

WIT AS ARGUMENT IN CICERO AND BEYOND

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Abstract

The large quantity of invective deployed by aristocrats in Roman criminal cases and political arguments of the late Republic has led scholars to argue that Romans considered character of great probative value. This dissertation examines the surprising fact that in such an environment, where reputation was one of the most important assets of an aristocrat, some individuals began to respond to criticism of their character in a manner that had not been seen in the earlier Republic – nearly admitting to certain character flaws.

The foremost practitioner of this strategy was Cicero. Herein I trace how he often responded to criticism by avoiding denial and instead responded with misleading admissions that shifted the meanings of accusations to grounds on which he had an advantage. I also provide anecdotal evidence for such a practice in Caesar and Catullus, as well as Quintilian's positive assessment of it.

I argue that contemporary sociolinguistic studies of such strategies indicate that the individuals who are most likely to learn such strategies often come from “macho” cultures in times of political upheaval who have challenged the dominant ethos of that culture. In other words, the more an individual is criticized by others, the more that individual learns that the best response to criticism is often one that minimizes its seriousness or dismisses it altogether. Such was the case with Cicero and Catullus, whose pursuit of distinction did not follow the traditional military path, and to some extent with Caesar, whose political ambitions threatened the senatorial dominance of Rome's political structure.

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Chapter One

1.1 Introduction

In Suetonius's *Life of Caesar*, an unusual exchange in the senate is reported by the biographer. It involves Caesar boasting about his acquisition of the province of (transalpine) Gaul despite the law of Vatinius, passed as an attempt by the senate to assign him the less desirable Cisalpine Gaul and Illyricum. Suetonius says:

Quo gaudio elatus non temperavit, quin paucos post dies frequenti curia iactaret, inuitis et gementibus aduersariis adeptum se quae concupisset, proinde ex eo insultaturum omnium capitibus; ac negante quodam per contumeliam facile hoc ulli feminae fore, responderit quasi adludens: in Suria quoque regnasse Sameramin magnamque Asiae partem Amazonas tenuisse quondam.¹

Elated with such joy he could not hold himself back from boasting a few days later in the crowded Curia that he, having taken what he had desired despite his opponents resisting and groaning, was forthwith going to jump upon the heads of all of them; but when someone, as an harsh insult, stated that this would be no easy thing for a woman, he responded as though he were merely kidding: "in Syria Semiramis too had reigned and that the Amazons controlled a sizable part of Asia at one time."²

Caesar compares himself to a woman. This is not a comparison we would expect from a politician, especially a Roman politician. What possible reason could Caesar have had for likening his power to that of a woman, "the weaker sex?" He does of course compare himself to a uniquely powerful woman. But one might ask why he does not deny that he is a woman altogether. Why does he not respond by challenging the suggestion? Why not respond by threateningly stating "I'll show you who is the woman?" By comparing himself to a woman, was he attempting to "own" a trait he had been accused of before? For Suetonius famously described Caesar as "every woman's man and every man's

¹ Suet. *Caes.* 22.2.1 - 22.2.8

² All translations are my own unless otherwise noted.

woman;” and according to Plutarch Cicero expressed bewilderment that a man who picked his hair with one finger could take over the republic.³ Or, was he trying to humiliate his challenger and the senate by asking what it meant for them that they were bested by an effeminate? Could the wit of his retort have affected the senate’s perception of him?

This dissertation is an attempt to explain such witty but unusual retorts. As such, it touches upon some of the same questions raised in Andrew Riggsby’s important article “Did the Romans Believe in Their Verdicts?” Therein, Riggsby considers why Roman defendants did not respond to accusations by denying their guilt and offering alternative explanations, and instead engaged in “flamboyant use of certain rhetorical figures, self-reference, and invoking the ambiance of the arena or the comic theater.”⁴ Riggsby argues that there are two ways for scholars to explain this rhetorical excess: to conclude that Roman courts were not concerned with guilt and that we are imposing our own concepts of justice on them,⁵ or to conclude, as he does, that we have a “tendency to underestimate drastically the ‘relevance to the case’ of many of Cicero’s arguments.”⁶ Riggsby contends that the reason we see so much invective is not that Romans didn’t care about guilt and innocence, but that they viewed character as relevant to this question. His implication is, therefore, that Romans believed character to be evidence of guilt or innocence to a greater degree than we do in the modern era, where forensic evidence and testimony are given more weight than character or motive. Furthermore, Riggsby

³ Plut *Caes.* 5.9: “ἀλλ’ ὅταν” ἔφη “τὴν κόμην οὕτω διακειμένην περιτῶς ἶδω, κάκεϊνον ἐνὶ δακτύλῳ κνώμενον, οὗ μοι δοκεῖ πάλιν οὗτος ἄνθρωπος εἰς νοῦν ἂν ἐμβαλέσθαι τηλικούτον κακόν, ἀναίρεσιν τῆς Ῥωμαίων πολιτείας.

⁴ Riggsby 1997: 235.

⁵ He correctly notes (236) that this conclusion would require some degree of collusion between the various elements of the courts.

⁶ Ibid 237.

collects a convincing number of examples of Roman discourse involving the courts where truth and guilt seem clearly to be the end goal.⁷ He does of course allow the possibility that orators viewed the courts differently than the jurors, with the former regarding the latter as manipulatable. This possibility is significant and something that we shall be returning to in future chapters. However, in regard to Riggsby's original question as to whether Romans believed in their verdicts, it is my contention that there is a third explanation for the excessive rhetoric that gives rise to the question: the clever orator avoided denial whenever possible because, for Roman audiences, being accused of something was almost the same as being proven guilty of it. What's more, Roman audiences saw humor as a positive character attribute, and orators won favor by demonstrating it—something that is hard to do while denying a charge. Thus, one reason we see so much insult and abuse and so little discussion of evidence and witnesses is that the defense in a Roman court case had an interest in ignoring these things. The more the defense sought to challenge the assertions of the prosecution or plaintiff, the more it would get bogged down in a discussion that merely reinforces an impression of guilt among judges, jurors, and audiences. By shifting the discussion to the matter of character, the defense is able to avoid this pitfall, and the other side has no choice but to go along; this is particularly true when the charges a defendant faced were severe.

The avoidance of denial entails a turn to character. The defense refuses to answer the question “did he do it?” and instead shifts the question to “why would he do this?” The result is an argument about reputation rather than one about what we could consider guilt and innocence. To return once more to Riggsby's analysis, he is right to some

⁷ See p. 238 for the range of sources cited. Of most importance are the occasions where jurors swear to judge by the laws, for which he mentions *Inv.* 1.70, 2.131-33; *Verr.* 1.46; *Clu.* 164; and especially *Verr.* 1.3; cf. *Cael.* 21; *Rosc.* 152; *Clu.* 27.

extent that the reason for the excessive rhetoric in Roman oratory is that Romans considered character to be of greater relevance than we do.⁸ However, another reason is that the defense had a vested interest in shift to character. Even if a prosecution were to ignore character and stick strictly to evidence and motive, the defense would be likely to reply to that evidence and motive with a claim that the accused couldn't be guilty because of his good character and arguments would arise that were particularly conducive to humor. Proclamation of innocence due to character leads to countercharges about character. Barbs begin to be traded back and forth by both sides and humor inevitably ends up playing a role. Before going further, however, let's turn back and briefly and consider Greek oratory.

1.2 Why isn't Greek Oratory as Funny as Roman?

Humor wasn't lacking among the Greeks, particularly relating to character. They had a long history of laughing at the expense of others, using humor to reinforce and challenge reputations. We can see this in book two of the Iliad when Thersites, an individual reviled by the rest of the Achaeans, exhorts them to return home and Odysseus beats him for his words:

ὥς ἄρ' ἔφη, σκήπτρῳ δὲ μετάφρενον ἠδὲ καὶ ὦμῳ
πλῆξεν· ὃ δ' ἰδνώθη, θαλερὸν δέ οἱ ἔκπεσε δάκρυ·
σμῶδιξ δ' αἱματόεσσα μεταφρένου ἐξυπανέστη
σκήπτρου ὑπο χρυσέου· ὃ δ' ἄρ' ἔξετο τάρβησέν τε,
ἀλγήσας δ' ἀχρεῖον ἰδὼν ἀπομόρξατο δάκρυ.
οἱ δὲ καὶ ἀχνύμενοί περ ἐπ' αὐτῷ ἠδὺ γέλασαν.⁹

⁸ By excessive rhetoric, we mean the amount of personal invective involved in matters that related to criminal activity. Thus, it is not enough for Cicero to accuse Catiline of taking up arms against the Republic. He also accuses him of enabling patricide and the sexual corruption of young men (*Cat.* 2.8), of leading men lusting for slaughter, fire, and robbery, who drank, gambled, belched, and feasted with despoiled women (2.10).

⁹ Hom. *Il.* 2.265-270

On this he beat him with his staff about the back and shoulders
till he dropped and fell a-weeping. The golden sceptre raised
a bloody weal on his back, so he sat down frightened and
in pain, looking foolish as he wiped the tears from his eyes.
The people were sorry for him, yet they laughed heartily.¹⁰

Further, the fifth century Greek philosopher Democritus was so well-known for his
acerbic wit that he was nicknamed *Gelasinos*, “Laugher,”¹¹ and Greek comedy certainly
has no shortage of disparaging humor, obviously thought funny by Romans, given their
comedic debt to New Comedy.

What is remarkable, however, is the relative lack of jests in Greek oratory when
compared to its Roman counterpart. Indeed, in one of the first attempts to collect
instances of wit in Greek oratory, Robert Bonner stated, “A survey of the remains of
Attic forensic oratory and other appropriate sources yields so little in the way of stories,
jest, and humor that the material is easily assembled.”¹² In contrast to Roman oratory,
many instances of humor in Greek oratory are not directed at any individual in particular.
There are, however, a few exceptions. As related in Plutarch’s biography, when
reproached by a thief for working late by candlelight, Demosthenes replied “I know that I
annoy you by lighting my lamp” (οἶδα ὅτι σε λυπῶ λύχνον καίων).¹³ Even in the war of
words between Demosthenes and Aeschines there are few examples of the kind of wit we
shall see in Cicero.¹⁴ Rather than appearing to admit to accusations and shift the

¹⁰ Translation by Samuel Butler

¹¹ Aelian *VH* 4.20.

¹² Bonner 1922. Furthermore, many of the passages referenced by Bonner, such as Lysias’s defense of the
cripple, are only questionably funny, by any measure.

¹³ Plut. *Dem.* 11.5.

¹⁴ There is one clear exception to this and that is in Demosthenes’ reactions to insults regarding his mouth.
Aeschines refers to him as a βᾶταλος, stammerer in 2.99, which Aeschines links to effeminacy, perhaps
through the association of not being able to talk with infants, thereby taking on a meaning similar to
“mamma’s boy.” Plutarch, however, links this word to one of three things: his weak physique, the fact that
there was an effeminate flute-player by that name, or that it was the name of a decadent poet (*Dem.* 4.5-6).

argument to advantageous ground, most Greek oratory involves trading insults, often related to style. Thus, for example, given that Attic orators were supposed to keep their right hands within their robes,¹⁵ Demosthenes upbraided Aeschines by saying “we don’t need to speak with a hand held within, Aeschines, but to be diplomatic with a hand held within. For there [Macedonia] with your hands stretched out and upturned you shamed yourself” (οὐ λέγειν εἴσω τὴν χεῖρ’ ἔχοντ’, Αἰσχίνῃ, δεῖ, οὐ, ἀλλὰ πρεσβεύειν εἴσω τὴν χεῖρ’ ἔχοντα. σὺ δ’ ἐκεῖ προτείνας καὶ ὑποσχὼν καὶ καταισχύνας τούτους).¹⁶ Lysias, speaking against Aeschines the Socratic, whom he had lent money for a perfume business, stated that the defendant was such an odious person that even his neighbors moved away. Later, in the same fragment, Lysias describes Aeschines’s relationship with a woman who had fewer teeth than fingers.¹⁷ However, outside of these instances, most of the humor in Attic orators is for no other purpose than to elicit laughter.¹⁸

Bonner offers a few explanations for this dearth of humor in Athenian courts.

The chief reason he cites is the lack of opportunities for retort in cross-examination.¹⁹

The only opportunities for comebacks occur in the interrogation of litigants. However, in

This is in keeping with Aeschines’ overall criticism of Demosthenes’ style and much similar to the role of the *os* in the *In Vatinius*; the debate between the two Attic operates on two related registers: the mouth as a organ of speech on the one hand and as a potential source of sexual misdeeds on the other. See Worman 2004. Aeschines further calls Demosthenes a κίναϊδος in 2.88 and 3.167. Demosthenes’ response to all of this at the beginning of *De Corona* is to say “If you know me to be such as he accuses (for I have never lived anywhere other than among you) then do not endure my voice.” *De Cor.*: εἰ μὲν ἴστε με τοιοῦτον οἶον οὗτος ἡτιᾶτο (οὐ γὰρ ἄλλοθί που βεβίωκ’ ἢ παρ’ ὑμῖν), μηδὲ φωνὴν ἀνάσχησθε. Thank you to Joshua Smith for this citation.

¹⁵ Aeschin 1.25: ὥστε ὁ νυνὶ πάντες ἐν ἔθει πράττομεν, τὸ τὴν χεῖρα ἔξω ἔχοντες λέγειν, τότε τοῦτο θρασὺ τι ἐδόκει εἶναι, καὶ εὐλαβοῦντο αὐτὸ πράττειν.

¹⁶ Dem. 19 255.

¹⁷ Lys. Fragment 1 *Against Aeschines*.

¹⁸ The one exception is an account from the Scholiast to *Vesp.* 191 in which Demosthenes tells a story that ends abruptly with no explanation, evoking protests from the jury - the orator was simply trying to keep their attention.

¹⁹ Bonner 1922: 101.

the recorded instances of such interrogations,²⁰ we find no humor. Another possible reason cited by Bonner for this dearth of humor is the crucial fact that we cannot assume that published speeches reflected the entirety of what was said and done in court.²¹ It's entirely possible that jokes were more common than our literary sources suggest, perhaps added extemporaneously as the situation arose. Yet if this were the case, we would expect at the very least to hear of examples in historical or epistolary sources; we do not. We are thus left with this question: were fifth and fourth century Athenian orators simply less funny than late Republican Roman orators?

This question is difficult to answer because the foremost Republican orator was renowned for his trenchant wit. It is possible that Roman oratory appears more funny than Greek because it is overwhelmingly Ciceronian. Perhaps if we had more of Crassus the Agelast, grandfather of Marcus Licinius Crassus, who, as his name suggests, was thought to have no sense of humor, we might have a different impression.²² Or, if we simply had more contemporaries of Cicero we might think of humor as playing a less crucial role — whatever that role may be — in Roman oratory. There is, however, a more interesting explanation.

1.3 Humor and Character

Bonner suggests that Lysias was the most humorous Attic orator because he was particularly concerned with the character of his clients and opponents.²³ He does not

²⁰ As an example of which Bonner cites Socrates' examination of Meletus in the *Apology* - p. 101.

²¹ Ibid. p. 103.

²² Plin *Nat.* 7.79-80. That a man would have a name that indicated he lacked a sense of humor is in itself evidence of the importance place about wit and humor. Were such qualities not valued, there would be no need to remark on the absence of them in others.

²³ Bonner 1922: p. 102.

elaborate on this statement, yet it certainly requires explanation. What is it about discussions of character that would give rise to laughs? We cannot appeal to evolutionary or physiological explanations, since none of these have proven satisfactory.²⁴ The most agreed upon, and most non-specific, explanation for humor offered by biologists and psychologists is that it is some kind of adaptive coping strategy.²⁵ Yet we can still ask why some contexts give rise to laughs more than others. When considering character we are dealing with a fair amount of subjectivity, something required for jokes since there is little room for laughter when dealing with the indisputable.

