***Past and Future* Background Briefing:**

Roman Rhetoric and the Arts of Persuasion

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Topics:

- *The Growth of Legal Process*
- *Courts in the Roman Republic*
- *The Arts of Persuasion*
- *Oratory in Practice: The Trial of Milo*
- *Humour and Lies*
- *Conclusion: Beyond Rhetoric*

Abstract

This article explores the significant role of rhetoric and the arts of persuasion in the evolution of Roman political and legal life. The rule of law, public debate and the regulated role of elected magistrates were central to the empowerment of the Roman Republic beyond its early days as a small city-stated ruled by kings. Rome had a mixed framework of laws and practices that underwent numerous changes, while the *mos maiorum* regulated custom via unwritten rules and traditions, linked to religious practices designed to ensure the goodwill of the gods (the Pax Deorum). As the Republic came to control a vast empire, its assembly, court and jury systems expanded as well. This led to the flourishing of rhetoric, oratory and legal advocacy as a major career paths for ambitious 'new men' including the young Cicero. Latin rhetoric, influenced by Greek theory and educators, became a standard requirement for all who sought higher office, while even military leaders such as Julius Caesar and Mark Antony were praised for their skilful speeches. The practical and political significance of such oratory is explored through the writings of Cicero, with a brief assessment of his unsuccessful defence of the demagogue Milo. Surprisingly, a marked feature of Roman court speeches was their extensive use of humour. Famous speakers used exaggeration, irony, satire, character-assassination, and sometimes even outright lies, when they could get away with them. Indeed, Cicero was attacked by his enemies as 'the stand-up Consul'. Despite some decline in the imperial period, Roman rhetoric as skilled and informed debate was at the heart of good policy and effective government. Roman practises helped inform important later trends, including adversarial systems of law and an evidential approach towards transparent, reasoned judgement. The importance of deliberative reason and public rationality was already recognized by Aristotle and Cicero, and remains the cornerstone of good governance for tolerant, cosmopolitan societies. Rhetoric, as it developed in the Greek, Hellenistic and Roman worlds, was an essential part of this process.

1. The Growth of Legal Process

Several major strands in Roman culture and life are essential in understanding the Republic and the early Empire. Two of these are their legal processes and the role of rhetoric and oratory in public life. The rule of law and the regulated role of elected magistrates were central to the emergence,

evolution and growth of the Roman Republic beyond its early days as a small city-stated ruled by kings in central Italy. As noted by Livy in his account of the early Republic: -

> My task from now on will be to trace the history in peace and of a free nation, governed by annually elected officers of state and subject not to the caprice of individual men, but to the overriding authority of law (Livy 2.1).

It is dangerous, however, to think of the body of Roman law as a singular and established constitution *per se*. Rather, Rome had a mixed framework of laws and practices that underwent numerous changes, and our understanding of the law of the Republic is itself based on complex historical reconstructions. Instead, the *mos maiorum* regulated much of Roman life via 'unwritten rules, traditions, and mutual expectations' (Duncan 2017, p4). It constituted a wider framework of custom that shaped legal and political practise from the earliest times. Later on Greek and Hellenistic philosophy, Greek constitutions (from Athens to Rhodes) and Greek oratory had considerable impact on Roman legal theorists. Thinkers as diverse as Cicero and Dio Cassius were deeply influenced by notions of constitutional form and change that went back through Polybius to Plato and Aristotle. Likewise, legend suggested that before Roman law was codified via the Twelve Tables of law (originally ten, with two more added in 450-449 BCE, Lewis & Reinhold, I, 1990, pp107-116), a commission was sent to various Greek cities in 451 BCE, with particular influence from the Athenian laws of Solon (Miles 1988; Kolbert 1979). These influences were real but should not be exaggerated: 'Rome's foundations came into being mostly outside the mainstream of Hellenistic culture' (Miles 1988, p196).

In the early Republic there had originally been a strong connection between religious practices and the general body of Roman private and criminal law. Pontiffs and priests would often act as legal advisers, since they had a detailed knowledge of the exact procedures and customs which guided large areas of public life. Thus, the three Pontifex Maxmuses P. Mucius Scaevola, P. Crassus Mucianus and Q. Mucius Scaevola, all acted as legal 'council' (Scullard 1966, p209). Roman *religio* as not so much a system of credal belief, but a set of actions designed to ensure the good will of the gods in relation to the state and its population. The Pax Deorum ensured the good fortune of Rome and was a regulator of daily life and practice for priests, temples, officials and for Roman elites (see further Champion 2017; Ferguson 2024). This was particularly important during periods of crisis and war. Plutarch commented that the Romans 'have been known to perform a single sacrifice thirty times over, because some omission or mistake was believed to have taken place', having extreme 'piety and reverence' in religious matters (Plutarch *Coriolanus* 25). In preparing for, and conducting, a war it was essential 'to appease the anger of the gods or to avert inauspicious omens' by a scrupulous conduct of all appropriate rituals (Plutarch *Fabius Maximus* 18). A special class of priests, Fetial priests, were engaged in declarations of war and negotiating peace treaties (see Livy VII.6-7). Ritual and legal issues were often linked in the early Republic, e.g. external relations and declaration of war: -

> The most signal part of Roman "external" law; however, is the archaic jus fetiale (feciale), a body of sacramental rules developed by a special group of priests, the fetiales. The latter were entrusted with the administration of religious ceremonials used in treaty-making, war and other international matters, such as legation and extradition. Toward the end of the Republic the authority and the functions of the fetailes faded, and only fragments of these rules have come down to us. Most

> memorable was their participation in the grave decision whether the Romans should begin a war. In a solemn and formalized procedure they would decide whether a war would be "just" and "pious" - *bellum justum et pium* - so as to be favored by the gods; the ultimate decision on the waging of a war was left to the Senate and the people. That particular feature of the jus fetiale probably belongs to a very early phase of the Republic, but indirectly, . . . it assumed a lasting significance. (Nussbaum 1952, p679)

Somewhat different details in Livy and Dionysius of Halicarnassus nonetheless include the use of embassies and formal demands for restitution before war are declared by the *fetiales*, with this group being involved in treaty-making in the early Republic, though claimed rituals such as throwing a spear into enemy territory or before the Temple of Bellona may have been later inventions (see Wiedemann 1986, p479, p484). In one view, the fetiales would be early legal experts on relations with allied and treaty-bound states (*foedera*) rather than just ritual priests (Wiedemann 1986, pp487-488). To this ritual weight must be added the *mos maiorum*, the body of customary laws which formed the basis for Roman civic life. In particular, persuasive appeals to the *auctoritas maiores* (their prestige and authority) were almost 'natural, unreflective elements of Latin discourse' (Miles 1988, p186), but persuasion was often crucial even for prominent military leaders in the interpretation of the 'customs of the Fathers' (see Livy 2.56).

