his grandfather, Hortensius, and Augustus.⁴⁰⁶

The expectations resting on Hortalus are not solely as a result of his grandfather, as Hortensius’ eloquence had not skipped a generation. In fact they would have been consolidated by Hortensia, the daughter of Hortensius, mother of Hortalus and the famous paradigm of female eloquence. In her we have the other side of the coin to Hortalus because she is, if anything, much more than we might expect from a woman but no less than we would expect from one of the Hortensii.

Hortensia vero, Q. Hortensii filia, cum ordo matronum gravi tributo a triumviris esset oneratus <nec> quisquam virorum patrocinium iis accomodare auderet, causam feminarum apud triumviros et constanter et feliciter egit: repraesentata enim patris facundia impetravit ut maior pars imperatae pecuniae iis remitteretur. revixit tum muliebri stirpe Q. Hortensius verbisque filiae aspiravit; cuius si virilis sexus posteris vi<a>m sequi voluissent, Hortensianae eloquentiae tanta hereditas una feminae actione abscissa non esset.

Val. Max. 8.3.3

⁴⁰⁵ Founded by C. Asinius Pollio.

⁴⁰⁶ These are not noted or discussed by Flower (1996) although she does cover statuary in public places, of which this is an example; unfortunately, neither the Library nor the Temple of Apollo on the Palatine figure in any of her discussions.

Whereas Hortensius' grandson is conscious of his lack of eloquence, a skill that runs in the family, his daughter is notable as the only example of a successful female orator who can be seen in a positive light.⁴⁰⁷

Turning to Appian, where the story of Hortensia pleading in front of the triumvirs is also recorded (B.C. 4.32–4), we can gain a greater insight into this scene: *καὶ ἐς τὴν ἀγορὰν ἐπὶ τὸ βῆμα τῶν ἀρχόντων ὠσάμεναι, δισταμένων τοῦ τε δήμου καὶ τῶν δορυφόρων, ἔλεγον, Ὁρτησίας ἐς τοῦτο προκεχειρισμένης* (Appian B.C. 4.32). The phrase *τὸ βῆμα τῶν ἀρχόντων* seems to refer to the tribunal of a magistrate,⁴⁰⁸ although in the context of the Roman Forum it can refer to the rostrum, which would seem to be implied by Appian's phrase *Καὶ τοῦτο ἐς τὸν δῆμον εἰπόντες προύγραφον* '[The triumvirs] addressed the people and published an edict' (4.32) requiring the 1400 matrons to be taxed. Thus, the meeting at which Hortensia pleaded was a *contio* and her speech, or at least the version Appian gives,⁴⁰⁹ is an example of deliberative rather than forensic oratory, specifically a *suasoria*.⁴¹⁰ As such we have no grounds for devaluing her speech owing to its being illegal; it is at worst unusual.⁴¹¹ Hortensia's speech, which Quintilian notes is still being read for its rhetoric rather than its

⁴⁰⁷ This view is also found in Quintilian 1.1.6 and App. B.C.4.32–34. Examples of female orators viewed in a negative light can be found in Valerius Maximus 8.3.1 and 8.3.2, D. 3.1.1.5 and Juv. 6.242–5 (against which cf. 2.51–3).

⁴⁰⁸ For other examples of *βῆμα* meaning 'tribunal' cf. *PTeb.434*, Dio 57.7.2 and Modest. *apud D.* 27.1.13.10.

⁴⁰⁹ In Chapters 32–3.

⁴¹⁰ Hortensia also describes the women as 'driven into the forum' *ἐς τὴν ἀγορὰν συνεώμεθα* (4.32) i.e. the speech took place in the forum.

⁴¹¹ Women were apparently not allowed to plead in court on behalf of others due to the actions of the over-litigious Carfania or Afrania – cf. D. 3.1.1.5 *feminas prohibet pro aliis postulare*, i.e. women are banned from pleading *pro aliis* not *pro se*, and Val. Max. 8.3.2. a state of affairs he attributes to Carfania. Valerius also sees Hortensia as pleading *pro aliis* and his use of *causam...egit* marks her out as an advocate (cf. Nero in Tacitus *Annals* 12.58.1, as discussed below); yet Appian's account make it clear that Hortensia (unusually, but legally, at a *contio* in the Forum) was pleading *pro se* as a matron (implied by the phrase *Ὁρτησίας ἐς τοῦτο προκεχειρισμένης*, 4.32), presumably one affected by the triumviral tax so she is appearing on her own behalf (as part of category of *matronae* affected by the sumptuary legislation). Valerius Maximus' description of Hortensia may be due to a desire to categorise her with the two negative examples in 8.3; in order to provide balance and contrast and also a positive *exemplum*.

novelty-value in that it was written by a woman (I.I.6),⁴¹² was also successful insofar as it did reduce the number of women who were taxed.

The fact that Hortensia did what no man could, or would, do elicits comment from both Appian (B.C. 4.34) and Valerius Maximus (8.3.3). Yet, while Appian notes the anger of the triumvirs at being stood up to by a woman, Valerius Maximus presents her action as an example of *prosopopoeia* in the clause *revixit tum muliebre stirpe Q. Hortensius verbisque filiae aspiravit*, which reinforces Quintilian's positive view. Valerius Maximus ends the *exemplum* by drawing a comparison between Hortensia and the male members of her family: *cuius si virilis sexus posteris vicam sequi voluissent, Hortensianae eloquentiae tanta hereditas una feminae actione abscissa non esset*.

If we compare these words with those of Hortalus in Tacitus *nam ego, qui non pecuniam, non studia populi neque eloquentiam, gentile domus nostrae bonum, varietate temporum accipere vel parare potuissem, satis habebam*, it is clear that Hortalus is aware of his lack of *eloquentia*, something for which his family has a reputation – hence Augustus' concern for the *gens Hortensia*. Reminding the emperor that you do not possess the quality on which a great part of your reputation is based is hardly the best way to ensure that your petition for financial assistance will be accepted; hence it appears to be not merely a risky, but an ill-conceived strategy, which reinforces the judgement he makes of his own lack of ability.⁴¹³ Thus, his inability to live up to the models of his own family undermines Hortalus as an orator and as a man.

It is possible to see the episode of Hortalus in a context which serves as a 'Republican' frame, reinforcing the contrast between Hortalus and his grandfather. The debate between Gallus and Tiberius in the previous chapter on whether magistrates should be

⁴¹² *et Hortensiae Q. filiae oratio apud triumviros habita legitur non tantum in sexus honorem.*

⁴¹³ It is, however, possible (if unlikely) that Hortalus' intention is to convince the emperor that he is no threat as a speaker in the hope that relief that the legendary eloquence of the Hortensii will not be deployed against him will loosen his purse-strings. However, no other source attributes this kind of astute political awareness to Hortalus.

elected 5 years in advance or not seems (especially when taken with the debate on sumptuary legislation in chapter 33) to point to a bygone age, when orators like Hortensius spoke in the Senate. This thematic link is reinforced by Asinius Gallus' speech on luxury,⁴¹⁴ which Syme sees as resembling a speech by Hortensius in 55BC.⁴¹⁵ The proximity of this speech to Hortensius' own appearance in the narrative cannot be coincidental, nor can their content (they are concerned with the acquisition and spending of money) or results (Gallus' speech wins general assent whereas Hortensius only just manages to gain help from Tiberius).

In Book II, the orators and oratory of the republican past and the question of money are once again centre stage. In a debate on the enforcement of the *Lex Cincia* (originally passed in 204BC, and revived by Augustus in 17BC, forbidding orators from accepting money or gifts as payment for their services,⁴¹⁶ and from which Tacitus quotes a clause) a comparison is drawn between the orators of the past and present. Tacitus describes the consul-designate C. Silius as *veterum oratorum exempla referens qui famam et posteros praemia eloquentiae cogitavissent* (II.6.1). The idea of the rewards of oratory reoccurs and is much debated in the *Dialogus de Oratoribus*, so it appears to be a particular concern of Tacitus' and his society at the time of writing.

Silius is in favour of the law because he sees the lack of pecuniary remuneration as giving rise to fewer lawsuits, that is to say fewer malicious accusations motivated by desire for gain through fees and rewards. Then he uses an analogy: just as illness makes doctors rich, so corruption of the forum enriches orators. The use of *tabes* a word with both medical and moral connotations is worthy of comment, especially when used as a metaphor for oratory.⁴¹⁷ The idea of moral corruption (*s.v. OLD tabes* 2c) and criticism of delation is

⁴¹⁴ 2.33

⁴¹⁵ Syme (1958) 324 draws the link between Gallus' speech and Dio 39.37.3, both of which advocated luxury.

⁴¹⁶ Cf. Furneaux (1907) 7.

⁴¹⁷ Cf. medical metaphors in the *Dialogus de Oratoribus* at 22.1, 23.3, 23.4, 31.4.

reminiscent of Maternus' comment in the *Dialogus*: *nam lucrosae huius et sanguinantis eloquentiae usus recens et ex malis moribus natus* (*Dial.* 12.2). In comparison the orators of the past have *incorrupta vita et facundia* (11.6.2), as we would expect given the traditional formulation of the orator as a good man.

The speech made against Silius' proposal is important both for what it contains and who deliver it. In the face of a motion to be prosecuted under the extortion law, two *delatores*, P. Suillius Rufus and Cossutianus Capito appeal directly to the emperor, Claudius.⁴¹⁸ In their appeal they first show that orators need to earn money: they recognise that Rome has changed and that laws made 250 years previously are not always applicable. Secondly, they show that the *exempla* Silius uses are not as straightforward as he might have us believe: the orators of the past had private incomes or benefitted from the spoils of the civil war, whereas under *Pax Romana* eternal fame is not enough reward. While their arguments are less noble and high minded (*minus decora*) they win through and persuade Claudius to fix a maximum fee at ten thousand sesterces;⁴¹⁹ Silius, despite his high-minded ideals and traditional position loses.

There are further examples of financial support for the descendants of famous orators: M. Valerius Messala Corvinus (Nero's consular colleague), Aurelius Cotta and Q. Haterius Antoninus are all granted annual sums by the young emperor Nero in the following passage:

Nerone tertium consule simul ini<i>t consulum Valerius Messala, cuius proavum, oratorem Corvinum, divo Augusto, abavo Neronis, collegam in eo<dem> magistratu fuisse pauci iam senum meminerant. sed nobili familiae honor auctus est oblatis in singulos annos quingenis sestertiis, quibus Messala paupertatem innoxiam sustentaret. Aurelio quoque Cottae et Haterio Antonino annuam pecuniam statuit princeps, quamvis per luxum avitas opes dissipassent. (13.34.1)

⁴¹⁸ For details of P. Suillius Rufus' prosopography and references in ancient and modern literature see Rutledge (2001) 270–1. For details of Cossutianus Capito see Rutledge (2001) 218–9. For a discussion of Suillius' oratory see Syme (1958) 331–2, for Cossutianus see Syme (1958) 332–3.

⁴¹⁹ This measure contributes financial support to the class of orators as a whole as a result of the emperor's 'patronage'.

Nero's choice of colleague is understood as a conscious act which allows him to be seen as following the example of his great-great-grandfather, Augustus; an important means of constructing his imperial persona. The mention of the memory of old men links the passage with the comment made at the beginning of Book 13 concerning Nero's perceived lack of oratorical talents (which is discussed below). Messala, like Hortensius, suffers from aristocratic poverty and while he does not feature elsewhere in the *Annals*, the fact that he is described as the grandson of a famous orator is significant, both for the present enquiry and also to Nero.

As well as allowing himself to be seen in terms of Augustus, Nero's choice of colleague also shows the importance of oratory to the identity of Roman men. As will be shown below, at Nero's first public engagement in 12.58, he wished to gain a reputation as an orator; some five years later, his choice of colleague allowed Nero to associate himself with a descendant of a famous Roman orator.

The other two senators in need of financial subsidies are descendants of Cotta Messalinus (possibly)⁴²⁰ and the famous senator and declaimer, Q. Haterius,⁴²¹ respectively; Haterius was also consul, five years previously, when Nero declaimed in the Senate (for which see below)⁴²² though whether this may have influenced Nero's decision is unclear.

Haterius' obituary is given in 4.61, where he is described as *familia senatoria, eloquentiae, quoad vixit, celebratae: monimenta ingeni eius haud perinde retinentur. scilicet impetus magis quam cura vigebat; utque aliorum meditatio et labor in posterum valescit, sic Haterii canorum illud et profluens cum ipso*

⁴²⁰ Cf. Koestermann (1967) *ad loc.* See also Tac. *Ann.* 2.32, 4.20. For a discussion of his oratory see Syme (1958) 323. At 3.34 Valerius Messalinus is described as possessing his father's eloquence *ineratque imago paternae eloquentiae.*

⁴²¹ Haterius appears and is discussed in the following places in the Elder Seneca: *Contr.* 1.6.12; 4.pr.6–11; 7.1.4, 24; 7.2.5; 7.8.3; 9.3.14; 9.4.16; 9.6.8, 11, 13, 16; 10.5.24. *Suas.* 2.14; 3.7; 6.1–2; 7.1.

⁴²² 12.58.1: *D. Iunio Q. Haterio consulibus sedecim annos natus Nero Octaviam Caesaris filiam in matrimonium accepit. utque...*

simul exstinctum est. It is clear that Haterius possessed some talent as an orator, although his reputation was not long-lasting, despite those passages found in the Elder Seneca.⁴²³ Turning to his style, Haterius' *impetus* is also commented upon in Seneca *Contr.* 4.pr.9,⁴²⁴ and despite the phrase *canorum illud et profluens* being an allusion to Cicero's verdict on Carbo in *De Oratore* 3.28: *profluens quiddam habuit ... et canorum* its meaning is the opposite due to the change in literary taste.⁴²⁵ Hence, 'Under the guise of of a rhetorical foil for his dispraise of Haterius...T[acitus] is also providing a "testimony to his own quality"'.⁴²⁶ It would seem therefore that in Haterius we have a figure similar in habit to Domitius Afer, if a little smaller in stature. Despite their distinguished background, both men, like Hortensius before them, are content to live the high life and do not seem bothered by their lack of oratorical success in comparison with their ancestors.

In these passages Tacitus is making a comparison between the orators of the past and the present – whereas the two *delatores* mentioned above can claim to *be* orators in the republican mould, there are several examples of men in the *Annals* who are related to the great orators of the past, but who cannot, or perhaps do not wish to, live up to the model set by their ancestors. Two possibilities for this behaviour present themselves: either they were happy to sit on their ancestral laurels or they had no desire to reaffirm their masculinity in the cut and thrust of the forum and Senate House, and unfortunately we cannot tell. Nevertheless, we can suggest that because the performative nature of Roman manhood affords less disgrace and loss of innate status to those who refuse to play rather than to those who play and lose, individuals of high status (e.g. with accomplished speakers for ancestors) may choose not to play in order not to lose a status that they could not then recover.

⁴²³ On Haterius' oratory see Syme (1958) 323–4, 338.

⁴²⁴ His speed of delivery is also commented on by the Younger Seneca in *Ep.* 40.10.

⁴²⁵ Martin & Woodman (1989) 232.

⁴²⁶ Martin & Woodman (1989) 232, quoting Syme (1958) 624 n.3.

In *Annals* 12.58.1–2, Tacitus gives us an account of speeches made by the future emperor Nero to the Senate.⁴²⁷ Here, Nero is described as an *orator*, something that has caused disquiet amongst some scholars, who have tried to explain it away rather than exploring what Tacitus is trying to indicate in this passage:

utque studiis honestis <et> eloquentiae gloria enitesceret, causa Iliensium suscepta Romanum Troia demissum et Iuliae stirpis auctorem Aeneam aliaque haud procul fabulis ve<te>ra facunde perpetrat, ut Ilienses omni publico munere solverentur. eodem oratore Bononiensi coloniae igni haustae subventum centies sestertii largitione. reddita Rhodiis libertas, adempta saepe aut firmata, prout bellis externis meruerant aut domi seditione deliquerant; tributum Apamensibus terrae motu convolsis in quinquennium remissum.

(12.58.1–2)

Nero's motivation is described by Tacitus as the desire 'to become conspicuous/begin to shine forth in honourable studies and the glory of eloquence', which emphasises both the purpose of higher education and the reward of oratory. The passage contains a mixture of oratorical and educational terms; on the oratorical side the important phrase is *causam...suscipere* 'to take on someone's case', and *causam alicuius suscipere* (s.v. *causa* OLD 8c) is a phrase typically used of an advocate,⁴²⁸ while on the educational side two phrases are worth consideration. Nero's speech is a mythological excursus on the descent of the Romans, and in particular the Julian family, and is described as 'not far from fables'. It should be noted that *fabulae* were part of the rhetorical training undertaken by a fledgling orator;⁴²⁹ the narration of a family's ancestors is one of the topics found in an *ἐγκώμιον*.⁴³⁰ Tacitus, therefore, describes Nero's speech as containing elements of rhetorical exercises,⁴³¹ a picture which reinforces the

⁴²⁷ On which see also Jones (1999) and (2000)

⁴²⁸ Cf. Cic. *Phil.* 7.3

⁴²⁹ On *fabulae* cf. Quintilian 5.11.17–20. and *Rhet. Her.* 1.13.

⁴³⁰ On *ἐγκώμια* of cities cf. Quintilian 3.7.26; see also *Men. Rhet.* 359–67. On the various categories contained within *ἐγκώμια* cf. Theon (*RG* 2.109 ff. (Spengel) = Patillon 74–6) which is also quoted in translation in Marrou (1956) 198–9.

⁴³¹ In terms of the content of Nero's speeches for Troy, Bononia and Apamena, [Hermog.] *de Inv.* 1.5, (108.1–2 Rabe), Aps. 4.3 (Patillon) = 261 (Spengel) give an account of a proposal that the Athenians reduce the tax on the inhabitants of an island. Pollux of Naucratis also declaimed this

mention of *honestis studiis* at the beginning of the passage. Tacitus is therefore presenting Nero as a student of rhetoric, giving the kind of speech that we would expect a young Roman to give. The content and context of the speech is however unusual – it is not the kind of *tirocinium* we would expect a boy to have.⁴³²

Tacitus' use of *demissum* in his description of Nero's speech has given rise to the comment of various scholars.⁴³³ What they have failed to recognise is that all the uses of the word quoted above occur when describing the descent of Rome from Troy, and that such an obvious allusion is not a coincidence. While it is possible that the use of a word with such obvious poetic resonances as *demissum* can be seen as prefiguring the young Nero's later attempts at poetry, it also operates on other levels. The conscious evocation of poetic purple passages also gives a clue of the register of language employed by Nero; it is a particularly grand one, no doubt in imitation of the famous poetic and oratorical models he is following.⁴³⁴ This is a clue to help explain what Tacitus is describing in this passage: we are aware of several famous examples of poetic *ἐγκώμια* alluded to by the use of *demissum* and of rhetorical exercises dealing with this theme. It is possible, therefore, to assume that the young Nero is imitating these in his speech. The imitation of famous models was a key part of a rhetorical education,⁴³⁵ and a way of signalling to the audience that Nero was well read. We seem, therefore, to be dealing with a grand speech and one which fulfils Nero's desires, as expressed at the beginning of the speech, to gain a reputation for honest study and oratorical glory. At the same time, the fact that the person delivering the *ἐγκώμιον* is the young prince

theme (Philostr. *VS* 593 = 2.12). The exercises undertaken by Nero are thus *suasoriae*, which are appropriate to someone of his age and level of education.

⁴³² Cf. Jones (1999) 99: 'Nero was only articulating motives which governed Rome's relations with Ilium from the beginning. We shall see Caracalla on his entry to public life bestowing similar favors on Aphrodisias, and such acts were no doubt considered a harmless way for princes to gain general approval.'

⁴³³ Furneaux (1907) 134: 'only here so used in prose, from Verg. (G.3.35; Aen.1.288) and Hor. (Sat. 2.5, 63), and Syme (1958) 515 n.2: 'Observe the verbal felicity of the poetic "demissum" (Virgil *Georg.* 3.35; *Aen.* 1.288; Horace *Sat.* 2.5.63).'

⁴³⁴ On the link between poetry and epideictic see Russell & Wilson (1981) xxxi–ii.

⁴³⁵ Cf. Marrou (1956) 200–I.

and its subject matter highlight the fact that the speech is both a grand speech and a glorified school exercise, which undercuts both his literary and oratorical pretensions. Given that in the following Book Nero is seen as relying on the Younger Seneca as his speech-writer, we can ask whether what Tacitus is describing is the delivery by a pupil of his master's fair copies, thereby denying Nero any credit in the proceedings.⁴³⁶

Nero's speech also provides help for the Roman colony of Bononia, in the form of a gift of 100 million sesterces, to help rebuild after a fire. In addition to this, he obtains a five-year break from tribute for Apamena after an earthquake and self-government for Rhodes.⁴³⁷ These actions are those of an orator, as Tacitus makes clear with the phrase *eodem oratore*; however, Furneaux comments on the use of *exsecutus*, 'The eloquence was clearly that of Seneca (see 13.3.2)'.⁴³⁸

There are no extant speeches regarding Bononia (whose foundation is described in Livy 37.57.7–8⁴³⁹ shortly after the speech of the Rhodians describing their relationship with Rome). This juxtaposition of Bononia and Rhodes in Livy's narrative seems to be mirrored in the speeches made by Nero, which may itself be an example of literary imitation. Several models exist for speeches concerning Rhodes: Demosthenes *Oration 15* (*Περὶ τῆς Ῥόδιων ἐλευθερίας*), Cato the Elder's *Oratio pro Rhodensibus*, and the speeches in Livy 37 and 45.⁴⁴⁰

⁴³⁶ Jones (2000) is ambivalent, though does posit the idea that Nicetes may have had some involvement with Nero's Greek rhetorical tuition (460–2). Millar (1977) 87 suggests that Chaeremon, part of Alexandrian embassy of 41, may have been a teacher of Nero. On Nero as orator see also Millar (1977) 203–4.

⁴³⁷ Nero refers to this in his later correspondence with island, on which see Jones (2000) 456.

⁴³⁸ Furneaux (1907) 134.

⁴³⁹ *eodem anno ante diem tertium Kal. Ianuarias Bononiam Latinam coloniam ex senatus consulto L. Valerius Flaccus M. Atilius Serranus L. Valerius Tappo triumviri deduxerunt. tria milia hominum sunt deducta; equitibus septuagena iugera, ceteris colonis quinquagena sunt data. ager captus de Gallis Bois fuerat; Galli Tuscos expulerant.*

⁴⁴⁰ Nero's patronage of the Rhodians is also recorded in an epigram ascribed to Antiphilus of Byzantium (*Anth. Pal.* 9.178):

᾿Ως πάρος ᾿Αελίου, νῦν Καίσαρος ᾿ ᾿ Ῥόδος εἰμὶ
 νᾱσος, ἴσον δ' αὐχῶ φέγγος ᾰπ' ᾰμφοτέρων·
 ἤδη σβεννυμένην με νέα κατεφώτισεν ᾰκτίς,
 ᾿ Ἄλιε, καὶ παρὰ σὸν φέγγος ἔλαμψε Νέρων.
 πῶς εἶπω, τίνι μᾰλλον ᾰφείλομαι: ᾰς μὲν ἔδειξεν
 ἐξ ᾰλός, ᾰς δ' ἤδη ῤύσατο δυομένην.

The imitation of famous speeches at school was part of an orator's training.⁴⁴¹ Regardless of which model he used for his speech, Nero is seen as taking on the case of the inhabitants of Ilium, Rhodes and Bononia in the manner of an orator and conforming to the prescriptions of rhetorical theory. His speeches, despite the fact that they can be read as glorified school exercises, take place in the Senate and are examples of the *genus deliberativum* of the kind a senator, as *patronus*, would give in senatorial debates on behalf of his *clientela*. In other words, Nero is doing what an orator does in a place where oratory traditionally takes place. Nero's speeches also succeed in their aim of providing relief to Apamena and Bononia, returning *libertas* to the Rhodians and making the inhabitants of Ilium exempt from tax. Such success stands in contrast to the failure of orators, though his success may be due to his position as the emperor's son and the speeches being written by Seneca than any talent on his own part.

It is possible to detect a degree of Tacitean cynicism in the description of Nero's entry into public life: given that we have the future emperor Nero making speeches in the Senate in the manner of a republican *patronus*, we can ask the question, 'How can Nero fail?' There is the possibility of borrowed eloquence: in other words, the speech can be seen as only delivered by Nero, having been written by Seneca, which can be inferred from the comment in 13.3.2 (for which see below). Thus, the description of Nero as an orator is undercut a few chapters later: he is an orator who cannot write his own speeches.

We can agree with O'Gorman, who argues that the speech 'is so Senecan that it could not possibly be mistaken for Nero's own voice.'⁴⁴² One might think that this is an inference which we have to draw from comments made later, and that when we read about Nero at this point we need not suppose that his eloquence is borrowed or that his status as an orator can be read as compromised. However one must also note that Seneca has been introduced as Nero's tutor in 12.8 where stress is laid upon his abilities (*ob claritudinem studiorum eius*

⁴⁴¹ Cf. Marrou (1956) 200–1. On *μίμησις* cf. *Rhet. Her.* 4.1. Such imitation was designed to give an orator facility, as discussed in the opening chapters of Quint. *Inst.* 10.

⁴⁴² O'Gorman (2000) 149.

(12.8.2)) and also that the speeches delivered by Nero are best understood as schoolboy exercises dressed up, as I pointed out above.

We can also ask the questions, 'who is he, what is he, where is he?' Simple answers are 'the emperor's adopted son, soon to be emperor himself, in the Senate with his father in charge'. In other words, it could be argued that Nero could make the worst speeches possible, as it is the nature of the Principate that the young prince would get what he wanted, and as the event would have been stage-managed to ensure his success. This is attractive and useful, especially as a paradigm for Nero's later acts of public performance. Therefore Tacitus' use of *orator* here is best understood as ironic: Nero can be seen as going through the motions, but the possibility that the words are not his own and that he is speaking in a situation where he cannot fail to win mean that any notion of competition, which is central to oratory, has gone out of the window.

LITERARY HISTORY

In *Annals* 13.3.2 after having noted that Nero was the first of the emperors to need borrowed eloquence (*primum ex iis, qui rerum potiti essent, Neronem alienae facundiae eguisse*) Tacitus turns to the Julio-Claudians and comment on their oratorical ability.⁴⁴³

nam dictator Caesar summis oratoribus Aemulus, et Augusto prompta ac profluens, quae deceret principem, eloquentia fuit. Tiberius artem quoque callebat, qua verba expenderet, tum validus sensibus aut consulto ambiguus. etiam C. Caesaris turbata mens uim dicendi non corripuit; nec in Claudio, quotiens meditata dissereret, elegantiam requires. Nero puerilibus statim annis uiuidum animum in alia detorsit: caelare pingere, cantus aut regimen equorum exercere; et aliquando carminibus pangendis inesse sibi elementa doctrinae ostentebat.

(13.3.2)

⁴⁴³ On Julius Caesar's oratory cf. Cic. *Brut.* 252–61; Suet. *Jul.* 6, 55; Quint. 10.1.144; Tac. *Dial.* 21.5. On Augustus cf. Suet. *Aug.* 84 (on declaiming daily), 86; Gel. 15.7.3. On Tiberius cf. Tac. *Ann.* 1.7, 11; 3.51; 4.31; Suet. *Tib.* 8, 70. On Gaius (Caligula) cf. Suet. *Cal.* 50; Dio 59.60. On Claudius cf. Suet. *Cl.* 4, 41; Sen. *Cons. ad Pol.* 14. On Nero cf. Suet. *Nero* 7.

The catalogue of members of the Julio-Claudian family and their skills is quite revealing as a piece of literary history and is pertinent to the present enquiry. Julius Caesar is described as 'a rival to the greatest orators', Augustus is credited with 'ready and fluent eloquence as befits an emperor' and Tiberius is seen as skilled in the art of weighing words. Caligula has a certain force of speech, Claudius made elegant prepared speeches, but Nero is seen as turning from oratory to other pursuits: singing, horse riding, sculpture and painting. In the catalogue, there seems to be a clear decline in the oratorical skills of the various rulers: only Julius Caesar is seen as an orator. All the other Julio-Claudians are described as possessing a fair degree of oratorical skill, but may not have the complete package, so to speak. It may not be coincidental that the only member of the Julio-Claudian family seen as an orator is Julius Caesar, who was not an emperor and belongs to the period of the great Republican orators from whom examples of the oratory of the past are taken. Whether this is purely literary criticism or a profound comment on the nature of the Principate is a question to which I shall return later.

A key to understanding this passage is offered in the opening of section two of chapter 2: *adnotabant seniores, quibus otiosum est vetera et praesentia contendere*. The first word, *adnotabant* can mean 'to mark (passages of a work) with signs of approval or disapproval'.⁴⁴⁴ This word signposts the fact that Tacitus is describing men engaging in literary criticism regarding the oratorical ability of Nero in comparison with other members of the Julio-Claudian family. The fact that they are described as older men makes it reasonable to assume that they could have heard Augustus in person. Their judgement may be based on personal experience or not: it makes it more authoritative if it is, but it is not necessary for their judgements to have validity, which given the presentation of Nero thus far, they would seem

⁴⁴⁴ s.v. *adnoto* (OLD 3c); also cf. Plin. *Ep.* 3.5.10, 3.13.5.

to. That such judgements abound in other works where the oratory of emperors is subjected to literary criticism (cited above) is testament to their widespread nature.

The literary criticism of Nero's audience is further reinforced by the mention of *otiosum*; the critics are indulging in a leisure activity proper to their class.⁴⁴⁵ The phrase *vetera et praesentia contendere* particularly brings to mind the debate between Aper and Messala in the *Dialogus de Oratoribus* (16.3–26); as that debate discussed whether ancient or modern orators were better, it is also possible to read the criticism of the old men here as being on the decline of oratory – a feature of discussions of literature under the Early Empire. What they are engaged in, in the same way as the participants in the *Dialogus*, is a questioning of both the nature of oratory and its place in the world – something common to all the texts covered in this thesis.

Returning to the presentation of Nero as an orator, there is another example that deserves consideration. In Book 14 of the *Annals*, during an exchange between Nero and Seneca regarding Seneca's retirement from public life, Nero replies as follows: *quod meditatae orationi tuae statim occurram, id primum tui muneris habeo, qui me non tantum praevisa, sed subita expedire docuisti* (14.55.1).

Nero begins his speech by praising Seneca for having taught him to make prepared and impromptu speeches, essential skills for the budding orator (cf. Quintilian 11.3.12 noted above). This is presented by Tacitus as praise of a teacher by pupil,⁴⁴⁶ and given the examples of Nero's epideictic oratory in Book 12 it is how we would expect such a speech to begin: the *exempla* which follow this *captatio benevolentiae* seem straight out of a rhetorical handbook. It is possible to read Nero's speech, or at least its exordium, as an example of a *προπεμπτικὸς λόγος*,⁴⁴⁷ 'a speech which speeds its subject on his journey with

⁴⁴⁵ cf. Toner (1995) 147.

⁴⁴⁶ Jones (2000) 458 takes the speech as proof of Nero's rhetorical ability.