Given that humor is not about fact but about perception, and that there is no greater source for a multitude of perceptions than the human mind and individual psyches, we should expect humor and character to be linked. Furthermore, given that we are social animals, it is natural that one of our primary topics of conversation (and thus humor) should be each other. The subjectivity of character helps. And what's more, regardless of the manner in which humor is interpreted, everyone can agree that it is related to affect – emotions that influence behavior. Whether affect gives rise to humor, allows its reception, or both, it plays a central role, uncertain though that role may be. Lastly, discussions of character usually involve communal standards – whether one is exceeding or failing to live up to them. Humor has been demonstrated to have a regulatory aspect, both on a communal and a psychological scale. On the communal

²⁴ Mary Beard provides a recent Classicist's view on the matter, contrasting what she sees as the superior Freudian interpretation of humor as the escape of the ego from the superego with Bakhtin's view of humor as related to the carnival side of life. See Beard 2014: 59-69.

²⁵ Samson and Gross 2012: 375-376.

level, humor is reflective of a society's character and mood.²⁶ On the individual level, different kinds of humor have greater or lesser impacts on our degree of optimism and happiness.²⁷ In other words, our character or personalities affect our senses of humor and are therefore linked to them.

The judicial world may, paradoxically, be the ideal place to find laughs. Judicial systems, whether formal or informal, exist in order to assign blame and mete out punishment, financial or penal. Even in Western systems, which are concerned with abstract notions of truth and justice, humor plays a significant role, not only as a result of adversarial exchanges but also individual inclinations, such as in judicial opinions.²⁸ Perhaps, then, Cicero is the rule and Greek orators the exceptions. However, in one area the Roman courts stand out as unusual: their almost singular obsession with character.

Analyses of Roman humor underscore this preoccupation with character, demonstrating that humor was always directed *against* someone. Tacitus remarks, with surprise, that the Germans don't laugh at vices (*nemo vitia ridet*),²⁹ meaning of course that in his view laughing at personal shortcomings was normal. This was in stark contrast

²⁶ In the case of the United States, see Rourke 2004: p. 186-236.

²⁷ Samson and Gross 2012: 378-379. The authors differentiate between positive humor wherein there is no target and negative humor where there is. They find, unsurprisingly, that positive humor leads to positive emotions far greater than negative humor.

²⁸ See Hori 2012. One notable example he provides involves humor in the form of wordplay for no other reason than amusement. In a suit regarding the labeling of detergents, John Brown of the Fifth Circuit had the following paragraph (328) in *Chem. Specialties Mfrs. Ass'n v. Clark*, 482 F.2d 325 (5th Cir. 1973): "Clearly, the decision represents a *Gamble* since we risk a *Cascade* of criticism from an increasing *Tide* of ecology-minded citizens. Yet, contrary decision would most likely have precipitated a *Niagara* of complaints from an industry which justifiably seeks uniformity in the laws with which it must comply. Inspired by the legendary valor of *Ajax*, who withstood Hector's lance, we have *Boldly* chosen the course of uniformity in reversing the lower Court's decision upholding Dade County's local labeling laws." Likewise, when issuing a decision involving the rapper Eminem, who was being charged with libel, Michigan Judge Deborah Servitto rapped. (Deangelo Bailey vs Marshall Bruce Mathers III, a/k/a Eminem Slim Shady). Humor is even more evident in daytime courtroom dramas, as summed up well in the title of Judge Judy Sheindlin's 1996 book "Don't Pee on My Leg and Tell Me It's Raining." Among televised courtroom dramas the reason for humor is twofold: the attorney wants to ingratiate himself with the jury *and* the show itself wants to entertain, and thus retain, viewers at home.

²⁹ Tac. *Germ* 19.

to the Greek tradition.³⁰ Moreover, Quintilian largely defines humor as having its base in insult.³¹ He argues that character debates naturally lead to invective, and invective, in the Roman mind, is largely associated with humor. As a result, humor becomes an essential part of Roman argumentation. I contend that this argument can be taken a step further: a contest over character through humor could be eclipsed by the humor itself. Verbal one-upmanship can take center stage, and in such a situation the more successful orator is the more humorous one.

There is evidence for the intrinsic power of humor in one telling example of American judicature. In 2009 Davis Andre Davis was accused by the state of California of possessing and transporting methamphetamine. While exiting a restroom stall during a short recess Davis noticed a juror from his case at the urinal. While passing the juror Davis remarked with a smile and a laugh “vote for me.” Although the juror, upon informing the judge of the interaction, stated that he believed the defendant to be joking, the defendant was charged with jury tampering. The defense argued that there was no intent to corrupt the process by the defendant, that it was merely a bad joke. And indeed, the law did require the intent to corrupt in order to be found guilty of influencing the jury.³² Nevertheless, the jury found him to be guilty and the following conclusion was drawn:

Even if Juror L. thought [the] defendant was trying to be funny, that perception as evidence of defendant's intent, even if believed by the jury, did not foreclose the jury from concluding that defendant simultaneously intended for Juror L. to acquit

³⁰ See pages 36-7 below for a discussion of Greek humor.

³¹ 6.3.8: *Habet enim, ut Cicero dicit, sedem in deformitate aliqua et turpitudine: quae cum in aliis demonstrantur, urbanitas, cum in ipsos dicentis reccidunt, stultitia uocatur.*

³² In fact CA code 116.5, under all its provisions lists the conveyance of “payment or benefit,” to a juror or his agent as necessary for a conviction. In this case, unless the court considered the joke, assuming it was a joke, a benefit to the juror, clearly no such exchange took place.

him. The jury concluded such was defendant's intent, and substantial evidence supports that determination.³³

The defendant, the jury reckoned, even if he was just trying to be funny, was intending to influence the juror. In other words, the jury found that humor itself could be an influence.

The successful orator – and it is worth mentioning that the corpus of Latin orations that has survived has done so largely because they were considered somehow successful – focused on insulting the character of his opponent in as humorous a way as possible. As Riggsby has argued, this is not to say that Roman audiences had no fixed standards. When Caesar responded to the accusation that he was effeminate by mentioning Semiramis, his senatorial audience (a setting that, though not judicial, was clearly argumentative) most likely had a very fixed view on gender and masculinity. It has been argued by many since 1983 when Amy Richlin first systematically looked into ideas of masculinity in the Roman world, and in particular by Erik Gunderson, that the standards for how an aristocratic Roman man should behave were highly specific and inflexible.³⁴ The performance of masculinity, at least in regard to practicing rhetoric, was indeed likened to a tightrope by Lucian.³⁵ One slip and the game is up. In such a world, we might expect Caesar to be ridiculed for his response, and for his political career to suffer. Yet, the fact that he does not appear to have suffered does not mean that his words about Semiramis changed the minds of any senators present about what it means to be a Roman man. If anything changed, it was their views of Caesar. Given that

³³ THE PEOPLE, Plaintiff and Respondent, v. DAVIS ANDRE DAVIS, Defendant and Appellant. Court of Appeals of California, Third Appellate District, Yolo. 2009.

³⁴ Gunderson 2000, Williams 1999, Richlin 1997 and 1983, Fantham, Skinner, Ancona, R. & Greene, E. 2005, Butrica, 2005.

³⁵ As translated by Gunderson. The actual words of Lucian at *Rh. Pr.* 9 are εἰ κατὰ τούτων ὁδεύσεις ὥσπερ οἱ ἐπὶ τῶν κάλων βαίνοντες.

Suetonius reports the exchange as a mild witticism, *quasi adludens*, he likely viewed the remark as a successful comeback. If he had not viewed it as such, one would expect him to relate the exchange with surprise, disbelief, or disapproval that Caesar would have said such a thing. Further, the fact that Suetonius jumps from his narration of this altercation to the end of Caesar's consulship implies that the Senate's response was not noteworthy. For Suetonius to depict Caesar as joking and then immediately switch topics suggests that it was unlikely there was an uproar in response. It is possible, if not probable, that some senators walked away thinking less of Caesar, but there is no reason to think that there were so many such senators that his career suffered. We are thus left with two possible reactions, between which the truth must lie. At one end the individual views of senators towards Caesar mattered little in comparison to the military might he had. And at the other end, although their views about masculine behavior didn't change, their views towards Caesar did.

No one would deny that the support Caesar enjoyed among the legions was the basis of his power. But the second option cannot be discounted. For one, Caesar's response, by avoiding denial and artfully referencing a counterpoint, changed the subject. The issue shifts from whether he was effeminate to whether he was an Assyrian empress, something so outrageous as to be dismissed outright. Almost as important, and little discussed, is the likelihood that some senators found new respect for Caesar based on his quick wit and, furthermore, that quick wit was highly esteemed – so highly esteemed that demonstrating it could override a great deal of criticism, including the charge of effeminacy.

It might seem obvious that quick wit is something an electorate would respect. It is natural to want one's politicians to be able to think quickly under pressure. What needs to be acknowledged, however, is the precedence given to this quality over others. This is true both of Roman republican politics and contemporary politics. In the second 1984 presidential debate Ronald Reagan gave a very Caesarian example of this. After slipping up several times and admitting to being confused, he was asked by Henry Trehwitt of the Baltimore Sun whether he was too old for the presidency, a question the Mondale campaign had repeatedly brought up in the past. Reagan's response was met with enormous laughter, including that of Mondale, and applause:

Not at all, Mr. Trehwitt, and I want you to know that I will not make age an issue in this campaign. I am not going to exploit for political purposes my opponent's youth and inexperience...[applause and laughter]...If I still have time, I might add, Mr. Trehwitt, I might add that it was Seneca or it was Cicero -- I don't know which -- that said, "If it was not for the elders correcting the mistakes of the young, there would be no state."³⁶

Walter Mondale later said that he knew he had lost the debate at that moment. Why would this be? There were serious concerns about Reagan's mental health and he was the oldest president in history at seventy-three. These concerns remained despite his response, and the president's mental state was a serious source of distress. He had recently demonstrated a lack of knowledge of Soviet nuclear retaliatory capabilities and appeared to misunderstand the nature of the weapons systems of American nuclear submarines as well. Not only did his response fail by any logic to change the perception of his understanding of these matters, but it could well have been taken as evidence of his mental decline in itself as neither Seneca nor Cicero said any such thing -- although the supposed quote is certainly not out of keeping with either's views on age and the state.

³⁶ Presidential Debate. October 21st 1984. Kansas City, Missouri.

We can only conclude that, in the end, a quick response that shifted the debate was more meaningful to the audience and voters that night than the potential mishandling of nuclear weapons in a struggle against an heavily armed and imperfectly understood adversary. One might argue that Reagan's response was proof that he had his wits about him. But, of course, he was likely anticipating questions from the panel or remarks by Mondale about his age and thus probably had this response pre-prepared, ready to be stated should the need arise, as indeed Caesar likely anticipated insults about his manhood. Furthermore, there are many more requirements to understanding and managing a cold war than quick wit. It is thus an inescapable conclusion that the ability to make one's audience laugh is a powerful tool for a politician.³⁷ This dissertation is an exploration of this phenomenon in Roman republican politics.

1.4 Previous Scholarship

The idea that humor might influence argument has been broadly neglected not only by Classicists but also by Social Scientists. Of the latter, I know of only one study, one that nevertheless yielded interesting results.³⁸ Four groups of thirty-two male undergraduates at the University of Nebraska were assigned to four different lectures over four subsequent days (32 students in 16 lectures with 4 each day for the 4 groups).

³⁷ Meyer (1990: 76-80) has systematically studied Reagan's use of humor in 22 of his speeches and found that he uses it for three things: relaxing tension around an item of controversy, contrasting view points or offering new ones, and criticizing the opposition / ingratiating the audience.

³⁸ Gruner 1967: 228. Most modern studies of humor and argument focus on the instructional benefits of using humor upon students in primary and secondary education. As we shall see, this is not far from Quintilian's assessment of the use of humor on Roman oratory - see chapter four. An exception is a pair of studies by Patrick Stewart, investigating both the humor of candidates in general (2008: 233) and self-deprecating humor (2011: 201-222). I am aware of just one investigation of the role of humor in contemporary political campaigns—a study concerned with the impact of third party comedians impersonating candidates, such as on Saturday Night Live, on campaigns. See Smith & Voth 2002: 126-128.

The speakers alternated between serious and humorous lectures and they were evaluated by the students for authoritativeness, interest, information retention, character, and seriousness. Contrary to what we might expect, interest and information retention varied little between serious and humorous lectures. Authoritativeness dropped slightly for humorous lectures and the perception of the seriousness of the lecturer showed the most disparity – literally dropping in half. However, the second greatest disparity, or f-ratio was the perception of the lecturer’s character, the mean of which increased a statistically significant amount.³⁹ The indication is thus that humor caused the students to develop some degree of affection for the speakers who employed it.

Classical scholarship on humor’s role in argumentation is also quite scarce, though not for lack of ancient source material. Cicero’s abusive language has been documented since his slave Tiro put together three volumes of his jokes after his death. Quintilian and Tacitus both demonstrated a significant interest in the subject of humor and argumentation in their rhetorical works. However, in the modern world, the study of Ciceronian humor is largely a mid to late 20th century and later phenomenon.⁴⁰ Furthermore, nearly all the work that has been done on humor and argument in the Roman world has resulted from a focus on one or the other individually rather than the relationship between them.⁴¹ There are, however, a few valuable studies. Katherine Geffcken recognized parallels between Cicero’s *Pro Caelio* and New Comedy, arguing that Cicero identified with the comic hero and in so doing ingratiated himself with

³⁹ For more on the parameters of the study and the results, see Gruner 1967: 229-232.

⁴⁰ One of the earliest studies is a collection, Severinus Hammer’s *Contumeliae Quae in Ciceronis Invektivis et Epistulis Occurrent Quatenus Plautinum redoleant sermonem* (1905). See also Syme 1939, Taylor 1949, Kennedy 1973.

⁴¹ The work on argument is too vast to summarize here. See Rubinelli 2010: 93-141 for the most recent work on Cicero’s method of argumentation. On humor see Beard 2014, who is the first person to take up the matter seriously since Kraft 1943, and for the material world Clarke 2007 and Croxford 2008.

juries.⁴² She did not, however, consider the question of how and why provoking laughter should help Cicero or explain the dynamics of the humor in the speech.⁴³ Byron Harries has argued that Cicero employs the devices of the comic stage in other speeches as well, suggesting that he was influenced by friendships with actors and their patrons.⁴⁴ Anthony Corbeill, in his seminal 1996 book *Controlling Laughter: Political Humor in the Late Roman Republic*, argues that Cicero uses humor, chiefly invective, in order to place his opponents outside the bounds of contemporary Roman *mores*. Thus, when Cicero insults the mouths of Vatinius and Clodius, claiming that filth not only flows into them but also emanates from them in the form of polluted words, he is revealing a system of belief in which oratory and sexual probity are linked.⁴⁵ Corbeill does not allow for Roman orators to deploy “humor for humor’s sake” or to demonstrate individuality. Humor is something that is used strictly as a means of enforcing conformity. While I agree that this can be the case, I also see in humor, particularly the passages of Cicero and Quintilian we will discuss in chapters three and four, a great deal of individualism. In fact, the very joke from the film *Life of Brian* that Corbeill provides as an opening to his introduction illustrates the point where I differ from him:

Brian: You’ve got to think for yourself! You are all individuals.

Crowd: Yes, we are all individuals!

Brian: You are all different!

Crowd: Yes, we are all different!

Voice from crowd: I’m not.

⁴² Geffcken 1973: 7.

⁴³ This has been done by Leigh (2004) but restricted to how humor was particularly effective given the specifics of the *Pro Caelio*, namely that the humor in the speech functioned to mock the seriousness of the prosecution and trivialize its arguments. Volpe (1977: 321-323) comes a bit closer to making a wider argument about humor but again, does not attempt to explain how it might help persuade audiences.

⁴⁴ Harries 2007: 133-141. However, he also argues that this comic influence waned over the course of Cicero’s career. I would argue the opposite. While Cicero may not have been thinking specifically of comedy in his later speeches, he nevertheless employed more humor in them (see chapter three below).

⁴⁵ Corbeill 1996: 99-124.

Corbeill claims that that “Cicero would not have gotten this joke; or at least he wouldn’t have laughed.”⁴⁶ I am not so certain this is the case. In the Monty Python scene the joke stems from the paradox of one individual claiming that he’s not different from anyone else, while the crowd collectively asserts its individuality, precisely the opposite claim. I agree with Corbeill that this is not the kind of joke a Roman of the last century BCE would make. But I shall argue that this joke works in a way very similar to some of the most important jokes in Cicero, and most praised by Quintilian: namely, it is an admission that contradicts and challenges conventional wisdom.