Early legal experts did begin to write on such issues: the publication of the *Annales Maximi* by Maximus P. Scaevola provided a considerable amount of information on law and precedent, the treatise on civil law published by his son Q. Scaevola (consul in 95 BCE) and the writings on religious law by Q. Fabius (consul 142 BCE) all provided a growing body of legal theory (Scullard 1966), while M. Manilius and M. Junius Brutus were also involved in various jurisprudential debates on slavery and property issues (Bradley 1989). Unfortunately, little more than fragments of these early works survive, in part due to their consolidation under later Imperial Digests and Codes that sought to limit access to earlier versions of legal precedent (Kolbert 1979). By the late Republic we find legal studies becoming a more specialised task, often taken up by young men or *equites* to help build a political career. A rising or 'new' man might become useful as an adviser to magistrates or as an expert on the drafting of legal documents, or indeed, in conjunction with rhetorical skills, as a prosecutor or advocate in the court system (Kolbert 1979, p24). It is with this background in mind that we can comprehend some of the complex alterations in the court systems, and the fierce debates about proper process which occurred.

Two aspects of Roman Law as revealed in a coin of 54 BCE: the quest for liberty as represented by the goddess Libertas, and on the reverse, the necessary authority of Roman magistrates, as symbolized by the fasces (an axe sheathed in a bundle of rods) carried by their attendant lictors, while the group as a whole is preceded by an *accensus*, a civil servant that helped magistrates in their various roles, e.g. in keeping order in the courts. Silver denarius issued by L. Junius Brutus, later on one of the assassins of Julius Caesar.[1]

In particular, by the time of the late Republic the old trial procedure under a Praetor (*legis actio*) had become too rigid to cope with the range of prosecutions occurring and the wide variety of cases held in Rome as the empire developed. Under the *Lex Aebutia*, around 150 BCE, we find the introduction of 'an alternative formulary system under which the praetor could allow formulas that were drafted to meet the requirements of the specific case' (Scullard 1966, p210). The residing magistrate, usually a praetor, would publish, either at the beginning of his office or at the beginning of taking up control of a particular court, the general procedural rules he would follow and the kind of expectations which he would place on accusers and defenders. This was a form of edict, published each year and valid throughout that year, written up in a conspicuous place in the Forum on large white boards - hence the term 'album' for the contents and the jury selection groups (Jolowicz 1932, pp95-6). This gave such 'judges', who were elected officials and politicians rather than appointed officials, somewhat more freedom of action and discretion than we might find in many modern legal systems.

We also find the development of an extra body of law to help deal with non-citizens, the *ius gentium*, law of the peoples, i.e. foreigners in Rome, non-citizens within the empire, and those who interacted with Roman citizens, with some aspects of Roman law itself adapted to accommodate them. For example, under edicts erected in the Hellenic city of Cyrene (in North Africa), we find

[1] Image used courtesy of the British Museum, https://www.britishmuseum.org/collection/object/C_2002-0102-4364 under Creative Commons (CC BY-NC-SA 4.0).

Augustus and the Senate of Rome establishing procedures whereby it would be easier for locals to find redress against the extortion or acts of Roman citizens abroad. Rather than forcing such hearings to always be held before Roman citizens or brought into Rome, with its attendant delays and the costs of bringing witnesses in from distant regions, local courts could be empanelled with juries one lower financial rank than required at Rome, i.e. the group below the *equites* could be drawn on, while half of the jurors could be Greeks if the indited person so chose (see SEG IX no. 8, *i*, in Lewis & Reinhold, I, 1990, pp591-592). For lesser disputes (non-capital offences) among Greeks, the governor might decide the case or else set up a panel of Greek jurors (see SEG IX no. 8, *iv*, in Lewis & Reinhold, I, 1990, p593). Although still presided over by a ranking governor or Roman official, these new court formations would be more aware of local concerns and interests than the older courts convened by regional governors, which usually consisted of their own *consilium* (group of advisers) and the leading Romans of the province. Under the older court system fair outcomes for local grievances would have been hard to achieve for several reasons: the strong dependence of the Romans on their local governor, his ability to stack the combination of people chosen to sit on his board of advisors, as Verres had tried to do in Sicily during his exploitative governorship through 73-71 BCE (he may have illegally extracted forty million sesterces, according to Cicero *In Verrem* 1.56), and the fact that local representatives would have been drawn in only when they held Roman citizenship. The provincial ruling class had always been able to 'close ranks' on even eminent members of the local community. The kind of jury panel envisaged in the Cyrene edicts is more balanced, though it is uncertain how far such a system was applied to other areas in the empire. Likewise, we also hear of legal advisors being assigned by judges to help provincials, e.g. to Sicilians in a case being heard by Scipio. However, the counsel supplied was apparently a very stupid family friend of the Judge, and the Sicilian replied:

> "With all due respect, your Honour, give that lawyer of yours to my opponent – then you won't need to assign anyone to me" (Cicero *On the Ideal Orator* 2.280 B.10; on the role of humour in oratory, see further below)

The *ius gentium*, moreover, evolved in its usage during the empire from cosmopolitan to universal claims: -

> Roman law held out a convenient name for the new discipline; jus gentium (law of nations, droit des gens). In ancient Roman law, to be sure, that term had a different significance. It meant first a quasi-cosmopolitan segment of municipal Roman law designed primarily for litigation among or with foreigners; in a broader - as it were, philosophical - sense it meant law common to all or to many nations (for instance, protection of property). It was in the latter sense that jus gentium included rules of international law such as the sanctity of envoys or the captor's right to war booty; in fact, international law is to a great extent necessarily "universal" (Nussbaum 1952, p682; see further Livy 2.5 & 2.42).

Civil law (*ius civile*), of course, underwent its own development in Rome under the impact of precedents set by magistrates, *ius honorarium* (Scullard 1966), as well as by various reforms promoted through the Senate. The attempt by Q. Scaevola to codify the huge mass of statutes and interpretations that had been received by the late Republic was a needed but daunting undertaking. The other main development was the setting up of several standing jury courts, the *quaestiones perpetuae*, for specific sets of crimes. Criminal law, however, was not at this stage codified into a coherent system, though this was one of the tasks that Julius Caesar may have been contemplating

before his assassination. In general, the trend was towards a more systematic and extensive treatment of civil law, which developed an important intellectual legacy: -

> The civil law of Rome in its developed form as it has come down to us is undoubtedly one of the greatest achievements of the human mind and spirit. After so many centuries of so-called civilization, progress and culture it is well for twentieth-century man, taking for granted, as he does, that among the plethora of things which the state will provide for him is a system of law which he supposes will ensure justice, and regulate society, to reflect that he owes directly to the Romans the very existence of a theory of such a thing as law. Had that theoretical base not been brought into existence, present-day lifestyles would be unlikely to exist either. The Romans were the first to regard law as a science by means of which they could look at the world, with all its people and property and intermingling relations, through juridical concepts . . . (Kolbert 1979, p7).