⁴⁴⁷ Cairns (1972) argues for the influence of epideictic oratory on Latin Poetry.

commendation'.⁴⁴⁸ This is in effect the kind of speech Nero is delivering in honour of Seneca:⁴⁴⁹ commending his teacher for what he has taught his pupil before sending him off into retirement. Thus, on two occasions, Nero is seen as displaying some talent for epideictic oratory, or at least for following established conventions of this genre (as later transmitted by Menander). On at least one of these occasions Nero can take some credit for both composing and delivering a speech. It is also noticeable that the ends of the first two sentences of Nero's speech, *expedire docuisti* and *qualecumque tribuisset* are Ciceronian clausulae: a resolved cretic followed by a trochee that is the 'admired (and derided) *esse videatur*'. Martin believes that this is a deliberate effect on Tacitus' part because it alerts the careful reader to the possibility of Nero's oratorical skill, or at least the quality of Seneca's teaching.⁴⁵⁰

Given the fact that Nero's speeches have been undercut twice in the preceding narrative we are faced with the problem of how to read this example of his oratory. It is not plausible to see Nero's reply as written by Seneca; therefore, Nero can hardly be seen as devoid of any oratorical talent whatsoever: his own speech proves his ability to make speeches. The fact that his ability has been questioned earlier does encourage a negative reading and similarly Nero's following the rules of epideictic oratory to the letter leaves him open to the charge of lacking originality, but this suggests that his talent is not very well-developed.

We are therefore faced with a judgement in terms of literary criticism. We can choose to see Nero as displaying the 'elements of learning' (*elementa doctrinae*) in the manner of the elderly unnamed critics of 13.3, a learning inculcated by Seneca. O'Gorman sees the episode between Nero and Seneca first as an allusion to a passage of Seneca's *De Ira*,⁴⁵¹ and secondly as an episode 'initiated and summed up by him. Seneca, despite his disclaimers, continues to

⁴⁴⁸ Russell and Wilson (1981) 127.

⁴⁴⁹ For the details of the Propemptic Talk see *Men. Rhet.* 395–9.

⁴⁵⁰ Martin (1967) 109. For derision of this clausula cf. the comments of Aper in Tac. *Dial.* 23.

⁴⁵¹ O'Gorman (2000) 153.

assert literary dominance over his emperor'.⁴⁵² Nero's reply begins by stating his debt to his teacher: that fact that he says 'You taught me everything I know' only serves to underline Seneca's dominance, which is a main argument of the detractors (as reported in 14.52.2–4), and which Seneca is trying to end through his retirement.⁴⁵³

Thus, while taken in isolation, Nero's speech can be read as an example of his oratorical skill; in the context of the surrounding narrative, however, this skill reflects more on Seneca as Nero's teacher than on the young emperor himself, which reinforces the judgement of the 'critics in 13.3 and discourages a positive reading of Nero's skills.⁴⁵⁴ Further evidence can also be found in Nero's being awarded the prize for eloquence at the Quinquennial Games,⁴⁵⁵ despite not even competing, and his praise by orators and poets at the second Quinquennial Games.⁴⁵⁶

CONCLUSION

To return to a question asked at the beginning 'Is it significant that the word *orator* is not found in the *Histories* – there are plenty of speeches and speakers in the work?' a simple answer would take this bare fact to be symptomatic of the 'decline of oratory'. Yet there are clearly plenty of orators and oratory in the remaining five books of the *Histories*, which contain a speech in *oratio recta*, the only one in Tacitus' historical and biographical works to make sustained use of Ciceronian prose rhythm – the speech of Curtius Montanus in *Hist.*

⁴⁵² O'Gorman (2000) 153.

⁴⁵³ Seneca's detractors claim that he is unable to tolerate a rival in rhetoric and poetry and that he belittles Nero's abilities in chariot racing and singing. These comments echo the characterisation of Nero's skills in 13.3.2 and can be seen as ironic. In advising the emperor to dismiss his teacher and look to his own ancestors the detractors make use of a traditional aspect of Roman self-fashioning, which can also be portrayed in a negative light: if Nero chooses to emulate Mark Antony and Caligula this will not have beneficial effects.

While he is accused of not tolerating a rival, Seneca's retirement is best understood as a conscious decision not to play the game – he is letting Nero win by not competing against him.

⁴⁵⁴ Cf. O'Gorman (2000) 152.

⁴⁵⁵ 14.21.3–4

⁴⁵⁶ 16.2.2

4.42.⁴⁵⁷ While the speech may be traditional in style, its effectiveness was not as great as could have been expected when such speeches were more common. Keitel is, I believe, right in claiming that all attempts at senatorial independence in Book 4 fail,⁴⁵⁸ but despite his failure to convict the *delatores* Montanus' speech does succeed in bringing a temporary stop to the practice of delation.

Those people described as orators in Tacitus' *Annals* enjoy varying levels of success and possess different levels of oratorical skill. They have various faults and failings, e.g. Afer's inability to retire at an appropriate time,⁴⁵⁹ Blaesus' inability to present his case and Nero's inability to write his own speeches. It would be impossible to see any of them as rhetorical models of the stature of Cicero; while Quintilian may look kindly on the talents of Cn. Domitius Afer, and no doubt Tacitus' readers would have remembered the man, his presentation is essentially damned with faint praise.

It is tempting to read these imperfect orators as manifestations of the decline of oratory,⁴⁶⁰ a subject much debated in the first century AD,⁴⁶¹ but rather than writing off the Romans described as orators in Tacitus' *Annals* as bad *en masse*, one can argue that Tacitus' conception is more complex.

Given the fact that Tacitus' *Dialogus de Oratoribus* opens with the comment that orators are sadly lacking and that the term is only used in reference to people described as *antiqui*, is this equally applicable to Tacitus' *Annals*? In the *Annals*, there are several examples of men referred to as orators, who are both orators in the old-fashioned sense of the world (at least to a partial extent) and at the same time can hardly be seen as the same as Calvus, Hortensius or Cicero, with the exception of Crispus. We are then faced with a problem:

⁴⁵⁷ On this speech see Martin (1967).

⁴⁵⁸ Keitel (1993) 40.

⁴⁵⁹ For which see Quint. *Inst.* 12.11.3 and Tac. *Ann.* 4.52.4

⁴⁶⁰ For analyses of decline as a trope, see Hinds (1998), Johnson (1987) and Farrell (2001).

⁴⁶¹ For discussions of the decline of eloquence in the literature of the 1st century AD see Tac. *Dial.* 1.1, Sen. *Controv.* 1. pr. 7–10, Petron. *Sat.* 1–2, Vell. *Pat.* 1.16–18, Pliny *N.H.* 14.1.5–6. For a discussion of these passages see Fairweather (1981) 132–148 and Heldmann (1982).

'When is an orator not an orator?' a problem of definition which we, like the Romans of the first century AD, attempt to answer. To reply to Messala in the *Dialogus*, we are not dealing with a *nominis controversia*:⁴⁶² the orators of Rome's past were still important, either through emulation of their words and exploits, or simply by claiming descent from them.

Any attempt to answer this question has to confront another problem: that while the question is easy to formulate, the answer is not equally simple. Of the people described as orators in the *Annals*, those who come closest to the orators of the past are arguably Passienus Crispus and the *delatores*. There are characters in the *Annals* who can be seen as possessing a greater claim to be called orators, who are not referred as such: M. Aemilius Lepidus or P. Clodius Thrasea Paetus for instance.⁴⁶³ If those people referred to as orators in Tacitus' *Annals* can tell us anything about being an orator under the Julio-Claudian principate, it is that the recognition of the good and bad points of models is key to their successful emulation⁴⁶⁴ and that one's status as an orator is constructed or demolished through performance and how this is interpreted. To quote Dupont 'oratio, or public discourse, constitutes the means by which the ideal citizen enacts and confirms his status or *dignitas* within the socio-political hierarchy of the state'.⁴⁶⁵

⁴⁶² *Dial.*25.1

⁴⁶³ Thrasea Paetus does however refer to orators in his speech against Claudius Timarchus, a Cretan, for *contumelia* against the Senate in 15.20, in seeing the *Lex Cincia* as curbing orators from only representing those who pay them. In attempting to cut Claudius Timarchus down to size with respect to praising governors, Paetus advocates a return to a traditional position by forbidding *gratiarum actiones*. Such a sensible proposal could be seen as likening to orators of the past. Indeed, while his proposal meets with general approval it is initially unsuccessful – the consuls deny that there had been a motion on the subject, so the senate cannot adopt his proposal – this is later rectified at Nero's instigation. This is thus a successful deliberative speech on Paetus' part.

⁴⁶⁴ As argued by the Elder Seneca and discussed in Chapter 4.

⁴⁶⁵ Dupont (1997) 89.

❧ CHAPTER 6 ❧

ORATORY AND DECLAMATION IN PETRONIUS' *SATYRICON*

PETRONIUS' *Satyricon* is a work often quoted in discussions of oratory and declamation or first century prose for one reason: the opening scene of the work. The first five chapters are often considered as an example of the criticism of declamation prevalent in the first century AD,⁴⁶⁶ though they have also been seen as evidence for Asianism as the dominant style in Silver Latin Prose,⁴⁶⁷ or written off as a series of trite commonplaces aimed at satisfying the bodily desires of the participants.⁴⁶⁸

This chapter looks at the role played by oratory and declamation in the *Satyricon* as a whole rather than just the first few pages, through an examination of passages where vocabulary which presupposes a relation to oratory or declamation is used.⁴⁶⁹ This is necessary in order to arrive at an interpretation of how Petronius and the characters within his novel understand oratory and declamation, and to re-assess the place of the work and its discussion of rhetoric in the literature of the period.⁴⁷⁰

The extant work opens with the main character, Encolpius, in full flow, berating the

⁴⁶⁶ Russell and Winterbottom (1972) 361 introduce the passage thus: 'The Absurdities of Declamation: Complaints about the unreality of declamation are common in the first century. We give perhaps the most entertaining of such attacks'. Kroll's entry on rhetoric in *RE* 7.1121 also reads Petronius at face value, as do Braund (1997) 148–9, Winterbottom (1982) 63, Fairweather (1981) 144–5, Bonner (1949) 75–6 and Ruden (2000).

⁴⁶⁷ Norden (1898) 263–5.

⁴⁶⁸ On the satisfaction of bodily desires (essentially for food and sex) especially in the opening chapters, see Panayotakis (1995), Rimmell (2002) and Kennedy (1978). Cf. *Luc. de Merc. Cond.* 24 on the rhetorically educated desiring lavish dinners and *Luc. de Merc. Cond.* 26 on them getting very bad food!

⁴⁶⁹ The criterion for the passages I have chosen to examine in the order in which they appear is that within them Petronius uses one (or more) of the following words: *causidicus*, *controversia*, *declamare*, *declamator*, *oratio*, *scholasticus*, *suasoria*.

⁴⁷⁰ One recent study of Petronius, Rimmell (2002) entitles her first chapter, which deals with the opening of the *Satyricon*, 'Rhetorical Red Herrings' which, while it may just be a piece of empty sophistry, does imply that the link between rhetoric and fish which she discusses is hinted at in this opening. This is in fact the case, but closer study reveals that it is only one of the threads which links together the sections of the *Satyricon* examined in this chapter.

excesses of the rhetorical schools.⁴⁷¹ It should be made clear from the outset that, contrary to the opinion of scholars, Encolpius is not actually declaiming;⁴⁷² his speech is more of a 'tirade',⁴⁷³ a rant which bears some similarities to high-flown declamatory style but is not itself a declamation.

It has been argued that in the opening of the *Satyricon* we are faced with a parody of the more florid (often termed 'Asian') style of declamation.⁴⁷⁴ The parody is similar in tone to Plato's parody of Gorgias in *Grg.* 448C 4–9.⁴⁷⁵ We have, to quote Fairweather (1981), 'A fine parody of a melodramatic type of declamation',⁴⁷⁶ a speech which opens in such a way as to signal to the reader the precise object of Encolpius' initial complaint. The parodic nature of the speeches does not mean that they do not contain realistic elements and cannot be a vehicle for serious comment on the nature of oratory, declamation and rhetorical training.

To use this as an example of 'anti-Asianist' bombast, as Norden and others have done, is

⁴⁷¹ Laird (1999) 216, on the opening pair of speeches writes 'this exchange might well give the initial impression that the text to come will be entirely devoted to a discussion of oratory — rather like Tacitus' *Dialogus*'

⁴⁷² This observation is also made by Kennedy (1978) 173. While Gunderson (2003) is generally very good indeed in his interpretation of Petronius (10–11), his statement that 'Encolpius has just delivered a declamation against declamation', II, is an overstatement.

⁴⁷³ Bonner (1949) 76. See also Bonner (1949) 76 on *haec vulnera... membra non sustinent* as 'a clever parody of declamation... [which] is all too reminiscent of the pseudo-pathos involving the inevitable "tyrannicida"; here the pathos is increased by making the hero blind'. Bonner continues by arguing that it is not surprising that a declaimer who turned from such speeches to the courts would think they were in a different world.

⁴⁷⁴ Innes & Winterbottom (1988) 18: *num alio genere furiarum declamatores inquietantur qui clamant: Haec vulnera pro libertate pūblica excēpī, hunc oculum pro vobis impendi; date mihi [ducem] qui me ducat ad liberos meos nam succisi pōplītēs mēmbrā nōn sūstīnēt. haec ipsa tolerabilia si ad eloquentiam ituris viam facerent.* Winterbottom (who wrote this section of the Introduction) sees it as an example of 'Asianism'. Alternatively, they could equally be seen as characteristic of the grand style and high emotional tone of the declamation. Fairweather (1981) 373 notes that the rhythm of *dātē mīhī dūcēm* might well have been considered by Seneca as a case of *emollita compositione*. She does, however, note that (on the evidence of *Contr.* 7.4.8) 'even "effeminate" rhythms were not a monopoly of the *Asiani*.' Such discussions indicate that a clear division between 'Atticism' and 'Asianism' cannot be readily identified and therefore may not exist.

On the caution which should be employed when using terms such as 'Asianist', see Fairweather (1981) 302–3. On the polemical rather than historical nature of the term see von Wilamowitz-Moellendorff (1900) 1–8, see also Leeman (1963) 136–67, Gleason (1995) 107–8 and Richlin (1997) 106–7.

⁴⁷⁵ Cf. Dodds (1959) 192 (on 448C4–9) 'Its peculiarities of style mark it as either a quotation or parody. ... parody is more likely in Plato than *verbatim* quotation. ... The style is in any case Gorgian to a point of grotesqueness.'

⁴⁷⁶ Fairweather (1981) 244.

something of an overstatement:⁴⁷⁷ Petronius is offering what can be read as a hackneyed criticism of declamation and declamatory style, yet the high emotional style of Encolpius' parody is not without parallels.⁴⁷⁸

These parallels provide points of contact with reality which enable Petronius' audience to know where they are. Encolpius' arguments are 'normal' yet also widespread enough to be parodies. Rimmell is right to suggest that 'in order to condemn the fantastic rhetoric of trainee orators, he [Encolpius] has to act out their "loud empty phrases" in direct speech'.⁴⁷⁹ Reading Encolpius in this scene as a hypocrite muddling the relationship between critic and criticised is instructive:⁴⁸⁰ the relationship between critic and criticised is something which is elided throughout the *Satyricon* as a whole and can be seen as a part of its satirical technique and thrust.

Having quoted examples of declamatory excess, Encolpius notes *haec ipsa tolerabilia essent si ad eloquentiam ituris facerent*.⁴⁸¹ This is, in his opinion, not the case: when declaimers find themselves in the forum they think that they have been carried to another world. A similar point of view has been discussed in the section considering the Elder Seneca.⁴⁸² There it was shown that the attack made on declamation by Cassius Severus and Votienus Montanus was a form of defence of their own inability to declaim well. These two 'critics' of declamation have to engage with that which they criticise, but their criticism is also self-referential in nature, in that it is a strategy to explain their inability to declaim. The fact that they need to explain

⁴⁷⁷ Sinclair (1984) 234–6 surprisingly sees Encolpius' speech as based on Dion. Hal. *De Orat. Vet.* 1.6.7 and Cic. *Brut.* 8, 51. Gunderson (2000) 246 n.34 sees that 'decline is directly compared to the death of rhetoric at the hands of fantastic contemporary "Asiatic" taste'. For a more balanced view of Petronius, Asianism and the Elder Seneca, see Fairweather (1981) 298–303.

⁴⁷⁸ Cf. Cicero's translation of Soph. *Trach.* 1060ff. in *Tusc.* 2.8.20 ff. Fairweather (1981) 261 sees that its 'rhetoric is not so very far removed from the melodramatic style later to be parodied by Petronius'.

⁴⁷⁹ Rimmell (2002) 19.

⁴⁸⁰ *ibid.*

⁴⁸¹ The word *ituris* is also used by Quintilian *Inst.* 7.2.54, when describing bad habits learnt in declamation which can compromise one's ability in court.

⁴⁸² Especially in Sen. *Contr.* 3.pr.13 and 9.pr.1–2; see also Brink (1989) 476.

this away by criticising the practice itself shows that it must be important; otherwise, they would have no need to explain away their inability to do it. The question whether such an analysis can be applied to Encolpius will be discussed later once his declamatory and oratorical abilities have been fully examined.

In the next sentence, Encolpius can be seen as making the suggestion that if declamation were grounded in reality then eloquence might improve and this looks very much like the sort of sentiment expressed by Quintilian (*Inst.* 2.10.4–9) and the unreal elements of declamation quoted by Encolpius here are also similar to those noted by Quintilian. Such a correspondence is not surprising because it reflects an issue much discussed in the Early Empire and found in the Elder Seneca, Quintilian,⁴⁸³ and Tacitus *Dialogus de Oratoribus*.⁴⁸⁴ The main fault with Encolpius' argument is that he offers an exaggerated reading of declamation and condemns the subject matter of declamation while failing to notice that the purpose of declamation is to take a situation, real or imaginary, and use it to teach pupils how to argue.

In Chapter 2, Encolpius begins by taking the food metaphor which he has used to describe declamation, as composed of honeyed globules of words and sprinkled with poppy-seed and sesame, and conflated the ideas of speech and diet.⁴⁸⁵ Such food is in Encolpius' opinion not conducive to good health: *qui inter haec nutriuntur non magis sapere possunt quam bene olere qui in culina habitant* (*Sat.* 2.1).⁴⁸⁶

⁴⁸³ *contra* Sullivan (1968).

⁴⁸⁴ Parallels between Petronius and Tacitus *Dialogus de Oratoribus* (the speeches of Messala in 302 and 34–6) are noted by Collignon (1892) 95–9 and Paratore (1933) vol.2, 1–5, Kißel (1978) 319 and also by Mayer (2001) 175, who doubts that Tacitus is engaged in conscious imitation 'since its terms were very much a commonplace at the time'. Crook (1995) 165 sees the two works noted as 'utterly condemnatory' of declamation.

⁴⁸⁵ This, I would argue, is an allusion to Plato's description of rhetoric in the *Gorgias*, where rhetoric and cookery are seen as similar due to their pandering to base appetite rather than doing people real good. On this point, see the following section.

⁴⁸⁶ Cf. Quint. 12.10.77 where an imperfect orator is macerated and cooked by anxieties, which make him juggle laboriously with words and waste away with the effort of weighing them and fitting them

Encolpius goes on to lay the blame for the unreality of declamation at the door of teachers, once again, an element found in Quintilian (*Inst.* 2.10.3). Encolpius goes somewhat further in blaming either the teachers or the pupils for being more interested in effect rather than substance, with the following result, *ut corpus orationis enervaretur et caderet* 'the body of the speech is castrated and dies' (2.2): the speech of a declaimer is seen in terms which are usually applied to their body. A similar idea can be found in Quintilian *Inst.* 5.12.17:⁴⁸⁷

Quod eo diligentius faciendum fuit quia declamationes, quibus ad pugnam forensem velut praepilatis exerceri solebamus, olim iam ab illa vera imagine orandi recesserunt, atque ad solam compositae voluptatem nervis carent, non alio mediis fidius vitio dicentium quam quo mancipiorum negotiatores formae puerorum virilitate excisa lenocinantur.

Here teachers are blamed for teaching their pupils to declaim solely for pleasure, rather than as a practical training for oratory. This has the result that the pupils are somewhat lacking: *nervis carent*. While this is usually translated a 'muscle'⁴⁸⁸ or 'spine', the immediate context of slave dealers castrating boys to increase their beauty surely encourages a more sexual translation.⁴⁸⁹ The idea that one's speech can be understood in gendered terms is clear from examples of rhetorical theory⁴⁹⁰ and invective throughout the republican period;⁴⁹¹ this idea is also carried through to the Early Empire.⁴⁹² As Beard has argued, declamation can be seen a means of displaying one's mastery of *Romanitas*, being and thinking Roman.⁴⁹³ This mastery can also be seen to apply to orators in a physical sense: their own bodies, dress and

in into their places (trans. taken from Russell (2001)). The metaphor is also found in Plaut. *Trinum.* 225 and Sen. *Ep.* 70.4.

⁴⁸⁷ This link is also made by Gunderson (2003) 10 n.42.

⁴⁸⁸ Cf. Ruden (2000) 2. Her translation understands Encolpius' metaphor as envisaging a speech in terms of a body, which falls as it lacks muscles and bones.

⁴⁸⁹ For such a translation, see Richlin (1997) 107.

⁴⁹⁰ In *Orator* 91, Cicero describes the middle style as *hoc in genere nervorum vel minimum, suavitatis est vel plurimum*. On this in general see Winterbottom (1989).

⁴⁹¹ On this see Corbeill (1996), Richlin (1983) and (1997) cf. Fantham (1972) 165.

⁴⁹² See Sen. *Contr.* I.pr.8–9 and Pers. I.103–4 and Walters (1993). Brink (1989) 478 comments on Quintilian (quoted above) and tends to favour reading gendered criticism as a manifestation of the Asianism–Atticism debate, citing Dionysius of Hallicarnassus.

⁴⁹³ Beard (1993).

movement are subject to the judgement and criticism of others.⁴⁹⁴ The threat of emasculation, real or metaphorical, is clearly meant to have an impact on the speaker's claim to masculine status. Thus, in his apparently off the cuff remark, does Encolpius betray a fundamental knowledge of the 'rules of the game' or does Encolpius' impotence throughout the *Satyricon* problematise his speech?

Gendered criticism is a hallmark of invective and what is understood as the Atticist–Asianist debate;⁴⁹⁵ critics are, however, sometimes too quick to understand criticism under the Early Empire as a manifestation of this stylistic controversy.⁴⁹⁶ While there are two pieces of criticism in the second chapter, there is almost nothing elsewhere in the extant *Satyricon* which can support the assertion that Petronius is an Atticist or anti-declamation.

Encolpius proceeds to give examples of tragedians, lyric poets, Plato and Demosthenes to build up a picture of pre-declamatory literary culture to compare with a present where young men are shut in by declamations, their talents destroyed by anonymous learned men who inhabit shadows.⁴⁹⁷ The comparison is clear: if such writers produced great work without recourse to declamation, then it is not necessary to engage in declamation to produce great work. Encolpius' argument is clearly weak – just because Shakespeare wrote his plays using a quill pen, this does not mean that a modern playwright who composes on a word-processor is any worse for so doing; and equally a modern playwright may still use pen and paper; this does not make work better or worse. The fact that Plato and Demosthenes

⁴⁹⁴ The idea is discussed in Walters (1993). It is also analysed in detail by Gunderson (1998) and (2000). Rimmell (2002) applies Gunderson's ideas to the *Satyricon*.

⁴⁹⁵ On the gendered nature of the Atticist–Asianist debate see Richlin (1997) 106–7.

⁴⁹⁶ Austin (1948) 162 on Quint. 12.10.16 notes that the phrase dies out after the Augustan period, is not used by Seneca (the Younger) and regarded as 'obsolete' by Quintilian. Winterbottom's article on the stylistic debate in *OCD* also downplays the alleged importance and longevity of the debate, favouring Wilamowitz over Norden. Usher (1974) 2 notes that by the Augustan period (when Dionysius of Hallicarnassus was writing) that the debate 'had become so confused and bedevilled by personalities that it was utterly impossible to say with any degree of objectivity, what constituted Attic and what Asianic style.'

⁴⁹⁷ This idea can also be found in Sen. *Contr.* 3. pr. 13, Quint. 10.5.17 Tac. *Ann.* 14.53 and Juv. *Sat.* 7.172–3.

did not declaim does not invalidate the practice of declamation; it shows that it is not necessary, but it does not show that it is a hindrance, which Encolpius claims that it is.⁴⁹⁸ Not only therefore is Encolpius' argument weak but it also undermines the point he is trying to make.

Having invoked two of the great masters of Attic Greek prose, our would-be literary critic continues by making a stylistic judgement: *Grandis et utra dicam pudica oratio non est maculosa nec turgida, sed naturali pulchritudine exsurgit*. The language of his comment echoes that of the late first century BC, the Atticist-Asianist debate of the first centuries BC/AD and the criticism of Quintilian.⁴⁹⁹ This continues with an attack on declamatory prose style (*nuper ventosa... et obmutuit*). The passage (2.1–2) is one of the four cited by Norden (1898) 263–5 to prove that the prose style of the early empire was a type of Asianism. Such a critical position has been shown to be untenable: by the time the *Satyricon* was written such criticism was no longer in common currency, so Encolpius' arguments are clearly out of date – what he offers is in effect a parody of criticism, rather than serious criticism itself. This is

⁴⁹⁸ Nevertheless the Greeks did practice speech-making: cf. Antiphon and Xen. *Oec.* 9.23–5 where a man practices public-speaking in all its forms in the privacy of his own home with the participation of slaves (23) and his wife (25). It is also interesting to note that in *Inst.* 12.10.24, while describing the Atticist-Asianist controversy, Quintilian argues that if we took the Atticist viewpoint in its strictest sense we would have to call Plato an Asianist (this may also lie behind the assaults on Plato undertaken by Dionysius of Hallicarnassus and Caecilius of Caleacte, cf. Walsdorff (1927) 30). While this appears at first sight to be a ludicrous proposition, it is not necessarily the case. On discussions of faults in Plato's style see D.H. *Dem.* 34 and *Ep. ad Pomp.* 2.5 (=2.227–8 Usener-Rademacher):

ὅταν δ' εἰς τὴν περιττολογίαν καὶ τὸ καλλιπεῖν, ὃ πολλάκις εἴωθε ποιεῖν, ἄμετρον ὄρμην λάβῃ, πολλῶν χείρων ἑαυτῆς γίγνεται· καὶ γὰρ ἀηδεστέρα καὶ κάκιον ἑλληνίζουσα καὶ παχυτέρα φαίνεται· μελαίνει τε τὸ σαφές καὶ ζόφω ποιεῖ παραπλήσιον, ἔλκει τε μακρὸν ἀποτείνουσα τὸν νοῦν, συστρέψαι δὲ δέον ἐν ὀλίγοις ὀνόμασιν ἐκχεῖται εἰς ἀπειροκάλους περιφράσεις, πλοῦτον ὀνομάτων ἐπιδεικνυμένη, ὑπεριδοῦσα δὲ τῶν κυρίων ὀνομάτων κὰν τῇ κοινῇ χρήσει κειμένων τὰ πεποιημένα ζητεῖ καὶ ξένα καὶ ἀρχαιοπρεπῆ· μάλιστα δὲ χεϊμάζεται περὶ τὴν τροπικὴν φράσιν·

See also Heath (1999), Bonner (1939) 8 and Walsdorff (1927). On the superiority of Demosthenes to Plato in Hermog. *Id.* see Rutherford (1998) 47–52.

⁴⁹⁹ *Macula* is used of faults in oratory in Quint. *Inst.* 8.3.18 and 8.5.28. In the first it is used to describe the effect of a low word in a high, polished context can stick out. In the second, it is used to describe how an excess of *sententiae* can lead to a broken style, which affects the whole tone of the speech, a brilliant speech appears bespeckled. That such a word should only be used by Quintilian (in a book on *elocutio*) when describing speech which is 'polished' *ornatus* (*κατασκευῆ*) and the use of *sententiae*, is not surprising. The polish given to a speech and the use of memorable pithy expressions were two crucial elements in the success or failure of a speech.

presumably as with Petronius' presentation of the criticism of Agamemnon, Trimalchio and Eumolpus done for comic effect. There is nothing more amusing than a satirical presentation of a self-important critic who is essentially full of hot air.⁵⁰⁰

The rhetor Agamemnon serves up a stale diatribe (*Sat.* 3), already familiar from the previous generation, on the degeneracy and effeminacy of the young and its deplorable effect on style in oratory. We have read the same clichés in the Elder Seneca's preface to his sons, but the ideas were too widespread for this Agamemnon to be specifically a takeoff on old Seneca.⁵⁰¹

At the beginning of Chapter 3, Encolpius says of Agamemnon that he did not allow him *declamare in porticu* longer than he had sweated *in schola*. Is this 'a mildly amusing metaphor' a Kennedy takes it⁵⁰² or something more? If Encolpius' opening speech of the *Satyricon* is not a declamation,⁵⁰³ what does it mean that Encolpius sees what he has just done as a declamation? Does his inability to know what a declamation is compromise his 'criticism' of it? The answer must be 'yes' and this in turn problematises Agamemnon's remarks. Encolpius's speech is not *publici saporis* either because Agamemnon is being ironic and his criticism is of the public taste, or Petronius is characterising him as not knowing what he is talking about, or indeed who his audience is. The criticism of declamation is a well-known phenomenon, and other critics have expressed such views. In other words, public taste depends on how 'the public' is defined; Agamemnon's remark may refer to the commonplace nature of Encolpius' criticism. However, it is still true that the speech is not something popular, because the majority of people were pro- rather than anti-declimation. Thus, it is

⁵⁰⁰ Hence the allusions to Platonic criticism of sophistic rhetoric throughout the *Satyricon*.

⁵⁰¹ Fantham (1996) 164. Gunderson (2003) 10, however, sees parallels between Petronius and the Elder Seneca, but also considers 'that we are seeing in Petronius a commonplace of the rhetoric of the battle over rhetorical education' 10 n.46. Likewise, Eumolpus' complaints in Chs. 83 and 88 linking the decline of eloquence with a love of money have a parallel in Sen. *Contr.* 1.pr.7.

⁵⁰² Kennedy (1978) 173.

⁵⁰³ Soverini (1985) 173I n.116 on this passage notes 'Naturalmente non si dovrà cercare nella tirata di Encolpio la riproduzione di una declamazione in senso strettamente tecnico, ma i toni, lo stile e le caratteristiche più tipiche di tale esercizio oratorio.'

more likely that Agamemnon's comment refers to the commonplace nature of Encolpius' criticism. This, in turn, problematises Agamemnon's reply, since he takes much of Encolpius' criticism as the starting-point for his own views on rhetorical education. Owing to the widespread nature of such criticism, it is hard to take what Agamemnon says at face value and yet the opposite position of treating the speech as a parody is not without its own problems. However, as previously noted, parody does not preclude serious content, so given the fact that rhetoric is the site of much debate in the first century AD, and that Encolpius' speech is not without insightful comment on the nature and use of Roman education, can some insight be gained from Agamemnon's speech as well?