Despite the small body of scholarly work directly focusing on humor and argument, a considerable body of scholarship addresses invective in oratory and in neoteric poetry. The first systematic study of Ciceronian abuse is Norman Merrill’s 1975 dissertation on the typology of invective.⁴⁷ Merrill demarcates eight common types of abuse: “aspiring to *regnum*,” “sexual misconduct,” “plunder,” “cruel and unusual punishment,” “effeminate behavior and appearance,” “drunkenness,” “*oratio inepta*,” and “*turpitude generis*.”⁴⁸ Cicero uses all eight of these tropes, and Merrill credits him also with the invention of what he calls “base associations.” Merrill further identifies physiognomic deformities as a common subject for Ciceronian invective.⁴⁹ To these I would add blasphemy. Although most of the evidence for blasphemy as a distinct *topos*

⁴⁶ Ibid. p. 3.

⁴⁷ To be sure, many scholars commented upon Roman invective before Merrill. Both Pocock (1926) and Syme (1939) thought it so rampant as to be customary. Nisbet (1961: 192-197) too thought that invective was so common that it couldn’t be viewed as accurate.

⁴⁸ Merrill 1975: 50-97. Following Merrill’s approach Wolf (1999: 136) argued that all of the invective in his speeches against Verres, Catiline, Vatinius, Piso, and Antony share similar imagery, particularly of beasts and “unnatural prodigies.” In contrast, Arena (2007: 60-73) argues that Cicero’s views on liberty changed through Cicero’s contact with Greek philosophy such that his invective against the *dominatus* of Antony is significantly different from the invective found in his earlier speeches.

⁴⁹ Ibid: 106-152, where Merrill draws attention to how the words *convivium*, *popina*, *scortum*, *tunica*, *pallium*, and *unguenta* are used by Cicero to make these arguments.

is from the Verrines,⁵⁰ it also obviously plays a large role in Cicero's prosecution of Clodius for desecrating the Bona Dea festival.

The next scholar to take up the topic of invective was Amy Richlin, in her groundbreaking study *The Gardens of Priapus* (1983). Richlin argues that Latin invective is hyper-masculine and so stigmatizing to its targets that it reveals the insecurities of the Roman elite male.⁵¹ Richlin's argument – that such invective, which she likens to the figure of Priapus who guarded homes and threatened transgressors with rape, is a tool for the elite to affirm its positions of power – is important because it represents the first step towards considering invective, and the humor therein, as evidence for Roman cultural values. It moved the discourse of Ciceronian invective from rhetorical traditions and schools of philosophy⁵² to Cicero's audience and Roman social history. Although I disagree with her Freudian reading of humor and its application to Roman oratory, her willingness to use humor as a tool of social analysis is an original and, for me, influential approach to thinking about Roman politics.⁵³

Two edited volumes of note with a focus on invective came out in 2004 and 2007.⁵⁴ In the first, *Cicero the Advocate*, Christopher Craig argues that Cicero used invective not to humiliate his opponents but “to make arguments of probative value in a judicial context.”⁵⁵ He admits that not all invective charges were true, claiming only that

⁵⁰ *Ver.* 24.

⁵¹ Richlin 1983.

⁵² Indicative of studies prior to Corbeill is De Lacy (1941: 49) who tries to trace the invective in the *In Pisonem* to common anti-Epicurean arguments in the philosophical literature of Cicero's time.

⁵³ Hickson-Hahn (1998: 1-7) has taken a similar approach to invective about incest. Adopting a Freudian interpretation, she argues that incest wasn't just a source of abuse for Romans, but was actually considered funny as well.

⁵⁴ A third, *Praise and Blame in Roman Republican Rhetoric* came out in 2010 and, though replete with great discussions of invective in its second half (e.g. Jehne's discussion of how Cicero criticizes parts of his audience – p. 111-125), offers few new conclusions about invective.

⁵⁵ Craig 2004: 212.

those which were perceived as true impacted the audience more deeply. Regarding the subject of invective, in *Cicero on the Attack* Anton Powell argues that invective reveals a culture's values. Meanwhile, Robin Seager claims that the majority of Ciceronian invective highlights one of three things: that "the target's behavior is (1) unprecedented, (2) unique and (3) highlighted by contrast with that of a 'foil'."⁵⁶ Likewise, Javier Uría argues that invective is a tool of political manipulation, used to expel individuals from elite status.⁵⁷ Regarding the target of invective, Steel argues that Cicero often omits naming his opponent, especially Clodius, in order to cast aspersions on the wider group of which that opponent is a part,⁵⁸ while van der Wal claims that Cicero uses language similar to invective to weaken the "ēthos" of opponents with whom he is on good terms and does not want to subject to his usual invective.⁵⁹

Ethnographic and feminist studies of poetry have also impacted our understanding of humor and argument. Regarding the former, David Wray's *The Poetics of Roman Manhood* followed Michael Herzfeld's *The Poetics of Manhood: Contest and Identity in a Cretan Mountain Village* in considering the communal aspect to Catullan poetry.⁶⁰ Wray found that Catullus engages in a form of verbal dueling, much like the *altercatio*.⁶¹ Among feminist scholars, Amy Richlin and Marilyn Skinner's discussions of how

⁵⁶ Powell 2007: 18 and Seager 2007: 43.

⁵⁷ Uría 2007: 60.

⁵⁸ Steel 2007: 123. Thus when in the *Pro Sestio* Cicero promises to be restrained in his invective and goes on to mention the wrongs that his enemies have done to him, he is chiefly thinking of Clodius but also referring to Piso and Gabinius. See p. 122 for Steel's analysis of this passage.

⁵⁹ Van der Wal: 193-197.

⁶⁰ See Chapter five for more on the competitive nature of Catullan poetry.

⁶¹ The word *altercatio* merely means verbal "give and take," but some scholars take it to be a formal process, perhaps part of judicial procedure. See p. 39-41 below.

Catullus uses obscenity have added to our understanding of the very dynamics of invective that Cicero occasionally employs in his speeches.⁶²

Few anthropologically-oriented interpretations of the language of Roman courts have been attempted apart from those of Riggsby and Hölkeskamp.⁶³ Investigations of Roman politics have adopted anthropological methods, but have focused on material culture;⁶⁴ for example, scholars have examined the traditional legislative bodies and battlefield;⁶⁵ Paul Zanker considered the sculpture of the Augustan Roman Forum; Wallace-Hadrill has analyzed the Roman house.⁶⁶ However, these works have attempted to understand the manner of communicating power rather than the language and rules of politics.⁶⁷ That is to say, much more emphasis has been placed on describing how someone who wielded power justified that power to others than on how that power was obtained in the first place. This emphasis, however, is understandable since the question of the role verbal performance played in the settling of power struggles is one which wasn't conceivable prior to the earliest work on the power of language, which began with Austin's theory of "performative utterances."⁶⁸ Since then much has been made of

⁶² Richlin 1991 and Skinner 1992. Richlin's discussion of *irrumare*, for example, has added to our understanding of the implications of anything Cicero says about the mouth, *os*.

⁶³ Hölkeskamp 1993, 2009, 2010, Riggsby 1995, 1997, 1999, 2004, 2010

⁶⁴ There are some exceptions. Roman texts of the late Republic have really only been treated from an anthropological perspective by Bettini 1991, Knight 1967, McCormack 1979, Pina Polo 2010 (although the latter is largely focused on the personal rather than the institutional dimension), and Wray 2001. Aristocratic competition has been treated more widely: see David 2009 and Farney 2007.

⁶⁵ De Blois 1987, Epstein 1987, Shatzman 1977.

⁶⁶ Wallace-Hadrill 1989, 1990, 1997.

⁶⁷ Zanker exemplifies this in his influential book on Augustan politics and material culture, *The Power of Images in the Age of Augustus* (1990).

⁶⁸ Austin 1955. This is indeed earlier than most of the studies cited above. However, this is more a testament to the speed with which the discipline of Classics embraces new ideas than a problem with linguistic theories (although such problems certainly exist).

performance, particularly by Richard Bauman and Charles Briggs,⁶⁹ opening up the possibility for future investigations.

1.5 The Following Chapters

I have divided this work into five chapters, including this introductory chapter. In the second chapter I lay out some of my assumptions and the justifications for them: namely my belief that the framework of Political Anthropology offers an useful interpretive platform for explaining the high degree of competition among Roman aristocrats,⁷⁰ both during the Republic and continuing on into the imperial period,⁷¹ and that Sociolinguistics helps explain the humor that was utilized by Cicero and certain other Romans of the late Republic. In chapter three I compile tables on the characteristics of Cicero's relevant defenses, chiefly the extent to which character and humor play a role in each speech. I then analyze each speech and conclude that, *ceteris paribus*, the more serious the charge his client faced, the more likely Cicero was to use character humor in his argument. I also argue that Cicero's primary tactic for dealing with the abuse the prosecution directs toward himself or his client is to admit to the accusation in a misleading manner and to turn it against the accuser. In chapter four I compile a list of jokes that Quintilian discusses in the sixth book of his *Institutio Oratoria*. I argue that Quintilian largely shares Cicero's sense of humor in that he most appreciates jokes that respond to criticism, avoid denial, and turn criticism back on the person who voiced it.

⁶⁹ Bauman (1983) investigated Quaker attitudes towards words, a concern which has become known as language ideology: the belief that a group has toward their language and its cultural context.

⁷⁰ Certainly this is an aspect to most aristocracies. See Kautsky 1982: 211-228. It has also been studied as a part of the Greek Symposium (Wecowski 2014), the Elizabethan and Stuart aristocracies (Stone 1965: 11-64), and Early Modern France (Grasby 1960: 19-38). Moreover, it has been a central part of assumptions in political science since the advent of anthropology's influence upon that field.

⁷¹ For the Republican period, see Rosenstein 1982, 1990a, 1990b, Farney 2000, Hölkeskamp 2010. For the imperial period, see Roller 2009 and Werner 2010.

Lastly, in the fifth chapter I go beyond the world of the courts to examine the tactic of misleading admissions and counterattack within the wider context of the late Republic. I consider examples in some of Cicero's non-judicial speeches and an *altercatio* he famously describes in one of his letters to Atticus. I additionally consider three poems of Catullus and multiple anecdotes from Plutarch's *Apothphegmata*. Overall, I contend that the verbal competition we find in Rome is characteristic of that culture and other "hyper-masculine" cultures, and I suggest that it is the result of a scarcity of prestige in the context of a martial culture.⁷² I conclude by suggesting that the tactic of admission and counterattack is an adaptive strategy for those in masculine, competitive cultures who were either not equipped to claim prestige by traditional methods, such as in battle, or were facing an onslaught of criticism. In other words, the individuals most likely to be skilled in responding to criticism are those who faced the most criticism. It is thus, no surprise that we find so many examples of this strategy in Catullus and Cicero, both of whom sought renown outside the traditional military sphere, one through literature and the other through oratory and statesmanship, and Caesar who, as the first dictator in Rome in thirty years and just the second in one hundred fifty years, encountered strong opposition.

⁷² I think it is fair to describe Honduras in the 1970s, under the junta, as well as Harlem in the 1960s (see chapter two below), hyper-masculine and short on opportunity for prestige. Of the other society famous for such verbal competitions, Turkey, I am not certain. However, it is worth noting that the only known participants in such verbal competitions in Turkey are boys between the ages of eight and fourteen. One could perhaps make the argument that, at this stage of intellectual, physical, and emotional development, boys have outlooks similar to those in martial societies. See Dundes, Leach, and Özkök 1972.

Chapter Two: Assumptions about Competition and Roman Politics

2.1 Introduction

To argue that Cicero had a common and successful response to criticism, namely to appear to admit to the criticism in such a way as to turn the debate toward an area in which he could excel, is to make an argument about much more than Cicero. Indeed, it is an argument about more than Cicero and his opponent(s). It is one about the two of them and the audience to whom they are appealing for support. The argument that I intend to make does not depend on the specifics of that audience. I would maintain that the tactic of mock admission and comeback as a response to censure is an effective strategy regardless of the background of the audience – be that equestrian, senatorial, equestrian-senatorial, or the people in the forum who gather around to listen for the sake of curiosity or entertainment (the *corona*). However, the success of this strategy does depend on certain assumptions about politics, competition, and social interaction. Those assumptions are the following:

- 2.1a The use of political anthropology and sociolinguistics is an effective way to understand verbal power negotiation in the late Republic.
- 2.1b Beyond the argument at hand in a particular case, Roman courts served as a locus for these verbal negotiations in which the performance of prosecutor and advocate alike determined how power was allotted.
- 2.1c Humor is a tool of power negotiation beyond the Roman world. Indeed, much ethnography demonstrates that humor wins arguments.
- 2.1d Some ethnography demonstrates that the humor that most effectively wins arguments is that which avoids denial, ideally admits to the accusation, in such a way as to shift the ground to a subject matter in which the accused can excel.

In this chapter I am interested in two large issues: why there are verbal contests in Rome at all; and what the dynamics of those contests are. I address the first of these broad

issues in the following sections: I shall first discuss [2.2] how I define power and then competition [2.3]; I then explain why and how we can apply certain categories and methods of political anthropology to the Roman context [2.4]. The second broad issue is the topic of the remaining sections: I shall then introduce the terms of sociolinguistics that we will be using, chiefly those surrounding the concepts of face and politeness [2.5]. Having done this we shall consider a number of ethnographic examples that demonstrate that the tendency for audiences to be heavily influenced by humor is more widespread than the Italic peninsula [2.6] and how multiple examples of verbal duels outside Rome share a common sociolinguistic framework [2.7].

2.2 Defining Power

Over the last century there has been much debate over how power should be defined. There is no question that power has to do with gaining desired results, but whether it is about the *potential* to bring about these results or the *actual* bringing them about continues to be debated. Furthermore, whether power should be viewed in terms of individuals or institutions has been a question. These are problems that we must consider when discussing the nature of verbal competition. Is it merely a form of symbolic capital and status over which Romans competed? If so, it would suggest that their struggles were more about ability than what that ability could bring about. Is the perception of power the same as actual power? Can we even think in terms of the interests of individuals? We need to arrive at our own definition of power in order to begin to address these questions.

Max Weber offers one of the simplest and broadest definitions of power. He suggests it is “the possibility of imposing one’s will upon the behavior of other persons.”¹ The first thing to note is that Weber sees power as a possibility. It is not that there is no power in carrying out one’s will, but rather that its origin is in the possibility itself, without which one couldn’t carry it out. One benefit to this interpretation is that it makes power more flexible. If we were to view power only in terms of action, then we would be limiting the kinds of power that exist in the world.² However, when we look at this definition from another angle, power unrealized is no power at all. To say “it could have been” is no evidence of power. I could have been president, but does that make me powerful? If I truly were the strongest candidate, this would imply that I possessed power, but if something happened and this was not realized, then would not whoever became president become more powerful than I?

To consider this definition in terms of two powerful rivals in the late Republic with differing claims to prominence, Cicero and Piso,³ we first have to consider what the wills of Cicero and Piso were. What did they want? Stephen Lukes suggests that this kind of question can be addressed by considering the benefits of power which he equates to a subject’s interests, which he describes using the words of Joel Feinberg:

[interests,] taken as a miscellaneous collection, consist of all those things in which one has a personal stake, whereas one’s interest in the singular, one’s personal interest or self-interest, consists in the harmonious advancement of all one’s interests in the plural. These interests, or perhaps more accurately, the things these interests are in, are distinguishable components of a person’s wellbeing: he

¹ Weber 1967: 323.

² Wealth, for instance, would not be considered power unless it was spent. Nor would physical strength if it were not exerted.