It must be stressed, however, that the emergence of law and legal procedures was born from a deeply political and public process moderating the conflict between social orders on the one hand (Millar 1986), and the relations of Rome to it wider inter-state environment: -

> By this standard, *libertas*, and with it the organization of Romans for voting and the rule of law, gain prominence through the recurrent and extended attention to the struggle of the orders . . . In addition, the narrative positioning of the political and social struggle for *libertas* matches the historical context that Livy ascribes to it. Just as the narrative of the struggle for *libertas* is framed by attention to place and religion, so the actual struggle is itself circumscribed and limited by those foundations; the necessity of defending the city against foreign invaders and the force of religious scruple are two principles that contain intense rivalry between plebeian and patrician and prevent it from breaking out into actual civil war (Miles 1988, pp200-201).

2. Courts in the Roman Republic

Any Roman magistrate of rank, especially those with substantial *imperium* and *potestas*, such as the praetors and consuls, could enforce the law upon Roman citizens, or be asked to conduct an initial investigation into a case, or to oversee a court or trial. This was also the case under military law, where the commander with *imperium* originally had complete jurisdiction, and could try and punish, even with death, not only individual Romans and allies but even entire populations. Major treaties, of course, had to be ratified by the Senate and People, as did acts of war (if interpreted as major new campaigns rather than defensive or on-going operations). Nonetheless, the commander in the field would rarely have the time to wait for approval in the Senate to be returned to him before taking operations within his province; in most cases the proconsul or propraetor would take reasonable actions which he assumed would be ratified later on. Such actions were usually only disapproved if the commander was defeated, entered into treaties prematurely which seemed to be to the detriment of Rome, or was suspected of treason. Likewise, charges might be brought for the planned use of armies against the state (e.g. the knight Gallus, the first governor of Egypt, who superseded his authority, see Ferguson 2024b), for those suspected of having been bribed (as in the case of the early commanders sent against Jugurtha in North Africa, Sallust *Jugurtha* 40), or if a major political opponent in Rome could persuade the Senate to attack the officers in command, as happened to Gaius Hostilius Mancinus over his defeat in Spain by the Numantines and the treaty he signed to save his army, circa 137 BCE (Wiedemann 1986). If a signed treaty or peace agreement was repudiated, then the commander concerned might be handed over to the enemy, as happened Claudius Clineas over his treaty with the Corsicans in 236 BCE (the Corsicans did not want him, in the end he was exiled). This procedure was originated in part due to religious scruples over the

giving of oaths that were part of treaty processes: if a treaty was not ratified then the commander by default became an oath-breaker (Nussbaum 1952; Widemann 1986).

However, even these military prerogatives begin to be eroded in the later part of the Republic: both corporeal and capital punishment are limited, and often commanders prefer to refer such severe matters back to the Senate (Jones 1972). Likewise, we find the growth of the procedure whereby the 'military court', consisting of the ranking officers and his military tribunes, would try the case, but let the penalty by carried out by the common soldiers, who might either stone or beat the culprit to death, or let him escape if sufficient good will existed towards him (Polybius VI.37; Jones 1972, p24). During the second century there was also an effort to limit the arbitrary actions of Roman magistrates in flogging or executing allied citizens: a coin issued just before 100 BCE had as a legend PROVOCO, with an image of a Roman magistrate putting his hand on the head of a man, while a third holds rods - the coin probably refers to an appeal (a challenge) made against punishment (Jones 1972, p23).

However, in all major cases of political, civil or criminal law within Rome, the initial investigations or decision of a magistrate (often the urban praetor) had to be been confirmed by one of the Roman courts. Two major types of courts existed under the Republic. The first consisted of the popular court, the *iudicia publica*, which was the popular assembly voting to confirm a conviction and its penalty. This was the court to which any citizen might in theory appeal for crimes with serious penalties such as death, exile, or heavy fines. The first postulated case of the appeal, the *provocatio ad populum*, was believed to have occurred as early as 509 BCE (Jones 1972, p1) and was an important issue for the period 507-494 BCE since it seemed to undermine the authority of consuls as much as protect the rights of citizens (see further Livy 2.8-30). However, this procedure developed as part of the contest of orders in the early Republic, limiting the arbitrary powers of magistrates and consuls (originally patricians), who could be interdicted by the intercession of the sacrosanct person of a plebeian tribune, who emerge as a major political force from 494 BCE (see Livy 2.32-55). At times, however, we do hear of direct appeal to the plebeians as 'a people' to act even before or without the agency of tribunes, e.g. the case of Volero Publilius in 473 BCE (he was thereafter elected as tribune of the plebs in 472 BCE, Livy 2.55-58). The only early exceptions to this appeal procedure were under emergency powers granted to the office of dictator (which usually lasted for six months), or in the cases of special courts set up with the consent of the will of the people to try specific cases.

The question we might ask, however, is how often such a large and clumsy court procedure could be invoked. The German theorist Wolfgang Kunkel, for example, envisages that such popular courts would only have been established for political trials, in which a plebeian was being defended, or a person had been charged by a tribune for crimes against the state (in Jones 1972, p2). However, surprisingly, this process does seem to have evolved in the early Republic and thereafter became a principle that might be invoked under specific conditions.

Several factors needed to be considered in this context. Early Rome was a type of city-state (though with remnant tribal elements), and the calling of an assembly, or part thereof, would not be

excessively difficult for a polity of limited territory. The early importance of the three assemblies (Centuriate, Tribal, and Plebeian) under normal conditions is hard to exaggerate:

> The democratic element of the Roman constitution is often underrated, but the Assemblies were incredibly powerful. Only an Assembly could enact a law or pass a capital sentence on a citizen. And while a citizen could always appeal a verdict *to* the Assemblies, there was no appeal *from* the Assemblies. (Duncan 2017, p9).

Murders and violent crimes, moreover, were at this stage rather personal, in that both the accused and the accusers were probably known to a sizeable portion of the citizen body. Such public trials, for example, are readily attested in the large Athenian jury courts, which ranged in number from 501, to over a thousand, or to virtually the entire Assembly. The procedure became gradually more unworkable as the Athenian state and empire grew. We also have significant historical evidence of cases of trial by popular courts in Rome, and of appeal to them, down into the second century BCE. For example, we find the tribune C. Caelius prosecuting and convicting C. Popillius Laenas for *perduellio* before the popular court, in that he surrendered to save the lives of his army, a 'secular treason' involving disloyalty to his country, in 106 BCE (Jones 1972, p4; Cicero *Ad Herenn* I.25; IV.34). A similar prosecution was conducted in 104 BCE unsuccessfully against Junius Silanus for making war against the Cimbri tribe without orders (Jones 1972). Other treasonable actions included neglect of taking the auspices before a battle in which a defeat followed, cowardice while in command of an army (Jones 1972), and taking bribes to secure a favourable peace for an enemy.