At the beginning of his speech, Agamemnon sees the debate in stylistic terms: *Nam nisi dixerint quae adolescentuli probent, ut ait Cicero, "soli in scholis relinquuntur."* Teachers, therefore, are teaching their pupils what they want to learn, rather than what they need to learn. As we have seen in the Prefaces to *Contr.* 1&3, Seneca and Cassius Severus criticise the lack of judgement and poor choice of models of young men. While scholars have tried to write this off as a trite commonplace, an example of the *locus de saeculo* which is widespread enough to be unremarkable, it is possible that by referring to it Agamemnon is making a serious point. Likewise, his redeployment of Cicero *Pro Caelio* 41 can be taken in several ways. The critic who wishes to denigrate Agamemnon and his opinions would write this off as an attempt to show some erudition, whereas one who does not could argue that Agamemnon is being erudite by taking the image of harsh unpopular Stoics being left without anyone to lecture to,⁵⁰⁴ on the grounds that the only path to *laus* is *labor*. Agamemnon then uses the figure of the *adulator*, familiar from New Comedy and satire, as a metaphor for a rhetorician.⁵⁰⁵ Rhetoricians are required to say what people want to hear (in order to please them): *nihil prius meditantur quam id quod putant gratissimum auditoribus fore*, and thereby receive some

⁵⁰⁴ On the identification of Cicero's subject as Stoics, see Austin (1960) 104.

⁵⁰⁵ Later in the work, in the *Cena*, Agamemnon not only invites Encolpius, Ascyltos and Giton to dinner with Trimalchio, but at the dinner tells Trimalchio what he wants to hear.

reward.⁵⁰⁶ The idea of rhetoricians only speaking to please people is well known from Platonic criticism of rhetoric. This allusion to Platonic imagery is reinforced by Agamemnon's next metaphor, that of the rhetorician as fisherman.⁵⁰⁷ This metaphor has been recently discussed by Rimmell,⁵⁰⁸ who applies its themes to other passages in the *Satyricon*. While this metaphor anticipates the characterization of rhetoricians as fishy in the zodiac-dish of Chapter 39, I believe that a different interpretation from Rimmell's may be equally plausible and worthy of consideration. In Chapter 39, rhetoricians and *obsonatores* are categorised together in a passage which I shall show later is a direct allusion to the criticism of rhetoric in Plato's *Gorgias*. Here the rhetorician, in speaking and teaching in order to provide pleasure, is likened to a man who is catching fish, fish that presumably supply providers of luxury foodstuffs.⁵⁰⁹

Agamemnon goes on to blame parents for not allowing discipline, and continues by blaming parents for pushing their children into forensic oratory too early.⁵¹⁰ Agamemnon offers an alternative pedagogical model, where his students read, imitate good models and do not trust their own taste, which is parallel to the views of Quintilian,⁵¹¹ Tacitus⁵¹² and the Elder Seneca.⁵¹³ We could, like Fantham, see these views as part of a 'stale diatribe', but this viewpoint undermines the *raison d'être* of Quintilian's later project.

⁵⁰⁶ Those for whom teaching is a means to gain 'filthy lucre' rather than teaching eloquence for its own sake are criticised in Quint. 1.12.16.

⁵⁰⁷ This metaphor is first found in Plat. *Soph.* 221D–223A (it is also made in [Xen.] *de Venatione* 13 and Philostr. *Vit.Soph.* 1.12). The link between Plato and Petronius is made by Conte (1996) 138 n.51.

⁵⁰⁸ Rimmell (2002) 22–30.

⁵⁰⁹ Cf. Conte (1996) 138 n.51 who argues that 'Plato too, with polemic intent had compared sophistic rhetoric, as technique of flattery for profit with the art of the fisherman with rod and line'. For refs. see n. 46.

⁵¹⁰ A common complaint in the criticism of declamation.

⁵¹¹ Quintilian *Inst.* 10.1–7 deals with the acquisition of *εἶσις* (facility): by reading (10.1), imitation (10.2) and writing (10.3).

⁵¹² Messala in Chapters 30 & 32 of the *Dialogus* stresses the need for knowledge of philosophy and in Chapter 29 criticises boys for not being sufficiently devoted to literature.

⁵¹³ On the inferior taste of boys, see *Contr.* 1.pr.10 and 3.pr.13.

Agamemnon's arguments can be understood in relation to Quintilian Inst. 2.10.3: *Eo quidem res ista culpa doctentium reccidit ut inter praecipuas quae corrumpent eloquentiam causas licentia atque inscitia declamantium fuerit*. While Quintilian blames teachers, Agamemnon (like the Elder Seneca and Cassius Severus) puts the blame on students, and yet like the critics of declamation (Cassius Severus and Votienus Montanus) we too can see attack as the best form of defence. As has been shown in the chapter on the Elder Seneca, such criticism is usually a means of covering up for the inability of the complainant to declaim well. In addition, what is criticised is a parodied form of declamation: the over-the-top elements are given prominence whereas in reality declamation appears as a more mundane affair.⁵¹⁴ In a similar way to the 'critics' of declamation in the Elder Seneca, Encolpius' arguments are due more to his own lack of ability than to a true critical position. While it will be shown in the following section that the parodic element of Encolpius' declamation serves another purpose, the presentation of public speech and public speakers, with which the extant work opens, can be seen to be of importance in several sections of the work.

Thus far, we have seen that in attempting to understand the dynamics of the opening chapters, scholars generally fall into two camps: first, those who take the criticism therein at face value and secondly, those who take it as a parody of criticism – including some who see the ideas expressed in the opening pair of speeches as so commonplace to be almost meaningless. The problem with both positions is that the first neglects the element of parody, which is clearly present, and the second undervalues the engagement of the characters in the *Satyricon* with a literary and rhetorical culture where such ideas can be shown to have been discussed. Rather than plumping for one view or the other, it is possible to see Petronius and his characters as being both serious and not serious, operating on several levels

⁵¹⁴ Sullivan (1985) 173 begins by reading the opening of the *Satyricon* as a parody of the Elder Seneca; Fantham (1996) 164 (quoted above) doubts whether such parody is taking place (in Ch.3) due to the widespread nature of the ideas contained therein. Sullivan concludes that 'the argument that both authors are using commonplaces seems more valid'.

at once, to enable a more complex view of the opening and, by extension, the work as a whole. The *Satyricon* can, therefore, be read as a satire that allows its author to have his cake and eat it: to engage in serious discussion and amusing parody. Both these strategies rely on the fact that rhetoric and its criticism are subjects which are worthy of discussion.

SOMETHING FISHY?

In Chapter 35, a dish is brought to the dinner party which purports to represent the twelve signs of the zodiac, with food appropriate for each of the twelve signs in its respective place. Two of the twelve signs and their representative foods are relevant to an understanding of oratory and declamation within the *Satyricon*. The two signs of the zodiac are Aries and Pisces, whose foods are as follows: *super arietem cicer aretinum* (35.3) *super pisces duos mullos* (35.4). The choice of foodstuff is explained in Chapter 39 – on Aries, Trimalchio comments *plurimi hoc signo scholastici nascuntur et arietilli* (39.5), while for Pisces he states *in piscibus obsonatores et rhetores* (39.13).

The precise meaning and significance of the foodstuffs and their relation to aficionados of declamatory schools, rhetors and caterers has certainly puzzled scholars, though few have examined the scene in any great detail.⁵¹⁵ I wish first to turn to the foodstuffs themselves and see whether they give us any clues which can help us to understand one of the more bizarre episodes of the *Cena*.

First, Aries has a ram's-head chickpea. Smith (1975) *ad loc.* quotes Plin. *H.N.* 18.124 to explain why these are appropriate for Aries and hints at the available sexual undertones; on their explanation he notes that *arietilli* are a type of chickpea in Columella (presumably *Rust.* 2.10.20). The *arietilli* in Petronius are the black Bithynian chickpeas called 'rams' (*krioi*)⁵¹⁶ in

⁵¹⁵ These passages are not discussed in Gowers (1994). Of recent scholars, Rimmell (2002) goes further than most to explain the possible significance of fish, but even she does not concern herself with the chickpeas. Conte (1996) goes far in drawing parallels between Petronius and Plato, but does not link the zodiac dish with Plato's *Gorgias*.

⁵¹⁶ Cf. Sophil. 8 and Thph. *HP* 8.5.1.

Galen *De alimentorum facultatibus* 533.22 (Kühn vol.6).⁵¹⁷ They are appropriate in the context of the *Satyricon* due to their stimulating the sexual urge and producing semen, (understandable when *ἐρεβίνθος* is a metaphor for the *glans* of the penis).⁵¹⁸

The link between Aries and chickpeas is well established, but that between Aries/chickpeas and people who speak is less so. The link between *scholastici* and food may well be an allusion to Var. *Men. fr.* 144: *et ceteri scholastici saturis auribus scholica dape atque ebris sophisticis aperantologia consurgimus ieiunis oculis*. Smith's explanation is that Trimalchio is poking fun at Agamemnon and Encolpius: *arietillus* (ram-like) means 'shameless'.⁵¹⁹

The most likely reason for the linking of chickpeas and *scholastici* is that a chickpea (*cicer arietinum*) is the root of the cognomen *Cicero* (whose ancestor may have had a prominent facial wart or a cleft chin).⁵²⁰ The chickpea is therefore an appropriate food for orators and declaimers: in making speeches and declamations the example they have to live up to is that of Cicero, Rome's greatest orator. The idea that aficionados of the declamatory schools, as would-be Ciceros, are being offered the food which stands for their hero (or nemesis) is both highly amusing and important - as will be shown by the linking of food and speakers. Such etymology is both sound and highly relevant.

The connection made by Trimalchio between mullets and rhetoricians is read by Rimmell as referring back to Agamemnon's image of rhetorician as fisherman in Chapter 3.⁵²¹ This interpretation can be expanded upon by further considering the preparation and

⁵¹⁷ *LSJ* VII cf. *Dsc.* 2.104. cf. Powell, (2003) 61.

⁵¹⁸ *LSJ* II see also *Ar. Ra.* 545, *Ach.* 801 (*contra LSJ*). Also cf. Henderson (1991) 119. The chick-pea is a metaphor for the *glans* of the penis, which can be linked to masturbation and excessive sexual desire.

⁵¹⁹ Another possibility is indicated by Quintilian *Inst.* 2.20.3. In his discussion of whether rhetoric is a virtue, Quintilian discusses those who consider rhetoric to be a *ματαιοτεχνία*, a pointless imitation. He then recounts the story of a man who threw chickpeas through the eye of a needle from a distance and was rewarded by Alexander the Great with a bushel of said vegetables. Quintilian then compares such a skill with those who design their declamations to be as unrealistic as possible. On this story and its reception in later philosophy see Inwood (1997).

⁵²⁰ On etymology and names see O'Hara (1996).

⁵²¹ Rimmell (2002) 55: 'mulletts representing Pisces the sign for rhetoricians and chefs (because they fish for pupils and fish for dinner)'.

presentation of the fish for consumption and its shared association with rhetorical preparation and presentation; an association which sheds light on several aspects of the *Satyricon*.⁵²²

First, having noted Trimalchio's reference to the *obsonatores* as an integral part of the dish and reinstating him into the equation linking mullets and rhetoricians, it is necessary to consider some more etymology. Smith (1975) 91 notes that the word *obsonatores* 'has the general sense of "caterer"', although it is derived from *ὄψωνέω*, which normally refers to the purchase of fish in particular. As well as the purchase of fish, it refers to the purchase of other 'dainties' (*LSJ*). These foodstuffs are over and above the normal diet — luxury items, flavourings or garnish — whose consumption is problematic,⁵²³ as either conspicuous consumption or the culinary equivalent of playing with appearance and reality. What you see is not necessarily what you get: a characteristic of a great deal of the food served in the *Cena*. The role of the caterer in this culinary sleight of hand is crucial and something which I will now develop.⁵²⁴

Returning to rhetoricians and caterers requires an examination of the fullest treatment of this pairing, which is found in Plato's *Gorgias* as part of an extended discussion of *τέχναι*. Having begun to discuss the nature and use of rhetoric with the sophist, Gorgias, Socrates is asked by Polus what he thinks rhetoric is (*Grg.* 462B6–C1). Having denied that it is an art (*τέχνη*),⁵²⁵ Socrates takes Polus' own description of rhetoric as an art to prove that it is not an art, but a knack based on experience *Ἐμπειρίαν ἔγωγέ τινα* (462C3). This Socrates explains is something which aims at producing pleasure and gratification *Χάριτός*

⁵²² Another possible intertext is Cassius Severus in *Sen. Contr.* 3.pr.14 where he complains that training an orator by declamation is like assessing a helmsman on a fishpond.

⁵²³ On the problematic status of *ὄψα* see Davidson (1997).

⁵²⁴ Conte (1996) 132 claims that the cook Daedalus 'is an important figure, at least as important as a professor of Rhetoric, if we can rely on Trimalchio, who proclaimed in his cosmology that *rhetores* and *obsonatores* (cooks or their assistants who did the shopping) are born under the same star (39.13): this common origin binds together their arts and their destinies'.

⁵²⁵ For analysis of discussions of the theme 'Is Rhetoric an art?' in later literature (Philodemus, Quintilian and Sextus Empiricus), see J. Barnes (1986).

τινος καὶ ἡδονῆς ἀπεργασίας (462C7). The argument then considers another art, cookery (ὀψοποιία) 'and particularly fine cookery' (*LSJ*). Socrates asks Polus, since he thinks highly of gratification, to do him a favour:

ΣΩ. Ἐροῦ νῦν με, ὀψοποιία ἤτις μοι δοκεῖ τέχνη εἶναι.
 ΠΩ. Ἐρωτῶ δὴ, τίς τέχνη ὀψοποιία; -ΣΩ. Οὐδεμία,
 ὦ Πῶλε. Ἄλλὰ τίς φάθι. -ΠΩ. Φημὶ δὴ, -ΣΩ. Ἐμπειρία τις.
 Τίνος; φάθι. -ΠΩ. Φημὶ δὴ. -ΣΩ. Χάριτος καὶ ἡδονῆς
 ἀπεργασίας, ὦ Πῶλε.
 ΠΩ. Ταῦτόν ἄρ' ἐστὶν ὀψοποιία καὶ ῥητορικὴ;
 ΣΩ. Οὐδαμῶς γε, ἀλλὰ τῆς αὐτῆς μὲν ἐπιτηδεύσεως
 μῶριον.

Gr. 462D9–E1

Thus, cookery is treated in the same way that rhetoric has been in the passages quoted above, and with a similar result. Cookery and rhetoric are not the same thing but are revealed as branches of the same activity. This association is further developed in Socrates' next speech, where he explains to Gorgias the nature of their similarity.

ΣΩ. ...καλῶ δὲ αὐτοῦ
 ἐγὼ τὸ κεφάλαιον κολακείαν. ταύτης μοι δοκεῖ τῆς ἐπι-
 τηδεύσεως πολλὰ μὲν καὶ ἄλλα μῶρια εἶναι, ἐν δὲ καὶ ἡ
 ὀψοποιική· ὃ δοκεῖ μὲν εἶναι τέχνη, ὡς δὲ ὁ ἐμὸς λόγος, οὐκ
 ἔστιν τέχνη ἀλλ' ἐμπειρία καὶ τριβή. ταύτης μῶριον καὶ
 τὴν ῥητορικὴν ἐγὼ καλῶ καὶ τὴν γε κομμωτικὴν καὶ τὴν
 σοφιστικὴν, τέτταρα ταῦτα μῶρια ἐπὶ τέτταρσιν πράγμασιν.

Gr. 463A8–B6

Rhetoric and cookery, along with cosmetics and sophistry, are all types of pandering (κολακεία): they satisfy appetites, rather than being good in and of themselves. They are also denied the status of an art, while they appear to be one, they are seen by Socrates as a knack acquired through experience (οὐκ ἔστιν τέχνη ἀλλ' ἐμπειρία καὶ τριβή), something which you learn over time and which you do not fully understand. Socrates then continues his attempt to prove that rhetoric is not an art and inherently bad, providing a detailed explanation of the argument of the passage quoted above to Gorgias. Having outlined his classification of various arts, medicine, exercise, the administration of justice and the legislative process, Socrates proceeds to discuss how pandering seeks to pervert these τέχνηαι. Instead of acting in the best interests of the body or the mind, pandering traps the foolish by offering them

immediate gratification rather than wholesome action (464C7–D3). Socrates then provides an example of pandering in action, accompanied by an analysis of cookery.

ΣΩ. ...ὕπὸ μὲν οὖν τὴν ἰατρικὴν ἢ
ὀψοποικὴν ὑποδέδουκεν, καὶ προσποιεῖται τὰ βέλτιστα σιτία
τῷ σώματι εἰδέναι, ὥστ' εἰ δέοι ἐν παισὶ διαγωνίζεσθαι
ὀψοποιόν τε καὶ ἰατρόν, ἢ ἐν ἀνδράσιν οὕτως ἀνοήτοις ὥσπερ
οἱ παῖδες, πότερος ἐπαῖει περὶ τῶν χρηστῶν σιτίων καὶ
πονηρῶν, ὁ ἰατρός ἢ ὁ ὀψοποιός, λιμῶ ἂν ἀποθανεῖν τὸν
ἰατρόν. κολακείαν μὲν οὖν αὐτὸ καλῶ, καὶ αἰσχρόν φημι

Grg. 464D3–E2

According to Socrates, cookery impersonates medicine by claiming the place of Hippocratic dietetics in knowing which food is best for the body, with the result that a cook would win a competition with a doctor regarding which of the two was an expert in matters of diet. Socrates is careful to qualify his statement by explaining that the judges are men with the intellects of children. These ἄνδρες ἀνοήτοι are responsible for failing to recognise the difference between true and apparent goodness:⁵²⁶ you can fool some people all of the time, it would seem. Cookery is successful in pandering because it aims at producing pleasure rather than what is best: ὅτι τοῦ ἡδέος στοχάζεται ἄνευ τοῦ βελτίστου (Grg. 465A2). Medicine, however, aims to give the patient food which will make them better, rather than just provide pleasure. There is a difference then between real nourishment,⁵²⁷ and food which just looks good, or is designed for gratification rather than nourishment.⁵²⁸

The comparison drawn by Plato between cookery and rhetoric and their criticism outlined above lies behind the explanation offered by Trimalchio (in Chapter 39) of people

⁵²⁶ Likewise, in the preface to Bk. 3 of Seneca's *Controversiae*, Cassius Severus blames audiences for failing to pull up bad speakers; in the preface to Book I, Seneca himself criticises audiences for their inability to spot plagiarism at I. pr. 10.

⁵²⁷ For a catalogue of images of nourishment and τροφή in Plato (and their relation to the soul), see Pender (2000) 248–9.

⁵²⁸ The following passages in Plato illustrate Plato's views on ὄψα:

ὄψον : Theatetus 175E4 (a philosopher cannot flavour a dish with spices or a speech with flattery – contrasted with another man); *Resp.* 372C4

ὄψα : *Resp.* 372E1, 373A3

ὀψοποι- : *Theat.* 178D10 a (cook can speak more authoritatively than an untrained person on the pleasure a dish will cause), *Symp.* 187E4 (Eryximachus on regulating food so that one is not made ill).

The one reference to chickpeas (as discussed at the opening of this section) in Plato is in Republic 2 (372C8) where Socrates names ἐρεβίνθοι as one of the few ὄψα allowed in the ideal state (On this, see also Davidson (1997) 24–5).

born under Pisces. The link between caterers and rhetoricians is best understood as a hitherto unnoticed Platonic allusion,⁵²⁹ which in turn is important due to the fact that the Platonic intertext is concerned with the criticism of rhetoric and cookery. It should be noticed that Platonic allusions abound in the *Satyricon*.⁵³⁰ For example, the late entrance of Habinnas in Ch. 65 is a parody of that of Alcibiades at *Symp.* 212C3.

Given the important role given to rhetoric in the *Satyricon* in general and of food within the *Cena Trimalchionis*, this chapter will later explore whether Platonic criticism plays a part in the wider presentation of rhetoric within the *Satyricon*.

Not only are there Platonic allusions in Petronius but they can be understood as part of a literary and rhetorical culture in which Plato is read and used. A parallel to Petronius can be found in Quintilian. In *Institutio Oratoria* 2.15, a discussion of whether rhetoric is an art or not, Quintilian's discussion considers the criticism of rhetoric found in the *Gorgias*. In this, he complains that many people are content just to quote 'popular' sections of the dialogue, which produces a misplaced belief that rhetoric was not an art but 'a certain expertise in charm and pleasure' (*peritiam quandam gratiae ac voluptatis*) (*Inst.* 2.15.24).

The evidence of Quintilian on the way the *Gorgias* was read in the mid-late first century AD means that Petronius' deployment of Platonic rhetorical criticism is thereby validated. Plato can be used both to satirize Trimalchio and to make serious points about the nature and role of rhetoric. The fact that this is done through the deployment of Platonic criticism will be examined in the conclusions of this chapter.

⁵²⁹ Conte (1996) 134–6 draws links between Petronius and Plato and in particular, the criticism of rhetoric in the *Gorgias*; however he does not go into great detail. He does note (p.136 n.45) that 'in Petronius' case, the concept of *κολακεία* elaborated by Plato in the *Gorgias* and elsewhere is important' and that 'it is well known that the cook especially in comedy, is an ambiguous figure, often the producer of parody, even or especially, in relation to literature: cf. Dohm (1964)' (*ibid.*).

⁵³⁰ On the links between Plato and Roman culture see Conte (1992).

DECLAIMING OVER DINNER

sed tu narra mihi, Agamemnon, quam controversiam hodie declamasti? ego etiam si causas non ago in domusionem tamen litteras didici. et ne me putes studia fastiditum, II bybliothechas habeo, unam Graecam, alteram Latinam. dic ergo, si me amas, peristasim declamationis tuae'. Cum dixisset Agamemnon: 'pauper et dives inimici erant', ait Trimalchio 'quid est pauper?' 'urbane' inquit Agamemnon et nescio quam controversiam exposuit. statim Trimalchio 'hoc' inquit 'si factum est, controversia non est; si factum non est, nihil est'.

Satyricon 48.4–6

During the *Cena Trimalchionis*, between dishes so to speak, the conversation turns to matters rhetorical. Agamemnon, a guest at the dinner party, is asked by Trimalchio to tell him which *controversia* he had declaimed that day.⁵³¹

Trimalchio then launches into a speech of self-justification. He begins by claiming that while he may not plead cases he has been educated for private or household purposes. Smith (1975) *ad loc.* takes *causas...ago* as referring to declamations, whereas *causas agere* is the technical term for being an advocate (*OLD causa* 3c). It would be quite understandable for Trimalchio to conflate the two practices:⁵³² the two are considered together in the Elder Seneca, and it was not unknown for people to both declaim and speak in court. Yet, Trimalchio seems keen to point out that although he is not an orator, he does have a certain level of education, albeit not a rhetorical one, but a more basic one which allowed him to conduct business as a slave and a freedman.⁵³³ Trimalchio's status is important here: while there is an example of a freedman pleading cases in the Late Republic, there are none known from the Early Empire. L. Voltacilius Pilutus is the one example we have of a slave-turned-

⁵³¹ Luc. *de Merc. Cond.* 35 is the only other example I have found where declamations are given during dinner: οἶδα δ' ἐγὼ καὶ ῥήτορα τῶν καρχάρων ἐπὶ τῷ δείπνῳ κελευσθέντα μελετήσαντα μὰ τὸν Δί' οὐκ ἀπαιδευτῶς, ἀλλὰ πάνυ τωρῶς καὶ συγκεκροτημένως· ἐπηνεῖτο γοῦν μεταξὺ πινόντων οὐ πρὸς ὕδωρ μεμετρημένον, ἀλλὰ πρὸς οἴνου ἀμφορέας λέγων, καὶ τοῦτο ὑποστῆναι τὸ τόλμημα ἐπὶ διακοσίαις δραχμαῖς ἐλέγετο.

⁵³² It could of course be the case that Trimalchio has misunderstood the difference between the two and it is therefore an amusing remark.

⁵³³ It is also possible that Petronius is alluding to Var. *Men.* fr. 517: *Diogenem litteras scisse, domusioni quod satis esset, hunc / quod etiam acroasi bellorum hominum.*

orator, who having been manumitted by his owner, acted as a *subscriber* (an assistant prosecutor) when his patron was prosecuting and later became a teacher of rhetoric.⁵³⁴ Why then does Trimalchio need to make the claim that he has a level of education suited for practical purposes? We do not expect him to have an upper class Roman education, and Agamemnon, who presumably does have a rhetorical education, may not be of any different status. In addition to bringing up matters of education, Trimalchio also makes the point that he has two libraries — one Greek, the other Latin — the mark of a wealthy, educated, man. While Trimalchio does not have the knowledge or position, he certainly has its trappings and is keen to make this known.⁵³⁵

Trimalchio asks Agamemnon for the *περίστασις* of the declamation he had declaimed that day,⁵³⁶ and as is clear from the passage, Agamemnon begins to outline the case. The conflict between a rich man and a poor one forms the basis for a great number of surviving declamation themes.⁵³⁷ It was a popular theme, the most popular of themes in declamation,⁵³⁸ allowing a speaker to champion the underdog and to digress on the evils of poverty and the vicissitudes of fortune, or to take the other side. ‘A further allusion to declamation is later made by Trimalchio, who cleverly satirises the stock theme of the rich man and the poor

⁵³⁴ For details see Suet. *De Gramm. & Rhet* 27.1. On the role of the *subscriber* see Alexander (2002) 7 and Berger (1953).

⁵³⁵ Cf. Luc. *Ind.* where a Trimalchio-like individual is abused. In 3–4 the man is described as an uneducated man who is attempting to make for his lack of education through owning a large and impressive library.

⁵³⁶ *Περίστασις* is described by Smith (1975) *ad loc.* as ‘*negotium* - the facts of a case, cf. Quint. 3.5.17ff.’ to which Russell (2001) Vol. 2, 47 n.20 adds: ‘lit. “circumstance”’. For a similar definition, see Anon. Seg. 50 (Dilts-Kennedy 18): ‘*Peristasis* is an accumulation (*athroisma*) of persons, actions, emotions (*pathôn* ‘perhaps rather ‘sufferings’), causes, resonances and times’. In layman’s terms, it is the ‘who, what, where, when and why’ of the declamation. These elements of circumstance are often found in the introductory material which prefaces many surviving examples of declamation, and are crucial for the argument of any case, as they are by their nature based on circumstantial evidence.

⁵³⁷ Treatments and variations of the theme of the conflict between rich and poor can be found in the following examples of Roman declamation: Sen. *Contr.* 1.1, 2.1, 5.2, 5.5, 8.6, 10.1; Quint. *Inst.* 4.2.100; Quint. *Decl.* 252, 257, 259, 269, 271, 279, 301, 305, 306, 325, 332, 333, 337, 343, 344, 345, 364, 370, 376, 379, 382, 384; Calp. 11, 17, 27, 28, 29, 36, 50, 53; [Quint.] *Decl.* 7, 9, 11, 13; Aug. 148.

⁵³⁸ This point is made by Gunderson (2003) 233. For an analysis of the theme, see Tabacco (1978) and (1979).

man, and neatly employs the correct terminology (*peristasis*) for the circumstances of the case'.⁵³⁹ It is, however, not clear that Trimalchio is satirising the declamation theme as Bonner asserts.

Trimalchio then interrupts asking 'What is a poor man?' On 48.6 Smith (1975) notes that the parody operates on several levels:

Trimalchio's interruption, 'quid est pauper?' combines a pretence at being too wealthy to understand the meaning of the word *pauper* with an aping of the rhetoricians' custom of starting from a careful definition of terms.

While Smith sees the careful definition of terms as rhetorical it may also be possible that Trimalchio is attempting in an ill-educated and unsuccessful way to sound like a philosopher. The audience also knows that Trimalchio, as a former-slave, knows all too well what a poor man is, having been one himself. In the same way, Agamemnon's response *urbane* can be taken as genuine praise of the wit of his host (who seems to be acting in the manner of a Greek sophist or philosopher) or as ironic. After Agamemnon has given his declamation on the subject, his host once again makes a problematic comment: "*hoc*" inquit "*si factum est, controversia non est; si factum non est, nihil est*". This passage represents the stereotypical view of declamations, although it is not strictly true: there is nothing about *controversiae* which precludes them being based on real life, although there are few that are based on historical circumstances.⁵⁴⁰ The criticism of declamation usually seeks to create a stronger link between declamatory themes and real life, though even Quintilian, who argues that declamations should be grounded in reality, makes much use of standard declamatory themes to illustrate points in the *Institutio Oratoria*. Thus to an educated reader Trimalchio's comment is amusing because it comes about by accident. Also given the Platonic allusions in the *Satyricon*, Trimalchio's performance here can be understood in relation to sophistic argument. As with Encolpius' parody of declamation in the opening chapters of the extant work, which looks

⁵³⁹ Bonner (1949) 75.

⁵⁴⁰ See also Beard (1993) on the fictionality of declamations as an aid to argumentation.

back to parody of the sophists at the beginning of the *Gorgias*, Trimalchio's aping of sophistic argument in his careful definition of terms and now in his apparent ability to invent ingenious arguments without knowing what he is doing seem to be filled with the negative view of rhetoric and Sophists which characterize works such as the *Gorgias*.

There is no need, therefore, to understand this scene with Panayotakis (1995) 80 as 'a ridiculous discussion on rhetorical themes'. While the episode has clear comic potential, this does not preclude the possibility of it containing material which requires detailed consideration. As has been shown, what has normally been seen as a storm in a rhetorical teacup can be a vehicle for satire, allusion and educated discussion of rhetoric. The Platonic criticism of rhetoric in the *Gorgias* has and will be seen to underlie a great deal of Petronius' presentation of rhetoric in the *Satyricon*, although this does not imply that Petronius is anti-rhetorical, or endorsing the Platonic viewpoint.

MESSING ABOUT IN BOATS

In the middle of the episode on board Lichas' ship, Encolpius and Giton have been disguised as runaway slaves at Eumolpus' instigation, as a part of which they are shaved by Eumolpus' slave, a barber, thereby making a bad omen for the voyage.⁵⁴¹ The scene develops into a mock trial, and has long been recognised as such. The recent study of Panayotakis is one of the more detailed treatments of this scene. His primary interest is in establishing a link between this scene and ancient pantomime.⁵⁴² Nevertheless, his analysis of the scene is and of its

⁵⁴¹ Due to the fact that people faced with storms dedicated locks of hair to placate the angry sea-god, or gave them in thanks to the god for being saved from a shipwreck (parodied by Luc. *Merc. Con.* 1–2, *Herm.* 86); this also applied to slaves given their freedom (Nonius p.848 (Lindsay)). Such depilation could also connote worship of the goddess Isis. On this see Winkler (1985) 225.