³ After Piso supported Clodius in the latter’s attempt to keep Cicero in exile in 58 BCE, Piso and Cicero became enemies. Cicero wrote the *In Pisonem* and Piso circulated pamphlets critical of Cicero. These documents appealed to the same audience, and thus we can consider them to be in competition with each other. Although we can’t be certain what Piso said of Cicero, there are some hints in Cicero’s invective. It’s likely that Piso appealed to his illustrious family background. See Griffin 2001: 85-99.

flourishes or languishes as they flourish or languish. What promotes them is to his advantage or in his interest; what thwarts them is to his detriment or against his interest.⁴

Such a definition, Lukes notes, breaks up one's interests into those of distant goals and those of more immediate means to achieving those goals. What were the long-term goals of Piso and Cicero? Speculating on this would be useless. But we can say that, whatever they were, they were dependent on short-term goals, and these short-term goals were dependent on the others' perceptions of them. Furthermore, related to this public perception of one's self is the public perception of one's rival. Cicero and Piso were not merely trying to paint themselves favorably but each other negatively. It seems to be a zero-sum game. But it does not have to be.

Feinberg's definition allows for the question of intention to be addressed in that one's immediate interests can be contrary to one's ultimate goals and vice-versa. These ultimate goals Lukes understands in terms of Feinberg's "interest network," where the achievement of one individual's goal can further the interests of others who have their own set of goals. Lukes quotes Feinberg's example of the dream house:

Thus, building a dream house is a means to the entertainment of house guests, to the private pursuit of studies and pleasures, to hours of aesthetic contemplation, and so on; the achievement of political power is a means to the advancement of favorite causes and policies; and the solution to a scientific problem is a means to the further advance of knowledge and technology, to say nothing of personal glory.⁵

Thus, going back to our Roman examples, Piso and Cicero, both individuals could, in theory, shine at the same time. Cicero could be famous for his statesmanship and Piso for his noble background. However, this possibility would depend upon there being two

⁴ Feinberg 1984: 34, quoted from Lukes 1986: 5.

⁵ *Ibid.*, 42, quoted from Lukes 1986: 7.

different, yet equal, places of power from which they could each exercise their claim to prominence: one that values statesmanship and one that values pedigree. Given that this was rarely the case in Rome due to the scarcity of honors, especially at the highest levels, competition arises. Both sides turn towards the same place, the same audience, and make contrasting appeals to it. And given the importance of honor and recognition to the Roman aristocrat, invective inevitably enters the picture. And once that happens, the conflict becomes that much more intense. Invective is designed to wound. It is the suggestion of the illegitimacy of another's claim to respect. Once Piso questions Cicero's claim that his handling of the Catilinarian conspiracy makes him deserving of respect, only one claim to legitimacy can remain standing.

Once we are in the zero-sum world of power, Michel Foucault offers a great deal of insight. His view of power is that it is only one part of a three part dynamic between truth and right.⁶ There is no one type of power, but many, and they depend on what one views as true and correct. In fact, Foucault goes so far as to say that "there can be no possible exercise of power without a certain economy of discourses of truth."⁷ By such a definition, Cicero and Piso are not only arguing about who is right and who is wrong but about competing versions of reality and value. The does not mean, however, that their arguments are sincere. Cicero could be passionately arguing for the superiority of statesmanship over pedigree not because he believes in it, but because he believes he can convince his audience, the senate and people, to believe it. In such a case, with two opposing appeals for political support, truth is irrelevant. In other words, Cicero's most basic desire is not that the world believe that politics and oratory are the most deserving

⁶ Foucault 1976.

⁷ Ibid. p. 1.

of praise. Rather it is that he be respected the most, that he be seen to have greater *dignitas* than Piso. Perception is what matters, not reality. That oratory be seen as superior to lineage is merely a means to an end. Furthermore, if perception is what matters, not oratory or triumphs in and of themselves, then we ought to speak of power in terms of individuals, not institutions. But what about the question of ability versus action, the question posed initially by Weber? Let us consider ability first.

If we are to use the Weberian definition of power as the ability to impose one's will on others, then we would have to say that the ability in question regarding Cicero and Piso is persuasion. Whoever is the more persuasive in selling his own claim to respect, and the concomitant unworthiness of the other, is going to have the ability to carry out his will. In such a situation, where the ability to argue surpasses merit itself in importance, it would seem that Cicero, a more famous orator than Piso, would be at an advantage. Simply by engaging in argument with Cicero, Piso is to some extent validating Cicero's position. For he is attempting to use rhetoric to argue that someone who came to prominence through rhetorical prowess has a less worthy claim. However, just because Piso is justifying Cicero's claims by trying to win over the public with words does not mean the debate is over. Piso may be using words but they are not words that are designed to appeal to the same logic as Cicero's. Cicero is trying to sell the value of oratory and statesmanship, by means of oratory, to an audience. Piso is trying to sell the value of nobility, not by means of verbal eloquence, but by simply declaring that he is from a better-known family, with more experience in leadership and more military accomplishments than Cicero. In other words, Cicero's argument is an appeal to oratory

whereas Piso's is an appeal to tradition. These different appeals are claims to legitimacy and respect, and thus, the ability to impose their wills on others.

If, on the other hand we are to think of power not as ability but as action, then what action or actions would we be speaking of? If the longterm goal of both Piso and Cicero is to gain respect, then that which brings about this respect would be the action in question, namely the success of one or the other's appeals to lineage or oratory. The problem of finding what earns respect is difficult because it depends on the values and mindset of others. What may earn respect with one person one day may incur disrespect with another person the next day. Thus, it seems as though we are dealing with elusive concepts.

In response to the question of "what interests us when we are interested in power"

Lukes states:

It turns out that there are various answers, all deeply familiar, which respond to our interests in both the outcomes and the location of power. Perhaps this explains why, in our ordinary unreflective judgments and comparisons of power, we normally know what we mean and have little difficulty in understanding one another, yet every attempt at a single general answer to the question has failed and seems likely to fail.⁸

Nevertheless, we can come to several conclusions about power in the world of Roman verbal contests. The first is that we can only speculate about long term goals. While it may not be a stretch to claim that Cicero's long term goal was to be thought the savior of the Republic, it is safer to stick to the basics. There is no question that in his forensic orations he is trying to win cases. In all of our analyses of verbal debates, this can be assumed: the adversaries are trying to come out on top; we may not be able to guess their long term goals but their short term goals are to appear to win arguments in the eyes of

⁸ Lukes 1986: 17.

the audience. Another conclusion related to this is that the Weberian definition of power as ability to impose will is convenient for our purposes for the very reason that it is focused on the short term rather than long term. Lastly, Foucault's argument – that any claim to power is embedded within its specific cultural and moral context – is a useful way to consider the nature of the debate and the audience's role in it. Romans, such as Cicero and Piso, who engaged in verbal contests appealed to more than one set of values in order to obtain the ability to impose their will freely.

2.3 Competition

There have historically been two different ways of looking at competition or rivalry. The first is to think of competition as being universal and biological, and the second is to view it as embedded within particular cultures and individuals. The latter view was championed by Georg Simmel.⁹ While some consider these views to be at odds with one another,¹⁰ they do not have to be. Scarcity is a fact of life, and much research in the social sciences is predicated, to some extent, on the assumption that societies face scarcities of resources. Thus it is not without merit to say that competition exists everywhere. Certain claims can moreover be made about its universal nature. The first is that competition is always over something. Hans van Wees claims that there are two types of competition, one form in which the purpose is to gain something desired by at least one other party and another form in which the purpose is to achieve superiority. He claims that for the former to exist there has to be a degree of scarcity, whereas for the

⁹ Coming from an economic perspective, Simmel (1903: 1010) differentiates between two types of competition: one between two individuals over money or reputation, and the other between collectives (for example, two theaters competing for audiences). The former he describes more as fighting and the latter as true competition, which can bring the community benefits (1012).

¹⁰ Nuffelen 2012.

latter scarcity is irrelevant. Rather than being opposing ways of competing, or even opposing ends of a spectrum of competition, the competition for superiority always exists; one may overlook it when one is caught up in survival, but it is there. Another way of saying this is that competition doesn't have to be for material gain. It can be for symbolic capital.¹¹ Van Wees is right to see a form of competition with no end in sight. And it makes sense that when it comes to the competition for superiority, where there is no conspicuous prize, the struggle could go on indefinitely and might escalate in such a way as to become a threat to society, at which point society must step in to control it. The problem is that the same sort of endless struggle could take place over a conspicuous prize as well.¹² What's more, Van Wees's dichotomy seems to imply that it is possible for one type of competition not to exist, for if in the pursuit of supremacy scarcity is irrelevant, then the only truly necessary or useful form of competition is for prizes. The dichotomy not only makes for different kinds of competition but assesses the values of them. It makes far more sense to see competition as having a clear goal, a prize, a conspicuous prize. One doesn't need to be able to see or touch that prize. One need only to see or touch the benefits associated with that prize. The Roman world, in fact, offers a perfect example of this: the *fascēs*. Bearing little to no value in themselves, the *fascēs* came to be seen as the sign of political and militaristic power.¹³ They came with any office that held claim to *imperium*, the right to command an army. One did not win the

¹¹ As Veblen showed in his seminal *Theory of the Leisure Class* (1912: 57-67).

¹² From a Marxist perspective it may be possible to eliminate the struggle for preeminence such that society could focus strictly on the allotment of materials, from prizes to grain and industrial goods. For more on Marx's views on competition see Stillman (1983: 297-306), who argues that Marx, following Hegel, considered *material* scarcity inevitable but thought *human desires* to be infinite. In such a dichotomy, one can either see the infinite human desires and imagination as ways to cope with scarcity and minimize it or as exacerbating the problem of scarcity further. It is only in the former view that one type of competition, the competition for preeminence, could be minimized.

¹³ For more on the *fascēs* as a symbol, see Schäfer 1988: 427-440.

fascēs; one didn't even win the *imperium*. One acquired the office, and the *imperium* and the visual sign of it went along with that office. The *fascēs* were merely a symbol of power.

When we try to go deeper into defining the fundamental characteristics of competition, the waters get a little murkier. However, we can still claim a few more universals. Van Wees articulates his competition for superiority into four constituent parts: escalation, regulation, exclusion, and rejection. His aim is to account for the breaking down of a competition, for situations when the game collapses and the loser challenges the winner's legitimacy. However, this collapse and challenge does not inevitably or necessarily happen. In my view, allowing for either a clear winner or a challenge by the loser would make for a better taxonomy. Thus I would propose a threefold articulation: challenge, regulation, and resolution. If the resolution is challenged, isn't it easier just to think of another competition taking place—namely, competition over a competition? To question a resolution is simply to challenge an opponent on another level from what was previously being contested. Usually this challenge takes the form of questioning whether the proper regulation was followed.¹⁴

2.4a Political Anthropology

In Rome and elsewhere, competition is best understood as part of a larger political system. We need to take into consideration not just the nature of competition but the nature of politics, or rather the politics of nature. As Ted Lewellen lays out in one of the earliest and most complete handbooks on Political Anthropology, "Political

¹⁴ We shall see that there are other ways to articulate the constituent parts of a competition, most of which only involve escalation and encounter. See below.

Anthropology ... consists mainly in the study of the competition for power, and the way that group goals are implemented by those possessing power.”¹⁵ Although we are more concerned here with the the competition for power, rather than with the wielding of it, we shall see below that we can fit passages of Cicero, Quintilian, and others into one of the following paradigms very effectively. From the early twentieth century to the early 1990’s, when Lewellen published, there have been approximately three main ways of looking at political culture from an anthropological perspective: the structural functionalist, the processual, and the action approach. Lewellen offers the following table to summarize their differences:

	Structural-Functionalism	Process Theory	Action Theory
Goal	To show how particular institutions serve to maintain the equilibrium of the whole society	To define the processes involved in political competitions and in implementing public goals	To describe individual strategies for gaining and maintaining power
Unit of Analysis	A society, tribe, social group, etc., usually treated as an ideal whole; this group was considered for analytical purposes as a closed system insofar as little regard was paid to the wider environment	The “political field,” a flexible and relative concept referring to any area in which political interaction takes place; may involve a part of society or extend beyond social or ethnic boundaries	The “political arena,” an area in which individual actors or small groups vie for political power. Political arenas may be, or be comprised all or in part of, factions, patron-client relations, parties, elites, and other informal parapolitical groups
Analytic Approach to Time	Synchronic: society is viewed as though outside of time, in	Diachronic, or “in time”: analysis may focus on	Diachronic, but often focused on the actions of individuals

¹⁵ Lewellen 1992: 99.

	Structural-Functionalism	Process Theory	Action Theory
	ideal present	actual history or on ideal processes of change through time	within the duration of the anthropologist's fieldwork
Attitude toward Change	In some writings, there was simply no interest expressed in change; society was treated in a purely structural fashion; in other writings, change (in the sense of adaptive adjustments of the parts) was emphasized, but the whole was seen to be in equilibrium	Conflict, tension, and change are viewed as the normal condition of society	Change within a political arena is virtually constant, though there may be a relative stability of the wider system
Key Terms	Structure, function, equilibrium, integration	Process, competition, conflict, power, legitimacy, support	Strategy, manipulation, decision making, roles, goals, games, rules
Examples	<p><i>African Political Systems</i>, ed. Fortes and Evans-Pritchard</p> <p><i>The Nuer</i>, by Evans-Pritchard</p>	<p><i>Political Systems of Highland Burma</i>, by Leach (transitional)</p> <p><i>Political Anthropology</i>, ed. Swartz, Turner, and Tuden</p>	<p><i>Schism and Continuity in an African Society</i>, by Turner</p> <p><i>Lugbara Religion</i> by Middleton</p> <p>"Political Anthropology: Manipulative Strategies," by Vincent, in <i>Annual Review of Anthropology</i> 1978</p>

It is hard to look at this typology and not see a great deal in each of the three theoretical frameworks that could help one understand the world of the late Roman Republic – especially the last two frameworks, both of which Lewellen considers to be processual. Action Theory, in particular, offers a productive way to look at individual competition in Roman politics of the late Republic. By de-emphasizing the value-laden rhetoric of Roman oratory, Action Theory gives us a window into not only cultural values but also the often strange world of Roman *competitive* values.

According to Action Theory, each “political man” seeks to maximize not only his financial situation but also, more broadly, his power. When two of these so-called Political Men meet, a political arena is created and what results is termed the “Social Drama.” The Social Drama has a series of rules, which may or may not be obeyed, and there can be only one winner. The winner may be a group rather than an individual but this group can be viewed, for practical purposes, as an individual. One of the first anthropological investigations to take up and develop this theory was Victor Turner, who analyzed the Ndembu of Rhodesia in *Schism and Continuity in an African Society* (1957). Turner moved away from looking at groups and focused instead on the individual.¹⁶ The individual can take up any number of strategies to advance his own interests. According to Turner, the main protagonist of his ethnography, Sandombu, seeks to pursue his interests through religion, or more specifically, curses. Another means of pursuing one’s interests might be physical violence. Still other means include poetic dueling, debating policy, debating character, or engaging in athletic competition. The important thing is that there are rules. The individual might not always be aware of the rules, but the rules

¹⁶ The individual being one person rather than the amalgamation of a group into an individual actor.

always exist.¹⁷ They may be normative rules that deal with (mostly) agreed upon principles – usually about ethics or other public ideals – or they may be pragmatic, dealing with the way the competition is won. We may think of these two different sets of rules as public and shared (normative), and private and individual (pragmatic). The competitors may not, and in fact rarely do, agree upon the normative rules but there is at least a debate about doing so with both sides trying to paint themselves as more closely following them. The pragmatic, however, is the set of choices made by the competitor in order to distinguish himself. This shall be our primary interest when it comes to Roman oratory.

Lewellen, following F.G. Bailey, sets out five elements of political structure, the first three of which are rather obvious: prizes or goals, the personnel seeking those prizes or goals, and leadership. The fourth, which is particularly relevant to Roman politics,¹⁸ is the competition itself. Lewellen, importantly, breaks this competition into two parts: confrontation, “or a move within the political arena that announces to an opponent one’s strengths in resources and one’s possible intentions,” and encounter, “in which both contestants publicly agree to test their strength against each other.”¹⁹ The fifth element of political structure is that which defines the rules: the judges.