These were mainly political cases, but we also hear of major criminal cases, e.g. Q. Fabius Maximus circa 105-102 BCE was tried before the *comitia centuriata* for killing his own son (Jones 1972), while a certain Cn Sergius Silus was convicted before the people of bribing a woman to commit adultery (Jones 1972). Criminal cases also included sodomy, some forms of magic (note the common use by the 1st century BCE of 'binding curses' on lead tablets, *tabella defixionis*, aimed at harming or killing opponents, see *CIL*, I, no. 2520 in Lewis & Reinhold, I, 1990, p513-514), perhaps arson, and certain pecuniary operations, though theft and assault were part of civil law and handled by civil courts which might hand out fines (Jones 1972). By the early imperial period acts of magic and the casting of horoscopes were viewed as acts of treason if conducted on the lives of important persons or if they involved the fate of members of the imperial household. Thus the emperor Tiberius may have had a personal astrologer, Thrasyllus, whom he trusted, but also had other astrologers expelled from Rome (Tacitus *Annals* VI.20; Suetonius *Tiberius* 36).

The general trial procedure as reconstructed from historical cases seems to have been: -

> First came notice of trial. Then three sessions at intervals of (at least) one day, at which the magistrate investigated the case, then after an interval . . . the formal judgement of the vote of the people. (Jones 1972, p6)

These delays in proceedings that may have allowed citizens to move in from the surrounding countryside to vote in trials significant to them. For voting on bills and laws there was a delay of three market days after their introduction before they could be voted on: since market days occurred approximately once a week, this meant a delay of 18-24 days, an interval important for laws affecting wider Italian interests (see Duncan 2017, pp27-28).

The accused was rarely arrested, detained, or even asked to provide bail. Exceptions included cases where there was a direct threat to the state, as in the Cataline Conspiracy of 63 BCE and major cases where violence had been used, while generally people of more humble origin were more likely to be kept in prison only for a short time, awaiting trial or execution (Jones 1972). The Roman state did not have an official police force, though the lictors preceding consuls could have applied some restraint on individuals, and there was a small 'night watch' which dealt with fires and might apprehended criminals and lay information before a magistrate (Jones 1972, p26; this private system would only be formalised and expanded under the Emperor Augustus as the *vigiles*). Rome only had one tiny prison during this early period, used more for temporary holding purposes. In general terms, by the early imperial period if a person was held in jail before a serious trial, this would in effect become a place of execution (Garnsey 1966).

The magistrate in this procedure was also obliged to specify the penalty along with the charges (Jones 1972), so the assembly or jury would know the exact outcome if they found a person guilty. Penalties might include death, a fine, exile, or some loss of status or civil rights. Imprisonment of any sort was not a penalty in the late Republic. However, if the accused did not appear in court for any major offence, he might automatically be declared guilty, in many cases then being exiled with a loss of property and civic rights.

The magistrate in such cases sometimes had a prosecution role, that is, bringing charges forward against a person on behalf of the state, in other cases investigating charges lodged by another. In major cases the magistrate would have taken the auspices and summoned the assembly; at a later date when tribunes call the *comitia centuriata*, they would have needed a praetor to take the auspices for him (Jones 1972). The magistrate could also can limit the time which speakers had, as well as arrange for evidence to be submitted under oath (Jones 1972). The final session could bring in new evidence, as well as allowing final speeches, *perorata causa*, to be given for either side (Jones 1972, p9). The defendant, of course, might either speak for himself or have another do so, especially if it was a person of high prestige or authority, or a skilled writer or orator, e.g. Cicero made his early career as a writer of defence speeches. Voting would then follow, which after 137 BCE was taken by secret ballet, except for treason trials (Duncan 2017; Jones 1972). In the case of trials for corrupt practises of governors, there might need to be considerable delays for witnesses to be brought in from the provinces, e.g. see Cicero's complaints about failures of the prosecution to produce witnesses from Gaul (*On Behalf of Fonteius* 11-12).

We can see these procedures concerning prosecution and penalties in important political speeches. For example, Cicero's speeches against Cataline functioned in this way, even although the *senatus consultum ultimum* decree used by Cicero against Catalina was an exceptional use of the Senate's authority, including the major debate which followed on the proper penalty for the conspirators, including a speech by Julius Caesar (see Plutarch *Cicero* 19-22). Cicero's accusations of Catiline before the Senate, then, acted as the initial laying out of charges (Cicero *Against Cataline* 1), the later speeches bringing the people around to accepting, if not actually voting, upon the proposals of capital punishment for the conspirators. As noted by Plutarch, it was important to remain persuasive especially when presenting unpopular policies: -

> Indeed, Cicero, more than anyone, made the Romans see how great is the charm which eloquence confers on what is good, how invincible justice is if it is well expressed in words, and how the good and efficient statesman should always in his actions prefer what is right to what will win popularity, and in his words should express the public interest in a manner that will please rather than prove offensive (Plutarch *Cicero* 13).

During the second and first centuries the voting on cases where only a fine was involved went before one of the two assemblies drawn up by tribal divisions, either the plebeian assembly (*concilium plebis*), or the *comitia tributa*, a body drawn up on the basis of tribes allocated on a territorial basis and originally used for taxation and military levies (Jolowicz 1932, pp20-1). This last assembly originally had 4 city tribes, to which 17 country tribes were added, then others until a total of 35 tribes were formed. Technically, the plebeian assembly would only be used if tribunes or plebeian aediles were conducting the case, though in our sources these two tribal assemblies are often confused (Jones 1972; Duncan 2107). In general, it seems that these tribal voting groups were somewhat more representative in the sense of individual citizens having a somewhat more equal vote, though the tribes in Roman territory probably had a greater weight than the voting of citizen Latins who were allocated to newer tribes, later on distributed by lot (for the early importance of the Tribal Assembly as moderating the power of the patricians, see Livy 2.55-61).

What is clear is that these assemblies remained highly active in making law during the second century BCE, as noted by Fergus Millar: -

> The issue - of the extension, or rather non-extension, of citizen rights - was only one of a whole series of issues on which the Roman people were called upon to vote between 150 and 90 B.C. These issues were not all controversial, and the passing of a law might on occasion be a mere formality. But they did include the setting up of permanent *quaestiones*, for *repetundae* [peculation by officials or governors] and *maiestas* [treason] at least, and the qualifications and duties of the jurors; the procedures in voting - that is, above all the series of laws on the use of the ballot passed in the 130s and 104; the establishment of the basic constitutional principle of the election of members of the priestly colleges, proposed in 145, passed in 104; the use of the public land in Italy, and in Africa; the use to be made of the legacy of Attalus of Pergamon; the conduct of wars - in at least three forms; the direct appointment of commanders to wars, overriding the normal distribution of *provinciae* by lot; the use of tribunician legislation passed by the people to give direct instructions to holders of *imperium*, as in the law of 101/100 on the Eastern provinces; and the passing of laws to establish special ad hoc *questiones* to examine misconduct in diplomatic and military affairs. (Millar 1986, p6, brackets added)

A conservative figure such as Cicero in his *De Legibus* recommends that judicial activities be conducted by magistrates, supported by right of appeal to the people (III.xi.27). Though critical of the abuse of liberty which becomes license in the people and tribunes (Cicero *De Legibus* III.ix.23-4), Cicero was suspicious that any other system would soon break down his conception of a balanced constitution founded on a real concord of the different orders in society. Furthermore, he himself was fully aware of the many problems facing the standing juries of the late Republic. That he can recommend a procedure for criminal trials of magistrates pronouncing judgement, followed by an appeal to the popular court, which then voted, shows that to Cicero this procedure had existed in the past, and could be carried on (Jones 1972), at least in some cases.