⁵⁴² On the links between Petronius and mime see also Kehoe (1984). Panayotakis (1995) 152–3 draws links between this scene and Herodas 2, *Apul. Met.* 10.2–12, *Choric. Apol. Mimorum* 30 and 55) and also makes reference to Livy 3.44.9, Philo *De Legat.* 359.

structure is useful: he sees it as composed of five speeches alternating between prosecution and defence.⁵⁴³

In chapter 105, before the 'trial' begins, Eumolpus argues that he gave the order to shave the two (*ego... hoc iussi*), and that this was done without malice aforethought (*nec in eodem futuris navigio auspicium mihi feci*), but so as not to make the ship into a prison and to make clear the marks of runaways. This preliminary skirmish is meant to transfer the blame off Encolpius and Giton onto Eumolpus, but is unsuccessful. The two are then beaten until they are recognised.

Then in Chapter 106, Tryphaena enters a plea for mercy (*Volebat Tryphaena misereri*), due to her still fancying Giton; however, Lichas, mindful of the fact that the pair have seduced his wife and insulted him publicly, launches into a speech. This speech is composed of recognisable elements: 1) why they must be punished, 2) a religious justification of their punishment and 3) the consequences of the failure to punish them – if I do not punish them I will be punished myself, with its accompanying element of self-interest. The question that this raises is whether this is how to counter a plea of mitigation, transferring the blame onto Eumolpus, such as is contained in Eumolpus' opening skirmish. Presumably, Lichas' emphasis on the crime, its severity and the need for punishment are at least relatively effective.

Tryphaena moved *tam superstitiosa oratione* into changing her mind with the result that she stops interfering and wants them to be punished; in which she acts like a jury/judge-swayed by argument. That the speech itself could be viewed as unconvincing from the defendants' standpoint is inherent in its description: *superstitiosus* (*OLD* 2 – 'full of unreasoning religious awe or credulity, superstitious'): which means that the speech can be considered unconvincing by the narrator in order to gain the maximum amount of humorous

⁵⁴³ i) accusation (*superstitiosa oratio*) 106.3, ii) defence (*deprecatio supplicii*) 107.1–6, iii) accusation (*iniqua declamatio*) 107.7–11, iv) defence 107.12–14, v) accusation 107.15. Taken from Panayotakis (1995) 152.

parody from the scene. In fact, when viewed as a piece of practical rhetoric, Lichas' speech is effective, as one would expect an argument which relies upon religious justification to be, owing to the fact that it is hard to argue against.

Turning to the end of Chapter 106, the narrator's comment on Tryphaena, *cuius pudoris dignitas in contione proscripta sit* does appear to be (quasi)legal language. *Contio* can be understood as a public meeting or audience, while *proscribere* can here mean as per *OLD* 1 : 'announce publicly in writing'. It should also be borne in mind that making an assault upon a woman's *pudicitia* was punishable by *infamia*: *D. 47.10.1.2 (ad infamiam, cum pudicitia adtemptatur)*.⁵⁴⁴ The text here also implies that Tryphaena was found to have been unchaste, which was grounds for divorce. In Ch. 101 we are told *Tryphaena . . . quae voluptatis causa huc atque illuc vectatur* which, while it does not state outright that she was a woman of negotiable affection, does allow us to draw that conclusion if we wish. In the previous chapter, we are told that Tryphaena is being taken to Tarentum; we can speculate as to the reason, but there is no evidence to support any assertions. The evidence of 106.3 *sed Lichas memor adhuc uxoris corruptae iniuriarumque, quas in Herculis porticu acceperat* can help shed some light: this could refer to Lichas being branded a *leno* for refusing to divorce his wife, who was clearly guilty of adultery, or it may just refer to the slight of having your wife shown up in public.⁵⁴⁵ This analysis is perhaps pushing the reality of the scene past its limits, and while its roots *may* lie in the theatre, it does show us that the scene would both recognisable and intelligible (due to its 'legal' background) to a contemporary audience.

After this, Eumolpus speaks on behalf of the 'accused'. He begins with a *captatio benevolentiae*: *me, ut puto, hominem non ignotum, elegerunt ad hoc officium [legatum] petieruntque ut se reconciliarem aliquando amicissimis*. This then turns into the first aim of his speech: reconciliation with old friends. He continues by arguing that you do not think they came on

⁵⁴⁴ If Encolpius is guilty of such a crime, he could be subject to this legal penalty.

⁵⁴⁵ For legal sources on the above issue, see *D. 48.5* on the *Lex Iulia de adulteriis* and Edwards (1993) Ch.I. For a reconstruction of the law, with extensive bibliography, see Crawford (1996) 78+.

board by chance because if you are travelling you find someone you can rely upon to go with, therefore they chose to go with friends. While this is not the case (they only discover that it is Lichas' ship once on board), it is a perfectly sensible argument in itself, given that it is not their being on board, but their cutting their hair which has given rise to the 'trial'. He continues by arguing that having beaten the two, Lichas should let them go free: *flectite ergo mentes satisfactione lenitas, et patimini liberos homines ire sine iniuria quo destinant*. He then expands on this point in a manner which is reminiscent of a *θέσις*, as is often used just before the summing up of a declamation: even a harsh master forgives penitent runaways who return: we pardon enemies who surrender. These examples are intended to get Encolpius and Giton off the hook. Eumolpus concludes his speech as follows:

...in conspectu vestro supplices iacent iuvenes, ingenui honesti, et quod utroque potentius est, familiaritate vobis aliquando coniuncti. si mehercules intervertissent pecuniam vestram, si fidem proditione laesissent, satiari tamen potuissetis hac poena quam videtis. servitia ecce in frontibus cernitis et vultus ingenuos voluntaria poenarum lege proscriptos.

Satyricon 107.5–6

It begins by emphasising the youth and freeborn status of his 'clients' and the fact that they are supplicating Lichas, which is an attempt to copy the religious arguments used earlier by Lichas to convince Tryphaena. Eumolpus then emphasises their former friendship and states that if they had stolen from Lichas or betrayed his confidence (which are more serious than cutting one's hair on a ship) he would have been satisfied with their punishment. So, by extension, their having been beaten should be sufficient punishment, and they should go free. He then raises the emotional tone of the speech, highlighting the marks of slavery, which he sees as a self-imposed sentence on freeborn men.

This speech contains the same types of recognisable parody which are apparent in Encolpius' opening speech, particularly with the high-flown (declamatory) exclamations. It is also an unreal situation, such as he had identified as the useless content of declamation, but here it is shown to be possible in the constructed reality of the *Satyricon*. Other examples,

such as those involving pirates, are also possible in the real world outside literature. Petronius' decision to put them in the boat shows the artificiality of Petronius' construction of reality.

The speech is described by the narrator as a *deprecatio* [*supplicis*] — a plea in mitigation of punishment.⁵⁴⁶ Given the fact that Eumolpus' earlier attempt at transference of blame (onto himself) has failed, mitigation is the best of the counterpositions available to Eumolpus. However, given that in 105.2 he has argued that *nec in eodem futuris navigio auspicium mihi feci* such an argument could form an argument for mitigation: if the action was done without malice it is much easier to argue that the punishment should be less severe. This is not the most complicated piece of rhetorical *inventio*, yet its absence from Eumolpus' speech must count against the speaker.

Before Eumolpus can finish his speech Lichas interrupts with the objection *noli causam confundere* which is presumably aimed to get him back on topic. Lichas' advice to Eumolpus is *sed impone singulis modum* (107.7) 'but impose/set bounds/limits on each one'. It is tempting to understand this advice as having rhetorical undertones, in other words don't get your argument mixed up! As if to force the point home in his speech (107.8–11), Lichas argues point for point. He takes each point made by Eumolpus and argues the opposite, giving in effect a 'paradigm' of forensic oratory: this is how you answer an opponent's speech.

Eumolpus turns first to Encolpius and Giton's disguise. He argues that if they came of their own accord they would not have needed to shave their heads. He offers an alternative explanation: *vultum enim qui permutat, fraudem parat, non satisfactionem*. He then turns to the notion that if Eumolpus' 'clients' were planning to appease him, why were they hidden away. This allows Lichas to draw the following conclusion: *ex quo apparet casu incidisse noxios in plagas*

⁵⁴⁶ OLD *deprecatio* 3b. Cf. Quint. 5.13.5 — a *deprecatio* contains justification, *Rhet Her.* 2.25 — use *deprecatio* when confessing the crime without attributing it to ignorance, chance, or necessity, yet beg for pardon, Cic. *De Or.* 2.339 — it is weak but occasionally useful. It is an example of the *stasis* of mitigation (*συγγνώμη*) which is usually used as a secondary argument in a speech for the defence.

et te artem quaesisse, qua nostrae animadversionis impetum eluderet (107.10). They are therefore not on board his ship on purpose, the opposite of the argument advanced by Eumolpus.

Lichas then turns to Eumolpus' stress on the freeborn status of his clients, which would preclude their being beaten with impunity. Lichas warns Eumolpus that by so doing he make his case worse. He replies to the statement that Encolpius and Giton were once his friends with the claim that then they deserve harsher treatment: *at enim amici fuerunt nostri: eo maiora meruerunt supplicia; nam qui ignotos laedit, latro appellatur, qui amicos, paulo minus quam parricida* (107.11). At this point things seem to be going quite well for the prosecution; Lichas has undercut several defence arguments, although he has not countered the central part of the defence of mitigation, that the action was done without knowing that it would offend the gods. He has managed to question their motives and imply that they were planning to play a trick on him.

At this point Eumolpus interjects, putting an end to Lichas' speech: *resolvit Eumolpus tam iniquam declamationem* (107.12). The declamation is so unfair because Encolpius regards Lichas' points as unjust. While Eumolpus' ability as an orator, poet or literary critic can be called into question,⁵⁴⁷ Lichas is doing a fairly good job of undermining the defence case.

Eumolpus opens his speech by returning to the hair-cutting incident, which he admits looks bad: *nihil magis obesse iuuenibus miseris quam quod nocte deposuerunt capillos: hoc argumento incidisse in navem videntur, non venisse*. Such an admission is both necessary and helps him make his point. This point is that first they wanted to rid their heads of an excessive burden and secondly they were ignorant of sailors' omens and laws: *nec omen nec legem navigantium noverant*' (107.14).

Lichas then counters this by returning to the shaving incident. He takes up Eumolpus' point that the defendants are wretched or miserable (*miseris*) and argues 'quid'

⁵⁴⁷ On Eumolpus as an unsuccessful poet see Zeitlin (1971) 640.

inquit Lichas 'attinuit supplices radere? nisi forte miserabiliores calvi solent esse.' This is of course amusing, several members of the Julio-Claudian family were prone to baldness, as presumably were plenty of Petronius' audience. Lichas then turns to the defendants' use of an advocate to argue their case, which he interprets as futile.

Lichas then turns to Encolpius and asks him who took off his eyebrows and to which god he dedicated his hair. His description of Encolpius as *pharmace* is often translated as though Encolpius was a poisonous fellow or a poisoner. Another interpretation is possible given the Platonic undercurrent of rhetorical criticism in the *Satyricon*: we can see the idea of rhetoric as *pharmakon* as referring to Gorgias *Helen* (and Plato *Gorgias*) as a signifier of sophistic language. Encolpius has demonstrated from the opening section of the work that he is capable of persuasive speech. Lichas' comment recognises the artificiality and problematic nature of his speech.

After this, Encolpius and Giton have their faces wiped with wet sponges which removes their 'make-up'. In the same way that Lichas' speech aims to remove the *kolakeia* of Eumolpus' rhetoric and give the truth of the case this removal of Encolpius and Giton's disguise is a similar removal of *kolakeia*.

The 'trial' then collapses into a fight which is brought to an end by means of a 'treaty' devised by Eumolpus:

utitur paenitentiae occasione dux Eumolpos et castigato ante vehementissime Licha tabulas foederis signat, quis haec formula erat: 'ex tui animi sententia, ut tu, Tryphaena, neque iniuriam tibi factam a Gitone quereris, neque si quid ante hunc diem factum est obicies vindicabisve aut ullo alio genere persequendum curabis; ut tu nihil imperabis puero repugnanti, non amplexum, non osculum, non coitum venere constrictum, nisi pro qua re praesentes numeraveris denarios centum. item, Licha, ex tui animi sententia, ut tu Encolpion nec verbo contumelioso insequeris nec vultu, neque quaeres ubi nocte dormiat, aut [si quaesieris] pro singulis iniuriis numerabis praesentes denarios ducenos.'

Satyricon 109.1-4

This 'treaty' can be seen as another parody, one of legal Latin. The treaty is introduced in terms of its *formula* (the terms or conditions of a legal document).⁵⁴⁸ The wording of the treaty bears a striking similarity to clauses of legal Latin.⁵⁴⁹ The use of phrases such as *sive...sive*⁵⁵⁰ and repeated subjunctives in the second person singular give the treaty a distinctly legal air, reminiscent of a contract. The subject matter treated is clearly ludicrous, and could encourage a parodic reading; nevertheless, at a narrative level, it provides a settlement and ends the dispute: *in haec verba foederibus compositis arma deponimus* (109.4).

This episode is clearly significant in that it is the longest 'rhetorical' episode in the extant work. It serves as an example of rhetoric in action, which is relatively ineffective (at least on the defence's part) and countered by a prosecution advocate who is not marked out as having rhetorical training, but is nonetheless effective.⁵⁵¹ At a narrative level, it is the superior legal knowledge of Eumolpus which gives the trial episode closure.

A QUESTION OF LITERATURE

Eumolpus' speech (Ch. 118) which begins with the question why people turn to poetry from forensic oratory is reminiscent of the setting of Tacitus' *Dialogus de Oratoribus*, in particular the first pair of speeches between M. Aper and Maternus. 'Those troubled by the duties of the forum', who turn to poetry as a safer harbour, applies to Maternus at the beginning of the *Dialogus de Oratoribus*, and is used by Aper in his speech, which makes use of the heads of purpose (*τελικὰ κεφάλαια*), to convince Maternus that the opposite is the case. The ideas expressed in Eumolpus' speech are echoed elsewhere: cf. Quintilian *Decl. Min.* 268 with

⁵⁴⁸ OLD 5.

⁵⁴⁹ Examples of treaties (up to 200BC) can be found in Schmidt (1969). Also, examples of extant Roman laws (from epigraphic and literary sources) from the Republic and Early Empire are collected in Crawford (1996). For a list of the uses of *sive* in Roman laws see Crawford (1996) 848.

⁵⁵⁰ OLD 4.

⁵⁵¹ This countering of a trained speaker with an untrained one, with similar results can be seen in the different outcomes of the speeches of Q. Iunius Blaesus and Drusus in Book I of Tacitus' *Annals* (on which see Ch. 5).

Winterbottom (1984) *ad loc.* and [Hermog.] *Prog.* 25.4 (Rabe): *Τῶν δὲ θέσεων αἱ μὲν πολιτικάι, αἱ δὲ οὐ· καὶ πολιτικάι μὲν αἱ ὑποπεπτωκυῖαι ταῖς κοιναῖς ἐννοίαις, οἷον εἰ ῥητορευτέον καὶ ὅσα τοιαῦτά, and Florus' fragmentary work *Vergilius Orator an Poeta*. All these texts are concerned with the nature and use of rhetoric, topics which have their origins in the writings of Plato and the sophists and are characteristic of discussions of rhetoric and literature in the late republic and early empire.*

It is possible then to see Encolpius' discussion as related to a topic in common currency — a commonplace argument in the same way that the 'criticism' of declamation by Encolpius in the opening chapters is a commonplace of argument.⁵⁵² Sullivan believes that Eumolpus '...puts his finger on what all later critics of Roman literature have noted as the main characteristic of Silver Latin literature, the influence of rhetoric on poetry'.⁵⁵³ Yet when we read what Eumolpus says, this is not the case: people are not writing 'silver' poetry due to their rhetorical education; he is making the point that poetry is seen as both safer and easier than oratory or declamation,⁵⁵⁴ while this is not the case. The rhetorical skill of the would-be poets is also open to question, and does not mean that their poetry will be rhetorical.

Many scholars, when considering the writings of the early empire, take the widespread nature of such discussions as evidence of their commonplace nature. It is also possible to take the large amount of evidence as proof of the importance of rhetoric. In continuing to debate how and whether one should practise rhetoric, we can see the continued importance of the subject. The treatments of this subject range from the abstract and philosophical (in Book 2 of the *Institutio Oratoria*) through the practical to the humorous, as we have in Eumolpus' speech.

⁵⁵² In addition, the first 60 lines of Ch. 119, Encolpius' poem the *Bellum Civile*, are an example of the *locus de saeculo* (a commonplace on decline) as used by declaimers — notably Fabianus in Elder Seneca. Decline is seen as a cause of the war in Luc. 1.158–82 and Sen. *Ep.* 114.9.

⁵⁵³ Sullivan (1968) 165.

⁵⁵⁴ *credentes facilius poema extrui posse quam controversiam sententiolis vibrantibus pictam* (118.2)

Eumolpus has shown through his 'advocacy' on board Lichas' ship that he is not a terribly good orator, although he is able to construct 'legal' documents: the treaty on board ship and his will at Croton. He could then be argued to prefer poetry to oratory (which would then make the latter easier than the former) and places him firmly among those critics who criticise in order to cover up their own inadequacies. It is somewhat more likely to consider that his 'failure' on board ship, like his musing on art in Chs. 88–9, is designed to characterise him as a slightly boorish and pompous figure, which in turn undercuts his position as a critic.

CONCLUSION

We have seen that the opening section of the *Satyricon* is not the successful assault on declamation that it is often taken to be. Instead, it shows that the interplay of declamation and oratory and the nature of rhetorical education in Rome in the first century was something that remained a subject worthy of comment continuously. This is the case even though it is hard to be sure about anything due to the satiric/parodic nature of the text. The text's concern with appearance and reality is brought to bear on rhetoric and while the conclusions drawn by Petronius are not always positive, they do allow us to see a concern with the nature of rhetoric, which characterises much of Roman writing on the subject from Cicero to Quintilian. Petronius' tendency to set up the internal critic for criticism by his external audience is likewise instructive. Much of the critical discussion of rhetoric in this period not only discusses rhetoric but also its criticism. That this is done in Petronius with a comic or satiric purpose in mind does not entirely negate the value of his criticism.

We have also seen a thread of allusion to Plato running through several of the scenes, starting with the opening parody of declamation as parallel to Socrates parody of Polus' sophistic rhetoric in *Gorgias* 448C 4–9, and proceeding to Agamemnon's image of rhetorician as fisherman, which foreshadows the allusion in the *Cena*.

Plato's concern with appearance and reality provides a useful approach to Petronius' treatment of the food in the *Cena Trimalchionis*: the falseness of food which is not what it seems, designed by a cook called Daedalus, which is designed for pleasure and spectacle, rather than being wholesome. This subtle allusion to the arts of cookery and rhetoric, which is most explicit in Trimalchio's exegesis of the zodiac dish, leads into Trimalchio's questioning of Agamemnon about declamation which reveals itself as a sophistic parody.

The technique of parody and interplay of appearance and reality reappear on board Lichas' boat in a scene which contains a reference to make-up as a Platonic *κολακεία*, in that it makes Encolpius and Giton appear to be something they are not. The treaty which gives the trial scene closure is both an amusing parody of a legal document and a means of undermining the character of Eumolpus, who after a fairly lack-lustre performance in the 'courtroom' comes up with a treaty which has the correct form though not the content one would expect to find.

The *Satyricon* (as we have it) ends with shipwrecks and legacy hunters — the material of declamatory themes, with specific allusions to declamation.⁵⁵⁵ We have already seen⁵⁵⁶ that challenges to wills or struggles over inheritance form the bread and butter of much Roman civil litigation.⁵⁵⁷ Inheritance hunting (*captatio*) can be seen as a social ill, or a sign of decline (in Pliny and Tacitus).⁵⁵⁸ Champlin urges caution on treating Petronius 'as a historical record' and sees him 'satirizing not contemporary life at Rome but a contemporary attitude to it'.⁵⁵⁹ Such attitudes are ones with which I agree. Also, the evidence of Petronius and Champlin's analysis can shed light on both the practice and the social attitudes which

⁵⁵⁵ Cf. Lichas body and [Quint.] *Decl.* 6 – *Corporis proieci* and Encolpius' lament for him at 115.16 with *Sen Contr.* 7.1.9. On parody wills see Champlin (1987).

⁵⁵⁶ In Chapter 3

⁵⁵⁷ Kelly (1976) estimates that 60% of civil cases under the Empire were taken up with disputes over inheritance.

⁵⁵⁸ On *captatio* in general see Champlin (1991) Ch. 5 and with relation to the *Satyricon* in particular see pages 92 and 97.

⁵⁵⁹ Champlin (1991) 97.

account for the highly coloured picture of it in the Early Empire. Champlin sees the literary evidence not as supporting the standard view that such practices were widespread, but in fact the opposite:

What is central here is captation's symbolic role in the standard perception of the evil effect of wealth on Roman society, of avarice and selfishness both tearing the family apart and perverting friendship absolutely. Given their great concern with wills, it is not surprising that Roman writers should express such evil in terms of inheritance hunting.⁵⁶⁰

When the episodes which concentrate on rhetoric in Petronius are considered in an abstract sense, we can see a pattern emerge. In the opening chapters of the work, the focus of the discussion is the nature, use and value of rhetorical education, itself a common topic in the *prolegomena* to rhetorical handbooks. While the conclusions drawn by Encolpius and Agamemnon have some similarities with notions of the decline of eloquence and are not without their negative aspects, rhetoric or education are not dismissed outright. In the *Cena*, the rhetorical discussions regarding the *causidicus* Norbanus highlight the usefulness of oratory as a career and the discussion of Agamemnon and Trimalchio on the *minutiae* of declamation, while highly amusing, contains a detailed use of rhetorical theory, which increases the amusement of Petronius' educated upper-class reader. We thus have a movement from preliminary discussions to the techniques of invention and argumentation and the practical use of oratory. This very Roman stress on the practical nature of oratory is seen in the longest rhetorical episode of the work: the 'trial' scene on board Lichas' ship. The scene despite its fictional nature is an example of how the knowledge and argumentation of declamation can be put into practice in a 'real' situation. The final scene of the work develops the practical aspect of rhetoric by giving us an example of inheritance hunting, which while not devoid of its comic aspects represents one of the major concerns of Roman law in the

⁵⁶⁰ Champlin (1991) 102. The idea of the corrupting power of money is also found in Eumolpus' speeches in Chs. 83 & 88.

Early Imperial period, testation and inheritance. As we have seen,⁵⁶¹ inheritance disinheritance and the challenge of wills was both an important part of an orator's work and training.

Petronius' work is one in which criticism and judgement play a large part. The fact that large parts of Roman cultural and social life come under his satirical microscope is hardly surprising. Rome was a competitive society where one was constantly being judged. This is shown quite explicitly in the Roman practice of oratory and declamation,⁵⁶² and also in the process by which characters within the *Satyricon* and modern readers make sense of the work.

⁵⁶¹ In Ch. 3.

⁵⁶² On the performative nature of Roman oratory and masculinity see Walters (1993), for Greek examples see Gleason (1995).

❧ CHAPTER 7 ❧

FROM THEORY TO PRACTICE: QUINTILIAN BOOK 12

THIS chapter considers the construction of the orator, in terms of both his training and his role within Roman society as a man and a public speaker, with specific reference to Book Twelve of Quintilian's *Institutio Oratoria*, one of the three most well-known books of the work. Treatments of this book have concentrated on the opening chapters, with their stress on the orator as *vir bonus dicendi peritus*, and in particular the first half of this phrase and its relationship to philosophy, its various schools and the ethics of rhetoric.⁵⁶³ Instead, this chapter will focus on the practical advice given by Quintilian in this book to the orator throughout his career.

The book's status in the scholarly world is mainly due to the subject matter of the opening chapters of the book, which deal with the orator as *vir bonus* and the relationship between rhetoric and morality. The former point has provoked much discussion and the 'goodness' of Quintilian's orator has been subjected to analysis in terms of Stoic, Platonic and Aristotelian influences, and also in terms of contemporary Roman society and the practice of delation.⁵⁶⁴ The latter point is as old as the systematic formulation of rhetoric, as taught by sophists in the fifth century BC and criticised in Aristophanes' *Clouds* and Plato's *Gorgias*. The focus on the philosophical aspects of Book 12 has somewhat overshadowed the content of the rest of the book, which is concerned with practical aspects of the orator's career from its beginning to its end. In contrast to the tradition of literary history which sees

⁵⁶³ The views of Atherton (1988) 395 n.10 express something close to a Roman way of understanding the phrase *vir bonus*:

This definition of the orator, attributed to Cato the Elder by Seneca the Elder (*contr.* I.pr.9), may perhaps suggest Stoic influence: but its totemic rôle may be another, small illustration of the happy coincidence between (some of) the principal tenets of Stoic ethics, and Roman ideology as developed in the face of Greek culture.

⁵⁶⁴ On which see Winterbottom (1964), for an alternative reading see the section of this chapter on prosecution.

the early empire as a period of decline and Quintilian as an ultimately unsuccessful reactionary figure, this chapter will argue that the practical advice offered by Quintilian was both useful and relevant, based on supporting evidence adduced from roughly contemporary sources.

Recently, scholars have discussed Quintilian's formulation of the orator, a quotation of Cato's dictum *Orator est Marce fili vir bonus dicendi peritus*, in terms of gender.⁵⁶⁵ Advances in literary theory in the 1990s have allowed us to understand that gender, whether male or female, can be understood as constructed by, within and for a society, through a series of roles which seek to affirm or subvert the norms of the society within which they operate. The relationship between speaking and the construction of masculinity can thus be a fruitful strategy with which to investigate the dynamics of Quintilian's account.⁵⁶⁶

Whenever we talk of Roman men, or indeed the Roman orator, we must realise that we are dealing with a construction: their self-presentation and underlying rationale are bound up with societal norms and expectations. It is important to note that Quintilian seems to recognise the fact that the orator is a construct; as I shall show it relates to the norms of Roman society. We are more used to the idea of modern scholars who claim to identify constructs that the ancients believed reflected reality, yet here such theorisation can be shown to be reflected in the words of an ancient author and integral to his outlook.

By way of a justification of this strategy, this thesis has considered a previous use of Cato's dictum, the cause of much of the fame of Book 12. This quotation appears in Sen. *Contr.* I.pr.9 (discussed in Chapter 4), for which Walters (1993) 87 has argued that the

⁵⁶⁵ Cf. Walters (1993), Richlin (1997) and Habinek (2005) 65.

⁵⁶⁶ The performative construction of masculinity is outlined in Butler (1990). It has been applied to oratory and declamation in the Greek and Roman worlds by Walters (1993), Gleason (1995) and other authors, whose work is discussed below.

quotation occurs within a section of highly gendered criticism, and thus that the use of the term *vir bonus* can be understood as pertaining to the notion of the orator's masculinity.⁵⁶⁷

Through an examination of passages of gendered criticism within the *Institutio Oratoria*, this chapter will show that the gendered nature of rhetorical criticism underlies Quintilian's presentation of the orator as *vir bonus* in the same way as that the Elder Seneca: by quoting Cato's phrase in the context of a passage of gendered criticism which verges on invective, Quintilian can be said to understand the definition of an orator as encapsulating, amongst other things, the norms of Roman society as they pertain to masculinity.

The purpose of Book 12 is to deal with the orator from their departure from the rhetorical school through their early, middle and late career, ending with the question when one should retire. How then is this development achieved? This chapter will examine some of the major aspects of the practical advice offered by Quintilian to draw conclusions concerning both how and why such advice was necessary for an orator in the first and second centuries AD.⁵⁶⁸

We have two extant fragments of Cato's rhetorical work: *Orator est, Marce fili, vir bonus, dicendi peritus. Rem tene, verba sequentur.* originally quoted in Sen. *Contr.* I.pr.9 and Victor. 374 (RLM) respectively.⁵⁶⁹ In examining Quintilian's quotation of Cato's dictum, it is worth returning to first principles and examining what Cato says and the context within which it was originally delivered. We know from Plutarch's life of Cato that he was seen as somewhat

⁵⁶⁷ 'The full force of this formulation has not.... been brought out before: it is best made clear if the Latin is translated to read that the ideal public speaker (as well as being skilled at oratory) is not merely a good man, but good at being a man, to bring out the performative element common to both oratory and "manhood".'

⁵⁶⁸ For recent studies of Quintilian's relation to Roman politics see Morgan (1998b) and Scarano Ussani, V. (2003).

⁵⁶⁹ Jordan (1860) fr. I4 and I5.

dismissive of Greek philosophy and rhetorical teaching and educated his son in the traditional Roman way, through paternal instruction.⁵⁷⁰

Cato objected to Carneades' playing fast and loose with the truth: the verbal pyrotechnics of the philosopher who could advocate both sides of an issue placed a premium on words rather than deeds, suited to the classrooms of Greece but not for Roman youth, who pay heed to laws and magistrates.

Gruen (1992) 65

Cato is, according to Gruen,⁵⁷¹ concerned with being Roman and its superiority over being Greek: the Romans are practical, the Greeks abstract. It should be clear then that his advice on rhetoric, which is also likely to have been written for publication,⁵⁷² is all about being Roman. The concern for practicality in rhetorical invention and concept of the orator as *vir bonus* – a good man, an aristocratic upper-class man, a manly, proper Roman man, clad in a toga – are paradigms of *Romanitas*, of what makes Rome great. The *Romanitas* of Cato's orator and, by extension, that of Quintilian's orator should, therefore, not be dismissed. As it will be shown, Quintilian can be seen to be as concerned with the orator's paradigmatic status and the various aspects which allow the orator to claim this status as Cato.

Having spent eleven books describing the education and training which allow the orator to lay claim to being described as *dicendi peritus*, Quintilian begins Book Twelve by turning his attention to the first half of Cato's phrase:

Sit ergo nobis orator quem constiuimus is qui a M. Catone finitur,
'vir bonus dicendi peritus', verum id quod et ille posuit prius et ipsa
natura potius ac maius est, utique vir bonus

12.1.1

⁵⁷⁰ On this subject and on Cato and Hellenism in general, see Gruen (1992) 52–83.

⁵⁷¹ While Gruen's thesis is controversial it does provide a very interesting analysis of Cato.

⁵⁷² On which see Gruen (1992) 77–8. The idea of a published work would then tie in with the Elder Seneca's stance in the prefaces to the *Controversiae*, which make use of Cato and highlight the idea of paternal instruction. In addition, both Cicero and Quintilian set themselves up as paternal figures aiming to instruct Roman youth in a general sense; their works are also written for publication. Thus, a tradition can be observed where authors take the traditional model of Roman education, that of fathers educating their sons (exemplified by the Elder Cato), and conceptualise their own educational project in terms of that traditional model. On Seneca's place within the tradition of Roman paternal instruction see Lockyer (1971) and the discussion of Chapter 4.

It should be noted that the concluding section of the previous book dealing with dress, gesture and deportment is both part of *actio*, the delivery of a speech, and key to our understanding of Roman male self-presentation. Thus we can posit a link between the two books in terms of gendered criticism, which suggests that the work is rather more coherent than often supposed.