Within the category of political competition, according to Lewellen, there are two types of political teams, the contract and the moral. He defines contract teams as those that are bound by “the profit or potential profit to be derived from following a certain leader.” Of contract teams there are two types: the transactional, in which the followers of

¹⁷ In the case of Barth 1959, the rules could be so thin as to be nearly invisible and at times border on anarchy.

¹⁸ The first three are: the political prizes, the people involved in the competition, and the leadership thereof. The last of the five are the judges of the competition. Lewellen 1992: 115.

¹⁹ *ibid*: 115.

a leader do so only as long as they perceive a direct benefit from him; and the bureaucratic,²⁰ where the leadership is dispersed so that the leader can avoid any challengers. Moral teams are those which share a core moral belief.²¹ Lastly, teams operate by means of what Lewellen calls “political symbolism,” which he says is “most powerfully manifested in nonpolitical institutions such as kinship, marriage, and other rites of passage, ethnicity, elitism, and various group ceremonies.”²²

2.4b The Political Anthropology of the Roman Republic

In Action Theory, the so-called political men are the two opposing sides.²³ The social drama is the competition itself and specifically the verbal exchanges that constitute it. The political arena in which the social drama (see below paragraph) took place is simply wherever these verbal exchanges took place, chiefly in the courts, the *quaestiones*. Lastly, the political symbolism upon which Lewellen places great emphasis is the discursive subjects under debate, as mentioned in Merrill in chapter one above.²⁴

If we take Lewellen’s five aspects of political structure and apply these to the Roman world, we would find that anywhere arguments were made there existed social dramas; for us this is chiefly the world of Roman courts. The people involved, the political men, are the advocate(s) and client on the defense and either the prosecutor(s) in a criminal case or advocate and plaintiff in a civil case. Outside the courts, the political men are the individuals exchanging words. The leadership is the magistrate under whose

²⁰ Lewellen offers Labor Unions as an example of a transactional contract team.

²¹ *ibid*: 116.

²² *ibid*: 120.

²³ Lewellen (1992: 83) defines the political man as someone who has “manipulative strategies to gain and maintain power.” For more see Blok 1970: 225-235.

²⁴ Namely, the range of the debate over character in which humor was used. Sexual dominance, financial security, verbal capabilities would thus be three different kinds of verbal symbolism.

authority the case is tried for the courts, or a moral authority such as the censor or a particular college of priests for extralegal exchanges. The competition itself, as stated above, is more difficult to define precisely. The first part of it is easy enough. What Lewellen calls the confrontation is what we would call the challenge. It occurs on two levels, the bringing of the case and, within that or independent of it, the challenges and claims issued. What would qualify as Lewellen's "encounter" would have to be the exchange of speeches that followed the confrontation or challenge. The arbiters are of course the audience, the onlookers and listeners and/or a formal judge, an *unus iudex*,²⁵ or jury. The prize for which the political men would be competing is, of course, reputation.

There are three distinct terms that are used to indicate the initiation or carrying out of a verbal duel, or what Lewellen would call an encounter, where the social dramas under consideration would take place: the *contumelia*, *altercatio*, and the *convicium*.²⁶ Regarding the *contumelia*, we have a working definition in Cicero. When Cicero differentiates between legitimate and illegitimate criticism of one's opponent in the *Pro Caelio*, he says that the former involves proof and is for the purpose of argument. The latter, he says, has nothing as its object beyond abuse, and he calls this *contumelia*. Thus it is acceptable to denigrate the adversary's social and moral failings, but not to do so falsely, which is not too far from saying that the adversary must be *infamis*.

²⁵ Civil cases of little political consequence would be heard by such a judge.

²⁶ The *contio* could be used to initiate a verbal confrontation but its format was such that it didn't allow quick retorts. It was a public gathering of citizens prompted by a magistrate for the purpose of informing them of something. Cicero frequently discusses giving them in response to Clodius or Antonius, as well as vice-versa. In the *Pro Sestio* Cicero suggests that Clodius held daily *contiones* against him. Cicero further mentions a *contio* of Caesar's that failed in a letter to Atticus. Unpopular at the time, Caesar was attempting to discredit some edicts of Bibulus against him and Cicero says that he could not "squeeze a voice [out of the crowd]." Presumably this means that noise from the crowd indicated that they were receiving a speech well and thus the silence in response to Caesar's *contio* meant that it was poorly received. See Morstein Marx (2004: 34- 67) for details on where and how the *contio* was given. He argues that it was used by the elite to mislead the crowds and justify their power (163).

One of the most commonly cited realms of verbal competition of the Roman world is the *altercatio*, a frequently brandished term which has little meaning in the Republican era. In fact, the word as a distinct form of confrontation is mainly found in ecclesiastical contexts;²⁷ this pattern of usage is the polar opposite to the description offered by Peterson, who asserts that “the essence of the *altercatio* is that it was conducted in the way of short answers or retorts.”²⁸ However, the evidence offered for this claim is a sentence in book twelve of Quintilian’s *Institutio Oratoria*, in which the author simply says “the Stoics argue bitterly about justice, probity, expedient, and the opposite, as well as about matters of the Gods while the Socratics are best at preparing the future orator for debates (*altercationes*) and interviewing witnesses (*interrogationes*).”²⁹ It is hard to see how we get from this to short answers or retorts. The only thing that seems to be conveyed by the passage is that Stoics and Socratics prepare to debate differently and for different subjects; that the former focus on the abstract subjects of justice, honor and usefulness and the latter on the pragmatic winning of cases and examination of witnesses. Quintilian isn’t contrasting the rhetorical style of the two schools but what they emphasize. It is true that the nature of debating justice, honor, and usefulness is such that one would expect long *sententiae* rather than quick barbs, but that is not to imply that the *interrogatio* or *altercatio* are somehow short.

Another oft-cited passage concerning the *altercatio* is from Cicero’s *De Oratore*, where Cicero discusses the value of unexpected words or claims for laughs. He says:

²⁷ For instance, the *Altercatio Iasonis et Papisci*, *Philo*, and *Anastasius the Sinaite*, a partially preserved dialog between a Christian and an Alexandrian Jew where the latter ends up converting. See Bruns 1973: 287-294. Most *altercationes* seem to be attempts to delegitimize Judaism. See Frede 1981.

²⁸ From Shackleton Bailey, *Ad Att.* I, 319.

²⁹ 10.1.35: *nam et de iustis, honestis, utilibus, iisque quae sint istis contraria, et de rebus divinis maxime dicunt et argumentantur acriter Stoici, et altercationibus atque interrogationibus oratorem futurum optime Socratici praeparant.*

quae genera percurram equidem. Sed scitis esse notissimum ridiculi genus, cum aliud exspectamus, aliud dicitur: hic nobismet ipsis noster error risum mouet: quod si admixtum est etiam ambiguum, fit salsius; ut apud Nouium uidetur esse misericors ille, qui iudicatum duci uidet: percontatur ita: “quanti addictus?” “Mille nummum.” Si addidisset tantummodo “ducas licet”; esset illud genus ridiculi praeter expectationem; sed quia addidit “nihil addo, ducas licet”; addito ambiguo [altero genere ridiculi], fuit, ut mihi quidem uidetur, salsissimus. Hoc tum est uenustum, cum in altercatione arripitur ab aduersario uerbum et ex eo, ut a Catulo in Philippum, in eum ipsum aliquid, qui lacesiuit, infligitur.³⁰

These sorts [sc. of jesting] I will now run over: but you are aware that that is the most common kind of joke, when we expect one thing and another is said; in which case our own disappointed expectation makes us laugh. But if something ambiguous is thrown in with it, the wit is heightened; as at the house of Novius, it seems there was a certain compassionate man who saw someone that was sentenced for debt being led away and inquired ‘for how much is he adjudged’? He answered, ‘A thousand sestertii’. If he had then added only, ‘You may take him away’, it would have been a species of joke that takes you by surprise; but as he said, ‘I add no more; you may take him away’, (thus introducing the ambiguous, another kind of jest,) the repartee, as it seems to me, is rendered witty in the highest degree. Such equivocation is most happy, when, in any dispute (*altercatio*), a word is caught from your adversary, and thence something severe is turned upon the very person who gave the provocation, as by Catulus upon Philippus.³¹

From this we can gather little other than that the *altercatio* was something in which one might use the words of one’s opponents against him. While it is easy to see why this would mostly occur in short exchanges (see [2.7a and b] below for more on this), there is no reason to think that it couldn’t appear in long ones either. Indeed, there are numerous instances in which Cicero twists the words that his enemies have directed against him at length in his speeches.³²

Others see an even more precise definition of an *altercatio*. Following Kennedy and Frier, Riggsby³³ cites Quintilian to suggest that the *altercatio* was a specific section

³⁰ *De Orat.* 2.255.

³¹ Translation by J.S. Watson, with alterations.

³² See chapters three and four.

³³ Riggsby 1999: 18, Kennedy 1972: 15, Frier 1985: 208-9.

of any trial, after the speeches and witnesses.³⁴ This is a far more sensible alternative. Rather than define the word by its essential meaning as a distinct form of argument, it makes much more sense to consider it within a larger context, and in this case that of a judicial setting. Therefore, some examples that other scholars have referred to as *altercationes* will simply be referred to as verbal contests here.

One mysterious area in which we can place verbal debate is something we will refer to as *convicium*, a word whose meaning is not entirely clear. We see something suggestive of it, which is perhaps a specific kind of *convicium* known as a *vociferatio*, in the Digest:

Ait praetor: 'qui aduersus bonos mores *conuicium* cui fecisse cuiusue opera factum esse dicetur, quo aduersus bonos mores *conuicium* fieret: in eum iudicium dabo'. *Conuicium* iniuriam esse Labeo ait. *Conuicium* autem dicitur uel a concitatione uel a conuentu, hoc est a collatione uocum. cum enim in unum complures uoces conferuntur, *conuicium* appellatur quasi *conuocium*. Sed quod adicitur a praetore 'aduersus bonos mores' ostendit non omnem in unum collatam uociferationem praetorem notare, sed eam, quae bonis moribus improbat quaeque ad infamiam uel inuidiam alicuius spectaret. Idem ait 'aduersus bonos mores' sic accipiendum non eius qui fecit, sed generaliter accipiendum aduersus bonos mores huius ciuitatis.³⁵

The Praetor says: "I will grant an action against anyone who is said to have made a *convicium* against another, or to have caused a *convicium* to be made, in a way contrary to good morals." Labeo says that a *convicium* constitutes an injury. However, a *convicium* is said to be from a mob or a group, i.e., from a gathering of voices. For when multiple voices are brought against one it is called a *convicium* as though it were a group of voices. But what is added by the Praetor, that is to say, "Contrary to good morals," shows that he condemned not all the united clamor, but merely that which violates good morals, and which has a tendency to render someone infamous, or detested. He also says that the expression, "Contrary to good morals," should not be understood to refer to those of the person who commits the offense, but, in general, to mean "in opposition to the morals of this community."

³⁴ *Inst Orat* 6.4: the word *altercatio* is used eight times, without other words being used in its stead.

³⁵ 47.10.15.2.1 - 47.10.15.7.1.

Despite the frustratingly ambiguous words *aduersus bonos mores*, we can still draw some conclusions about *convicia* from the reported words of the Praetor, especially when considered in light of another passage in the same chapter of the Digest. First of all, it is clear from the passage that the shouting of abuse, while not in itself a cause for action, must surely be the result of some feud or serious communal complaint against an individual, and thus at the very least possibly part of a verbal debate. It is not clear what makes a *convicium* actionable or not. If we were to take the *aduersus* as a predicate adjective agreeing with the *qui*, which has as its antecedent the *eum* near the end of the sentence (*qui aduersus bonos mores conuicium cui fecisse cuiusue opera factum esse dicetur, quo aduersus bonos mores conuicium fieret: in eum iudicium dabo*), it would seem that what is at stake is the character of the individual or individuals doing the shouting. Thus, if a person who himself was considered to be hostile to or acting contrary to community morals is the one instigating the *convicium*, there is grounds for the victim to sue.

When it comes to the following interpretation of the Praetor, the meaning is less clear. To whom does the *alicuius* refer in the clause *quaeque ad infamiam uel inuidiam alicuius spectaret*? Is it to the victim of the abuse, as Watson clearly takes it?³⁶ Or, does it refer to the person responsible for the *uociferatio*? The latter would seem to be in keeping with the reported words of the Praetor, since the difference between someone who already is opposed to sound morals and someone whose words make him opposed to sound morals is somewhat slight. In such a reading, the law would seem to be that a

³⁶ Watson has no commentary but his translation implies it. He renders the last two sentences, “But the praetor’s qualification ‘contrary to sound morals’ shows that he does not condemn all loud calling after a person, *but only that which offends against sound morals and is directed to the disgrace and unpopularity of an individual* [my italics]. Labeo says that ‘contrary to sound morals’ is to be taken as referring not to those of the offender but to those of the city.”

vociferatio that is conducted in a manner that leads to the *infamia* or *inuidia* of the person who instigates it would be actionable. However, this cannot be the case because there would be no need for someone who has already made himself infamous to be sued. The *alicuius* must therefore be the victim of the *vociferatio*. The indeterminate nature of the *ali-* prefix and the *infamia* and *inuidia* further suggest that it is the victim of the abuse. Moreover, *eius* is used to refer to the offender just below in the same passage. If someone stirs up *infamia* or *inuidia* against someone that goes against sound morals, that person may be charged. However, there is one more problem.

To take *alicuius* as referring to the victim of the *uociferatio* raises a question. If the Praetor only disapproves of the *convicium* that “points to the *infamia* or *inuidia* of someone” (*ad infamiam uel inuidiam alicuius spectaret*) then what kind of *convicium* can we imagine that does not *ad infamiam uel inuidiam alicuius spectat*? Is there any kind of abuse that doesn’t lead to *infamia* and *inuidia*? Other than simply concluding that there was a difference between the letter of the law and practice of it, the only possible interpretation is the requirements of the *quae ... ad infamiam uel inuidiam alicuius spectaret* clause and the previous *quae bonis moribus improbatur* clause must be met for something to be actionable. If the aim of the *vociferatio* is to bring *infamia* and *inuidia* upon its target, but the manner in which it is carried out is not at odds with *bonae mores*, then the *vociferatio* would not be actionable. Such an interpretation would suggest either that the words used in attempting to defame someone had to be polite or that the words were not against *bonae mores* if they were accepted as fact. Given that there is no mention of any standard of truth, it seems that the issue is how the *vociferatio* is delivered rather than how it is received. A *vociferatio* contrary to public morals is one that is

delivered with words contrary to public morals. But what are words against sound morals? Is it a matter of the choice of words or the manner in which they are spoken? Furthermore, if the Digest gives no examples of individuals performing a *convicium*, does that mean that there is no such thing as individual defamation?

One of the dominant views is that words against sound morals are those spoken with “deliberate or malicious incantation.”³⁷ This seems to be what the law says. However, it does not mean that actions were pursued on this basis. There is often a vast difference between theory and practice in law and this is especially true when it comes to defamation. For one thing, a great deal depends on the defamer. It would be a rare occasion for a poor defamer to be sued since he would have no money to give as compensation, and with no potential compensation, a plaintiff is not going to want to have his dirty laundry aired.³⁸ For another, what is or isn’t polite language is subjective.

Moving from the question of where in the Roman world the verbal competitions of the social drama took place to the question of the prize(s) over which Roman political men competed, we can point to something much more specific than *convicia* or *altercationes*: political office, or *honores*. High office not only augmented one’s reputation and increased one’s influence in the senate after holding office,³⁹ but also

³⁷ From the Twelve Tables. *Lex XII* 8.1: *qui malum carmen incantassit...*

³⁸ On occasion the wealthy would have motive to bring someone of a lower social status to court if that person had the capability of spreading the libel. In such situations, given the importance of reputation to Roman aristocrats, they might want to risk airing their dirty laundry in court to stop its spread. Thanks to Andrew Riggsby for pointing this out.