Appeals would not always be made to popular courts or assemblies unless a capital charge was involved. In cases of clear guilt for lessor offences the convicted party might prefer to avoid presentation to a popular court, where extra associated charges could be appended. It is unlikely that for many cases the full assembly would need to vote. By the 3rd and 2nd centuries it seems that the *comitia centuriata* is the main assembly involved, and the voting by centuries would settle the issue by a majority outcome before all the different class-groups had been called. In the *comitia centuriata*, from the point of view of Cicero, the 'good men' controlled the vote (Jones 1972, p3). Moreover, it is clear in many cases that appeal in effect involved the intervention of a tribune. By the imperial period appeals 'to Caesar' might be delegated to the urban praetor, as under Augustus, or if originating from the Senate might be considered by the emperor himself, e.g. as found in the reigns of Claudius and Nero (Garnsey 1966). By the second century CE, such appeals would have largely been at the discretion of governors or other officials, with the emperor tending to protect privileged citizens via 'rescripts conveying immunity from punishments' rather than systematic recourse to appeal procedures (Garnsey 1966, p189).

We see during the 3rd and 2nd centuries BCE the strong development of praetors and propraetors as judges, whether in Rome as the Praetor urbanus, or between Romans and foreigners as the praetor peregrinus (Kolbert 1979, p15). Praetors sometimes take on a 'travelling judge' role, whether on the way to their province or in their own governorships, e.g. the praetor Naevius Matho before proceeding to Sardinia investigated numerous cases of poisoning over a four-month period before taking up his province (Jones 1972). These special cases were often referred to them by the Senate, and were not the praetor's routine function, contra most secondary accounts, until later in the Republican period (Jones 1972). Consuls and aediles might also be given charge of investigations, depending on their relative complexity and importance. For the second century, in many cases the decision of such judges would be accepted in conjunction with support from the Senate, without appeal to the assemblies. Protest would probably only be strong when the cases demonstrated political bias or when they were part of the conflict between the plebeian and patrician orders (Duncan 2017; Jones 1972), though the overall trend does indicate some encroachment of the Senate on the traditional rights of the people. This was particularly the case when a *senatus consulta* had been passed during a crisis, and the *Lex Sempronia* of 123 BCE seems to have been passed to assert the right of appeal against the unilateral actions of magistrates, e.g. against the banishment of citizens without trial (Plutarch *Gaius Gracchus* 4; Jones 1972, p33).

In summary, the popular courts were central aspect of legal procedure down into the early 1st century BCE, and the right of appeal remained an important legal and political consideration that was gradually eroded through the late Republic. This process, of course, was later transferred into an 'appeal to Caesar' which might be made, in theory, by any Roman citizen, in Rome or abroad, against the actions of any Roman official or governor. In reality, it seems more likely that this appeal would only be effective if the governor agreed to it, with the case then being transferred back to Rome, e.g. this was effective in the case of the apostle Paul as a Roman citizen, thereby escaping flogging when arrested by Roman soldiers and avoiding trail by the Jewish authorities in Jerusalem (*Acts*: 22-27).

The second key development in the court system was the evolution of standing panels of jurors supervised by magistrates: the *iudicium publicum* or *quaestiones perpetuae*. These were drawn from a body of Senators, equites, or both, and sometimes included a group of persons just below the *equites* census level. Exactly who should sit as jurors in this courts became a burning political issue: Gracchian reforms in the *Lex Acilia* established the *equites* as the sole group to be empanelled, thus acting as a counterweight to the authority of the Senate. Accounts in sources suggest groups of between 300 and 450 from which a jury might be formed (Plutarch *Caius Gracchus* 5; Tacitus *Annals* XII.60; Johnson et al. 1961, pp38-46). This did, however, lead to some unfortunate cases where, for example, Senators returning from provinces might come under attack in the courts dealing with *res repetundae*, extortion in the provinces, especially where they had undermined the interest of equites operating there (Jolowicz 1932, p325).

Such charges had been made as early as 171 BCE by Spanish delegates, though standing courts probably did not evolve until after 149 BCE (Jones 1972). However, such cases would become more common from this time onwards. Penalties under such charges were for restitution, perhaps at twice the initial damages, while other penalties would be invoked under separate charges. Ironically, if governors had attempted to limit the more rapacious activities of the *publicani*, the tax farmers and underwriters drawn from the equites rank, they in turn might find themselves suffering under such juries (Duncan 2017; Scullard 1966). This was the main reason why Sulla legislated for such juries to be selected only from Senators. In his reforms, Sulla from 81 BCE onwards set up 7 permanent courts of this type, each one trying cases of different sorts including 'murder and poisoning, forgery, extortion, treason, electoral bribery, peculation and assault', there being no appeal from these courts at that time (Scullard 1966, p86). The structure of these courts, with their quaestors directing the court and a group of men selected to judge the case as a jury, seems to have been derived from cases of private law where a magistrate appointed a small panel to decide retributions or fines (Jones 1972). Quaestors would take charge of the different courts by lot. The magistrates would choose 450 persons of the necessary social class (later on probably a large group pre-selected by the urban praetor, Jones 1972), between 30 and 60 years of age, and then empanel a smaller group for actual duty, depending on the policies of the magistrate and the type of case.

Cases would need to wait until the appropriate court was free, though certain cases could be identified as urgent and given priority. One tactic that was used was for an accused to counter-charge his accuser with a crime and try to get the case put through first, e.g. Scaurus, charged with extortion by Caepio, then set about to convict Caepio of the same crime. He managed to get his case in first by asking for a shorter procedural time to get witnesses. Scaurus won his case, and therefore the accused was not able to continue the prosecution against him (Jones 1972). Of course, malicious charges might be penalised under the laws for judicial corruption, or under the charge of *calumnia*, that is, of bringing a false charge under oath. In a case where an extremely small number of jurors find the defendant guilty, the accuser might have the normal sentence imposed upon them as a rebounding penalty (Jones 1972; Jolowicz 1932).

Sulla's choice of senators as jurors only lasted about ten years: in 70 BCE Aurelius Cotta as praetor reformed the procedure to include panels drawn equally from senators, equites and the *tribuni aerarii*, officials of the treasury who came to be identified as a status group just below that of

equites (Jolowicz 1932, p326), the later group thereafter being removed by Julius Caesar (Suetonius *Julius Caesar* 41). The juries were usually drawn up as a standing group for one year and all persons directedly related to the defendant could be excluded, as were persons who had been gladiators or who had already been condemned in a public trial (as noted in Section 8 of the Acilian Law, Johnson 1961 et al.). Under original provisions of the *Lex Acilia* (sections 10 & 12), the accuser nominated 100 persons from the remainder, the defendant then choosing 50 of these (Johnson et al. 1961, Jones 1972).[2] This procedure tended to favour the prosecution, and on some occasions we hear of a sortition procedure being used instead, e.g. in Cicero's famous prosecution of Verres (Cicero *In Verrem* I.16 & 30). The verdict was given by the majority vote of the jury. Later reforms by Augustus may have modified these procedures in cases where the accused was not present: here the vote was made openly and had to be unanimous. Gaius Gracchus had also drawn up laws against judicial corruption and conspiracy, in particular those bringing false charges or evidence against a person in order to secure capital punishment (Jones 1972, p51).