Returning to Cato's dictum, the semantic field of the adjective *bonus* has been well described by Gunderson.⁵⁷³ Thus while not disputing the claim of the philosophical interpretation of the phrase, it should be noted that the phrase can be used to describe one's social standing and political outlook. Such a nexus of ideas ties in with our knowledge of elite Roman self-presentation from the Republic through the Empire,⁵⁷⁴ and should not be

⁵⁷³ (1998) cf. Gunderson (2000). See also Syme (1939) 14.

⁵⁷⁴ A classic statement of the ideals of the Roman elite (which according to Wiseman (1985) 3 is 'our best insight into the conceptual world of the Roman hierarchy') can be found in the remains of Q. Caecilius Metellus' eulogy of his father, L. Caecilius Metellus, as preserved in Plin. *HN* 7.141: *voluisse enim primarium bellatorem esse, optimum oratorem, fortissimum imperatorem, auspicio suo maximas res geri, maximo honore uti, summa sapientia esse, summum senatorem haberi, pecuniam magnam bono modo invenire, multos liberos relinquere et clarissimum in civitate esse; haec contigisse ei nec ulli alii post Romam conditam.*

Likewise the remarks of Lucilius on *virtus* (Warmington 1196–1208 = H23 Charpin = 1326–38 Marx) are a textbook statement of the conceptual framework of *virtus*, which can be seen at work in Metellus' eulogy and Quintilian's discussion:

*virtus, Albine, est, pretium persolvere verum
quis in versamur, quis vivimus rebus, potesse,
virtus est, homini scire id quod quaeque habeat res,
virtus, scire, homini rectum, utile quid sit, honestum;
quae bona, quae mala item, quid inutile, turpe, inhonestum,
virtus quaerendae finem re scire modumque,
virtus divitiis pretium persolvere posse,
virtus id dare quod re ipsa debetur honori;
hostem esse atque inimicum hominum morumque malorum,
contra defensorem hominum morumque bonorum,
hos magni facere, his bene velle, his vivere amicum;
commoda praeterea patriai prima putare,
deinde parentum, tertia iam postremaque nostra.
vis est vita, vides, vis nos facere omnia cogit.*

On the interpretation of *virtus* in this passage as related to aristocratic manly self-definition as opposed to philosophical virtue, see Raschke (1990); this view is also found in Coffey (1984) 58; also cf. Braund (1997) 152: the passage 'is not about 'virtue' but about "man-ness": being a man, being a Ro-man, being a true Roman aristocrat, which the addressee Albinus has clearly failed to do'. Braund's reading introduces a false dichotomy: manliness is bound up with ethics in the semantic field of *virtus* even in Lucilius' day. An opposite view can be found in McDonnell (2006) 124–32 which emphasises the public construction of *virtus* through service to the Republic in the Republican period over the linkage between *virtus* and gender which he sees as a development of the Empire.

dismissed lightly. In addition, the views of Walters (1993) discussed in Chapter 4 in relation to the Elder Seneca's use of the phrase in *Controversiae* I.pr.9 (and also quoted above) can be added in order to provide a wider frame of reference than traditional discussions, which focus purely on the moral and philosophical aspects of the term, have allowed.⁵⁷⁵ The moral nature of the orator highlighted in the opening sentence of Book 12 has already been brought out by Quintilian at several points in his opening preface. In the first of these, he states *Oratorem autem instituimus illum perfectum, qui esse nisi vir bonus non potest, ideoque non dicendi modo eximiam in eo facultatem sed omnis animi virtutes exigimus* (I.pr.9). If we consider the semantic field of *perfectus*, '[d]eveloped or completed so as to have all the desired qualities, perfect, finished' (OLD 3), this strengthens the idea that the acquisition of proper qualities is of great importance when lying claim to the status of a *vir bonus*. This can be understood as an ongoing process because the orator *qua vir bonus* will need to continually demonstrate all his virtues (as a well-rounded product of *ἐγκύκλιος παιδεία*) in order to maintain his status, meaning that the process conforms to what can be understood as a 'performative construction'.⁵⁷⁶ In the second of these, Quintilian gives us our first summary of the content of Book 12:

Unus accedet in quo nobis orator ipse informandus est: ubi qui mores eius, quae in suscipiendis discendis agendas causis ratio, quod eloquentiae genus, quis agendi debeat esse finis, quae post finem studia, quantum nostra valebit infirmitas disseremus

I.pr.22

While the existence of this programmatic statement has not gone unnoticed, its importance as an indicator of the scope of the book set within a preface which emphasises the orator's quest for status as a *vir bonus* is less often noted.

For a modern account of the aristocratic culture of honour in Rome in the first four centuries AD see Lendon (1997) esp. 30–106.

⁵⁷⁵ In addition, the remarks of Richlin (1997), Connelly (1998), Gunderson (1998) and (2000), and Farrell (2001) are also helpful in this regard.

⁵⁷⁶ The phrase is used by Butler (1990) to describe the way in which gender, and in particular masculinity can be understood as constructed performatively.

In the preface to Book 12, Quintilian begins (in §§1–2) by stressing the difficult nature of the task which lies ahead of him in writing the book. He claims to have persevered owing to feeling shame at not completing his promised work and then, as the task became increasingly difficult, feeling fear of wasting what he had already achieved. While this may look like standard authorial posturing, it has some relevance to the content of Book 12. Quintilian's problems in writing the book mirror the would-be orator's difficulties in progressing from the classroom to a career in the world of forensic and political oratory. He then expands upon his misgivings in §2: *tamen prospicienti finem constitutum est vel deficere potius quam desperare*. It is better to try and to fail than to give up hope and 'throw in the towel'. This attitude clearly mirrors that expressed in 1.pr.19–20, where Quintilian argued that although a *perfectus orator* has not existed, and may not ever exist, this does not mean that one should not try to be one. This is not Quintilian's accommodation to corrupt reality, or a ringing indictment of the death of oratory under the principate, but a perfectly sensible position. Quintilian backs up his argument with the example of philosophers, who hand on the precepts of wisdom even though no wise man has yet been found. This argument has a clear Stoic flavour: from a Senecan point of view to be a *proficiens* is not to be virtuous but to be making continual progress towards virtue.⁵⁷⁷ Thus, the idea of continuing progress on the part of the orator is inherent to Quintilian's perception of him, his development, motivation and way of living, but is also to some extent a philosophical and societal commonplace.

Quintilian then goes on to stress the difference between the rest of his work (his less widely treated survey of *elocutio*) where he had models to follow, in the same way as the pupil of oratory does, and this final part of the work, which he describes as follows:

postquam vero nobis ille quem instituebamus orator, a dicendi
magistris dimissus, aut suo iam impetu fertur aut maiora sibi auxilia

⁵⁷⁷ On the *proficiens* (*προκόπτων*) see Plut. *Prof. in Virt.* 75a–86a. (on *προκοπή* see SVF 3.31, 690) and Erskine (1990) 67, 77. The doctrine seems to be a key part of the doctrine of the Stoic Panaetius, and thereby an influence on Cicero *De Officiis*.

ex ipsis sapientiae penetralibus petit, quam in altum simus ablati sentire coepimus. Nunc 'caelum undique et undique pontus'. Unum modo in illa immensa vastitate cernere videmur M. Tullium, qui tamen ipse, quamvis tanta atque ita instructa nave hoc mare ingressus, contrahit vela inhihetque remos et de ipso demum genere dicendi quo sit usus perfectus orator satis habet dicere. At nostra temeritas etiam mores ei conabitur dare et adsignabit officia. Ita nec antecedentem consequi possumus et longius eundem est ut res feret. Probabilis tamen cupiditas honestorum, et velut tutioris audentiae est temptare quibus paratior venia est.

12.pr.3–4

Quintilian begins by reminding us of the point his orator has reached. Having left the rhetorical school, he either attempts to begin his career or seeks further training from philosophy and while it is tempting to see this in the philosophical trips of Marcus Tullius Cicero senior and junior and Quintus Horatius Flaccus to Athens, such trips were by no means a widespread part of the higher educational curriculum.⁵⁷⁸ It will be shown, however, that the philosophical education Quintilian has in mind is somewhat closer to home, and is in fact home-grown: the tradition of exemplary Romans of the past as known from historical works and the collections of *exempla* such as that of Valerius Maximus.⁵⁷⁹

Quintilian's only possible guide in this endeavour is Cicero, who, though not a *perfectus orator* himself,⁵⁸⁰ has at least discussed such a figure in the *De Oratore* and *Orator*.⁵⁸¹ Nevertheless, while Cicero's discussion attempts to regain ethics from philosophy and to prove that an orator should be proficient in philosophy, he only gives advice on the type of style to be used by his ideal orator, rather than describing him in detail. Quintilian goes further than Rome's greatest rhetorical author by proposing to specify the *mores* and *officia* of

⁵⁷⁸ They have been taken as such by Marrou (1956), but such extrapolation based on such a small amount of literary evidence seems somewhat shaky.

⁵⁷⁹ On *exempla* and their use in Roman society, see Bloomer (1992) and Skidmore (1996).

⁵⁸⁰ In 12.1.19, Quintilian describes Cicero as a perfect orator in the ordinary sense of the word, although he does not go so far as to describe him as his perfect orator.

⁵⁸¹ *De Or.* 1.34, 59, 71, 128, 130, 197; 2.33, 298; 3.34, 71, 80, 84, 85, 143. On the perfect orator in Cicero see Nielsen (1995) 141–50.

the orator and as such he sailing uncharted waters, to continue Quintilian's nautical metaphor.⁵⁸²

Quintilian's stress on the moral nature of his orator at the beginning of Book 12 can be understood as related to questions on the nature and use of rhetoric, discussed by Quintilian in the *prolegomena* to the main part of his work in chapters 10–21 of Book 2. Quintilian's focus on the 'goodness' of the orator in Book 12 can therefore be understood as a way of countering the criticism of rhetoric from Plato onwards. In addition, by considering the orator and his place within society in Book 12, Quintilian can move from abstract philosophical considerations to more practical ones, what does being a good man mean and how can this be demonstrated in normal life, and what beneficial effects can Quintilian's orator have on Roman society.⁵⁸³

A QUESTION OF PHILOSOPHY?

There has been a great deal of scholarly interest in tying down the philosophical aspects of Quintilian's work, identifying the Platonic, Aristotelian and Stoic influences on his writing.⁵⁸⁴ This chapter does not adopt that approach, as it is not the most fruitful. Given the interest in rhetoric and its criticism found in Plato, Aristotle and the Stoics, we would be surprised if they had not exercised an influence on Quintilian's work and the reference to philosophy within the *Institutio Oratoria* is best understood in these terms. Likewise, the Stoic aspects of the orator as *vir bonus* are best understood as indicative of a stoicising tendency on Quintilian's part, which ties into Roman ideology.⁵⁸⁵ The fact that the ethical aspects of

⁵⁸² Given the Stoic tone of Quintilian's discussion it is hard not to understand *officia* in the normal Stoic sense of *καθήκοντα*, i.e. 'proper function'.

⁵⁸³ For another reading of the practicality of Quintilian's ethical focus see Willbanks (1997). While Willbanks sees Quintilian writing in an age of oratorical decline, he does read the *Institutio* as 'a philosophy of rhetorical training grounded in an ethical theory' (809).

⁵⁸⁴ E.g. Garcia Castillo (1997).

⁵⁸⁵ Cf. Atherton (1988) 423:

Quintilian's rhetorical education (like Cicero's) is directed to the formation of an ideal orator, the '*Romanum quondam sapientem*' (12.2.6–7) who undoubtedly has some Stoic blood in his veins; but

Stoic philosophy and ideology of the Roman elite bear considerable similarities is a basis for arguing that they were predisposed towards a Stoic position.⁵⁸⁶ Thus, this chapter will tend to locate Quintilian's work within its cultural and social contexts, rather than focussing on the philosophical aspects of the orator being a good man.⁵⁸⁷ While this question has provoked discussion from Plato onwards, I feel that while the ethical nature or rhetoric is important,⁵⁸⁸ a focus on this aspect of the question has obscured many aspects of the text.

Instead, the key to our understanding of the philosophical discussion of the first two chapters of Book 12 (the focus of any scholars' enquiry) can be found in the final sections of Chapter 2.

Neque ea solum quae talibus disciplinis continentur, sed magis etiam quae sunt tradita antiquitus dicta ac facta praeclare et nosse et animo semper agitare conveniet. Quae profecto nusquam plura maioraque quam in nostrae ciuitatis monumentis reperientur. An fortitudinem, iustitiam, fidem, continentiam, frugalitatem, contemptum doloris ac mortis melius alii docebunt quam Fabricii, Curii, Reguli, Decii, Mucii aliique innumerabiles? Quantum enim Graeci praeceptis valent, tantum Romani, quod est maius, exemplis. Igitur qui non modo proximum tempus lucemque praesentem intueri satis credat, sed omnem posteritatis memoriam spatium vitae honestae et curriculum laudis existimet, hinc mihi ille iustitiae haustus bibat, hinc sumptam libertatem in causis atque consiliis praestet. Neque erit perfectus orator nisi qui honeste dicere et sciet et audebit.

12.2.29–31

Quintilian seems to distance himself from the Stoic model, while his appeals to support form the Stoa only on a few disputed points suggest independence elsewhere.

⁵⁸⁶ The definition of rhetoric adopted by Quintilian in Book 2 is that of *bene dicendi scientia*, which is the standard Stoic definition of rhetoric. On the problems of Stoic rhetoric, see Atherton (1988): who raises the fact that because Stoics focus on the process, namely speaking well, rather than the aim, namely persuading an audience, the effectiveness of their speech is compromised. While Quintilian adopts the Stoic definition of rhetoric, his advice on how to speak seems to disregard the Stoic position to some extent when dealing with the practicalities of speaking. While Quintilian's stylistic concerns can be seen as a means of living up to the Stoic ideal of the good man speaking well, his desire for effective, persuasive speech is where he parts company with the Stoa.

⁵⁸⁷ While scholars focus on the goodness of Quintilian's perfect orator, we should remember that in §§14–17 of Chapter 1, Quintilian discusses whether Demosthenes or Cicero were orators. He concludes that, just as the Stoic *sapiens* has never been discovered, likewise the imperfection of Cicero does not preclude his being called an orator. By extension, we can infer that Quintilian's orator need not be as perfect as scholars have tried to make him.

⁵⁸⁸ On the ethics of rhetoric see DeWitt (1987) 258–67, 310–2, Levene (1997) 93–9 and (2004b).

To begin to explain Quintilian's purpose in mentioning *exempla* here it is necessary to go back slightly further in order to contextualise Quintilian's discussion fully. At the end of §26 and the beginning of §27, Quintilian stated that it was not necessary for the trainee orator to swear allegiance to any single philosophical code (*oratori vero nihil est necesse in cuiusquam iurare leges*), using the example of the Stoics, who consider it a crime to abandon a conviction once formed.⁵⁸⁹ Instead, Quintilian has a greater and nobler aim (*Maius enim est opus atque praestantius*), which he describes as being made perfect in the glory of a virtuous life as well as eloquence (*si quidem est futurus cum vitae, tum etiam eloquentiae laude perfectus*), emphasising the moral and rhetorical characteristics of his orator. The opening statement of §29 looks back to the end of §27, where Quintilian had advised the orator to choose the foremost models of oratory, as well as the most honourable precepts and most direct route to virtue, in order to attain an upright character. It is for this reason that he sees the study of philosophy as being merely a part of the construction of the *vir bonus* and not the be all and end all of the creation of the morally outstanding orator.

Having said that one should not just study philosophy, Quintilian states that it is more important (*magis*) that we should know and continually ponder noble sayings and deeds; Austin is, I believe, wrong in stating that the 'oddly placed reference to the importance of historical *exempla*...would belong more naturally to chapter 4' because Quintilian is not referring to *exempla* as oratorical tools (as he is in chapter 4) but rather to the use of *exempla* in creating a *vir bonus*.⁵⁹⁰ His stress not only on knowledge (*nosse*) of *exempla* but also on reflection about them (*animo semper agitare*) is crucial to this interpretation. Whereas Austin sees this section as a stock-in-trade of a first century orator, such an interpretation would only be valid if Quintilian stated that it was enough to know *exempla*, in order to make

⁵⁸⁹ 12.2.26 may also be an allusion to Hor. *Epist.* 1.1.14: *nullius addictus iurare in verba magistri*, the verbal corresponsion and similarity of sentiment expressed in the two passages make this fairly certain.

⁵⁹⁰ Austin (1965) 90.

emotional appeals in one's speeches; this is not what Quintilian says here, as he is stressing the need for *both* knowledge *and* reflection, through the use of the repeated *et*. Quintilian's idea of pondering *exempla* is reminiscent of a famous passage towards the end of the preface to Livy's *Ab Urbe Condita*, arguably one of the most famous discussions of this subject.⁵⁹¹

donec ad haec tempora quibus nec vitia nostra nec remedia pati possumus perventum est. hoc illud est praecipue in cognitione rerum salubre ac frugiferum. omnis te exempli documenta in inlustri posita monumento intueri; inde tibi tuaeque rei publicae quod imitere capias, inde foedum inceptu foedum exitu quod vites.

Livy pr. 9–10

The didactic function of Livy's passage has long been recognised and, in the most recent analysis of this passage, Chaplin argues that scholars have concentrated on seeing history, especially Livy, as a storehouse for beneficial lessons rather than considering the more proactive possibility of tailoring one's actions by learning from the past.⁵⁹² If this were not enough, the second half of the Quintilianic section (*quae profecto... monumentis reperientur*) continues and develops the Livian allusion. Quintilian stresses the importance of knowledge of the past, a point to which he returns in chapter 4, where history's usefulness as a source of *exempla*, a key part of *amplificatio*, is stressed. By mentioning contemplation (*animo semper agitare*), Quintilian advocates the active process which will result in contemplation (*intueri*) and recognition (*cognitio*), as described in Livy. Quintilian proceeds to state that nowhere can be found more or greater (understand *exempla*) than in the *monumenta* of Rome. While it is perfectly plausible that Quintilian may be referring to physical *monumenta*, such as the Forum of Augustus with its niches and statues of great Romans, or the collections of *imagines* in the

⁵⁹¹ It is worth also bearing in mind Quintilian's comments at the start of chapter 2 of Book 10 on the list of authors (including Livy) that the orator should study: *ad exemplum virtutum omnium mens dirigenda* (10.2.1). Thus, Quintilian recommends the historian as providing examples which are useful both for the moral development of the orator and his rhetorical development because *exempla* are a useful means of adding authority and dignity to an orator's arguments (as, indeed, is an upright persona).

⁵⁹² Chaplin (2000) 2.

houses of the nobility,⁵⁹³ it is perhaps more probable that the *monumentum* Quintilian has in mind is Livy's history, which constructs itself as such in its preface. Its *exempla* are placed in *monumento* and Livy describes Rome as *nec ulla unquam res publica...bonis exemplis ditior fuit* (pr.II). While the specific vocabulary used in the sentence *Quae profecto...monumentis reperientur* is different, the sense of Quintilian's passage is essentially the same as that of Livy.⁵⁹⁴ To reinforce this similarity, Quintilian mentions *aliique innumerabiles* as embodiments of *exempla* to signify the great number of exemplary figures that can be found in Roman history. The process of internalisation envisaged by Quintilian is parallel to that of Livy,⁵⁹⁵ Quintilian's orator as a *vir bonus* will want to help the state in a similar way that in which Livy's reader is advised to in the passage quoted above.

Quintilian proceeds to give a list of 'traditional' Roman virtues,⁵⁹⁶ as well as a list of Republican heroes who embody the virtues listed. All the figures Quintilian mentions have one thing in common, other than the fact that they are examples of the list of virtues and 'all typical of Roman *gravitas*'.⁵⁹⁷ This is the idea of service to Rome. All the 'grand old men' exhibit their respective virtues in the service of Rome, a claim which Quintilian will make for the conduct of his perfect orator.⁵⁹⁸ In addition to this, the didactic function Chaplin identifies in Livy's preface is foregrounded in Quintilian's discussion by the use of the word *docebunt*; the men mentioned will teach the virtues they embody, and given the purpose of the

⁵⁹³ On *imagines* and their place in Roman society see Flower (1996).

⁵⁹⁴ It is worth considering that the meaning of *monumentum* was something to make you think (on this point see Miles (1995) 17) or to remember, as seems to be the case in the accounts of Cicero's death discussed in Chapter 1. On *monumenta* in Livy's preface see also Jaeger (1997) 23–9 and Moles (1993) 146.

⁵⁹⁵ Jaeger (1997) 23: 'Livy's words stress the active role that his audience must play to comprehend the past.' Thus, the parallel between Livy and Quintilian, who stresses the need to internalise *exempla*, leads me to claim that in his discussion of *exempla* in Chapter 2, Quintilian is alluding to Livy's preface.

⁵⁹⁶ The *animi virtutes* as promised in I.pr.9.

⁵⁹⁷ Austin (1965) 90.

⁵⁹⁸ I am grateful to Kate Gurney for her advice on this point.

work as a whole and Book 12 in particular, the pupils whom they will teach are none other than trainee orators whom Quintilian wishes to be *viri boni*.

Quintilian rounds off the section with a comparison that it is hard not to consider hackneyed; that while Greece leads the way in providing precepts (i.e. the rules of philosophy and rhetoric) Rome's strength lies in *exempla*, which Quintilian considers to be of greater importance: *tantum Romani, quod est maius, exemplis*.⁵⁹⁹ Comparisons of the sort found here are an important source for reconstructing how the Romans defined themselves, what they saw themselves as, as well as how they perceived others. Ideas of self-definition are always worth considering and this is especially the case in relation to Book 12, itself a book which opened with a definition; returning to the Livian precursor it must be noted that the entirety of §11 of Livy's preface *ceterum aut me... parsimoniae honos fuerit* is an extended definition of the idealised *Romanitas* which characterises accounts of Rome's early history and, while Greece is not named, Livy's widespread use of comparative adjectives implies a comparison with another (unspecified) country. In seeing *exempla* as greater (*maius*), Quintilian is both making a claim for Roman superiority over Greece and, at a more practical level, attaching a higher educational value to examples from Roman history as opposed to philosophical maxims in the creation of the good man.⁶⁰⁰ By so doing, he is espousing a 'traditional' point of view, notably that of the Elder Cato, which can be seen at work on a wider scale in the historiographical tradition in general, where discussions of the utility of history abound.⁶⁰¹

In the final section of Quintilian's discussion of the use of *exempla* to the trainee orator, he sees him regarding the whole tradition of posterity as a guideline for his career and

⁵⁹⁹ Austin (1965) 90–1 describes this as 'the true "practical Roman" touch' and notes Pliny *NH* 7.140 as a list of 'practical Roman ideals'.

⁶⁰⁰ Cf. Wiseman (1979) 39: 'The aristocratic society of republican Rome gave new meaning to the Hellenistic concept of history as the best education and training for life'.

⁶⁰¹ Other examples occur in Dion. Hal. 1.6.3–4 and Diod. Sic. 1.1.4–5. There are also discussions of the provision of *exempla* in Polyb. 2.61.3 and Diod. Sic. 1.1.2–4. On this subject see Herkommer (1968) and Fornara (1983) 104–20.

the development of proper Roman qualities (which *exempla* by their nature exemplify); this is achieved, to quote Austin, by the orator basing 'his conduct and thought in a practical way on the high morality of the heroes of old, thus uniting the study of philosophy with that of history'.⁶⁰² In seeing the trainee orator as deriving his sense of independence from justice and applying both these qualities in his public life *in causis atque consiliis* as well as having the knowledge and courage to speak honestly, we have a slight problem: we are used to reading the literature of the imperial period as an attempt to 'accommodate corrupt reality', to 'encode' and use 'figured speech', yet here Quintilian seems to be instructing his orator to 'tell it like it is'.

In his account of what is commonly known as figured speech in 9.2.65–95,⁶⁰³ Quintilian discusses how topics may be discussed by an orator where his listeners will understand what the orator says even though he does not mention something for his own safety, for the sake of propriety,⁶⁰⁴ or elegance. While scholars have tended to view Quintilian's discussion of figured speech in Book 9 as indicative of the lack of *libertas* under the Principate,⁶⁰⁵ it should be noted that the majority of his discussion refers to the over-use of the figure in declamations. This fact should not be taken as proof of the nature of public speech in the late first century AD; Quintilian gives us an example in §§73–4 of his own use of this figure in a court case, defending a woman alleged to have forged her late husband's will, as an example of how figured speech can be used in a real case. His use of figured speech

⁶⁰² Austin (1965) 91.

⁶⁰³ The discussion of types of speech in 12.9, which is also relevant to the discussion of figured speech, may be found in the penultimate section of this chapter.

⁶⁰⁴ For a discussion of propriety in Ancient Literary Criticism, see DeWitt (1987).

⁶⁰⁵ Ahl (1984) sees Quintilian elaborating on [Demetrius] *On Style* 287–98, and reads 9.2.66 as reflecting the political constraint of speech, in this he is followed by Too (1998) 178. Both presumably take Quintilian's phrase *unus si parum parum tutum est* as referring to public speech in general. Given that in §67, Quintilian elaborates on this with the phrase *Ex his quod est primum frequens in scholis est*, we can take his earlier comment as referring to declamation in particular rather than public speech in general, and perhaps also to the declamation of schoolboys rather than that of adult males (Quintilian's use of an example from his own forensic career can then be taken as an example of how to use the figure in a legal context). Thus, a point made in a specific context may have been stretched to fit in with a literary history which stresses the fact that rhêtors were occasionally put to death for declaiming against tyrants.

here is motivated by proving his client's case rather than any political concerns. Likewise, the argument of Quintilian's account of figured speech, when taken as a whole, is concerned with not over-using the figure, and when it is used that is used properly.

Having shown the use of practical examples, Quintilian is not in a position to deny his finished product a role in Roman political life, taking cases and giving advice; nor does he question the role of oratory in society like Tacitus in the *Dialogus de Oratoribus*; rather there are references to the role of the orator in public life throughout Book 12. This is due, first, to the influence of Cicero on Quintilian, as both follow the 'Isocratean' pattern of seeing the orator as someone who can serve the state: the view of Antonius in *De Oratore* 2.85 is not far away from that advocated by Quintilian. Secondly, Quintilian, through his allusions to Livy and the 'traditional' concept of Roman manhood as exemplified in the heroes of Rome's republican past, is attempting to produce a traditional product to fulfil a traditional role. Whereas traditional interpretations of Book 12 have considered Quintilian's perfect orator at an abstract level, the practical nature of his advice to the orator predisposes an interpretation which focuses on the practical nature of the orator's goodness and its relation to societal norms.

As well as using *exempla* as a means to inculcate proper Roman behaviour in his trainee orator, Quintilian also considers the use of *exempla* in their role as an *instrumentum* for both oratory and the orator.⁶⁰⁶

In primis vero abundare debet orator exemplorum copia cum veterum tum etiam novorum, adeo ut non ea modo quae conscripta sunt historiis aut sermonibus velut per manus tradita quaeque cotidie aguntur debeat nosse, verum ne ea quidem quae sunt a clarioribus poetis ficta neglegere. Nam illa quidem priora aut testimoniorum aut etiam iudicatorum optinent locum, sed haec quoque aut vetustatis fide tuta sunt aut ab hominibus magnis praeceptorum loco ficta creduntur. Sciat ergo quam plurima: unde etiam senibus auctoritas maior est, quod plura nosse et vidisse creduntur (quod Homerus frequentissime testatur). Sed non est expectanda ultima aetas, cum studia praestent ut, quantum ad

⁶⁰⁶ cf. 12.5.1.

cognitionem pertinet rerum, etiam praeteritis saeculis vixisse
videamur.

12.4.1–2

While the majority of the chapter is concerned with justifying the use of historical as well as fictitious *exempla*, Quintilian begins his account by stressing the need for knowledge of *exempla* (as he mentioned in chapter 2). It is, however, the last sentence of the chapter that is the most pertinent to the present discussion. Unlike the figure of Nestor in the *Iliad*, the orator does not need to wait until the autumn of his years to become an expert because the study of history (*studia*), a crucial part of a Roman's education, can bring about the same result: namely the appearance of having lived in times long past (*etiam praeteritis saeculis vixisse videamur*) as far as the knowledge of facts (*quantum ad cognitionem pertinet rerum*) is concerned. This knowledge inculcates an awareness of the facts and, therefore, conditions of living and behaving under those conditions, and this in fact predisposes one to internalise the ethical standards prevalent at that time. As well as their knowledge of history, figures from Rome's past are characterised by a stern and uncompromising moral stance and, as Livy's preface shows, these morals are bound up with the idea of history as an incentive to virtue. The mere mention of appearing to have lived in the past conjures up notions such as the *mos maiorum* central to the Roman conception of ethics. The use of *exempla* 'must have been intelligible and acceptable to the jury, not just an intellectual's fancy but part of every Roman's sense of *mos maiorum*'.⁶⁰⁷ Thus, while Quintilian can be seen as viewing *exempla* simply in terms of their use in a speech, the use of vocabulary imbued with meaning at several levels encourages us to read what he is saying as intimately bound up with matters of Roman self-definition.

While the notion of appearing to live in the past may appear to contradict Quintilian's earlier statement in Chapter 2 on the need for the orator to internalise the moral precepts provided by Romans of the past, this is not the case. Quintilian's point here is that the study of history allows one to acquire the *auctoritas* which was once only the preserve of

⁶⁰⁷ Wiseman (1979) 37.

old men and that an orator with such knowledge will appear to live in the past. First, this is because he will be a living embodiment of the *mos maiorum*, a paradigm of *Romanitas* akin to the Elder Cato. Secondly, such an orator can only *appear* to live in the past, as he is in fact living in the present. This is simply due to the nature of time, rather than the ‘falsity’ of Quintilian’s orator.

As well as a high standard of morality, the ancient Roman man is understood as a paradigm of proper Roman masculinity, as propriety in behaviour, outlook and action affect his ability to claim the status of a *vir*. Every aspect of his life can be scrutinised in order to cast doubt upon his claim to this status.

Women, then, are almost written out of Quintilian’s book: we must take literally his ideal, for which he claims the elder Cato as source, of the orator as *vir bonus dicendi peritus*, “a good man skilled at speaking”.