³⁹ See Ryan (1998: 113) who cites *FIRA* I² 21 CAP 124: *si volet, in eius locum qui condemnatus erit sententiam dicere, ex h(ac) lege liceto*. He also cites Cicero’s statement in the *Verrines* that “if I seem here to have wished to rise at the expense of that man, something which I have not sought, in the event that he is acquitted, which is impossible without the criminality of many men, I’ll rise at the expense of many” (*si videor hic, id quod ego non quaesivi, de uno isto voluisse crescere, isto absoluto, quod sine multorum scelere fieri non potest, de multis mihi crescere licebit*).

came with the potential for holding a military command – something both lucrative and potentially a means to win glory for one’s name.

Further, pursuit of public office in itself was a means of spreading one’s name and increasing one’s reputation.⁴⁰ Cicero highlights this in the *De Officiis*:

Sed cum duplex ratio sit orationis, quarum in altera sermo sit, in altera contentio, non est id quidem dubium, quin contentio orationis maiorem uim habeat ad gloriam...⁴¹

Sed cum sint plura causarum genera, quae eloquentiam desiderent, multique in nostra re publica adulescentes et apud iudices et apud populum et apud senatum dicendo laudem assecuti sint, maxima est admiratio in iudiciis, quorum ratio duplex est.⁴²

But as the classification of discourse is a twofold one — conversation, on the one side; debate, on the other — there can be no doubt that of the two this debating power counts for more toward the attainment of glory.

But while there are occasions of many kinds that call for eloquence, and while many young men in our republic have obtained distinction by their speeches in the courts, in the popular assemblies, and in the senate, yet it is the speeches before our courts that excite the highest admiration.⁴³

Furthermore, Jean Michel David and Francis Ryan have shed light on the benefits to be had by successful prosecutions while procedural questions and punishments have been investigated many times.⁴⁴ When it comes to what I am calling challenge, regulation, and resolution, however, things are less well-defined. We could say that in the courts a

⁴⁰ In the *Commentariolum Petitionis* the author notes that a new man could be thought deserving of the consulship if he successfully defended someone of consular rank. See Q. Cic. *Pet.* 2: *non potest qui dignus habetur patronus consularium indignus consulatu putari*. Indeed, David (1992: 67) argues that anyone who goes to an orator for help is subjecting himself to that orator. While I would not go this far, the level of vitriol in Roman oratory is proof of its high stakes in and of itself.

⁴¹ *De Off.* 2.48.1-3.

⁴² *Ibid.* 2.49.1-5.

⁴³ Translation by Miller 1913.

⁴⁴ David 1992: 497-569 and Ryan 1998: 113-115. For recent work on punishment in Rome, see: Saller 1991, Robinson 1995, Bauman 1996, Beness 2000. For a fuller bibliography (most of which is focused on procedural rather than substantive issues), see Bauman 1996, p. ix.

challenge simply consisted of a charge. However, we are interested in verbal contests within the courts, and there may be multiple verbal contests within the same case. It is better to think of the challenge in terms of Goffman's concept of face, what we might call "a face threatening act" (see below for both).⁴⁵ Such an act could take almost any form so long as it resulted in the opponent being insulted. It could, for example, take the form of an explicit verbal insult, a particular tone of voice, a particular stance or gesture, or simply a rolling of the eyes. As to what I, and indeed Van Wees, am calling the "regulation," the competition itself; for our purposes that would be the verbal duel, and more specifically those of the Roman courts, the *quaestiones*.

2.5 Face and Sociolinguistics

In order to understand fully the dynamics of verbal contests, I have found it helpful to bring a sociolinguistic perspective to bear. I draw chiefly upon the work of Brown and Levinson, who themselves draw a great deal of their inspiration from Erwing Goffman and, to some extent, William Labov. Before I begin to analyze some Latin passages, it is necessary to give a very brief overview of some of the terminology that is commonly used in sociolinguistic treatments of invective.

"Face" is a term used to describe the image that a person wants to claim for his or herself.⁴⁶ It has two aspects to it: a negative and a positive. The negative aspect is the claim to personal rights and autonomy. The positive aspect is the way one would like to

⁴⁵ Goffman 1959. See also Brown and Levinson 1987.

⁴⁶ A term coined by Goffman and used extensively in his book "The Presentation of the Self in Everyday Life."

be perceived. In general, all people cooperate to maintain face,⁴⁷ but in the highly contentious world of Roman politics there was much to gain by not cooperating. When one person threatens another person's face, that action is referred to as a "Face Threatening Act" or FTA. Actions which are designed to restrict someone's claim to autonomy are "negative FTAs." Those which violate one's desire to be perceived in a certain way are "positive FTAs." I shall be concerned primarily with positive FTAs. However, it will be useful to give examples of the range of both types of actions. All of the following, 2.5a and 2.5b, is from Brown and Levinson.⁴⁸

2.5a). Negative FTAs

Negative FTAs are those:

1.) that assume a future action (A) of the listener (H) and in so doing put pressure on H to do or refrain from doing that A. Under this category would fall:

- a) Orders and requests – Speaker (S) indicates that he wants H to do or refrain from doing A
- b) Suggestions and advice
- c) Reminders
- d) Threats, warnings, and dares

2) that predicate some positive future act of S toward H, and in doing put pressure on H to accept or reject them, and possibly incur a debt:

⁴⁷ Brown and Levinson. This has recently be challenged by Mühleisen and Migge (2005: 8-12) as well Eelen (2001) Wierzbicka (1985, 1991), all on the problems with the universal claims of Brown and Levinson. This controversy is of little relevance when it comes to argument. These linguists are concerned with everyday face maintenance, whereas we are concerned here with debate, often involving highly contentious claims relating to character and where, consequently, we would expect politeness to be at a minimum (though not absent entirely).

⁴⁸ 1987: 65-68.

- a) Offers (S indicates that he wants H to commit himself to whether or not he wants S to do some act for H, with H thereby incurring a possible debt).
 - b) Promises (S commits himself to a future act for H's benefit).
- 3) Those acts that predicate some desire of S toward H or H's goods, giving H reason to think that he may have to take action to protect the object of S's desire, or give it to S:
 - a) Compliments, expressions of envy or admiration (S indicates he likes or would like something of H's)
 - b) Expressions of strong (negative) emotions toward H (S indicates possible motivation for harming H or H's goods)

2.5b.) Positive FTAs

- 1) Those that show S has a negative evaluation of some aspect of H's positive face:
 - a) Expressions of disapproval, criticism, contempt, or ridicule, complaints and reprimands, accusations, insults (S indicates that he doesn't like/want one or more of H's wants, acts, personal characteristics, goods, beliefs or values)
 - b) Contradictions or disagreements, challenges (S indicates that he thinks H is wrong or misguided or unreasonable about some issue, such wrongness being associated with disapproval)
- 2) Those that show S doesn't care about or is indifferent to H's positive face:
 - a) Expressions of violent (out-of-control) emotions (S gives H possible reason to fear him or be embarrassed by him)

- b) Irreverence, mention of taboo topics, including those that are inappropriate in the context (S indicates that he doesn't value H's values and doesn't fear H's fears)
- c) Bringing of bad news about H, or good news (boasting) about S (S indicates that he is willing to cause distress to H, and/or doesn't care about H's feelings)
- d) Raising of dangerously emotional or divisive topics (S raises the possibility or likelihood of face-threatening acts occurring; i.e. S creates a dangerous-to-face atmosphere)
- e) Blatant non-cooperation in an activity – e.g. disruptively interrupting H's talk, making non-sequiturs or showing non-attention (S indicates that he doesn't care about H's negative or positive-face wants)
- f) Use of address terms and other status-marked identifications in initial encounters (S may misidentify H in an offensive or embarrassing way, intentionally or accidentally)

I would like to take one passage from Cicero's 2nd Philippic to illustrate the dynamics of face threatening acts. In it Cicero is responding to the criticism that he is vain and a poor poet. He does so in a progression of thought and language that begins quite explicitly but becomes increasingly exaggerated and hypothetical to the point that, by the end, it appears as though this whole line of thought was a joke. That is to say, Cicero presents what is a very serious accusation, a *convicium*, in language that masks its

seriousness. In his own words, he takes abuse and replies to it with *urbanitas* in order to make the original abuse look like mere jeering:

At etiam quodam loco facetus esse uoluisti. Quam id te, di boni, non decebat! In quo est tua culpa *non nulla*.⁴⁹ Aliquid enim salis a mima uxore trahere potuisti. 'Cedant arma togae.' *Quid? tum nonne cesserunt? At postea tuis armis cessit toga*.⁵⁰ Quaeramus igitur utrum melius fuerit libertati populi Romani sceleratorum arma an libertatem nostram armis tuis cedere. Nec uero tibi de uersibus plura respondebo: tantum dicam breuiter, te neque illos neque ullas omnino litteras nosse;⁵¹ me nec rei publicae nec amicis umquam defuisse, et tamen omni genere monumentorum meorum perfecisse operis subsiciuis ut meae uigiliae meaeque litterae et iuuentuti utilitatis et nomini Romano laudis aliquid adferrent. Sed haec non huius temporis: maiora uideamus.⁵²

But at one time you wished to be funny. Good god, how little this suited you! And in this matter you are rather at fault. You could have dragged something witty from that mime of a wife of yours. "Let arms yield to the toga" (is the statement you make fun of). *What of it? Did they not yield then? However, later the toga yielded to your arms.* Let us look into whether it was thus better that for the arms of criminals to yield to the freedom of the Roman people or for our freedom to yield to your arms. I shall respond no more to you about the poetry: I shall just say briefly that you don't know it or any other literature at all; that I have never failed the republic nor my friends, and furthermore that I made effort that in every genre of my writing that was made with a view to history my wakefulness and writings brought something useful to the young and something praiseworthy to Rome. But this isn't the time for that: let us turn our focus to bigger matters.

Cicero opens this passage by trivializing and mocking Antony's allegation, which was a positive FTA in that it challenged Cicero's claim to power and influence – his handling of the Catilinarian Conspiracy.⁵³ Instead of saying something weighty, Cicero accuses Antony of being petty, and of doing a bad job of being petty by not criticizing his poetry

⁴⁹ Ramsey calls this mock friendliness (p. 191).

⁵⁰ Ramsey points out that Cicero is deliberately misleading here. He says that he was merely trying to say "let war give way to peace" but from *Pis.* 73 we know that the second half of this verse was *concedat laurea laudi*, from which it seems fair to say that Cicero was claiming that he deserved more praise than a victorious general (191). Ramsey compares this to *Off* 1.77.

⁵¹ See *Phil.* 3.21-2 and 13.43.

⁵² *Phil.* 2.20.

⁵³ As Ramsey has pointed out, Cicero has used these very same words before in the *Pro Sulla* (22). c.f. *Dom.* 92.

with any style or ability. However, what follows is the real cleverness in Cicero's response. Instead of replying to the real charge, that of being a poor poet and a vain man, Cicero responds with language that suggests Antony had made an inaccurate historical claim – that arms did not yield to the toga – or claimed that the toga should have yielded to arms. Cicero pretends that Antony never threatened his face! In fact, Antony's criticism was likely that Cicero was an arrogant hack. What is odd about this is that we know how this speech was received. Cicero clearly won the public relations battle. How did Cicero manage to portray Antony's words as abusive and yet portray his own words as wit? The answer to this lies in the struggle to define one's opponent as a slanderer and oneself as a witty victim of abuse. Cicero's strategy is to portray Antony as someone who seeks unsuccessfully to appear urbane and witty, but in fact is out of control and spewing irrational abuse. He portrays Antony as an irate dimwit and himself as a calm and collected wit. And by pretending to misunderstand Antony's positive FTA he reinforces his own face with his own positive politeness.

2.5c.) Redressive Actions and Positive vs. Negative Politeness

Lastly, and most importantly for our purposes, are Redressive Actions. Redressive Actions are attempts to negate face-damage whereby S tries to show H that he recognizes H's face wants. This is done in two different kinds of politeness, positive and negative. Positive politeness refers to reinforcing the positive face of H, the image of himself to which he lays claim. Negative politeness refers to the avoidance of insulting the face of H.⁵⁴ In the schema of Brown and Levinson, Redressive Actions are used by

⁵⁴ A common example is that of asking for money. Positive politeness would be to ask "will you lend me some money?" Such a question gives the hearer the impression that you think he or she has money,

Speakers in order to “give face” to the listeners. To some extent, they are used to take back any FTA that may have been voiced by the speaker. I would like to suggest that in much of Latin oratory, and indeed in much of English vernacular practice, there exists what I would like to call a false Redressive Action. By this I mean that the speaker, S, caps his verbal abuse with what appears to be a Redressive Action but is in fact a strategy for deflecting future criticism.⁵⁵

2.6a Audiences

The strategy of evasion is a time honored one because it works. The reason for the success of this strategy is too complicated to address here. However, there is something to be said about the role of the audience. If Cicero succeeds in his handling of accusations and retorts, it is only because the audience goes along with it. When the audience does go along, does this mean that they are no longer paying attention to the issue at hand? Is Cicero merely pulling wool over the audience’s eyes? Yes, but the audience willfully lets it happen. Arguments over important matters are often entertaining. There is a reason that Aristophanes joked, in the *Wasps*, about the allure of the court among old men:

φιληλιαστής ἐστιν ὥς οὐδεὶς ἀνὴρ,
ἐρᾷ τε τούτου, τοῦ δικάζειν, καὶ στένει
ἢν μὴ 'πὶ τοῦ πρώτου καθίζηται ξύλου.
ὔπνου δ' ὁρᾷ τῆς νυκτὸς οὐδὲ πασπάλην.
ἢν δ' οὖν καταμύσῃ καὶ ἄχνην, ὅμως ἐκεῖ

thereby reinforcing the image that the listener wants to have, that he or she is wealthy. Negative politeness would be to ask “would it be too much for you to lend me some money?” This kind of question avoids calling the listener cheap and allows him or her the possibility of saying “yes, it would be too much” without creating strife.

⁵⁵ Cicero carries out Redressive actions throughout his *Pro Plancio*. The prosecutor, Laterensis interpreted Cicero’s support of Plancius as an affront so Cicero is careful to reiterate the basis of their friendship in the speech. Likewise, he carries out what I call a False Redressive Action in the *Pro Caelio* when his compliments of the young prosecutor’s character evolve into criticisms for his leniency with words.

ὁ νοῦς πέτεται τὴν νύκτα περὶ τὴν κλειψύδραν.
ὕπὸ τοῦ δὲ τὴν ψῆφόν γ' ἔχειν εἰωθέναι
τοὺς τρεῖς ξυνέχων τῶν δακτύλων ἀνίσταται,
ὥσπερ λιβανωτὸν ἐπιτιθεῖς νουμηνία.⁵⁶

Of all men, it is he who is fondest [sc. of the Heliaea].
Thus, to be judging is his hobby, and he groans
if he is not sitting on the first seat. He does not
close an eye at night, and if he dozes off for
an instant his mind flies instantly to the clepsydra.
He is so accustomed to hold the balloting pebble,
that he awakes with his three fingers pinched together
as if he were offering incense to the new moon.

Philocleon is so enamored with serving on juries that he groans from pain when not seated in front; he can't sleep at night, and when he can he dreams of sitting in judgment. This same obsession is today reflected in contemporary daytime television. Courtroom shows like Judge Mathis, Paternity Court, The People's Court, Last Shot with Judge Gunn, America's Court with Judge Ross, Judge Joe Brown, Judge Alex, etc. demonstrate the vast popularity of the reality courtroom television genre.⁵⁷

In a potential competition between two individuals for a job, a spouse, sustenance, or any other kind of resource, insults may be employed to attempt to dissuade the other from competition. But such insults, if they are to be effective, have to be recognized by both sides as insults, and thus the insulting would be ritual. However, if no dissuasion is possible and violence is presumed not an option, then the only other way to settle the dispute is by appeal. For invective to exist one needs not only two individuals at variance and an object that is the cause of that variance, but also an external audience who has control over that object and can adjudicate the competing claims. Thus invective is always about worth, or the lack thereof. And although its target might seem to be its

⁵⁶ Ar. *Vesp.* 88-96.

⁵⁷ For the popularity of this drama, see Nasheri 2002.

primary audience, it is is not. The primary audience of any invective is the person or persons who have the power to adjudicate and assign control of the object desired by the two sides.