3. The Arts of Persuasion

Oratory is skill at persuasive speaking aimed at influencing an audience, whether an Assembly, the Senate, a jury, an individual, or a magistrate. More conceptually, rhetoric can be defined as 'either the art of finding in any given context the most effective means of persuasion or the art of speaking well, with 'well' implying moral, logical, pragmatic and aesthetic aspects of communication. Rhetoric considered – and fostered – the interplay between artist, audience and message in specific contexts.' (Habinek 2017, p*ix;* see further Aristotle *Rhetoric* 1.1-1.2). This skill was essential in the public, military and social life of the Roman Republic. A man of any position would need on occasion to speak before the Senate, the public assemblies, or before the courts. This would be the case whether he wished it or not; Senators were obliged to express their opinions on numerous occasions, while a person of senatorial or equites rank might need to defend themselves, whether in the Senate, before the Assembly, or when interrogated either before a court or a magistrate. Public speaking skills were also necessary for governors and military commanders. It is true that the battle speeches we have recorded in historians are likely to be later reconstructions of what should have been said. Nonetheless, in ancient armies where morale was crucial, the persuasive ability of commanders and staff officers could be crucial in assuring loyalty and victory. Both governors and commanders might need to engage in acts of diplomacy, as well as deal with defeated opponents and allied states.

We can get a sense of how important rhetoric and effective speaking was in 2nd century in the case of one of Rome's most important and radical reformers, Gaius Gracchus, who had returned to Rome in 132 BCE, not long after his brother's political motivated murder:

> The power of Gaius's oratory was the stuff of instant legend. Gaius pioneered a new form of theatrical oratory: he was the first Roman to pace the rostra energetically and pull his toga off his shoulder as he spoke. Even Cicero – an unrelenting critic of the Gracchi – reckoned that Gaius was the finest orator of his generation: "How great was his genius! How great his energy! How impetuous his eloquence! . . ." (Duncan 2017, p60)

[2] See a translation of the *Lex Acilia*, based on reconstructed fragments from a large bronze tablet found in Rome, at https://droitromain.univ-grenoble-alpes.fr/Anglica/acilia_johnson.html

However, ‘lawyers’ did not exist in Rome in the modern, paid, professional sense: -

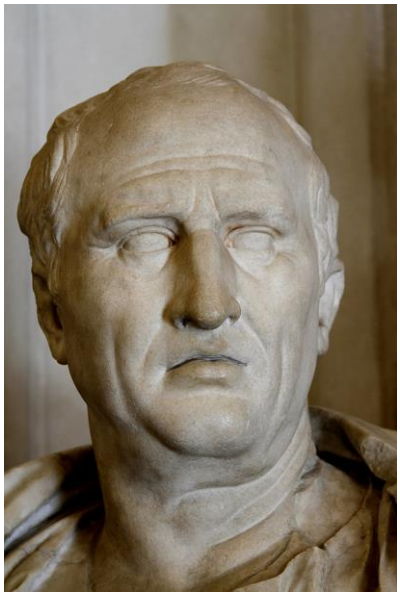
> Rather than 'lawyers' as we understand the term they were statesmen who were learned in the law; and even though the class from which they tended to come widened in the latter years of the Republic and thereafter, their essential character and cast of mind remained the same. As men of affairs they were interested in practical questions rather than matters of pure theory, but as they were not under the pressures of daily practice of the law in the courts they could afford the time to speculate as to how the law might apply in certain conditions. They thus filled the roles which nowadays we regard as separate - they were in effect both practical and academic lawyers. (Kolbert 1979, p23).

Indeed, it was forbidden for such advocates or legal consultants to be directly paid (until the time of the Emperor Claudius), though it was widely recognized that gifts and political favours would follow on a successful defence or prosecution, and leading young men built their careers this way. Roles were not always clearly delineated, but functionally included:

> Three principal functions can be recognized: first that of the *cognitor* or *procurator* who completely replaced the litigant and, as his agent, assumed all responsibility for the matter at hand. Second there was the *advocatus* or legal counsel who advised a client in the course of litigation, but ordinarily did not speak in court. Third was the patron, who took over the presentation of the case before a jury. In addition there was the speech-writer, the Roman counterpart of the logographer, but as in Greece he lacked the rhetorical situation of an advocate. (Kennedy 1968, p427)

The status of the defendant, the speaker and patron could be extremely important in determining case outcomes, with his advisors and supporters coming under high levels of scrutiny.

Rhetoric is sometimes defined as a separate discipline from that of oratory itself, i.e. as the body of theory about oratory and what constitutes the proper political and social function of persuasive methods. However, in both democratic Greek states and Republican Rome it was always a practical and political skill, at times viewed with a certain suspicion based on the knowledge of how well, or badly, charismatic speakers might influence public affairs, e.g. Socrates criticisms of sophists as willing to mislead and obscure the truth (see Kennedy 1963; Plato *Protagoras*). We can see the significance of oratory in Roman life when we understand that access to the consulship was generally recognised as demanding one or more of three qualities; noble birth, military service, and oratorical skill (Scullard 1966). Cicero could rise to the consulship without noble birth and without having had major commands, on the basis of his skills as a speaker and advocate. In the crisis of the late 60s, of course, these skills were also political skills - the ability to persuade others and focus power and justify its use. Julius Caesar represents a somewhat different combination; military brilliance combined with a powerful and smooth oratory. Another influential speaker was Q. Hortensius Hortalus (114-50 BCE), who favoured a more exaggerated ‘Asiatic’ style than the restrained forms employed by Caesar (Scullard 1966, p207). Even Mark Antony, recognized as military command and man of action, was apparently a skilled speaker and letter writer with some experience in the courts (Tatum 2024).