Farrell (2001) 59

QUINTILIAN AND THE GENDERED LANGUAGE OF CRITICISM

In order to justify the reading of the performative construction of gender in Quintilian I wish now to consider the use of the adjective *virilis* as part of the critical language employed by Quintilian: there are fifteen examples of the use of this adjective in the *Institutio Oratoria*.⁶⁰⁸

The first of these occurs in Book I: *Sit autem in primis lectio virilis et cum sanctitate gravis, et non quidem prorsae similis, quia et carmen est se poetae canere testantur, non tamen in canticum dissoluta nec plasmate, ut a plerisque fit effeminata* (I.8.2). While outlining the reading that should be undertaken with a *grammaticus*, Quintilian begins by advising how the text should be read, namely in a manly and dignified way rather than the singsong effeminate way that has become

⁶⁰⁸ For other discussions of some of these passages see Winterbottom (1997), Connolly, J. (1998), Keith (2000) Ch. 2 – ‘Epic and Education’. For the difference between *vir* and *homines*, see Santoro L’Hoir (1992) 9–28.

popular.⁶⁰⁹ Thus, from its first appearance Quintilian understands proper speech as dignified and masculine, whereas improper speech is effeminate and close to the theatrical.⁶¹⁰

Later in the same chapter, Quintilian gives us his second use: *Sanctitas certe et, ut sic dicam, virilitas ab iis petenda est, quando nos in omnia deliciarum vitia dicendi quoque ratione defluximus* (I.8.9). Once again, Quintilian adopts a moralising tone when discussing the merits of older Latin poets, Ennius, Naevius, Lucilius and the like. Whereas modern poetry delights in *sententiae* and is delivered in a degenerate fashion, older poetry can provide a high moral tone and even virility. The fact that such a description could also be applied to the figure of the Elder Cato; an example of stern, proper, Roman manhood should alert us to Quintilian's strategy here. His aim thus far has been to inculcate behaviour, action and speech in tune with the *mos maiorum*, the norms of Roman society.⁶¹¹

In his discussion of music as part of the elementary curriculum undertaken before moving on to the instruction of a *rhêtor*, Quintilian discusses lyre music and its application to poetry. In the following passage, having discussed music of which he does approve, he gives us his views on inappropriate music: *quae nunc in scaenis effeminata et inpudicis modis fracta non ex parte minima si quid in nobis virilis roboris manebat excidit* (I.10.31). The music of the modern stage is not a suitable model for manly pedagogy: it is seen as effeminate and its rhythms serve to emasculate the music yet further, to the extent that it has undermined Roman masculinity in general. Quintilian instead recommends music sung by, or to, brave Romans of old: *sed qua laudes fortium canebantur quaeque ipsi fortes canebunt*. It would seem that when concerned with an educational form close to the actions of an actor, Quintilian is very keen indeed to stress the proper Roman masculine alternative.

⁶⁰⁹ This is typified by Maecenas (in Sen. *Ep.* 19.9, 114 (esp. 4–11) and Tac. *Dial.* 26.1) on which see Richlin (1997) 94 and Graver (1998).

⁶¹⁰ On effeminacy and its association with the theatre see Edwards (1993) and (1997); on acting and orators see also Richlin (1997) 99–105.

⁶¹¹ Quintilian's strategy is to inculcate a pedagogical model which relies upon the paradigm of proper Roman masculinity, as exemplified by figures of the Republican past, e.g. the Elder Cato.

In the next chapter, after having discussed the use of, and problems with, the comic actor for the schoolboy (sounding weak, womanly or like an old man) and the faults we would describe as speech impediments,⁶¹² Quintilian turns to gymnastics. Having outlined some problematic aspects of the practice, he notes that dance and movement are approved of by Socrates, Plato, Chrysippus, the Spartans and the Romans (in the dance of the Salii, the priests of Mars Gradivus). He proceeds to quote the advice of Crassus (from Cic. *de Or.* 3.220) on the proper type of movement for an orator: *laterum inclinatione forti ac virili, non a scaena et histrionibus, sed ab armis aut etiam a palaestra* (I.II.18). An orator's movement, and hence delivery, should not take as its model the stage and the actor but instead military training and even the gymnasium. Thus, Quintilian is at pains to stress pedagogical models which aim to inculcate proper masculine behaviour and thereby produce a manly style of delivery. To reinforce this point he suggests that gymnastic exercise should not be undertaken beyond boyhood (when presumably some kind of military training could be expected to start) and provides this reason: *Neque enim gestum oratoris componi ad similitudinem saltationis volo, sed subesse aliquid ex hac exercitatione puerili* (I.II.19). The gymnastic exercises of youth provide a certain grace (*decor*) to the movements of an orator's delivery, but there must be a difference between this and the problematic figure of the actor/dancer.

The next use of *virilis* comes in Book 2, where Quintilian describes the reading of oratory and history with a *rhêtor*. Having gone through the various parts of the speech, he turns to *elocutio* (delivery) and in particular the stylistic aspects of words and phrases, on which the following is his final comment: *quae levis et quadrata, virilis tamen compositio* (2.5.9). The ideal for stylish composition is smooth and well formed, while retaining a masculine aspect. In other words, there is a golden mean where style is concerned: too little makes the speech look rough, unpolished and not a very professional product (to the extent of it also

⁶¹² These are discussed in Chapter 4 and more fully in Appendix I.

appearing as hyper-masculine), while too much can appear as affectation. Both positions are essentially an excess which may betray a lack of self-control on the part of the speaker.⁶¹³

Later on in the same chapter, Quintilian gives advice on the choice of reading at this point. His favoured authors are Livy (rather than Sallust) and Cicero. He warns against going to one stylistic extreme, namely that of the Elder Cato and the Gracchi, as they may have a negative effect on stylistic development and are better when read by a more mature pupil. He also warns against the reading of more modern authors as, while they are closer to the boys' natural tendencies, they can corrupt them due their concentration on stylistic matters. Instead, Quintilian argues that once the students have been given a grounding in the style of Cicero and Livy they may go on to broaden the scope of their knowledge of Roman oratory. He expresses a preference for the older orators at this stage for the following reason: *ex quibus si adsumatur solida ac virilis ingenii vis deterso rudis saeculi squalore* (2.5.23). While Quintilian is not in favour of the style of ancient orators, which can appear rather uncouth to modern ears, he does recommend the solid masculine power of their talent: they sound like Romans should and this is worthy of imitation. The stylistic niceties of modern oratory can be acquired later, for now it is important to know what is good, manly style.

In Book 5, in his discussion of how to marshal arguments, Quintilian turns to the practice and use of declamation. Unlike earlier critics discussed in previous chapters, Quintilian's criticism does not emanate from his inability to declaim or speak well; instead, we are faced with a practitioner whose main interests are the practical use of declamation as preparation for speaking in public life and the rehabilitation of the genre. As declamation has become less representative of actual practice and composed solely for pleasure, it is seen as emasculated (*nervis carent*). Quintilian continues the sexual metaphor by describing teachers

⁶¹³ This lack of self-control is effeminate and, therefore, compromises masculinity at its most basic level (cf. adulterers as effeminate and lacking in self-control, e.g. the Elder Seneca's description in *Contr.* 1.pr.8–9 as discussed in Chapter 3). On the idea of self-control as integral to the normative construction of masculine identity, see C. Williams (1998).

who have encouraged this practice among their pupils as slave-dealers who castrate boys to increase their beauty: *non alio mediis fidiis vitio doctentium quam quo mancipiorum negotiatores formae puerorum virilitate excisa lenocinantur* (5.12.17).⁶¹⁴ Here we have one of the clearest statements of the relationship between the performance of speech and the performance of masculinity. The breaking of the link between rhetorical training and practice in the courts is the equivalent of castrating men for the sake of beauty. Thus, the converse must also be true: that proper speech (i.e. declamation aimed at practical training rather than stylistic effects) can have the power to confirm the masculinity of the speaker.⁶¹⁵ The masculine pedagogy espoused by Quintilian thus far in the *Institutio Oratoria* is hereby revealed as something both necessary and worthwhile.

Quintilian continues his gendered account of speech by arguing that the manliness of eloquence is covered with a stylistic veneer: *ita nos habitum ipsum orationis virilem et illam vim stricte robusteque dicendi...* (5.12.18). The fine line between stylistic propriety and effete unmanly style must be trodden carefully. While a debauched audience may prefer style to manliness, Quintilian comes down in favour of natural manliness rather than stylistic niceties. He reinforces his position by claiming that speech *must* be manly and should be that of a proper man: *nullam esse existimabo quae ne minimum quidem in se indicium et incorrupti, ne dicam gravis et sancti, viri ostentet* (5.12.20). The *vir gravis et sanctus* seems to be another incarnation of the paradigmatic Roman man, the *vir bonus*. Thus, considerations of gender must play a part in the consideration of the orator in Book 12.

Quintilian ends this chapter with conclusions of a practical nature. He begins by arguing for declamation to be a preparation for a life of forensic oratory. He continues with the advice that you should aim to guard your own argumentative weak spots and attack your

⁶¹⁴ For other interpretations of this passage see Gunderson (2003) 10 and Winterbottom (1997).

⁶¹⁵ Cf. 5.12.20: *nullam esse existimabo quae ne minimum quidem in se indicium masculi et incorrupti, ne dicam gravis et sancti, viri ostentet.*

opponent's. While such advice may seem commonplace, it is relevant to the practical advice contained within Book 12 (discussed below).

In his next use of *virilis* Quintilian returns to the relationship between manliness and style. Having previously preferred unadorned speech as more manly, Quintilian creates the possibility of speech that can be both stylish and manly: *Sed hic ornatus (repetam enim) virilis et fortis et sanctus sit nec effeminatam levitatem et fuco ementitum colorem amet: sanguine et viribus niteat* (8.3.6). As part of a discussion on ornament, we would expect Quintilian to approve of it *per se*, yet, in the context of his previous pronouncements on the subject it could be read as something of a u-turn. This is in fact not the case: at the beginning of the chapter, Quintilian sees the rewards of correct clear speech as more the avoidance of stylistic faults rather than the acquisition of any virtues. In Book 9, in his discussion of composition, Quintilian returns to the idea of natural speech as more masculine: *modo magis naturalem, modo etiam magis virilem esse contendant* (9.4.3). Some teachers underplay the value of composition, arguing that raw language can be more natural and masculine but Quintilian's position seems to be more complex: natural speech is the aim, but this does not preclude stylistic composition, as the preferred style is a natural one.

Thus, the ornamentation of a speech conforms to the norms of proper masculine behaviour. This is compared with effeminate levity, the opposite of proper manly *gravitas*, and the use of makeup. Makeup here can be read both as effeminate and as a means of using style to cover up the inadequacies of a speech, which is reminiscent of the Platonic idea of rhetoric and cosmetics as forms of *kolakeia* as found in the *Gorgias* and discussed in Chapter 4 in relation to Petronius' *Satyricon*. In Book 12 Quintilian again discusses style. In his conclusions, he describes the style of his ideal orator as characterised by moderation. Rather than being excessively dazzling, the orator will use restrained manly elegance and apply his judgement when undertaking invention: *et nitor ille cultum virilem et inventio iudicium* (12.10.79).

The ideal orator will be an example of the golden mean,⁶¹⁶ as Quintilian has advised throughout the *Institutio Oratoria* whenever discussing style or using the adjective *virilis*.

In Book II, Quintilian quotes Cicero *Or.* 59 on gestures of the body: *trunco magis toto se ipse moderans et virili laterum flexione* (II.3.122). These are important and to be preferred to movement of the fingers. Later in the same chapter, he discusses dress: *Quare sit, ut in hominibus honestis debet esse, splendidus et virilis* (II.3.137). As the orator stands up in court to represent his client, his appearance will be noticed and the fact that judgements can be made about the orator owing to his dress, which may affect the outcome of the case, make this aspect of presentation and delivery important.⁶¹⁷ It is important to appear as *honestus*: a proper Roman man should look distinguished and manly. Quintilian's next comment, that both too much and too little care over the appearance can give rise to criticism, reinforces the idea that both oratory and one's presentation as a proper Roman man involve the negotiation of problematic boundaries. Society demands that one appear neither as too manly nor as not manly enough.⁶¹⁸ Then, Quintilian gives us a list of how clothes should (and should not) be worn to maintain the propriety of the speaker, to the extent of describing how one should rearrange one's toga during the course of the speech, ending the speech in a state of dishevelment.

⁶¹⁶ Cf. 12.10.80: *Similis in ceteris ratio est ac tutissima fere per medium via, quia utriusque ultimum vitium est.*

⁶¹⁷ In 6.3.54, Quintilian gives an example of a witticism of Domitius Afer at the expense of Manlius Sura who kept dropping and rearranging his toga: he is described not as acting (*agere*) for his client, but as over-acting (*satagere*). The example is reused by Quintilian at 11.3.126, where Sura's habit of running back and forth is criticised. Thus, the idea of theatricality is contrasted with implicit norms of dress and delivery.

⁶¹⁸ While it is important not to dress or move in away that can be understood as effeminate, the other extreme, the hyper-masculine should also be avoided in favour of a decorous golden mean (a similar sentiment can also be found in Sen. *Ep.* 114.14). The clearest statement of this negotiation occurs in Quint. *Inst.* 12.10.47: *Sed me hactenus cedentem nemo insequatur ultra; do tempori, ne hirta toga sit, non ut serica, ne intonsum caput, non <ut> in gradus atque anulos comptum: cum eo quod, si non ad luxuriam ac libidinem referas, eadem speciosiora quoque sint quae honestiora.* The 'hairy toga' as a shorthand for an almost hyper-masculine form of dress, contrasted with that of an effeminate man is also found in Tac. *Dial.* 26.1–3, where the same social norms can be seen to be operating.

The two remaining uses of *virilis* in the *Institutio Oratoria* are somewhat harder to categorise as employing the language of gendered criticism. This is because they are examples of the expression *pro virili parte*, which is normally translated as ‘to the best of one’s ability’.⁶¹⁹ Few scholars would wish to translate the phrase as ‘as far as pertains to masculinity’ because the phrases refer to Quintilian’s efforts in writing the *Institutio Oratoria*.⁶²⁰ Thus, while they may not appear relevant to the present discussion, if we can recognise them (as a result of the other usages) as providing an added dimension, enabling us to see Quintilian’s efforts to impart a training aimed at improving oratorical ability and manliness as being a manly endeavour in and of itself. He exerts himself as a man and an author, which he conceptualises as a difficult thing, in order to create good, manly speakers.⁶²¹

The majority of examples discussed above come from the first and last two books. This is significant as in effect they frame the work:⁶²² whereby the philosophical and gendered aspects of the construction of the orator underpin the rhetorical education contained within the rest of the work. Quintilian’s use of the adjective *virilis* is similar to that of *effeminatus*,⁶²³ which leads us to conclude that for Quintilian, as for earlier writers, oratory is gendered: masculine is good, feminine or effeminate is bad. Rather than being a modern idea imposed on the text, the gendered nature of oratory can be shown to be integral to Quintilian’s conception of the orator and literary criticism. In addition, the gendered nature

⁶¹⁹ s.v. *OLD* pars 8d.

⁶²⁰ [Q]ui pro virili parte conferre aliquid ad facultatem dicendi conati sumus (12.1.1); Haec erant, Marce Vitori, quibus praecepta dicendi pro virili parte adiuvari posse per nos videbantur. (12.11.31).

⁶²¹ In *D.* 3.1.1.5 (a passage already considered in Chapter 4) we have one of the clearest statements of oratory as gendered: women are forbidden to appear on behalf of others *ne virilibus officiis fungantur mulieres*, so oratory on behalf of clients is thus marked out as something exclusive to men.

⁶²² Morgan (1998b) 248 sees these books as containing a great deal of Quintilian’s thoughts on ‘the nature and expectations of the ideal orator and the sort of world in which he expects him to live’.

⁶²³ There are nine examples of *effeminatus* in the *Institutio Oratoria* (1.8.2, 1.10.31, 2.5.10, 5.12.19, 8.pr.20, 8.3.6, 9.4.142, 11.3.32, 11.3.91). As they all describe oratory which is seen as linked to the theatre, or a style that should be avoided, they offer a negative paradigm, parallel to the positive examples of manly oratory.

of oratory shows its importance during the period: why else would writers on rhetoric bother to describe the linking of oratory and masculinity?

PROSECUTION AND REMUNERATION

Having discussed the nature of proper, manly pedagogy, which is crucial to the formation of the character of the orator (which is also discussed by Quintilian in 12.5), I do not wish to dwell on Chapter 6 of Book 12, which deals with when the orator's career should start. Instead, I wish to turn to Chapter 7, whose themes of prosecution and the financial remuneration of the orator are something of a sticking point when considering orators and oratory during this period.

In general, scholars seem to be of one opinion: the *delator* is the bogeyman of imperial politics and oratory, the antithesis of the orator as good man. With regard to Quintilian, this position is perhaps best demonstrated by Winterbottom's 1964 article on Quintilian and the *vir bonus*. Winterbottom's analysis made much use of Tacitus (especially the *Dialogus de Oratoribus*) and the letters of the younger Pliny to show that delation caused Quintilian's reactionary stance in the *Institutio Oratoria*. The rhetorical aspects of the term *delator* are noted by Mommsen (1893) 493 n.2⁶²⁴ and the type seems to consist of three aspects: the corrupt noble, the man too impatient for an honest career, and the lowborn hanger-on. The desire for money, status and influence is understood as the motivating factor(s): 'One of the essential rubrics for recognizing *delatores* is the profit motive – in the form of financial gain, political advancement or both'.⁶²⁵ This position has been largely unchallenged (with the exception of Rutledge (2001)) and this section of the chapter will show that the traditional position, as espoused by Winterbottom and others, may in fact not reflect the reality of the first century AD but rather the agendas of writers such as Pliny and Tacitus.

⁶²⁴ These are expanded upon by B. Walker (1960) 101, see also Syme (1958) 326–8 and Sinclair (1995) 12–16.

⁶²⁵ Rutledge (2001) 12, a similar description can be found in B. Walker (1960) 101.

Chapter 7 of Book 12 deals with behavioural and pseudo-ethical questions, such as whether one should prosecute as well as defend and whether the orator should receive payment for his services.⁶²⁶ Such questions are clearly of interest when considering the nature and role of the orator and oratory in Roman society. Quintilian's treatment of prosecution and financial remuneration in the same chapter invites us to consider the chapter in the light of the practice of delation, due to their obvious similarities. However, before turning to the interpretation of Quintilian's chapter in terms of its social cultural and historical contexts, I wish to consider exactly what Quintilian tells us. In the previous chapter (Chapter 6), Quintilian had discussed when an orator's career should begin and the need for the would-be orator to put the theory he has learnt in school and honed through declamation into practice after an apprenticeship (*tirocinium*).⁶²⁷ In this chapter, Quintilian's orator is now ready to begin speaking in court and the first question he faces is which cases to take on. Quintilian gives the following advice:

in quibus defendere quidem reos profecto quam facere vir bonus
malet, non tamen ita nomen ipsum accusatoris horrebit ut nullo
neque publico neque privato duci possit officio ut aliquem ad
reddendam rationem vitae vocet.

12.7.1

The orator, as a *vir bonus*, will prefer to defend rather than prosecute, but Quintilian's implied advice is that the new orator should consider prosecution, and the reasons for this are various. First, as will be shown, prosecution was seen as easier than defence and thus, while less of a challenge to an orator's persuasive skills, it is an ideal way with which to begin a career in forensic oratory. The orator's need to prove himself as an established orator, therefore, prompts him to defend and (through the defendant's acquittal) show his abilities; but secondly, and more importantly, there is a deep-seated attachment to the

⁶²⁶ The most recent study of Roman prosecution is that of Alexander (2002). While he deals with the reconstruction of the other side to a selection of Cicero's speeches, his approach, along with the reinterpretation of evidence by Rutledge (2001), provides a much-needed basis to this field of study.

⁶²⁷ On the relationship between the theory and practice of rhetoric, see Heath (2004a) and (2004b) and Parks (1945).

idea of an orator as someone who defends his friends and family.⁶²⁸ To return to the first point, the conception of it being easier to prosecute was clearly shown in the discussion of *refutatio* back in 5.13.2–3⁶²⁹ This is because the presentation of a case for the prosecution is more straightforward from the point of view of invention – it is easier to argue that someone committed a crime from the circumstances of the case than to defend them: where you have to consider questions of conjecture (‘Roscius didn’t kill his father, it was Magnus and Capito’), definition (‘Milo killed Clodius, but it was in self-defence’) or quality (‘I killed the Catilinarian conspirators without trial, which saved the state from destruction’).⁶³⁰ Secondly, the prosecution can prepare its case in advance (as it speaks first) and so there is less need to improvise (although a trained orator should be able to do this). Thirdly, the prosecution can use witnesses and documentary evidence (*ἄτεχνοι πίστεις*) to help prove its case, whereas the defence must use argument (*ἔντεχνοι πίστεις*) to refute these; finally, the nature of the charge is of great help in influencing the emotional state (*πάθος*) of the judge and jury by means of *amplificatio* (making the crime out to be terrible) whereas the defence can only argue that the defendant did not do it.

While Quintilian’s discussion in Book 5 is an oversimplification made for the purposes of

⁶²⁸ Cic. *De Off.* 2.50–1 advises against gaining a reputation solely as a prosecutor put does not condemn prosecution *per se*.

⁶²⁹ On this passage and in general see Alexander (2002) 38–45.

⁶³⁰ While Quintilian maintains that prosecution is easier than defence, this is not entirely borne out by the statistics of trials under the Republic and in the first 2 centuries AD. On the basis of Alexander (1990), the number of acquittals and condemnations (for trials of known outcome) is roughly equal. Thus, Cicero stands out as a particularly successful defence advocate with a success rate of between 78% and 56%: on which see Alexander (2002) 5. For comparison the figures for trials under the *Lex Iulia de maiestate* in Tacitus *Annals* 1–6 (taken from Walker (1960) Appendix 2) are as follows: excluding those people (21) who committed suicide before the verdict and just comparing those who were executed (18) banished or imprisoned (21) with those who were acquitted (19) or whose cases were dismissed without trial (12), 56% of cases are prosecution victories and 44% defence victories. If pre-verdict suicides are included as victories for the prosecution, the figures become 66% and 34% respectively.

By way of further comparison, the figures for senatorial trial for extortion (*repetundae*) are as follows (details taken from Talbert (1984) 507–10): out of the 36 documented cases between AD 13 and 205, 7 result in acquittal (19%), 19 in condemnation (53%), for 6 the verdict is unknown (17%) and there are 4 suicides pre-verdict (11%). Under the empire, the two charges (treason and extortion) seem to have gone together with a great degree of regularity.

teaching the parts of a speech, it does help shed some light on the bare description of prosecution in Book 12.

Quintilian argues that, despite the impulse to defend and the problematic status of prosecution, the orator should not be afraid of the name of accuser or of his duty to bring public figures to account for their lives and actions. The straightforward nature of the argument required, as discussed above, and the public-spirited motives advocated by Quintilian allow us to see prosecution as a possible, and honourable, means of starting a career, which would fit into Quintilian's overall treatment of the development of the orator throughout Book 12.⁶³¹ Yet, prosecution is not described as being suitable only for the beginning of an orator's career; instead, it is seen in abstract terms:

Nam et leges ipsae nihil valeant nisi actoris idonea voce munitae,
et si poenas scelerum expetere fas non est prope est ut scelera ipsa
permissa sint, et licentiam malis dari certe contra bonos est.
Quare neque sociorum querelas nec amici vel propinqui necem nec
erupturas in rem publicam conspirationes inultas patietur orator,
non poenae nocentium cupidus sed emendandi vitia corrigendique
mores

12.7.1–2

In the first section, Quintilian sees prosecution as a means of enforcing the laws and therefore a good thing.⁶³² To make his point he describes a situation where not seeking the punishment of a crime (by means of initiating a prosecution) comes close to sanctioning the crime itself. No right-thinking Roman would allow this to happen, as it would threaten the very fabric of Roman society.

The list of crimes an orator should wish to prosecute is extremely informative as the three examples Quintilian gives are the complaints of *socii*, the murder of a friend or relative

⁶³¹ Cf. Cic. *div. in Caec.* 68 where Cicero makes this very point about *adulescentuli* beginning a career through prosecution.

⁶³² On the subject of *delatores* and law enforcement, see Rutledge (2001) 54–84.

and conspiracies which threaten the state.⁶³³ All three are readily understandable as manifestations of *pietas*, and the first two instances of prosecution fulfil the societal expectation of the orator as a defender of friends and family, but it is the third to which I wish to turn. Given that we have a standard perception of the first century AD as a time when delation and conspiracy against the (usually corrupt) emperor were part of the lamentable state of Roman politics,⁶³⁴ we are faced with the question of what Quintilian is doing here – is he living in Cloudcuckooland, giving an example of *Realpolitik* under Domitian, or doing something else entirely?

The phrase *in rem publicam conspirationes* is a metaphor for *maiestas*, and during the period when Quintilian was writing, *maiestas* is normally understood as pertaining to the emperor and the imperial family, although the provisions of the *Lex Iulia de maiestate* cover offences ranging from treason or conspiracy to any failure in public life.⁶³⁵ Under the principate the *maiestas* law does seem to become one of the main weapons for political prosecutions, that is to say prosecutions whose aim is the political advancement of the prosecutor and the removal of a rival for power and influence.⁶³⁶ While the notion of politically motivated prosecutions seems abhorrent to a modern sensibility, we must remember that Roman political life was fiercely competitive and that such competition produced both winners and losers. Winning could bring wealth and status while losing could result in exile or death. Yet, by stressing the role of prosecution in consolidating the

⁶³³ The motives advocated by Quintilian for prosecution are similar to those which would encourage an orator to act for the defence. On prosecution by familial groups in the late republic see David (1992) 588–9.

⁶³⁴ The view expressed is a simplified interpretation of the works of Tacitus.

⁶³⁵ The law is thus quite vague, and seems to have been used as means of getting a case heard in the senate rather than in a *quaestio*. On the *Lex Iulia de maiestate* see D. 48.4.1–11, Rutledge (2001) 85–7 and Bauman (1967) and (1974).

⁶³⁶ The exile of Cicero in 58BC can be understood as motivated by the threat of revenge for Cicero's evidence against P. Clodius Pulcher in the aftermath of the *Bona Dea* scandal in 62 BC, his prosecution of Piso in 59 BC and his execution (without trial) of the Catilinarian conspirators.

fledgling-orator's claim to that description Quintilian has to tackle the negative dimensions of acting for the prosecution.

Thus, Quintilian's phrase *Itaque ut accusatoriam vitam vivere et ad deferendos reos praemio duci proximum latrocinio est, ita pestem intestinam propulsare cum pro pugnatoribus patriae comparandum* (12.7.3) is worthy of more comment than it has hitherto received.⁶³⁷ Rutledge takes *Itaque...est* as follows: 'But, he qualifies, to live the life of an accuser and to be induced to denounce defendants for a price is akin to banditry (*latrocinio*)'.⁶³⁸ While this is an acceptable interpretation, it does not take full account of the second half of Quintilian's statement, which gives the other side of the argument, in which the removal of someone guilty of *maiestas* is seen as equivalent to fighting in the front ranks of a Roman army.⁶³⁹ Within a military context, Quintilian's metaphor implies a good deal of personal risk to the person fighting in this way, but doing this was also the way to demonstrate one's bravery and thereby both gain rewards and prove one's manhood. That this behaviour is acceptable and praiseworthy does not mean that Quintilian is encouraging anyone to become a *delator* out of devotion to the state; rather when the orator who is undertaking such a prosecution is a *vir bonus* the prosecution will happen for the right reasons and have an outcome which is beneficial to the state.⁶⁴⁰ While prosecution can be viewed as acceptable, an orator would not normally just take one side exclusively. Making one's reputation and livelihood almost

⁶³⁷ Quintilian's wording has not, to my knowledge, elicited comment from any commentators on this passage. It is briefly discussed by Rutledge (2001) 16.

⁶³⁸ Rutledge (2001) 16.

⁶³⁹ For fighting in the front line as a way of displaying valour and gaining rewards I am indebted to a paper delivered to the Leeds Branch of the Classical Association by Dr Kate Gilliver (Cardiff University).

⁶⁴⁰ While Quintilian's justification could be taken as pandering to *delatores*, due to the political conditions under Domitian, we must remember that for a legal system to function cases need both prosecutors and defending advocates. Given that in 12.2.28–9 Quintilian has been shown to be alluding to Livy's discussion of *exempla* in *pr.* 8–9, where *exempla* are recognised and internalised in a process that is useful for the state, it seems likely that Quintilian's discussion of prosecution needs to be understood in the same way as his discussion of *exempla*: as something which is useful both to the orator and the state.

exclusively through prosecution is looked down upon in the late Republic;⁶⁴¹ and it is reasonable to assume that this point of view continued in the Early Empire. We must remember that while the presentation of prosecutors is often negative, we have evidence of notable *delatores* acting as defence advocates as well as engaging in prosecution.⁶⁴² Thus, while some of their prosecutions may have been motivated by political reasons or financial gain, even notorious orators of the Early Empire seem to have shown some regard for societal norms.

Thus, prosecution can be understood as part of the orator's *officia* as a *vir bonus*. It may be objected that Quintilian is being unrealistic and that he is careful not to mention *delatores* while discussing prosecution. It should be noted that Quintilian uses the noun *delator* on only two occasions in the *Institutio Oratoria*: in the first (3.10.3) it is to describe a specific type of *causa*, such as a *divinatio* to establish which of the accusers will prosecute or how a *praemium* will be divided between *delatores*, in the second (9.2.74) Quintilian is giving an example of figured speech from his own career (one of four of his cases cited in the work) where he manages to make the judges in the Centumviral Court aware of the situation without giving the accusers anything on which to pin an argument. Neither of these two examples, nor the presentation of known *delatores* in the work, who are often quoted for their defence speeches, allows us to sustain the picture of delation drawn by Tacitus and Pliny and used by Syme and Winterbottom.

Returning to Quintilian's treatment of prosecution, the final clause of the passage quoted above allows us to explore further the purpose of prosecution in Roman society. While the prosecutor may be motivated by politics and/or revenge, the orator as a good man seeks to improve rather than punish: *non poenae nocentium cupidus sed emendandi vitia corrigendique mores*. While this may seem either trite (to a reader predisposed to viewing imperial politics

⁶⁴¹ Cf. Cicero's comments on M. Brutus in *De Or.* 2.220, 222–6.

⁶⁴² E.g. Domitius Afer's defence of Cloatilla in Quint. 8.5.16, 9.2.20, 9.3.66.

through Tacitus' account in the *Annals* and *Histories*) or a means of covering greed and ambition with a socially respectable gloss, or both, there is another interpretation which relates to Quintilian's earlier discussions of *exempla* in Chapters 2 & 4 of Book 12. There he referred to the preface of Livy's *Ab Urbe Condita* and his use of *exempla* to combat decline; here the possibility of using prosecution not to punish an individual but for broader moral improvement is stated and this too is reminiscent of Livy.⁶⁴³ Both Livy and Quintilian are quite positive about the possibility of reversing the perceived 'decline' of Roman society and this reversal is brought about through the imitation and emulation of models which encapsulate societal norms and patterns of behaviour.⁶⁴⁴

In order to make his case for prosecution even stronger, Quintilian then provides us with a series of *exempla* for emulation, a list of great republican orators who all engaged in prosecution (similar lists can also be found in Tac. *Dial.* 34.7 and Apul. *Apol.* 66), which is itself an enlarged version of the list already quoted in 12.6.I on how to begin a career.⁶⁴⁵ The picture given by Quintilian in the first four sections of this chapter is remarkably positive and upbeat; the similarities between the position in the late republic (as examined by Alexander and others) and the beginning of the second century AD allow us to stress the continuity of Roman politics and rhetoric over the change usually associated with this period.⁶⁴⁶ We should not forget that one main reason for junior senators, and young men in

⁶⁴³ In Livy, the ability to recognise, internalise and learn from *exempla* is seen both through characters within the narrative and as part of the didactic function of the text upon Livy's audience. If we understand Quintilian's presentation of prosecution in a similar way, we can posit that both he and his orators will contribute to the improvement of Roman society.