In political cases what is at stake in invective is the transfer of communal support from one person to another. It always involves the assessment and evaluation of opponents by people to whom both sides are appealing. And the greater the stakes, the greater the likelihood that the transfer of support will be larger in the end. Take two poets exchanging criticism over who is more stylistically sophisticated, as they seek the support of their peers; then imagine it over who had more support among the audiences of their poetry. In the case where the appeal is to one's peers, the stakes are lower. Losing the debate among one's peers rather than with the wider audience is less likely to result in one's being abandoned by his patrons and public. That is to say, given that the consequences are relatively trifling, the audience of peers is less likely to take the charges as sincere criticisms. They would simply consider the debate a friendly sparring match. It doesn't matter how serious the charges may be. It matters how strongly they resonate with the audience and the strength of resonance is dependent upon how great the repercussions of winning are. When Catullus, in poem 16, threatens to rape two critics of his poetry, this threat does not have to mean that something serious is at stake, that he truly hated Aurelius and Furius. If the readers of Catullan invective simply thought "Oh, those three are going at each other again," then it is less likely that the end result of the debate between Catullus and his critics would result in the complete defeat of one side and the exaltation of the other. Now consider what happens when we turn from an audience of peers to a broader public. When the audience of the agonistic exchange

includes potential and existing patrons and clients, the stakes rise dramatically and so does the likelihood that the insults are going to be taken seriously. No longer at issue is the question of standing within a group (first among equals), but standing within a larger social context, one that is tied up with prestige and capital. We can thus say that the seriousness of invective, how brutal it is, is dependent upon two things: the size and composition of the audience and the importance of what is at stake.

The degree to which a verbal competition was regulated was not due to a set system of rules created according to cultural values but by the ability of the competitor to manipulate the rules to suit his interests. Again, this is not to say that there was complete moral relativism in the Roman world. In fact, the opposite could be argued – that Romans cared so deeply about character and morality that accusations became much larger than the simple matter of guilt or innocence in a particular instance. However, even if we accept the reasonable assumption that there was no more agreement among Romans about morals than there is among individuals today, we can still say that the debates discussed in what follows were attempts to find common ground. In any event, when it came to the courts, no matter what the yardstick was for verdicts, the people judging were the jurors and audience. Their reactions to the words and claims of the speakers illustrate the rules of the game. The praise or blame they gave to speakers demonstrates whether they thought the game was being played fairly or not, as well as whom they thought to be winning. And as Leanne Bablitz has argued, audiences were not silent in their reactions.⁵⁸ She documents, from Martial, many common outbursts, from which we can conclude that audiences were not simply judging a speaker by the

⁵⁸ Bablitz 2007: 133, taken from Mart. 2.27 where a *patronus* is in the middle of pleading a case while the crowd shouts '*Effecte! graviter! cito! nequiter! euge! beate!*' '*Hoc volui!*'

quality of his argument but by the way in which he made it.⁵⁹ Thus we can say that style was at least at issue, in addition to the straightforward substance that we commonly think of as the subject of a legal decision. In fact, substance may not have played much of a role at all. And audiences played a role in areas outside of the courts. It is likely, as Fergus Millar has argued, that crowds were listening in on debate nearly everywhere it took place.⁶⁰

Andrew Riggsby argues that Cicero's speeches suggest that Romans at the very least wanted to believe in their verdicts or resolutions.⁶¹ He claims that the audience believed in the process, and that whether advocates considered themselves concerned with fairness and truth is besides the point. Furthermore, although the advocates may have lied and twisted the truth, the whole enterprise was thought to be about determining guilt or innocence. This may be true. In fact, one of Cicero's most famous speeches in antiquity, the *Pro Milone*, was a case that Cicero lost. If jurors cared only about rhetorical elegance, the cleverness of the argument, and jokes, then Clodius's prosecution must have been one outstanding piece of rhetoric. More likely, however, is that the jurors simply did not accept the twisted logic of Cicero's argument. Milo was simply and unequivocally guilty. But for every *Pro Milone*, there is an *In Vatinius*. It is hard to discount the fact that some of Cicero's most vitriolic invective was directed at a man with whom Cicero later exchanged pleasant letters.⁶² Of course, that men who were at odds in

⁵⁹ When we hear "*graviter*" it is hard not to see style as playing a role in audience assessments. *Graviter* could be referring to the seriousness of an accusation, but just as possible is the sense of depth or strength; or, in a negative sense, severe.

⁶⁰ Millar 1998.

⁶¹ Riggsby 1997.

⁶² *Ad Fam.* 5.9 and 5.11. In the latter letter Cicero calls Vatinius the most grateful man of all: *cognoui enim te gratissimum omnium, idque numquam destiti praedicare. nec enim tu mihi habuisti modo gratiam, uerum etiam cumulatissime rettulisti. quam ob rem in reliquis tuis rebus omnibus pari me studio erga te et eadem uoluntate cognosces.*

court might be friends in private is not proof that jurors would have been aware of any hypocrisy. However, if we accept Cicero's correspondence with Vatinius as proof that he was simply playing a game and that Vatinius was, at least later in life, aware of it, this suggests a cavalier attitude to questions of guilt among advocates. In the end, it is difficult to say what Roman jurors believed. But we can ask how and why they were influenced by some things and not by others. We can ask what they cared about. Humor and insult played a role in both of these questions. Indeed, they likely play a role in every society's legal system, but particularly in those where decisions are made by one's peer group.

2.6b Audience Ethnography

A perfect example of how a disagreement over right and wrong can become a subject of entertainment for an external audience is seen in an incident described in Colin Turnbull's book on the BaMbuti pygmies.⁶³ A dispute that arose between two brothers, when the wife of one brother insulted the other brother, came to the attention of the village. One brother, Aberi, whose wife was the offender, threatened the other with death, to which the other, Masalito, replied "Go and get your spear, then, and come back and kill me. I'll still be here. You don't have the courage to kill your brother."⁶⁴ Turnbull goes on to describe what transpired:

He [Masalito] said a lot of other things, goading Aberi on to an even higher pitch of fury. Aberi tried to make himself more impressive by a graphic dance, which

⁶³ The pygmies of Central Africa have been specifically studied for their laughter. Not only do they appear to laugh more easily than any of their near neighbors, they also laugh more physically. According to Turnbull (1961: 45), their laughter is particularly infectious and "they hold onto each other as if for support, slap their sides, snap their fingers, and go through all manner of physical contortions. If something strikes them as particularly funny they will even roll on the ground."

⁶⁴ Turnbull 1961: 117.

was meant to show exactly how he was going to leap in the air and twist around and drive the spear home. But he was not a good dancer, and when he tried to illustrate the leap he fell flat on his face. This was the end of the matter for Aberi. For weeks he was ridiculed, everyone asking him if he had lost his spear, or telling him to be careful not to trip and fall.⁶⁵

In the heat of the argument the audience, consisting of the rest of the village, ceased to consider who was at fault between the two brothers and one of their wives. Instead, it focused upon how the antagonists handled themselves during the confrontation. What had been a debate between the two brothers about whether Alberi's wife had disrespected Masalito became, once it had gone public, a contest over who could put on a better show. This shift came about not just because, as Turnbull says, the BaMbuti are "a good-natured people with an irresistible sense of humor; they are always making jokes about one another, even about themselves."⁶⁶ It was due, rather, to the fact that they had "no chiefs, no formal councils...no judge, no jury, no court."⁶⁷ As a result, "their humor can be turned into an instrument of punishment when they choose."⁶⁸ Had there been formal procedures and a specific place for Masalito to lodge a complaint, it is less likely that the manner in which the confrontation was settled would have shifted away from whether an offense had been committed.

With respect to how confrontations are settled, the Roman world may not have been so very different from the former Belgian Congo. While the Romans had more formalized institutions, decisions were sometimes made less on the basis of normative debates – where content and logical arguments matter most – than on issues of

⁶⁵ Ibid 117-8.

⁶⁶ Ibid 114.

⁶⁷ Ibid 110.

⁶⁸ Ibid 114.

performance during the debates. Further, there is ample evidence that the Romans used humor, as Turnbull stated of the BaMbuti, for punishment.⁶⁹

2.7 Retort Ethnographies

There are at least two cultures outside the Roman world where we can observe the effectiveness of the strategies discussed above: Honduran youths and the so-called “sounding” or “dozens” in the United States.⁷⁰ In both of these verbal competitions, an ability to admit to an accusation, or at the very least ignore it, is often necessary to top your opponent.

2.7a.) Honduras and Admission

Ricardo Agurcia recorded what he calls verbal dueling between anonymous participants, all adult men from La Ceiba, Honduras. These duels are almost exclusively sexual in nature, consisting of back and forth accusations of homosexuality. Agurcia only lists five sets of exchanges, but they are worth considering. I use his translations.

1.

Speaker A: Pendejo (Asshole.)

Speaker B: En el culo te la dejo (I will leave my penis in your ass)
con cien varas de pellejo (with a hundred yards of foreskin.)

A: Cabrón. (Asshole.)

B: El que te agarró en el callejón (the one who grabbed you in the alley)
y te dejó ir el jon-rón (and fucked you.)

A: Culero. (Homosexual.)

B: Así como el enfermero (just like the male nurse)
que te rellenó el agujero (who filled your ass off)

⁶⁹ See section above on the public *conuicium* as described in the Digest. If we take Tacitus’ remark about German humor, that they don’t laugh at one another’s failings, and conclude that Romans considered insults funny, then it is easy to see how humor could be seen as a sort of punishment, albeit an informal and non judicially enforced one.

⁷⁰ Another frequently cited culture for verbal duels is that of Turkish youths. See Dundes, Leach, and Ozkok 1972.

A: No Jodás (fuck off)
B: El culo me lo das (give me your ass)
y te meto la tamagás (and I will stick in my snake)
con un litro de gás (with a liter of gas)
para que te entre más (so that it will go in further)

2

A: Puro (I stick it in)
B: Con orgullo (with pride)
en el tuyo (in yours)

3.

A: Maricón (homosexual)
B: El que te sampa el Horcón (he who shoves a post up yours)
A: Diablito (little devil)
B: El que te metió el curnito (he who stuck his horn into you)
A: Berga de burro (donkey's penis)
B: Así te arrimo contra el muro (that's how I fuck you against the wall)
A: Quiebro (I break you)
B: Meto (I stick it into you)
A: Sampo (I shove it into you)
B: Puyo (I thrust it into you)
A: Urgo (I prod it into you)
A: Supermán (Superman)
B: Agarrame los huevos (grab my balls)
que se me ván (as they are getting away from me)

4

A: Enano (midget)
B: Seré enano (I might be a midget)
y sere lampiño (and I might have no pubic hair)
pero estos huevos no son de niño (but my balls are not those of a child)
A: Comé mierda (eat shit)
B: No te como (I won't eat you)
A: Pizado (fucked)
B: Me hago de lado a lado (I move from side to side)
y a tu tata le dejo el ojo hinchado (and I leave your father with a swollen eye)

5

A: Caballo (horse)
B: Tu nana de llegua y allí no fallo (with your mother as a mare I can't miss)
A: Tu Madra (I cuss at your mother)
B: La Tuya)I cuss at yours)
A: Aquí me la arrimo y le meto la cabuya (here I get up against her and stick my dick into her)
A: Maricón (homosexual)

B: Marinero, mariner no dejes la oración (sailor, sailor don't leave your prayers)
y prestame a tu hermana que te aumento la tripulación (and lend me your sister so
I can augment your crew)

A: (No response)

B: Esa bomba que me has echado (that bomb you have thrown at me)
hasta la cara me ha ardido (has even made my face sore)
porqué no se la echás a tu madre que te ha parido (why don't you throw it at your
mother who has bred you)

A: (No response)

B: Tu madre es concinera (your mother is a cook)
y a mi padre la calienta el chorizón (and she heats up my father's sausage)
tu hermana es pupusera (your sister is a pupusa maker)
y yo no me canso de rellenarle el tortillón (and I don't get tired of stuffing her big
tortilla)⁷¹

There are two commonalities between the five of these and the Roman sources we shall consider below. First of all, the person who insults first always loses. In all of the above examples participant B clearly has the more clever comebacks.⁷² Not only are they longer, filled with metaphors, and creative takes on participant A's words, they occasionally leave participant A speechless. Secondly, participant B appears to admit or outright admits to the accusations of A in exchanges 2, 4, and 5, and perhaps in 3 as well. In the second exchange, B appears to agree with A's statement implying that he was going to "stick it in" B by saying *con orgullo* (with pride). However with the delay and the next sentence *in el tuyo* (in yours) he breaks our expectation and switches from the position of the passive sexual partner to the active one. In exchange 4, perhaps the most emblematic of the sociolinguistic strategy under discussion, participant B literally agrees to the charge that he is a midget. He merely responds by saying "yes but this midget has some big balls." Therefore, the debate has gone from the issue of height to sexual dominance where he is particularly skilled. At the words of *pizado* (fucked) he responds

⁷¹ All are from Agurcia 1977: 21-24.

⁷² Agurcia does not say whether or not these are the same two individuals throughout. But given that he only had six subjects, there must have been some overlap.

with a highly sonorous and rhythmical *me hago de lado a lado* (I move from side to side) – presumably this means that he will physically evade any attempt to sodomize him. Similarly to the second and the fourth exchange, in the fifth, when participant B is called a horse, he responds by saying something akin to “and this horse is fucking your mare of a mother.” The connotations of being called a horse are unclear but whether it’s a matter of a lack of class or being a tamed animal, B has shifted the matter to sex by means of an admission.

2.7b The Dozens in Harlem and Denial

In a seminal 1972 study of the language of a young African American gang in Harlem, William Labov demonstrated the verbal richness of a group that had previously been seen as deficient in language.⁷³ One verbal context provided the primary framework for his linguistic analysis: the dozens. Also known as sounding, the dozens is a verbal game that provides the opportunity for youths to engage in trading insults with impunity. There are many reasons for the attractiveness of such a game, but primarily it allows for the expression of self and social standing within a group, while avoiding a resort to physical violence.⁷⁴ The game achieves these outcomes by dint of the fact that, theoretically, what is said during the game is assumed to be fictional by the participants. The insults that are exchanged are usually limited to those areas which have implications for the social status of the participants. In Labov’s study, there are four such areas: physical looks, family, poverty, and sexuality.

⁷³ See Labov 1972: 204-240 for previous literature on the topic. Labov was one of the first scholars to investigate African-American language on its own terms rather than in terms of its differences and perceived shortcomings in comparison to standard American English.

⁷⁴ See Parks 1986: 440.

Insults in the dozens usually take the form of “B is so X that P,” where B is the individual insulted, X is a negative attribute, and P is the proposition or punchline that proves X. Labov gives the following definition of a sound:

If A makes an utterance S in the presence of B and an audience C, which includes reference to a target related to B, T(B), in a proposition P, and

- a. B believes that A believes that P is not true and
- b. B believes that A believes that B knows that P is not true...

Then S is a sound, heard as T(B) is so X that P where X is a pejorative attribute, and A is said to have sounded on B.⁷⁵

In most sounds the negative attribute X is omitted and all that remains is the proposition P.⁷⁶ For example, in the proposition “your mother wear the seat of her drawers on the top of her head,”⁷⁷ the implied negative attribute of the mother is her lack of intelligence.

What is thus heard is “Your mother’s so stupid that she wear the seat of her drawers on the top of her head!” Sometimes the sound is disguised as an anecdote. For example, “I went up Money house and I walked in Money house, I say, I wanted to sit down, and then, you know, a roach jumped up and said, “Sorry, this seat is taken,”⁷⁸ can be understood as “Money is so poor that when you go to his house you have to share the table with cockroaches.”

We can see from these examples and Labov’s definition that for the game to be played successfully – in other words, for the sound to be recognized as a sound – the individuals involved should know each other; ideally they should be of the same social class, age, and ethnicity. Were it attempted by participants from different backgrounds, the possibility that a misunderstanding might arise would be great and could only be

⁷⁵ Labov 1972: 338-339.

⁷⁶ Ibid: 298-306.

⁷⁷ Ibid: 311.