Bust of Cicero, one of the most prominent lawyers, orators and rhetoricians of the first century CE.[3]

Two trends had already emerged by the late second century BCE. First, fine speeches begin to be recognised as an art in their own right, and we find them being written up and published as literary pieces (Scullard 1966). Secondly, we find Romans studying Greek speeches and rhetorical theory, including the works of Aristotle, Isocrates and Demosthenes, while many elite Romans were tutored under Greek teachers. Caesar and Cicero both went to Rhodes to study rhetoric, Athens retained its role as an educational centre for rhetoric and philosophy, and from 200 CE Berytus (Beirut) emerged as a major legal school (see Kolbert 1979). Cicero outlines the widespread influence of Greek eloquence and gives a viewpoint of their three main styles, the Attic, Asiatic and Rhodian:

> The Art of speaking was likewise studied, and admired, beyond the limits of Greece; and the extraordinary honours which were paid to oratory have perpetuated the names of many foreigners who had the happiness to excel in it. For no sooner had eloquence ventured to sail from the Peiraeus, but she traversed all the isles, and visited every part of Asia; till at last she infected herself with their manners, and lost all the purity and the healthy complexion of the Attic style, and indeed had almost forgot her native language. The Asiatic orators, therefore, though not to be undervalued for the rapidity and the copious variety of their elocution, were certainly too loose and luxuriant. But the Rhodians were of a sounder constitution, and more resembled the Athenians. [52] So much, then, for the Greeks; for, perhaps, what I have already said of them, is more than was necessary." (Cicero *Brutus* 51)

The first school for the study of rhetoric in Latin was established in Rome, apparently by a pupil of the populist leader Marius, which no doubt helps explain why it was shut down by conservative censors in the following year (Scullard 1966). The skills of rhetoric had been seen as adding a dangerous political strength to the aspirations new 'young men', while the excuse that this 'art' was just another Greek indulgence which undermined traditional Roman virtues would have been well understood. A *Manual of Rhetoric*, the first known Latin text on the subject, was dedicated to

[3] Photo courtesy of José Luiz Bernardes Ribeiro, CC BY-SA 4.0, https://commons.wikimedia.org/w/index.php?curid=53959809

Herennius and sometimes falsely attributed to Cicero, was written in the 80s BCE (Scullard 1966), following Greek forms but using incidents from Roman history for much of its content matter. By this stage both oratory and the law formed a regular part of the Roman education system. Children whose family had the means were first trained under a *grammaticus*, who tutored them in a range of literature including sections of the 12 Tables, the early law codes of Rome. Speech-making on set topics, using a set structure with openning, development, and conclusion, soon became a standard part of elite education. Cicero, of course, not only made numerous speeches, both forensic and political, but also wrote major treatises concerning oratory and rhetoric, which include *On the Ideal Orator, On Invention,* and *Brutus*. By the end of the 1st century CE, many of these ideas were brought together in Quintilian's detailed textbook called *The Education of the Orator*.

4. Oratory in Practice: The Trial of Milo

We can briefly examine the way this complex system worked in practice by looking at a highly controversial and politicized case. We can see this in the trial of Milo for the killing of his political and personal enemy, Clodius. Both men were standing for office, Milo for the consulship, Clodius for the praetorship, but on 18th January 53 BCE these two violent factions met on the Appian Way, perhaps by accident, and in the following melee Clodius was killed. For this case the court procedure had no independence from the Senate: Pompey, operating under an emergency degree of and as sole consul passed a specific law controlling the way the murder and the subsequent riots would be dealt with, and a quaestor of consular standing empanelled a jury of 360 (Plutarch *Pompey 55*; Jones 1972). The charges involved the use of murderous violence, plus electoral corruption. This court, then, was drawn up as a special form of public hearing, and was held in an open area where it could be observed by the 'people', including, of course, the factions of both Clodius and Milo. It is not surprising that Pompey had to station troops around the court to ensure its security. Cicero, as a key political protagonist and major orator during this period, was drawn in to help defend someone who had opposed Clodius, Cicero's bitter political and personal enemy Clodius. Cicero, too, may have viewed Milo as a necessary tool to be used against Caesar's growing power. Pompey's intentions, however, are less clear.

Cicero felt intimidated by the violent audience which attended the earlier sessions and attempted to influence the verdict (Cicero *In Defence of Titus Annius Milo* I.3), and by Pompey's troops (Scullard 1966). As a result, Cicero gave a shorter and less effective speech than he had intended. Indeed, certain parts of the prepared speech would have rung rather false: -

> For a speaker, who is beginning the defence of an extremely courageous man, to exhibit fear is a disgraceful thing, I must admit. And the fact, judges, that my client Titus Annius himself shows more concern for our country's salvation than for his own makes it particularly unbecoming that I am unable to muster the same intrepid spirit when I speak on his behalf. However, the unfamiliar aspect of this unfamiliar tribunal exercises and alarming effect on me. Wherever my eyes turn, they look in vain for the customary sights of the Forum and the traditional procedure of the courts. The usual circle of listeners is missing; the habitual crowds are nowhere to be seen. Instead you can see military guards, stationed in front of all the temples. They are posted there, it is true, in order to protect us from violence, but all the same they cannot fail to have an inhibiting effect on oratory. This ring of guards is, I repeat, both protective and necessary, and yet the very freedom which they are there to guarantee has something frightening about it. (Cicero *In Defence of Titus Annius Milo*, I)

This speech, as usual, was written up, or at least edited, as a piece of literature that would be widely disseminated after the trial. Who then, is Cicero defending? In part, of course, his own reputation. More than this, he wished to speak beyond the tribunal to another powerful man: -

> If I believed these precautions to be aimed against Milo, gentlemen, I should bow to necessity and conclude amid all this weapon-power there was no place for an advocate at all. But on this point the wisdom of the sage and fair-minded Cnaeus Pompeius has relieved and assured me. For once he has committed a man to a court to be tried, he would certainly not regard it as compatible with his sense of justice to place that same man at the mercy of troops bristling with arms. (Cicero *In Defence of Titus Annius Milo*, I)

The special pleading here is interesting: not only Milo's actions, but the validity of the court, the safety of the advocate, and the overruling power of Pompey are being brought into debate. Cicero here is quite clever, using normal rhetorical antithesis to question the wider motives of those who have an interest in the case. The speech tries to turn Milo's violence into a justified act of self-defence, which would thus be praised by the Senate: 'the Senate really approved of the deed' (Cicero *In Defence of Titus Annius Milo* 4). The standard tactics of attacking the dead victim as himself a criminal were also used, mobilising a range of direct claims, innuendo and satire. The supporters of Clodius, of course, are labelled as 'scum'. The speech moves on to earlier political contest between Cicero and Clodius, through which Milo can be portrayed as a good friend of Cicero. Thereby Cicero's defence is an act of *amicitia* (political friendship) and even *pietas* (as morally required in such friendships), while the death of Clodius was unfortunate but in the end well-deserved. The speech closes on such dramatic and pious notes.