⁶⁴⁴ Presumably, the extension of Quintilian's argument is similar to that found in Tac. *Dial.* 41.3: If you could find a state in which no-one did wrong, you would not need orators. This may be a philosophical ideal, which is unlikely to exist, but this does not stop it from being an ideal which can be worked towards, rather like the Stoic *proficiens* working towards becoming a *sapiens*.

⁶⁴⁵ See Alexander (2002) and David (1992) 572–84 for the details of prosecutions in the late Republic.

⁶⁴⁶ On the Roman Senate under the Empire, see Hopkins (1983) 120–200 and Talbert (1984). The former tends to stress change over continuity, which, while it holds true in terms of senatorial recruitment and membership, does not seem to apply quite so well in terms of ideology, on which the latter is far more useful.

general, to undertake prosecutions is the acquisition of status.⁶⁴⁷ If a young *eques* or junior senator prosecuted a man who was defended by, say an ex-praetor, and won his case, the result could be as follows: the successful prosecutor would acquire the status and position of the losing advocate, including his place in the senatorial hierarchy, which determined the order in which senators were asked for their opinion in debates.⁶⁴⁸ This reward of successful prosecution, while not mentioned in Quintilian's account (which is not concerned with senatorial advancement), may have exercised a considerable influence over the decision of a young advocate to instigate a prosecution.⁶⁴⁹ The assumption of the losing advocate's status is also a demonstration of the performative nature of Roman manhood. The ability to speak persuasively determines whether one loses, maintains or gains status in Roman politics. Thus, the stakes were potentially high and potentially offset the negative connotations of prosecution.

Returning to Chapter 7, Quintilian, having discussed prosecution, turns to defence. The orator is advised not to offer the safe harbour of eloquence to pirates but to judge each case on its merits, which would seem to suggest that the right to a defence is not necessarily automatic.⁶⁵⁰ This seems to go against the version of rhetorical theory espoused by Quintilian: even a guilty man may lessen his punishment, by means of mitigation or the transference of blame. However, Quintilian's next sentence goes some way to explaining this

⁶⁴⁷ On the permeability of the Roman elite see Hopkins (1983) 41–3. In *Contr.* 1.6.3–4 the Elder Seneca quotes Julius Bassus on the fact that the Roman elite have low-born ancestors; on which see Edwards (1996) 38.

⁶⁴⁸ On this see Talbert (1984) 245, Crook (1995) 160; Mommsen (1887–8) vol. 2, 971; Taylor and Scott (1969) 553–6. *Tac. Ann.* 2.32, *Hist.* 1.2, 2.53, 4.42.

⁶⁴⁹ Wiseman (1970) 120 'the prosecutor could win fame or notoriety at an early age by attacking powerful men. Small wonder that many new men rested their claim to a senatorial career on rhetorical prowess'. *Contra* Syme (1939) 13 who argues that a *novus homo* must 'shun where possible the role of prosecutor in the law-courts and win gratitude by the defence of even notorious malefactors.' Syme (*ibid.*) sees emnity and feuds as the province of the *nobilis*. On the rewards of prosecution see David (1992) 570–1, Rutledge (2001), and Crook (1995) 160.

⁶⁵⁰ Perhaps another reason for not taking on the defence of a man who is clearly guilty may be the fact that if you lose your case, your opponent will gain your status.

problem: since an orator cannot defend every client (and most clients are honest enough to be defended) he must be selective.

In 12.7.7, Quintilian declares *Nam et in hoc maximum, si aequi iudices sumus, beneficium est, ut non fallamus vana spe litigantem (neque est dignus opera patroni qui non utitur consilio) et certe non conuenit ei quem oratorem esse volumus iniusta tueri scientem*. That an orator should defend his friends or those recommended to one by one's friends has been advised in 12.7.5; furthermore he should reject cases that the preliminary investigation reveals as unjust (as mentioned in 12.7.6), so as not to deceive a litigant with false hopes, because if the client refuses to take the advice an orator can withdraw his services while not losing face. Quintilian's orator ought not to be defending a case that he knows to be unjust, although if he defends a wrong cause for a good reason, his own conduct will of course be irreproachable. Russell takes the statement *Nam si ex illis quas supra diximus causis falsum tuebitur* as referring back to 12.1.36,⁶⁵¹ which counsels the advocate that there are occasions when it may be necessary to deprive the judge of the truth⁶⁵² and to consider the motive(s) underlying the action of the accused, because child-killing or other crimes can be mitigated by considerations of public interest. While this is clearly sensible and appropriate, ranking as it does the demands of defence within the demands of *pietas*, the statement is also relevant to the advice contained within the section preceding it, and in the same way.

It is permissible, then, to defend one's friends and this was expected as part of the bonds of *amicitia*, especially in cases where the argument for the defence will rely upon the construction of plausible motivation, mitigating circumstances, or the value (actual or potential) of the accused to society, and doing so did not harm the advocate's own

⁶⁵¹ Russell (2001) 258 n.10.

⁶⁵² On which see also 2.17.26, where the end (persuasion) justifies the means, as long done for a good reason, an argument which appears in Cic. *de Off.* 2.51. The idea used by Quintilian is based on the Stoic notion that if someone assents to a false sense impression, it is their fault that they are misled rather than it being the fault of the speaker who misleads them.

reputation. We can compare this stance with the example of Cicero and the defence of M. Caelius Rufus, undertaken through personal ties and obligations to the litigant and his father, even though Caelius can be perceived as guilty. To defend him in the terms in which Cicero does and for these reasons, attaches no blame to Cicero's action. Essentially, within the practical constraints of advocacy, what Quintilian is suggesting here is that there is no case which cannot be defended, other than the case in which a clearly guilty party is unknown, or unrelated by the bonds of *amicitia*, to the advocate himself: a circumstance that would be unlikely to arise.

Therefore, Quintilian 12.7.7 provides both a mechanism for rejection should the situation noted above arise and a mechanism for evaluating whether to undertake the defence of a client whose relation to the orator is somewhat tenuous. It also provides a plausible reason for the rejection of such a case during the preliminary investigation in a way which would not damage the advocate's own social standing. On the other hand, Quintilian also provides the advocate with a reason to undertake such a case, should the advocate's obligation to the recommending friend be strong enough, by identifying the lack of social opprobrium attached to acting for this reason (at least within the circle of good men, whose opinions are the only ones that count). Thus, Quintilian's orator is furnished with justifications for accepting and turning away cases, whether he is defending or prosecuting. Such advice is clearly useful to an orator at an early stage in his career and throughout his professional life, and fits in to what may be seen as Quintilian's career development plan.

In §8, Quintilian turns to the question of fees: *Gratisne ei semper agendum sit tractari potest*, which is a problematic one.⁶⁵³ The remuneration of orators was strictly forbidden by the *Lex Cincia* of 204BC,⁶⁵⁴ which, having been often ignored in the late Republic, was

⁶⁵³ For the traditional position on senators, prosecution, and enrichment see Levick (1985) 55–60.

⁶⁵⁴ For the details of the law, see M.H. Crawford (1996) 741–4, Crook (1967) 90–1 and (1995) 129–31, Talbert (1984) 48–9 and Borkowski (1997) 209. The clause forbidding the donation of

reintroduced by Augustus in 17BC.⁶⁵⁵ In AD47, the emperor Claudius partially repealed the law in the face of some senatorial opposition and set a limit of 10,000 HS on payments, which if exceeded would give rise to prosecution for extortion.⁶⁵⁶ The arguments used by the senators in Tacitus' account for and against the repeal of the law echo those used by Quintilian in this section.⁶⁵⁷ The existence of such a comparison can be taken as evidence that both authors have made use of arguments which were at least plausible in rhetorical terms; they may even have been the actual arguments which orators used to debate this problematic subject, although this cannot be stated with complete certainty.⁶⁵⁸ Regardless of the veracity of the arguments used, the fact remains that they are used to discuss a question that shows that oratory was still a topic of considerable importance. Despite Claudius' reforms of almost fifty years earlier, the question of an orator's remuneration appears in Quintilian's account to be one which remains problematic. This in turn can be used to explore the rules of Roman society which make fees (and possibly prosecution) problematic in our sources.

In his discussion, Quintilian begins by arguing that the most honourable course of action is not to sell oneself or lessen the authority of such a great service: *non vendere operam nec elevare tanti beneficii auctoritatem*. He continues by arguing that, if one is self-sufficient, one

gifts to orators does survive in some form, which may reflect the wording of the law (though is not accepted or included by M.H. Crawford in his reconstruction), in Tac. *Ann.* 11.5.3: *cavetur...ne quis ob causam orandam pecuniam donumve accipiat*. Cic. *de Or.* 2.278 gives the following example of a joke used by M. Cincius Alimentus *Saepe etiam sententiose ridicula dicuntur, ut M. Cincius, quo die legem de donis et muneribus tulit, cum C. Cento prodisset et satis contumeliose "quid fers, Cinciole?" quaesisset, "ut emas," inquit "Gai, si uti velis."* On the law see also Livy 34.4.9ff; Cic. *de Sen.* 4.10 (for Q. Fabius Maximus' support for the law); Cic. *ad Att.* 1.20.7 and Tac. *Ann.* 15.20.3.

⁶⁵⁵ For Augustus' reintroduction of the law in 17BC see Dio 54.18.2: *καὶ τοὺς ῥήτορας ἀμισθὶ συναγορεύειν, ἢ τετραπλάσιον ὅσον ἂν λάβωσιν ἐκτίνειν, ἐκέλευσε*.

⁶⁵⁶ This is described in Tac. *Ann.* 11.5.1–7.4, see further discussion in Ch. 5.

⁶⁵⁷ The arguments used in both cases follow the standard heads of argument used for practical questions, the heads of purpose (*τελικὰ κεφάλαια*—e.g. honour, necessity, advantage etc.).

⁶⁵⁸ I am not concerned with matters of *Quellenforschung* here. It is hard to tell whether Tacitus is following Quintilian's account or whether they both draw upon a common source for senatorial procedure, e.g. the *acta senatus*. In addition, the subject is less interesting than a consideration of the issues which underpin the arguments used.

should not charge fees at all: *Caecis hoc, ut aiunt, satis clarum est, nec quisquam qui sufficientia sibi (modica autem haec sunt) possidebit hunc quaestum sine crimine sordium fecerit* (12.7.9). Hence, there is a fine line between charging enough to survive and appearing to make money out of oratory which appears to be a result of the deep-seated feeling amongst the Roman elite that the acquisition of money through work is inferior to having an income from landed property. In addition, some of the new men in the Roman senate adopt an ultra-conservative position with regard to social *mores*.⁶⁵⁹ As such, they are bound to take a negative view of senators and *equites* who need to supplement their income, rather than the more pragmatic view which recognises the practical reasons behind such behaviour.

While self-sufficiency must be understood as an ideal position, whether it was a practical possibility for the practising orator would depend on the financial situation of the senatorial class in the Early Empire. There is not a great deal of evidence for the financial position of senators during this period;⁶⁶⁰ nevertheless, we can draw some conclusions from it.⁶⁶¹ The senatorial ideal of wealth being held in landed property did not always provide sufficient liquidity for the senator to shoulder the burden of expenditure caused by public life. Thus, senators would look to loans, trade (normally carried out by a freedman acting on their behalf) or advocacy to support himself and his family.

Quintilian seems aware of the fact that orators may not be financially self-sufficient and makes the sensible argument that it is only right and proper to receive money for performing such a service. He also provides philosophical examples to justify the practice of accepting fees (12.7.9–10). Several of these are questionable, but this should not detract from his argument, that earning a living through oratory is perfectly justifiable, providing it is carried

⁶⁵⁹ E.g. Tacitus and the Younger Pliny.

⁶⁶⁰ This subject has been touched on in Chapter 5, where the financial position of senators under Tiberius and Claudius is discussed in the course of the analysis of Tacitus' portrayal of orators in the *Annals*.

⁶⁶¹ Most of the evidence is collected and discussed in Talbert (1984) 47–53. See also Wiseman (1970) 117–8 on the high, and sometimes unbearable, cost of becoming a senator.

out for the right reasons and with respect for societal norms. In his concluding remarks, Quintilian reinforces the idea that the orator will treat his profession as a means of support rather than as a way to make money,⁶⁶² treating the relationship between the orator and client in terms of the traditional patron-client relationship, based on reciprocity, and understanding the payment by the orator's client as the settling of a debt. Finally, there is the question why, if the matter had been settled by Claudius almost fifty years before the publication of the *Institutio Oratoria*, should Quintilian need to discuss the matter at such length? One could take Quintilian's discussion as evidence of the problematic nature of prosecution and *delatores*, which necessitates the justification and limitation of his account; given the stress on the practicality of Quintilian's discussion here, we can also understand his discussion of fees as engaging with perennial social questions.

While Winterbottom's 1964 article on Quintilian and the *vir bonus* is a great example of how ancient views on oratory need to be taken together rather than in isolation, it is not the last word on the subject. While his reading of literature within its historical and social contexts is admirable, it should be stressed that the picture of delation which informs his reading (and that of Syme) is in fact something of an oversimplification.

The recent reappraisals of *delatores* by Rutledge have shed light upon a practice which has often been condemned or written off rather than considered in depth.⁶⁶³ What emerges from Rutledge's studies is a picture of the upper echelons of Roman society as a highly

⁶⁶² This statement could be seen as condemning the practice of delation: taking more than the orator needs (*ultra quam satis*) can be taken to refer to orators who become rich through the rewards of prosecution. However, we should not forget the high cost of public office for the upper class in Rome (discussed above), though it does not account for the huge wealth amassed by some orators, such as Domitius Afer or Epirus Marcellus. By the same token, discussions of the 'decline' of eloquence in *Sen. Contr.* 1.pr.7 and *Tac. Dial.* 36.4.8 refer to the lack of *praemia* for orators: on the one hand, they do not exist, on the other, they do but getting them is dismissed as a bad thing. This contradiction represents the problems of dealing with sources such as Tacitus and Pliny: their position is not entirely logical but appears to be based on prejudice and snobbery, deriving from anxiety about their *arriviste* position in Roman society, similar to many men upon whom they chose to look down.

⁶⁶³ Rutledge (1999) and (2001) with Alexander (2002) has helped deepen our understanding of prosecution in the late Republic.

competitive elite who used prosecution for *maiestas* and other crimes as a means to acquire, and maintain, wealth and status. As such, they appear to be far closer to the political figures of the late Republic who used court cases as a means of fighting political battles, as well as avenging friends and relatives; indeed the reasons for prosecution remain the same regardless of period. Given that the shift from Republic to principate is usually seen as one of change, the continuity offered by Rutledge's model allows us to see an elite acting in the same way, despite changes in terms of politics and the elite's composition (specifically the decline of the old Republican families and the rise of new men). In addition, Rutledge's picture of *delatores* makes us treat the views of Tacitus and Pliny with greater caution than has hitherto been the case. The negative view of *delatores* common to Syme and Winterbottom is to some extent conditioned by the sources upon which they have drawn. Given that we now understand prosecution in a far better way, as part of the cut and thrust of Roman political life, and less as the action of a bloody-thirsty, money-grabbing, imperial lackey, the evidence of this chapter of Book 12 allows us to see Quintilian offering sensible practical advice to a fledgling orator, reflecting the reality of the political life and economic situation of members of the Roman elite in this period.⁶⁶⁴

In attempting to reconfigure the nature and use of prosecution under the Empire we are faced with the problem of the Ciceronian filter. Cicero is an orator whose fame rests mainly on his abilities as a defence advocate: of his extant speeches only the *Verrines* are prosecution speeches, the speeches against Catiline and Antony being political rather than forensic. Thus, our picture of Rome's canonical orator is predisposed to favour the defence advocate over the prosecution. One well-documented prosecution, that of Marius Priscus by the Younger Pliny and Tacitus,⁶⁶⁵ stands out as an example of a 'good' prosecution in comparison to those of

⁶⁶⁴ This position is opposed to seeing Quintilian as an upholder of the regime of Domitian; on which see Scarano Ussani (2003) who is followed by Katula (2003) 13.

⁶⁶⁵ See Plin. *Ep.* 2.11, 3.9, 6.29, 10.3a.

the *delatores*. That our sources for this prosecution are the same as those which give us a negative of prosecution by *delatores* should warn us that as readers we may be falling for some very skilful self-presentation. Perhaps Winterbottom found what he expected to find, based on a reading of Tacitus and Pliny and not considering the assumptions which underlie their positions.

Given that we can now see delation as far more complex than its representation in primary sources and secondary scholarship, we can assert that the traditional picture of prosecution under the empire is based mostly on the snobbery of members of the Roman elite. Quintilian in his account of Roman oratory treats some notable *delatores* as examples of good orators; the closest he comes to censure is in his description of the sad decline of Domitius Afer in 12.11.3. Yet, Quintilian uses this as an example of choosing the right time to retire because Afer is worse than he was in his prime: *Neque erant illa quaecumque mala sed minora*. In fact, Quintilian's only references to *delatores* use the term in a neutral rather than a pejorative sense.

GETTING DOWN TO BRASS TACKS

In Chapters 8–9, Quintilian continues his practical advice to his young orator. His advice in these chapters may seem rather straightforward and obvious to a modern reader with a degree of forensic knowledge or experience and presumably this may also have been the case when the *Institutio Oratoria* was first published. Equally, experience in any sphere of life will tell you that that the ability to master the basics well will pay dividends in the end. Given that the outline of the orator's career progression in Book 12 represents a young man's journey from the rhetorical school through the *tirocinium* (which is explicitly mentioned in 12.6.3 and 7) to the professional life of the forum and senate house, such advice cannot be dismissed lightly. The practical aspect of Quintilian's advice can be seen as coming from his own experience as an advocate, and given that in the ideal Roman form of the *tirocinium* the young

fledgling orator would spend time both in court and in the company of established orators (a process which can be inferred from the opening chapter of Tacitus *Dialogus de Oratoribus*),⁶⁶⁶ such advice would presumably be passed on, either explicitly or implicitly. Thus, in writing a book to train the ideal Roman orator, Quintilian includes aspects of the 'apprenticeship' which, while they may not be lacking, are certainly crucial enough to require reinforcement in order to ensure success.

Having discussed the potentially problematic areas of prosecution and the payment and receipt of fees in chapter 7, Quintilian continues his practical approach in the following chapter where he begins by considering the case itself. Quintilian does not advocate an extemporised speech with no advance preparation; instead he recommends preparing the speech in advance and memorising parts of it, as one would expect from his discussion of memory in Book II. He does not, however, recommend reliance on a written speech in court: the beginning and end of the speech, which tend to operate by means of *amplificatio* (evoking *πάθος* in the judges/jurors), could be taken from a prepared script, as presumably could a large part of the *narratio*, but the main argumentative sections of the speech cannot be prepared in such an inflexible way. The orator will, presumably, need to react to the evidence and argument of the other side: so while the case will have been prepared mentally beforehand, the ability to counter the opposing arguments necessitates a degree of improvisation.

Quintilian then turns to the preparation and examination of the client, although his advice is applicable to any witness. His advice has several main points: that the orator should take charge, rather than leave the job to a subordinate; that while written statements may be used, they should be used with a degree of scepticism and caution because clients can give less of a purely factual statement and instead introduce rhetorical aspects (colours, and

⁶⁶⁶ While ancient authors refer to the *tirocinium*, the phrase *tirocinium fori*, beloved of modern writers on oratory and rhetoric is not found before the Renaissance and is therefore eschewed here.

motives) which are rightly the province of the orator. Such a slanted initial presentation of evidence and the fact that advocates can treat the evidence as though it were the set of circumstances of a declamation theme (*περιστατικά*), rather than making changes appropriate to the nature of the case, can result in the orator appreciating the nature of their case through the opposing advocate during the case rather than before. This problem can be solved by taking the time to gain a full knowledge of the case before it comes to court and taking written notes, rather than relying upon one's memory. Thorough knowledge of the circumstances of the case allows the orator to marshal the most convincing arguments for his own side, making his client's case stronger; he will also be aware of those arguments which his opponent may try to use and be able to formulate plausible counters to them beforehand (as the practice of declaiming on both sides of an argument has taught him).

Having gained this information it is important to remember that clients lie or give their evidence as though they were advocates rather than witnesses, so they need to be tested for the veracity of their evidence to be beyond question.⁶⁶⁷ This testing can be achieved by cross-examination: with the orator taking on the role of the opposing orator. This is itself valuable as it prepares the client for when the case comes to court (providing the client with experience of the process of cross-examination) and allows the orator both to practise his cross-examination technique and to consider arguments for both sides of the case, thereby making his own case (and its presentation) stronger.

Quintilian also includes helpful comments on the problems of dealing with documentary evidence (*ἄτεχνοι πίστεις*).⁶⁶⁸ Some may not exist or have the requisite

⁶⁶⁷ Here Quintilian describes the relationship between an orator and his client using the analogy of a doctor and his patient, which may allude to Plato *Gorgias* where the same analogy is used to describe the relationship between a philosopher and his interlocutor, and is held up as what the relationship between an orator and his audience should be.

⁶⁶⁸ 12.8.12–3. Quintilian's discussion of artificial and inartificial proofs here can be seen as a development of his earlier discussion of this subject in Book 5.

information or have been tampered with;⁶⁶⁹ while such basic forensic safeguards may seem common-sense and self-evident, we should remember that at this point Quintilian is leading his fledgling orator through the early stages of his career; as such his textual *tirocinium* will go through the same stages as we would expect a young man with a real-life 'pupil-master' (to use a modern expression). Given the importance such documents could play in both criminal and civil cases,⁶⁷⁰ particularly those such as inheritance cases where the validity of the will is a major factor, or in criminal cases where a witness cannot be present and must give evidence by means of a sworn statement, such attention to detail could pay dividends to the orator. So as a result of this kind of advice the fledgling orator would have been better able to decide whether the evidence should be used in the preparation of the case, rather than risk having a case fall apart in court due to problems with the evidence.

Quintilian then turns to the use and selection of arguments (*ἐντεχνολογία*).⁶⁷¹ His advice is that (having used invention to work out which arguments can be used) the orator, using his knowledge of rhetoric, should choose the strongest and best arguments with which

⁶⁶⁹ Quintilian notes that seals or their cords may have been tampered with or that the seals may not have been validated by witnesses. The validity of documentary evidence, while crucial for affidavits, is most often crucial when dealing with wills, where the temptation to forge or tamper with the testator's request may be directly linked to the material benefits that would accrue from such fraudulent activity. Given that we understand inheritance as forming a large part of the civil cases undertaken by orators in the early empire, such concerns would clearly play a role in a number of the cases he would undertake. On the witnessing of a will (including the use of seals) and other legal safeguards, see *D.* 28.1.22.1–7 and Champlin (1991).

⁶⁷⁰ 'So far as evidence is concerned, there were established rules about which party bore the burden of proof: in broad terms, the plaintiff must prove the essence of his case, and the defendant the essence of any defence (Celsus, *D.* 22.3.13; Ulpian *D.* 22.3.19.pr.; Kaser (1996) 363)'; Johnston (1999) 128. Johnston (1999) 129 sees evidence being used for emotional appeal or character portrayal rather than being 'germane to the point at issue'. While documentary evidence could affect arguments relying on *πάθος* or *ἦθος*, from a rhetorical point of view such arguments tend to form the opening and conclusion to a speech and be amplificatory by their very nature and are thus not the most sensible place to deal with documentary evidence, which one would expect in the narration, argument or refutation of a speech, where their factual nature can be used to greatest effect; thus Johnson's argument seems to run against both established rhetorical practice and Quintilian's advice here. His point of view may well derive from the lack of reference to documentary evidence in the Ciceronian corpus. This is due to the nature of the cases taken on by Cicero, rather than the nature of the Roman legal system. Once again, the overwhelming nature of the Ciceronian evidence can be seen to act as a barrier to a proper understanding of the workings of the Roman legal system.

⁶⁷¹ 12.8.13–4.

to make his case. Quintilian lays stress on a consideration of the circumstances of the case (*περιστατικά*), the characters of the persons involved (*ἦθος*) and the documentary evidence (*ἄτεχνοι πίστεις*), from which the arguments or technical proofs may be derived. In addition, Quintilian notes that the orator should consider which witnesses pose the greatest threat and how they may be countered: this consideration of the case in its totality is a development of his earlier advice on the cross-examination of witnesses, but here his aim is to make the orator's own case stronger, by making clear the underlying rationale for the technical aspects of this section.⁶⁷² Thus, in a few sentences, he has outlined how to apply rhetorical theory and knowledge of legal practice and social norms to the situation faced by the orator and thereby turn the constituent elements into a substantial persuasive case. Having done so, the orator then needs to consider how to influence the judge before whom the case will be tried.

In order to make this judgement the orator should put himself into the mindset of the judge(s). The knowledge of one's audience allows the orator to choose arguments which are both appropriate and persuasive, and therefore increase the likelihood of him winning his case. This final piece of advice emphasises the fact that an orator has to persuade the man, or men, judging his case and his speech in court must persuade in order for the orator to have a realistic chance of winning. If the orator does not win his case, he can always blame the judge because, as we have seen, the taste and judgement of audiences has been a topic of discussion from the Elder Seneca onwards.

Having given us a thorough breakdown of the preparation of a case, Quintilian turns in Chapter 9 to the speech and its delivery in court, continuing the logical order of the

⁶⁷² Quintilian then considers the arguments to be used against witnesses by the defence in terms of social status. Generally speaking, where witnesses are concerned, superiors are treated with envy (*invidia*), equals with hatred (*odium*) and inferiors with contempt (*contemptus*). While this is a generalised picture, it does allow us to see in a very simple way how social class was made use of in legal situations: by considering the status of the opposing witness an orator can show that their evidence is motivated by one of the three feelings noted above and therefore should be dismissed, although the other side would presumably argue that such motivation is both right and acceptable in terms of Roman social norms.

second half of Book 12, tracing the orator's career from its first steps to retirement. Quintilian begins by noting that the art of speaking in court has been the subject matter of most of the work up to this point, so he will concern himself with the orator's duties while speaking in court: *quae non tam dicendi arte quam officiis agentis continentur, attingam*. Thus, his advice will be practical rather than theoretical. Indeed the first, not to let the orator's desire for praise override the need to do a good job, is exactly the kind of advice that a fledgling orator would need. Quintilian continues by stressing that while oratory may on occasion be about grand speeches and clever *sententiae*, an orator must not shy away from detailed legal argument or the search for the truth. It was presumably easy for a young man to be carried away by the grand style of great orators, and thereby forget the business of oratory, to prove his case.⁶⁷³

Having given some very sound advice on how to speak, in §7, Quintilian advises his orator not to refuse cases he considers beneath him. He restates the rationale behind taking up cases, which was first made clear in the previous chapter of Book 12: *Nam et suscipiendi ratio iustissima est officium* (12.9.7). He is aware of the dangers of having to represent one's friends (*et optandum etiam ut amici quam minimas lites habeant*) but this sentiment should be taken as evidence of a negative view of *delatores*; it should instead be recognised as inherent in Roman political life where litigation can be motivated by, or give rise to, enmity. In §8, Quintilian chastises men who try to fill out a speech by adding extraneous material, which is not pertinent to the case, or even abuse (presumably of the other side) purely to gratify the audience. He is aware that abuse has a place in a speech, but suggests it should only be used when it is necessary (presumably because infrequent, considered, use heightens its effect): *Quod ego adeo longe puto ab oratore perfecto ut eum ne vera quidem obiecturum nisi id causa exiget credam*.

⁶⁷³ In section 6, Quintilian disapproves of speakers who win approval for their speeches, due to the orator bringing in extraneous material (a point he will return to in §8), but do not win their cases.

Quintilian understands that if a client is bent on revenge rather than defence (*qui ultionem malunt quam defensionem*) he will be keen to have his enemies abused in court. Presumably, the perfect orator will be cautious in such matters and only chastise those who deserve chastisement.⁶⁷⁴ Indeed, giving in to the spite of the client, rather than considering the judge (whom he has to persuade), can only have a deleterious effect on the persuasive aspects of the case, which is damaging to the orator's persona:⁶⁷⁵

Super omnia perit illa quae plurimum oratori et auctoritatis et fidei adfert modestia sia viro bono in rabulam latratoremque convertitur, compositus non ad animum iudicis sed ad stomachum litigatoris

12.9.12

Having spent time training in rhetoric and cultivating an aristocratic persona, the orator should not risk losing his reputation through excessive abuse; there is a fine line between an acceptable level and type of abuse (aimed at a proper target) and excessive abuse that damages the case, client and orator, and if the line is crossed it can result in severe penalties.⁶⁷⁶ Quintilian then reinforces this advice in the following section; however, scholars have taken the references to *libertas* and the danger caused to an orator in the first two clauses of §13 as evidence for the need for figured speech under the Principate, due to political constraints and the unchecked excesses of *delatores*. While we should bear in mind the evidence of Cassius Severus and T. Labienus⁶⁷⁷ as warnings of the dangers of excessive abuse, we should not forget that under the Principate (as in the Republic) the nature of political life meant

⁶⁷⁴ This would then link back to Quintilian's discussions of prosecution and *exempla* (discussed above), where the orator is seen as an improver of public morals.

⁶⁷⁵ For extended discussions of the nature and use of abuse and invective in Roman rhetoric see Richlin (1983) and Corbeill (1996). The subject is also discussed in terms of its relation to humour by Plass (1988) and in relation to the Early Principate by Sinclair (1995a).

⁶⁷⁶ The classic case of an orator brought down by his abuse is that of Cassius Severus, on whom see Sen. *Contr.* 3.pr.1–17 and Tac. *Ann.* 1.72.3–4, 4.21.5. Defamation was covered by the *Lex Cornelia de iniuriis*, although Cassius seems to have been tried for *maiestas*.

⁶⁷⁷ On whom see Sen. *Contr.* 10.pr.4–8.

making, and dealing with, friends and enemies, so the risk was inevitable, though it could be minimised by the kind of restraint advised by Quintilian.⁶⁷⁸

Quintilian continues his discussion of the practicalities of forensic oratory by advising his fledgling orator to take care over the preparation of his speech and to have a sensible workload to help him in this regard. The orator must be aware of the need to improvise where necessary and not rely too heavily on the written text.

The transition in the following chapter to Quintilian's discussion of style can thus be understood as relating to his division of his work in 2.14.15 into *ars*, *artifex* and *opus*, with Books 3–11 covering the art of rhetoric, Book 12.1–9 (and the discussion of retirement in Chapter 11) covering the artist, that is to say the orator, and the remaining chapter dealing with the style of written and spoken works. While scholars find the arrangement of Book 12 rather hard to fathom,⁶⁷⁹ if we understand the first two thirds of the book as a textual *tirocinium*, replicating or enhancing the apprenticeship of an orator, and the rest of the book as mimicking his career until its end in retirement,⁶⁸⁰ then we have a text which covers the orator's education from cradle to grave.