Cicero's speech was not successful. Milo, not surprisingly, was condemned by a majority vote and he was sent into exile. Cicero, however, persisted, in publishing the written-up version of the speech that he had *intended* to give. This seems to have been an extension of normal practise; scribes often took down speeches that occurred in courts, while it was accepted that the author was allowed to polish the speech before releasing its final written form. We can see here how the forensic oration has become both a political weapon and a literary form, providing a certain biographical and historical record of the events concerned. However, the arguments of the *In Defence of Titus Annius Milo*, though it came to be viewed as a masterpiece of rhetoric, seem to have been 'probably riddled with lies'.[4]

The inhibiting effect on oratory, due to the power of great men and their influence on the legal system, deepened once the courts were reduced to contesting political forums during the late Republic, a trend would only worsen during the Principate. This can be seen in the evolution of treason trails. Trials for treason (*maiestas)* were at first dealt with by magistrates and the popular courts, but from around 103-100 BCE the *Lex Appuleia de maeistate* set up a standing public court to deal with such issues, at first under juries of equites. There was no appeal in such a court, since technically the will of the people had been delegated through the previous laws or plebiscites setting up these courts (Jones 1972). Treason was conceived of in a much wider sense than in modern states, with Cicero noting that *maiestas* was involved in any effort to 'detract in any way

[4] Comment by M. Grant, in Cicero *Selected Political Speeches of Cicero*, trans. M. Grant, Harmondsworth, Penguin, 1972, p216.

from the *dignitas* or the *amplitudo* or the *potestas* of the *populus*, or of those to whom the *populus* has given *potestas*' (*De Inventionne* II.53, cited in Millar 1986, p3). It is not surprising that treason trials soon used against anyone who seemed to impinge on the dignity, amplitude or powers of the emperor, a wide ambit readily abused by political enemies or professional prosecutors. In such a setting, not only the independence of the legal system but the art or rhetoric itself would further decline under the Empire, with the Emperor being viewed as virtually 'above the law' by the third century CE (Kolbert 1979, p16; see the detailed arguments in Tacitus *Dialogus*; Williams 1978; Ferguson 2024c). Nonetheless, rhetoric retained practical, administrative and educational functions: -

> Although politically charged public trials of the sort that characterized the career of Cicero had largely come to an end, and the debate in the senate was to varying degrees constrained by the presence of the emperor or his agents, the day-to-day activities of trying cases and discussing policy continued, providing outlets for rhetorical talent and training. (Habinek 2017, p*xvii*)

Humour and Lies

The leeway given to speakers in court proceedings was much wider than that permitted in modern courts. Famous speakers used exaggeration, humour, irony, satire, character-assassination, counter-charges and sometimes even outright lies, when they could get away with them. Cicero, especially, was a well-known wit, with his secretary Tiro collecting many of his jokes that then made their way into Macrobius' dialogue *The Saturnalia* (Fontaine 2021, following *Saturnalia* 2.3; for the wider context of Roman humour, see Beard 2014). Indeed, Cicero was attacked by his enemies as 'the stand-up Consul' (Fontaine 2021, p*xii*). For example, when he was defending Murena for electoral bribery against the prosecution by Cato the Younger, Cicero made a point of sending up Cato's Stoic views to distract the jury. Cato's response in turn was the simple come-back: "What a hilarious Consul we have folks!" (in Fontaine 2021, p272). Another example indicates Cicero's use of a cutting one-liner:

> Then there was a young man who was suspected of having given a poisoned cake to his father. This young man put on a very bold air and said that he proposed to give Cicero a bit of his mind. 'I would much prefer it,' said Cicero, 'to a bit of your cake.' (Plutarch *Cicer*o 26)

Indeed, Plutarch notes that "Cicero often got carried away with the ridicule and veered into stand-up comedy" (in Fontaine 2021, p*xiii*; for a sample of Cicero's jokes and comebacks see Plutarch *Cicero* 24 & 27), something that Cicero actually warns against in his own writings (Cicero *On the Ideal Orator* 2.221 & 2.239). Plutarch further notes:

> No doubt it is part of the business of a lawyer to employ these rather cruel jokes at the expense of his enemies and legal opponents. But Cicero's propensity to attack anyone for the sake of raising a laugh aroused a good deal of ill-feeling against him (Plutarch *Cicero* 27)

Quintilian, too warned that it was dangerous to go too far into 'buffoonery' as this undermined the dignity of the speaker and his claims (Fontaine 2021, pxv). Quintilian adds that Cicero was

regarded ‘as an excessive laugh-getter, and not only in normal life but even in his public speeches’ (Quintilian *On the Art of Humour* 6.3.3).

For advocates, wit and humour were ‘weapons of war’ used to undermined serious counter-arguments and undermine the standing of opponents or those accused (Fontaine, p*xvi*). They might permeate the tone of an entire speech, engage in light ribbing, razor-sharp comments, fierce attacks, insults, clever comebacks, word-plays, the trivialization of arguments when they could not be directly rebutted, and salacious stories (Cicero *On the Ideal Orator* 2.217-230). However, there should be some restraint in the use of such techniques. As noted by Quintilian:

> Since we’re entitled to make accusations openly and to legitimately seek the death penalty, it is sometimes allowable to get tough on opponents and insult them, but even then it usually looks callous to go after someone’s bad luck in life, because it’s not their fault or because it can even backfire on the attacker. (Quintilian *On the Art of Humour* 6.3.28)

Some judges, too, would not accept too many jokes on cases involving heinous crimes, while wise-cracks that applied not just to the accused but to powerful patrons could also boomerang back onto the speaker (Quintilian *On the Ideal Orator* 6.3.31-32). Given the fiercely competitive nature of Roman life, and the crucial role of prestige and dignity (*dignitas*) in shaping political power, cutting humour and demeaning opponents could be a dangerous activity. It certainly intensified the hatred felt for Cicero by opponents such as Clodius and Mark Antony. It was Antony’s agents in the end who killed Cicero, cutting off his hands and head which were then nailed up in the Roman forum (Plutarch *Cicero* 48).

Conclusion: Beyond Rhetoric

Roman rhetoric and legal processes were key contributions both to democratic and republican systems as they emerged in the wider European and then global experience of these institutions. ‘Persuasion was still vital’ (see Millar 1986, p11), even as political elites engaged in contests of power that would ultimately undermine the Republic and its institutions. There was also some limited impact of Roman law on early modern trends towards international law doctrines, e.g. influence on Gentili and Grotius, but this influence declined in the 18th and 19th centuries (Nussbaum 1952). Beyond this, the *jus gentium* also provides some elements that had a limited impact on the doctrines of ancient and modern international relations, e.g. the sanctity of envoys and ambassadors, formal requirements of surrender (*deditio*), the need to arbitrate between citizens and non-citizens, and some laws in relation to warfare (Nussbaum 1952, p678). More importantly, the emergence of the Roman Republic and its problematic transition into Empire showed that the rule of law plus vigorous and skilled debate before the courts, assemblies, the Senate and in the palace were at the heart of good policy and a working constitution.

Moreover, the system of open debate, public prosecution and defence, rhetoric and persuasion did shape important later trends, including adversarial systems of law ensuring an evidential approach towards transparent, reasoned judgements. The importance of deliberative reason and public rationality was already recognized by Aristotle and Cicero, and remain the cornerstone of good governance for tolerant, cosmopolitan societies (Habinek 2017; Smith & Brasset 2008; Habermas

1995). Rhetoric, as it developed in the Greek, Hellenistic and Roman worlds, was an essential part of this process.

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Detailed and dramatic fiction accounts of Cicero and his times will be found in the ***Cicero Trilogy*** **by Robert Harris**, published by Penguin.

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