CONCLUSION

Quintilian's perfect orator will no doubt provide scholars many more opportunities for engaging in debate, and this chapter cannot presume to be anything like a comprehensive treatment. Nonetheless, in shifting from the focus from strictly philosophical interpretations or a view of Roman society that is conditioned by the prejudices of a few authors, this chapter has shown that the majority of the content of Book 12 is, like the rest of the *Institutio*

⁶⁷⁸ Such self-control would also form part of the orator's ability to lay claim to his status as an upper-class Roman man.

⁶⁷⁹ 'It [book 12] remains, however, somewhat puzzling and scrappy' Russell (2001) vol. 5 p.187. The structure of the book has been analysed by Austin (1956) and Classen (1965).

⁶⁸⁰ It is noticeable that in 12.11.5 Quintilian uses nautical metaphors for an orator bringing on young *tirones*, which ties in with his own nautical language at the beginning of the Book, thereby enhancing Quintilian's own status and reinforcing the idea of the old great orator teaching young men in the traditional way, and thereby making an authority claim for the *Institutio Oratoria* as a whole.

Oratoria, both practical in nature and realistic in scope. As such, it is perhaps the most valuable example we have of the practicalities of Roman advocacy under the empire, for no other source gives us a similar level of detail. If questions such as the decline of oratory seem somewhat absent from the work as a whole,⁶⁸¹ this is due to the fact that while noting the arguments, Quintilian is optimistic about the way in which the orators of his own day will be viewed.⁶⁸²

Scholars such as Katula and Morgan are concerned to see this perfect orator as embodied in Domitian, in his heirs, or in someone else, or not existing at all, but this avenue is not very fruitful. Although Quintilian does go to some length to argue that the perfect orator has not existed and may not exist in the future, this does not mean that it is not worth trying to produce one, only that perfection is nigh on impossible to attain. The sceptic at this point may well think of the Vergilian tag [*alii*] *orabunt causas melius* (*Aen.* 6.849) to try to pour cold water on such a project, but we should not value the well-placed *bon-mot* of an earlier age over twelve books of sensible, practical advice. Also the fact that Quintilian towards the end of Chapter II first says that it is possible for a *perfectus orator* to exist, and then accommodates the fact that an orator may not be the best, should not be taken as a sign of failure or the impossibility of being a great orator under the Principate, but rather as a realistic statement that it is not being one that matters, but trying to be one: the means are almost more important than the end and this in itself presupposes that circumstances exist under which it is possible to make the attempt.

⁶⁸¹ The point can be made that decline has been overstressed in Quintilian: 8.6.76 is just a reference to a treatment of hyperbole in the *De Causis*, and the positive aspects of 2.10 have generally been under-emphasised (with the exception of Heath (2004b)). Indeed Quintilian's references to 'decline' and the *De Causis* seem to focus on stylistic matters, as does much of his gendered criticism, as discussed above.

⁶⁸² Cf. 10.1.122: *Habebunt qui post nos de oratoribus scribent magnam eos qui nunc vigent materiam vere laudandi: sunt enim summa hodie quibus inlustratur forum ingenia. Namque et consummati iam patroni veteribus aemulantur et eos iuvenum ad optima tendentium imitatur ac sequitur industria.* See also the remarks on this passage in Peterson (1891) 118.

The quest for the ultimate orator is not the plaything of a senile reactionary, but an acknowledgement of the healthy state of Roman oratory. It is common sense to state that if there were no crimes committed, no-one would need an orator,⁶⁸³ thus any protestation of a recession in the law courts in the Early Empire needs to be treated with caution;⁶⁸⁴ and while the Emperor's *consilium* may have taken a larger role in the formulation of policy decisions,⁶⁸⁵ the picture of the senate as a rubber-stamp body cannot be reconciled with the fact that the Roman Empire, though much of its bureaucracy was devolved, still required a Senate in which to debate the business of state and governors capable of debating business in the provinces.⁶⁸⁶ Thus, while the nature of the circumstances in which they took place may have changed, there was still a need for both forensic and political oratory under the empire. This was expected to be carried out in a proper, stylish, effective manner by trained, well-educated, Roman men. The practical nature of the content of much of Book 12 is aimed at such men from their first steps into the forum as *tirones* to their retirement, as leading advocates. Thus, if Quintilian and his work tell us anything about the construction of the orator in the period covered, it is that being an orator still mattered a great deal, in the same way that it had always mattered, and always would matter.

⁶⁸³ This commonplace is used by Maternus at *Dial.* 41.3, it is also part of Zeno's ideal stoic *politeia*, (on which see Diogenes 7.33 and Sen. *Ep.* 90.5).

⁶⁸⁴ In fairness, the description of decline in the opening chapter of the *Dialogus* refers to the esteem in which orators are held and oratory's place in Roman society; the nature of the cases rather than the lack of work.

⁶⁸⁵ On the nature and role of the *consilium principis*, see Crook (1955) and Millar (1977) 119–121. On the emperor's *a libellis* as a legal expert, see Millar (1977) 94–7. On military/foreign policy advice, see Tac. *Ann.* 15.25, *Hist.* 2.31–2. On the similarity with the entourage of a provincial governor, see Millar (1977) 269.

⁶⁸⁶ On the administration of the empire, see Millar (1977). For a defence of the view that the senate did not lose its significance under the empire see Millar (1977) 341. For the continuation of electoral assemblies (the *comitia tributa* and *centuriata*) up to the 3rd century AD, see Millar (1977) 302–3. On orators acting as imperial *ab epistulis* (Julius Secundus under Otho, Titinius Capito under Domitian and Nerva, Suetonius under Hadrian) see Millar (1977) 87–91.

CONCLUSION – THE END OF RHETORIC?

THE idea of 'The End of History' is primarily known through the works of the neo-conservative Fukayama and its subsequent critique by Derrida:⁶⁸⁷ it takes the political events of the late 1980s, namely the collapse of the Berlin Wall and the disintegration of the Soviet bloc, and represents them as the triumph of western 'liberal' democracy and capitalism over Marxism and thus the end of ideological conflict. The idea of the 'end of rhetoric' is, however, a feature of much scholarship, both ancient and modern, which can be seen as sharing some similarities with the views espoused by Fukayama.⁶⁸⁸ If one were to take Fukayama's point of view and apply it to oratory after Cicero's death, one might well argue that the fall of the Roman Republic and the successful institution of what can be seen as a Hellenistic monarchy by Augustus⁶⁸⁹ represents a triumph over an aristocratic oligarchy which was no longer effective. Thus, the rhetoric of the late republic, exemplified by Cicero, did not have a place in the new world order.

Is the strategy espoused by Fukayama best understood as an ideological confidence-trick: for the end of rhetoric 'read, in effect the suppression of political opposition by the new powers-that-be'?⁶⁹⁰ This viewpoint is perhaps more applicable to the views of scholars than to that of Romans in the first and second centuries AD. While not wishing to elide the

⁶⁸⁷ Fukayama (1989 & 1992) and Derrida (1993).

⁶⁸⁸ On Plutarch and the end of history see Dillon (1997) where Dillon sees Plutarch's view of history as similar to that of Fukayama. On the end of history in Tacitus *Annals* see O'Gorman (2000) 176–183.

⁶⁸⁹ It should be noted that while Augustus maintained the outward appearance of a Republican politician he is in essence the last of a series of military dynasts: Marius, Sulla, Pompey and his adoptive father. In his control of the Roman state and the introduction of ruler-cult he can be seen as acting in the tradition of Hellenistic monarchs. Syme (1939) discusses the relationship between members of the First and Second Triumvirates and Hellenistic monarchy and while he does not explicitly call Augustus a Hellenistic monarch it is reasonable to infer that such a description fits the evidence, particularly in the (Eastern) provinces.

⁶⁹⁰ Sim (1999) 8.

changes that took place, one may rightly stress the continuity between the republic and the Principate. Through what can be seen as a modified form of Hellenistic monarchy which integrated the ruling oligarchy and their ideology, the emperors attempted to curb the excesses of the Senate. Nevertheless, the competitive urge as a motivating factor continued to be integral to Roman elite ideology and self-definition. As such, an idea of a degree of containment and co-optation, or freedom within boundaries, is perhaps a closer approximation to reality than 'suppression'.

The recognition and negotiation of these boundaries is most well-known through the final speech of Maternus in Tacitus' *Dialogus de Oratoribus*, Rome is ruled by *sapientissimus et unus*⁶⁹¹ and *quid enim opus est longis in senatu sententiis cum optimi cito consentient?*⁶⁹² Yet, what has been taken as a straightforward endorsement of the political cause of the decline of oratory is, in fact, more complicated. First, while Rome may have an emperor, he is an emperor who needs advice and cannot rule alone effectively, so advice needs to be provided by men who have the ability to argue and persuade. Secondly, if Maternus' question holds true, such a proposal would need to be put forward in a rhetorically convincing manner by those who were skilled in oratory. We must also remember that Maternus is asking a question rather than making a statement. Thus, if the senate does not reach agreement quickly, then we can assume that lengthy discussion might well be required, which would require orators to make speeches. Likewise, Maternus' equivalence in *Dial.* 41.5 between the orators of his own day and those of the republic is only a point of view in a speech, best understood as a declamation, which can be argued against. One may counter it with, say, the views of Cicero (as expressed in the *Brutus*) that great oratory requires peace rather than strife; the point is that oratory and declamation and their place in Roman society are worth debating because

⁶⁹¹ *Dial.* 41.4.

⁶⁹² *ibid.*

they are still of value. Thus, while the views expressed by Maternus in the *Dialogus* may seem at a superficial level to espouse the end of rhetoric, this is not the case.

It is not that rhetoric has disappeared from Roman life: after all, speeches are still made in the senate, in the courts, embassies, and so forth, and rhetorical language permeates all the literary genres of the period. But the masters of social speech have now accepted a restricted context for their performance in exchange for the security of the social pyramid and, we should note, of their place at or near its top.⁶⁹³

Cicero's death,⁶⁹⁴ the starting point of the thesis, may seem like the end of oratory – and it is taken as such by declaimers in the generations after Cicero's death. Yet by the time Quintilian wrote the *Institutio Oratoria* in the late 90s AD he was both willing and able to make use of the heads of purpose to provide a trainee orator with a persuasive set of arguments which could be used to advise Cicero to save his life. In the sixty years between the publication of the works of the Elder Seneca and Quintilian, Cicero had become abstracted to represent Roman eloquence (a process which can be seen in responses to Cicero's death in *Suasoriae* 6 and 7). Cicero becomes someone about whom Romans are more willing and able to argue, his death matters less. In the Elder Seneca, even when Cicero's works are taken out of the equation, the declaimers are far more likely to urge Cicero's death than to advise begging Antony's pardon. This in turn confirms Cicero's self-presentation in his rhetorical works and *De Officiis*,⁶⁹⁵ and allows Cicero to assume the status of the paradigmatic Roman orator and a means for Romans to explore what oratory and the orator are and their place in society.

⁶⁹³ Habinek (2005) 12–13.

⁶⁹⁴ For a renaissance view of Cicero's death (one of the earliest extant representations) see Figure 1.

⁶⁹⁵ On which see Dugan (2005). This thesis assumes that Cicero's use of the *Regulus exemplum* towards the end of Book 3 of *De Officiis* is his way of anticipating his own proscription and letting his son know that good men die for the sake of the state. I am grateful to Dr Eleanor OKell for this point.

Nonetheless, this is only one view and one use of Cicero. The fact that declamations exist which lay the blame at Octavian's feet, or which argue against the predominant view of Cicero in our sources, allows us to see Cicero being used – he is rhetorical *materies*, something to think with, which allows Romans to construct their own 'Cicero' as each individual case requires. 'Cicero' can be used to allow subsequent generations of men and those with the potential to be men, to demonstrate their rhetorical (and political) skill, lay claim to status and engage in competition whereby they may even attain the level of status acquired by Cicero.

The thesis has shown how Tacitus' *Dialogus de Oratoribus* can be understood as a series of declamations which explore what oratory and the orator are and their place in society. By examining parallel passages the chapter has shown that the *Dialogus* is part of a tradition, beginning with Plato and continuing into late antiquity, considering the nature and use of rhetoric. The criticism of declamation has been shown to arise from Messala's inability to declaim *well*, and all the speeches are to be understood as rhetorical products – attempts to convince an audience of a particular point of view. None of these is complete in its coverage or effects and the lack of closure at the end of the work is fundamental to its nature and interpretation. By leaving the ending open Tacitus envisages the possibility that both the characters within the narrative and his readers will continue to debate what it means to be an orator.

Implicit in the text is the idea that Tacitus is constructing himself as Cicero by writing a Ciceronian dialogue,⁶⁹⁶ and by choosing to focus the dialogue on matters rhetorical he can be perceived as preparing his audience to accept him as the 'Cicero' of his generation, through the deployment of the works and skills of Cicero in his heyday. In providing his audience with an ever more sophisticated view of literary history⁶⁹⁷ Tacitus can be seen as

⁶⁹⁶ Cf. Haß-von-Reitzenstein (1970), Michel (1962).

⁶⁹⁷ Cf. Levene (2004a).

'attack is the best form of defence', thereby undermining the validity of the criticism of declamation and instead stressing its importance and utility. The Platonic criticism of rhetoric found in the *Gorgias* has been shown to be at the heart of the *Cena* and to be the foundation of the criticism of rhetoric throughout the *Satyricon*, this use of a Platonic intertext is reinforced and exploited in the mock-trial to lead the audience to question the use, and users, of rhetoric for themselves. Hence, Petronius' discussion of literary history and his mock-trial have been shown to engage with the same serious and sophisticated ideas about the ability to criticise and the identity of the orator as encountered in the other texts under discussion to suggest that Petronius is worthy of being read seriously. On the reading of this thesis the *Satyricon* is not just a piece of escapist fantasy but what may be described as an 'in-joke' for the Roman elite speaker, a work which contributes to the construction of Roman identity outside the *Cena* in passages which are frequently overlooked and even less frequently taken together. Petronius' highly entertaining presentation is a product of his aim to appeal to an highly-educated audience used to subtle techniques of reading and alert to the sophistication of the author, a audience well-versed in rhetorical techniques themselves as a result of their education.

This education is best shown in the *Institutio Oratoria* of Quintilian. The examination of Book 12, which went beyond the usual focus on the philosophical aspects of the *vir bonus*, gave us our best and most complete picture of how to be an orator in the late first and early second centuries AD.⁷⁰⁴ In taking his orator out of the classroom and into public life Quintilian has used his work to provide a textual *tirocinium* and a *vade mecum* which covers the orator's career up to and beyond retirement, showing that an orator's training is never complete and that his identity as an *orator* must be constantly demonstrated through performance. Quintilian's description of the preparation and conduct of a trial bears a degree

⁷⁰⁴ A partial exception is the section on remuneration, where Quintilian clearly has problems reconciling the Claudian partial repealing of the *Lex Cincia de donis et muneribus* with the *noblesse oblige* envisaged by the *mos maiorum*.

of comparison with modern forensic practice insofar as similarities exist between the two; as an experienced lawyer once said to one considering a life in the legal profession: ‘Remember, my boy, that there’s never a recession in the courts!’ This description is equally applicable to Rome under the Principate and coincides with Quintilian’s positive upbeat assessment of the oratory of his own day, demonstrating that the scope for performance still existed, despite all assertions to the contrary.

To conclude, the investigation of this thesis can be summed up in the words of Habinek:

What this large body of material, viewed comprehensively, suggests is that the personal and cultural transformations brought about by rhetoric involve language, relationship to tradition, gender identity, modes of interpersonal interaction, patterns of thought, and political affiliations. In short, becoming rhetorical, or becoming eloquent as the ancients would say, by reshaping individual subjectivity, reshapes culture and vice versa.⁷⁰⁵

The thesis has demonstrated that the concept of the decline of oratory should not be applied in the way that many scholars have taken it. Instead the thesis advances a reading of the literary sources which privileges continuity over change and establishes this continuity in particular areas: the criticism of rhetoric, the concept of the Roman man as *vir bonus dicendi peritus*, the need for education as acculturation⁷⁰⁶ and the inculcation of ‘masculine’ ideas, the utility of declamation in making forensic, deliberative and indeed epideictic speeches, and the centrality of the traditional pedagogical model of paternal instruction.

Thus, in answer to the question posed by the introduction, what does it mean to be an orator in the one hundred and fifty or so years after Cicero’s death, one may say that in many respects it meant what it always did, or, given Cicero’s status as the paradigmatic Roman orator, it can be seen as attempting to be, or even to better, Cicero. Thus Quintilian’s hope for the future, that a *perfectus orator* may yet come along, is not the pipe-

⁷⁰⁵ Habinek (2005) 61–2.

⁷⁰⁶ On rhetoric as acculturation see *inter alia* Habinek (2005) 60–78.

dream of 'rose-tinted' old age, but instead a realisation that orators and oratory still matter and that its practitioners will always strive to excel both one another and their models. This behaviour was integral to the orator and his place in Roman society: they had to be seen to be playing the game (in anthropological terms). Who you were, what you did, where you did it, when you did it, and how you did it all changed (to some extent) and yet remained in many ways the same. On the other hand, why you did it, as it was arguably the most important means of attaining and maintaining status for the Roman elite man, would always remain the same due to its centrality in Roman society.

hierarchy,⁷⁰³ in this case this insult relates to the character-types of New Comedy in a way that has distinct similarities with Cicero's use of such types in *Pro Caelio* and the *Philippics*. Tacitus' own use of Ciceronian prose-rhythm at this point encourages the reader to identify Crispus with Cicero and an anti-imperial attitude. This, combined with Tacitus' concentration on his other orators' ineffectiveness and his manipulation of narrative to ellide opportunities for mimetic representation, or even indirect report, of their speech, suggests that this may be part and parcel of his cynical presentation of the rule of one man and his removal of the opportunity for others to demonstrate manliness through speech, rather than an actual lack of orators and oratorical ability under the Principate. While O'Gorman's (2000) study argues that Tacitus' *Annals* is an ironic portrayal of Rome which relies on the misreading of signifying systems such as speech, she does not consider the use of the term *orator*. By taking up Tacitus' use of the term the thesis shows that Tacitus also manipulates this socially defined signifier. This would have been immediately apparent to his original audience but we can only penetrate it once we have become familiar with the cultural definition of the term. Tacitus' authorial agenda in the *Annals* complicates the picture in such a way as to suggest decline but, yet again, the appearance belies the reality.

Petronius' *Satyricon* is a highly engaging work (whose slippery nature and its associated interpretative problems belie its simple narrative style) in which oratory and declamation have also been shown to be dealt with with a surprising degree of subtlety. The criticism of declamation in the opening chapters arises from the inability of its practitioners to do it well (as has been seen in both Tacitus and the Elder Seneca) and thus is a case of

⁷⁰³ Crispus appears extensively (fourteen times) in Seneca *Controversiae*, where his oratorical abilities and ability to insult are beyond doubt. Thus, Tacitus is not able to deny the fact that he is worthy of the title of *orator*, but as Tacitus does deny this to other orators mentioned by Seneca this suggests that his usage of the term fulfils a wider purpose (see above). Crispus is not only an orator but a successful politician: he is suffect consul in 27, consul ordinarius in 44 and acted with Cn. Domitius Afer (also afforded the title *orator* by Tacitus) and D. Laelius Balbus for the defence of Volusenus Catulus (Quint. *Inst.* 10.1.23). He was married to Agrippina and Domitia Lepida.

taking up where Cicero's *Brutus* leaves off.⁶⁹⁸ In leaving the answer open, and allowing the internal and external audience to continue the debate, Tacitus allows Romans to keep considering what oratory is, its place in and use for society. In addressing the same issues as Cicero, Tacitus, his characters and audience can, in effect, see themselves as being like Cicero, thereby keeping the man, his works and ideas alive. This in turn has allowed us to see a close correspondence between the works of Tacitus and Quintilian,⁶⁹⁹ who also emphasises the centrality of the figure of Cicero in this period.

Declamation has been taken by critics, both ancient and modern, as 'the root of all evil' when considering rhetoric. Why should this be the case? As an educational tool it continues to be used into the Dark Ages in the West and is still being practised in Constantinople in the fifteenth century.⁷⁰⁰ Given that educational systems tend to stress utility, something shown by the evanescence of obsolete rhetorical textbooks such as Hermagoras *On Invention*, we must ask how can something as decadent and worthless as declamation can provide anything other than a badly trained product? Yet, if this were the case, why did it continue to be practised? The simplest answer is that declamation, despite its critics' protestations to the contrary, was useful and remained so. Given that elite ideology is governed by the *mos maiorum* and that a conservative society is likely to view any change as one for the worse, it is not hard to see whence such a view of declamation would arise. By examining declamation as a preparation for a life of advocacy and having identified an interplay between rhetorical education and transcripts of cases and legal instruments, the thesis has revealed that declamation may reflect developments in Roman law and this interrelation of rhetorical theory and practice exemplifies the utility of declamation.

⁶⁹⁸ On the relationship between the *Dialogus* and Cicero's *Brutus* see Gowring (2005).

⁶⁹⁹ It cannot be proved that Tacitus was, like Pliny, a pupil of Quintilian. However, despite the lack of evidence it remains an attractive hypothesis.

⁷⁰⁰ On the declamations of the Byzantine emperor Manuel II Palaeologus, see Heath (1996).

Examining oratory and declamation in the *Controversiae* of the Elder Seneca, with particular attention having been given to his prefaces, provided a great deal of evidence for rhetorical culture in the Early Principate. Seneca has been shown to problematise decline (like Tacitus and Petronius), which indicates that he is not as pessimistic about the future of oratory as the majority of scholars have taken him to be. In the light of this, and the recognition that the critics of declamation are not themselves good declaimers, the chapter re-evaluated the criticism of declamation in the prefaces to Books 3 and 9 to show that it should no longer be taken at face value. The existence and presentation of poor declaimers validates Seneca's project, which provides a textbook for the next generation of Roman men. Seneca's main pedagogical model, that of paternal instruction, is common to all rhetorical literature from Cato to Cicero to Quintilian and Tacitus. Each of these authors is concerned, however, not merely with the instruction of their own sons but with the wider education of Roman speakers to fulfil their role in society competently and appropriately. Thus, their endeavours not only educate but acculturate their audience and Seneca's views on rhetoric in his present day, while they contain an element of decline (a consequence of the Roman world-view), are not entirely pessimistic: while things have got worse they can improve. Seneca's implicit use of the *locus indulgentiae* envisages the possibility that Roman young men can, with the right guidance, become good Roman men, conforming to the norms of their class and society by being *viri boni dicendi periti*.⁷⁰¹

While there are several great studies of Tacitus' views on orators,⁷⁰² the examination of the use of the term *orator* in the *Annals* has demonstrated that Tacitus' orators may not be worthy of the title. Tacitus systematically denies the title *orator* to those worthy of it, with the exception of C. Sallustius Crispus (6.20.1), whose use of an insulting *sententia* demonstrates the orator's ability to assess his peers and position himself in the oratorical

⁷⁰¹ On which see Eyben (1993).

⁷⁰² Notably, Syme (1958) Ch. 25 and B. Walker (1960) Appendix 2.

APPENDIX – SPEECH DEFECTS IN ANTIQUITY

IN order to understand the nature of Tacitean word-play with regard to Q. Junius Blaesus (as discussed in Chapter 5), it is necessary to consider ancient views on speech impediments and their relation to oratory. It is reasonable to assume that speech impediments were no less common in antiquity than at present, yet evidence in both medical and rhetorical writers is notable for its relative paucity. There are, however, a few examples which help shed some light on this overlooked area of scholarship.

One of the first examples of a person in literature with a speech defect is Battus, the founder of the Greek colony of Cyrene in Libya, whose story is found in both Pindar⁷⁰⁷ and Herodotus.⁷⁰⁸ It seems that while Battus clearly wanted the god's help to cure his speech impediment, we have no evidence that it hindered him in founding Cyrene. Garland believes that Herodotus' narrative 'confirms the essential ambivalence of deformity as a sign',⁷⁰⁹ yet the fact that Battus wishes to be cured of his impediment could be seen as evidence for speech defects being viewed in a negative light.⁷¹⁰

Turning to Rome, we have a discussion of speech defects and their most famous sufferer as described in Cicero's *De Oratore*.

imiteturque illum, cui sine dubio summa vis dicendi conceditur, Atheniensem Demosthenem, in quo tantum studium fuisse tantusque labor dicitur, ut primum impedimenta naturae diligentia industriaque superaret, cumque ita balbus esset, ut eius ipsius artis, cui studeret, primam litteram non posset dicere, perfecit meditando, ut nemo planius esse locutus putaretur;

Cic. *De Or.* I.260

⁷⁰⁷ P. 4.59–63.

⁷⁰⁸ 4.155–8. see Garland (1995) 97.

⁷⁰⁹ Garland (1995) 97.

⁷¹⁰ In Aristophanes *Clouds* 862 and 1381 the verb *τραυλίζειν* 'to mispronounce letters, lisp, stammer' is used of children talking in baby talk, hardly a flattering comparison for someone with a speech impediment; it is also used of Alcibiades (see below).

We can assume from Cicero's comment that 'he could not pronounce the first letter of the art to which he was devoted' (namely rhetoric) that Demosthenes, arguably the greatest orator of antiquity, suffered from an inability to pronounce the letter 'r' correctly (he pronounced it as an 'l'),⁷¹¹ a disability which he shared with Alcibiades.⁷¹² Cicero describes him as overcoming his impediment by hard work and diligence so that his pronunciation was clearer than anyone else's (*ut nemo planius esse locutus putaretur*), to encourage the young orator to work at his craft, and to show that problems can be overcome with practice. Another discussion of speech impediments occurs in Quintilian:

Et illa per sonos accidunt, quae demonstrari scripto non possunt, vitia oris et linguae: iotacismus et labdacismus et ischnotetas et plateasmus feliciores fingendis nominibus vocant, sicut coelostomian, cum vox quasi in recessu auditur. Sunt enim proprii quidam et inenarrabiles soni, quibus non numquam nationes deprehendimus. Remotis igitur omnibus de quibus supra diximus vitiis erit illa quae ὀρθόπεια, id est emendata cum suavitate vocum explanatio: nam sic accipi potest recta.

Quint. *Inst.* 1.5.32–3

While it is clear that ὀρθόπεια means 'correct pronunciation' the exact nature of the speech defects described in section 32 has caused scholars problems.⁷¹³ Colson (in his 1924 edition of Book 1) quotes Diomedes on both iotacism and lambdacism, which he sees as differing from accounts given in Isidore and Martianus Capella of the same impediment,⁷¹⁴ which leads him to claim that the terms had no meaning to Latin grammarians.⁷¹⁵ While Diomedes describes lambdacism as *si lucem prima syllaba vel aliam nimium plene pronunciamus*⁷¹⁶ it is plausible that Quintilian is describing the defect which Demosthenes and Alcibiades

⁷¹¹ May & Wisse (2001) 124 n.235.

⁷¹² Cf. Ar. *Vesp.* 44, also Plutarch *Alc.* 1 (τραυλότης).

⁷¹³ Cf. Colson (1924) 61.

⁷¹⁴ They treat lambdacism as though it were iotacism. See Mart. Cap. *de Arte Rhetorica* 5.514 and Isidore *Etym.* 1.32.7–8.

⁷¹⁵ 'These doubtful and conflicting theories seem to me to make it possible that the terms were traditional, passed over from the Greek grammarians, but had no real meaning to the later Latin grammarians and possibly none to the earlier.' Colson (1924) *ad loc.*

⁷¹⁶ Diom. 453 *GLK* 1, 299.

suffered from. Indeed, Russell notes that *Labdacismus* is also obscure, and Latin grammarians give no clear account. One would suppose it to be a faulty pronunciation of *l*, or the lisping replacement of *r* by *l* (*traulismos*), satirized by Aristophanes (*Wasps* 44),⁷¹⁷ thus while it is not possible to prove exactly what Quintilian meant in this passage, the explanation offered by Russell does at least make sense and is one with which I agree.

The fact that the defects described by Quintilian are seen as *vitia* a noun which can mean both a fault and a vice is significant, especially when the traditional description of the Roman orator as *vir bonus dicendi peritus* is borne in mind:⁷¹⁸ speech impediments like vices affect the orator's ability to do his job well, and contain the possibility of undermining his gender and status. Quintilian later states at 11.3.12 *Nam certe bene pronuntiare non potuerit cui ... in iis quae subito dicenda erunt facilitas prompta defuerit, nec si inemendabilia oris incommoda obstabunt* 'Certainly, no one can have a good Delivery who lacks ... a ready facility for speaking impromptu, or who has an incurable speech defect' – delivery allows the orator to put his point across, to *perform* oratory, it is therefore understandable at a conceptual level that Blaesus does not manage to put his case to the Emperor and the Senate.

At 11.3.21 Quintilian notes that *Umor quoque vocem ut nimius impedit* which is similar to the views of Hippocrates in Galen's *Commentary on the Maxims of Hippocrates*, 32: *Τραυλοὶ ὑπὸ διάρροιας μάλιστα ἀλίσκονται μακρῆς* 'People who stutter are affected with chronic diarrhoea',⁷¹⁹ an ailment which Galen sees as caused by an excess of moisture in the head which works its way down to the bowels. Such an excess of moisture is also seen in Old Comedy in the figure of the *lakkoprôktos* whom Davidson (1997) 176–7 compares with Ar. *Prob.* 4.26, where an excess of moisture is seen as a cause of effeminate behaviour. Thus an inability to speak well may well be linked with behaviour which can compromise one's

⁷¹⁷ Russell (2001) 140 n.41.

⁷¹⁸ Quint. *Inst.* 12.1.1.

⁷¹⁹ Gal.17.1.50 [Kühn]

masculinity. While these are medical explanations of speech defects, we also have some legal evidence on speech impediments.

In Book 21 of the *Digest* of Justinian, where the Edict of the Praetors relating to the sale of slaves is discussed, there are three passages where speech defects are mentioned.

vitiumque a morbo multum differre, ut puta balbus sit, nam hunc vitiosum magis esse quam morbosum.⁷²⁰

Mutum morbosum esse Sabinus ait: morbum enim esse sine voce esse apparet. sed qui graviter loquitur, morbosus non est, nec qui ἀσαφῶς: plane qui ἀσήμως loquitur, hic utique morbosus est.⁷²¹

Quaesitum est, an balbus et blaesus et atypus isque qui tardius loquitur et varus et vatiis sanus sit: et opinor eos sanos esse.⁷²²

In these passages, *vitium* refers to a defect or disease, which can be further classified as a *vitium corporis*, a chronic physical defect or a *vitium animi*, a mental or psychic defect.⁷²³ Speech impediments are seen as a *vitium* as opposed to a *morbis*, which is 'a temporary sickness of the body while *vitium* (a defect) is a perpetual impediment of the body'.⁷²⁴ While the Edict of the Praetors refers to the sale of slaves, the attitude towards *vitia* and speech defects in particular concurs with that found in Quintilian.

⁷²⁰ D. 21.1.1.7

⁷²¹ D. 21.1.9

⁷²² D. 21.1.10.5

⁷²³ Cf. Berger (1953) 769.

⁷²⁴ D. 50.16.101.2.

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Figure 1: Popillius Laenas kills Cicero
 from Leonardo Bruni Aretino *Life of Cicero* c. AD 1500 (Den Haag, KB, 134 C 19 341r)