⁷⁸ Ibid: 316.

diminished if the proposition is so unlikely that it is immediately recognized as fictitious.⁷⁹ To take an example, the common dozens insult of implying that someone's mother is sexually available is rarely given in the form, "I fucked your mother," which could easily be interpreted as a statement of fact. It is rather given in a wildly unrealistic fashion, such as, "I fucked your mother on top of the *piano*; when she came out she was singin' the Star Spangled *Banner*."⁸⁰

Labov has numerous examples of individuals who misread a sound as a personal insult and what is interesting is how they deal with it. The younger, less adept participants tend to deny it, thus causing their interlocutors to drive the point home and successfully win the exchange. The older, more able participants admit to the criticism and shift the dynamics of the exchange to something related but different from that with which they were criticized. Labov offers the following example that took place between the older and more accomplished sounder Boot and the younger David,

Boot: Your father look like a grown pig.

David: Least my-at least my father don't be up there talking uh-uh-uh-uh-uh-uh.

Boot: Uh-so my father talks stutter talk what it mean?

At least my father ain't got a gray head! His father got a big bald spot with a gray head right down there, and one long string...

David: Because he' old he's old, that's why! He's old, that's why!...

Boot: ...and one long string, that covers his whole head, one, one long string, about that high, covers his whole head.⁸¹

We can see here how devastating it can be to deny a charge. By trying to justify why his father has gray hair, David reveals a weak spot that is taken full advantage of by Boot. The way Boot deals with the charge that his father stutters is markedly different. At first he takes the charge personally by hesitating and saying "uh-so." Then, gaining control of

⁷⁹ Ibid: 330.

⁸⁰ Ibid: 308. Note that the near rhyme of piano and banner formalizes the sound to some extent, thereby making it even less believable than it would be based on content alone.

⁸¹ Ibid: 332-333.

the situation, he admits the charge by saying “so what?” He then proceeds to change the subject of the insults being exchanged to great effect from one’s fathers’ ability to articulate to the age of one’s father. Thus the successful sounder is quick-witted, able to distinguish a sound from a personal insult, quick to take advantage when he senses a weakness, and able to change the nature of the insults being exchanged to his own advantage. Given the pace of the sounding, and the potentially hurtful nature of the insults, this is no small talent.

2.8 Conclusion

While most of the exchanges that this investigation will examine take place in judicial settings, it will also examine political exchanges – that is to say face threatening acts between “political men” – outside the courts. The one uniting feature of all the source material is that all examples are of verbal duels, and those exchanges are face threatening to at least one if not both of the individuals involved. Thus my investigation will be considering what has been called “capping,” but might simply be called one-upmanship. What works and what doesn’t work is the main concern but I am also concerned with understanding why things work or fail to work. This “why” question might be answered by looking at the dynamics of these exchanges and noting any patterns. We will notice that there are indeed patterns, and that these patterns find ethnographic parallels with societies that bear some similarities to Republican Rome.

Chapter Three: Moves to Character and Humor in Cicero's Defenses.

3.1 Introduction

In the previous chapter I have tried to show that Political Anthropology offers a useful way of interpreting Roman aristocratic competition, broadly speaking, and sociolinguistics a way for considering verbal duels specifically. I have argued that there is a strategic advantage to avoiding denial and that audiences can be swayed by laughter as much as by what we today consider valid evidence in judicial disputes. I have moreover suggested that there are linguistic similarities between certain Roman responses to criticism and the verbal duels of 1970s Honduras and 1960s Harlem.

In this chapter I will consider whether one can discern a pattern in Cicero's discussion of character and use of humor, and furthermore, I will consider whether some of the unusual humor – humor that challenges traditional beliefs or seems out of context – might be explained by considering aggression and the scarcity of honor within the framework of verbal competition set out in chapter two. In that chapter two I argued that power, the actual ability to impose one's will on others,¹ is often negotiated by rhetorical performance in verbal competitions. It is not necessarily the case that the strongest (physically, financially, or with regard to symbolic capital), the most intelligent, or the most attractive should win in competing for a prize. Often, the quickest wit is the winner. I suggested that what quick wits tend to share is an ability to sidestep criticism and reply to it in such a way that doesn't contest the merits of that criticism in depth but changes the nature of the argument in such a way that the original criticism is turned around on the person who initiated it. In chapter one I suggested that the ability to turn an insult

¹ Again, the Weberian definition of power.

back on the insulter is particularly important in Roman courts because of a focus on character; and that Cicero made abundant use of character as a substitute for what we would consider traditional evidence (e.g. witnesses, motive, physical evidence).

Although on occasion the prosecution raised the issue of character,² in Cicero's speeches he seems to be more preoccupied with the character of his client than the prosecutor. The reason for this is that by bringing up character Cicero accomplishes a number of rhetorical ends. For one, character can make the audience more sympathetic to his client or more hostile to his opponent. For another, by discussing his client's or opponent's character Cicero avoids reminding the audience of the specifics in regard to what his client was charged with thus making it seem as though the charge doesn't merit an answer. Third, by not contesting the accusations he almost de-legitimizes them; were he to deny the accusations too explicitly he would risk making his client appear as though he had something to hide. Lastly, by bringing up character Cicero creates the opportunity for more humor, something at which he excels. But how does he bring up character and why? Are there certain charges that necessitate more focus on character than others? For what reasons would Cicero *not* discuss character? And, finally, is there a general pattern that can be discerned such that we might even come up with a formula?

In the *De Inventione*, Cicero sets out guidelines for a proper speech and breaks down the order in which the various elements should be used, consisting of the following five steps: *inventio*, *dispositio*, *elocutio*, *memoria*, and *pronuntiatio*. Respectively, these were the creation of the arguments, the organization of those arguments, the finding of the best way of articulating said arguments, memorization, and delivery.³ However, he is

² As discussed below, Cato called Murena a dancer in *Mur.* 13.

³ *Inv. Rhet.* 1.9.

speaking in the broadest possible terms. He does not claim that first a speaker ought to deny the charges or go straight to a discussion of character or create an alternative narrative. He merely gives five steps a speaker must go through to finish a speech. Thus we can't turn to Cicero for help in understanding the order of a defense or prosecution. We must look for patterns ourselves, restricting ourselves to court cases since there will be more continuity in these.⁴

In order to think about patterns I have included a table that summarizes my findings, and a brief word on methodology is necessary before discussing it. More than half of the information I looked for was completely objective: presence and number of co-advocates, the result of the trial, and the nature of Cicero's opening remarks. The other three categories, however, need to be explained. In order to determine the extent that character played a role in a speech – that of either the prosecutor or Cicero's client – I have relied exclusively upon what have traditionally been considered character tropes. That is to say, I looked for the mention of the following positive qualities: republicanism, sexual propriety, *beneficia*, *humanitas*, *virtus*, *sobrietas*, *eloquentia*, *diligentia*, and *pietas*.⁵ Whenever I have found something related to one of these concepts in Cicero's defenses, I concluded that there existed at least a minimal amount of character-based praise. Likewise, whenever I found evidence of the negative opposites of the above qualities I considered that there existed at least a minimal amount of character denigration.⁶

⁴ Fragmentary speeches like the *Pro Scauro* and *Pro Fonteio* which lack beginnings will not be considered as it would be too speculative to believe we could understand their order when so much is missing.

⁵ See Merrill 1975: 50-97.

⁶ Aspiring to kingship, sexual misconduct, plunder, *crudelitas*, effeminate behavior, drunkenness, *oratio inepta*, *turpitudine generis*, and blasphemy.

The more complicated matter of character is the question of how to measure how much of a role it plays in a given speech. There are two ways we can begin to ascertain this. For one, the sheer percentage of time that is devoted to character relative to the rest of the speech is an indication. For another, we can look to the context in which the praise or criticism of character takes place. Is it the only evidence Cicero is offering or is it in addition to other evidence? For instance, in a hypothetical murder case, if the only evidence Cicero offers to counter the charge that his client committed murder is character, it's safe to assume character is playing a greater role than anything else. Similarly, if the only evidence Cicero offers is to claim that the prosecutor is of a questionable character, the same applies. If, on the other hand, Cicero offers both an alibi for the murder and praise for his client or blame for the prosecutor, character is sharing a role with something else and we thus can't claim it is central – though it may still be important. Finally, if an alibi, a lack of motive, and praise for his client are all offered, we can say that character is playing a minor role. As such, I have decided upon only four categories of character: “much,” “moderate,” and “little,” and “none.” When character is more than 50% of the defense with respect to the amount of time or importance devoted to it, I have deemed the speech to contain “much” character discourse. When it approaches 50%, I have deemed the speech to contain “moderate” character discourse. And, lastly, when the speech contains less than approximately 50% of character discourse, I have deemed it to contain “little.” When character is completely absent from the defense, I have simply listed it as having “none.”

The category of humor is much more difficult. Sometimes there is external evidence. For instance, we know that Cato accused Cicero of being a “funnyman” in his

defense of Murena. Although not solid evidence, since Cato could have been making a character attack upon Cicero, it is still more likely that at least one person, Cato, thought that Cicero's defense was relying too much on humor. More often than not, however, all we can do is consider how often in a defense speech Cicero made use of jokes. There are several ways to do this. First, we can rely upon our reading of Quintilian. If he says something Cicero said was a joke, we too can take it as such. Thus, the fact the Quintilian considers funny Cicero's response of "too late" to the question of "when was Clodius slain?" tells us at least that he received it as a joke and we too can take it as such. The second way we can determine the degree to which humor is playing a role is to ask, when we have seen something that strikes us as funny, what other function it could be serving apart from producing laughs. If there is no other imaginable function or the other functions seem minimal in comparison to winning the laughter of the audience, then it's likely we are looking at a joke. Third, if we take what we think of as a joke and interpret it as having been said in complete seriousness, and the result strikes us as out of place, it's more likely to be a joke than not. More than anything else, however, I have used my own best judgment to judge what would have been thought humorous.

If we begin by considering Cicero's advocate speeches in order of the severity of the charge, we begin to notice the outline of a pattern emerging:

3.2 Results

Civil Cases

	Pro Publio Quinctio (81)	Pro Quinto Roscio Comoedo (between 76 and 68)	Pro Caecina (69?)
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	Pro Publio Quinctio (81)	Pro Quinto Roscio Comoedo (between 76 and 68)	Pro Caecina (69?)
Claim	<i>Sponsio</i>	<i>Condictio certae pecuniae</i>	<i>Sponsio, unde vi hominibus coactis armatisve</i>
Co-advocates with Cicero	None	None	None
Result	Unknown	Unknown	Probably won
Opening	Facts of case	Facts of case	Plaintiff's malice towards client, facts of case
Extent client's character plays role	Moderate: he is cast as humble and honest	Little to moderate	Much
Extent opponent's character plays role	Little to moderate: questions the manner in which plaintiff brought case against his client; also calls plaintiff luxurious	Moderate: referred to throughout as dishonest	Moderate
Amount of humor	Little	Moderate: he is, after all, advocating on behalf of a comic actor. See Bonsangue 2010	Little: a remark or two about some of the plaintiff's witnesses

Citizenship

	Pro Archia (62)	Pro Balbo (56)
Charge	<i>Lex Papia</i>	<i>Lex Papia</i>
Co-advocates with Cicero	None	2, M.L. Crassus and G.P. Pompeius Magnus
Result	Won	Won
Opening	Facts of case	Facts of case

	Pro Archia (62)	Pro Balbo (56)
Extent client's character plays role	Little	Little
Extent prosecutor(s)'s character plays role	Somewhat	Little
Amount of humor	Little	Little

Financial Misconduct

	Pro Flacco (59)	Pro Rabirio Postumo (54-53)
Charge	<i>Lex Cornelia de repetundis</i>	<i>Lex Julia de repetundis (quo ea pecunia pervenerit)</i>
Co-advocates with Cicero	1: Q.H. Hortalus	None
Result	Won	Unknown but likely won due to the client's successful future career
Opening	Good character of client and prosecutorial malice	Censure of client for giving money to a king, call for pity for client due to a life of misfortune
Extent client's character plays role	Moderate: Cicero characterizes it as initiated by the prosecution but it could just as easily have been he who started it. He praises Flaccus heavily	Little: he is said to be generous and his father is praised and the prosecution alleged that he wore a Greek cloak — indicating a lack of loyalty to Rome
Extent prosecutor(s)'s character plays role	Moderate, focused on Laelius but there were 5 prosecutors.	None
Amount of humor	Little to moderate: Greek jokes, prosecution had not a staff but an army for its collection of evidence (flac 13)	Little: just a couple exaggerated analogies

Ambitus

	Pro Murena (63)	Pro Plancio (54)
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	Pro Murena (63)	Pro Plancio (54)
Charge	<i>Lex Tullia de ambitu</i>	<i>Lex licinia de sodaliciis</i>
Co-advocates with Cicero	2: Q.H. Hortalus and M.L. Crassus	1: Q.H. Hortalus
Result	Won	Won
Opening	Prosecutorial malice towards Cicero	Champions client's character
Extent client's character plays role	Much: initiated by prosecution	Much
Extent prosecutor(s)'s character plays role	Little: the reputation of the prosecutors was too strong to get away with this	Little: he accuses Laterensis of jealousy but not much else
Amount of humor	Much: Cato called Cicero a "funnyman" during trial	Little

Murder or Attempted Murder

	Pro Cluentio (66)	Pro C. Rabirio (63)
Charge	<i>Lex Cornelia de sicariis et veneficis</i>	<i>Iudicium populi</i> , for <i>perduellio</i>
Co-advocates with Cicero	None	1: Q.H. Hortalus
Result	Won	Lost
Opening	Prosecutor wrong about facts	Prosecution trying to undo the traditions of the Republic
Extent client's character plays role	Much	Little
Extent prosecutor(s)'s character plays role	Much, though through Sassia	Much
Amount of humor	Moderate to much humor: sarcasm directed at Sassia and Oppianicus	Moderate to much: not much more to his case than that Rabirius was acting under orders from the Senate. The rest of the speech is mostly devoted to humorous insults of Saturninus and his

	Pro Cluentio (66)	Pro C. Rabirio (63)
		associates.

Public Violence Cases

	Pro Sulla (62)	Pro Caelio (56)	Pro Sestio (56)	Pro Milone (52)
Charge	<i>Lex Plautia de Vi</i>	<i>Lex Plautia de vi</i>	<i>Lex Plautia de vi</i>	<i>Lex Pompeia de vi</i>
Co-advocates with Cicero	1: Q.H. Hortalus	1: M.L. Crassus	3: Q.H. Hortalus, M.L. Crassus, and C.L.M. Calvus	1: M.C. Marcellus
Result	Won	Won	Won	Lost
Opening	Prosecutorial malice towards Cicero	Prosecutor wrong about client's character	Champion's client's character	Prosecutorial malice toward client
Extent client's character plays role	Much but of Cicero's, initiated by prosecution	Much	Much	Much
Extent prosecutor(s)'s character plays role	Moderate: no severe charges are made against him but his positions are mocked	Much	Much	Much, though mainly through his connection to Clodius
Amount of humor	Moderate to much	Much: comedic personae, and mockery	Much: gladiators, wives, looks, sex, incest	Little to none

Parricide

	Pro Sexto Roscio Amerino (81-80)
Charge	<i>Lex Cornelia de sicariis et veneficis</i>
Co-advocates with Cicero	None
Result	Won
Opening	Raises the stakes: claims that this trial is about more than Roscius but about good noble young men versus evil freedmen.
Extent client's character plays role	Some: he is not depicted as outstanding but is said not to be bad
Extent prosecutor(s)'s character plays role	Little but the accuser's character is thoroughly challenged
Amount of humor	Little: some gladiator comparisons

3.3 Analysis

As we can see from the tables, character is not *always* a theme in Cicero's defenses. He does not, by default, proclaim his client's good character or his opponent's bad one. He does not discuss character when the facts of the case (charge or complaint, documentary evidence, witnesses, motive, etc) take centerstage. He also is less likely to focus on character for less serious cases: With the exception of the *Pro Caecina*, civil cases and cases involving the contesting of citizenship contain little discussion of character.

The clusters of cases that contain the heaviest amounts of character discourse are criminal cases. The only criminal case that contains minimal amounts of claims relating to character is the *Pro Rabirio Postumo* and it is noteworthy that in the opening of that speech Cicero questions the judgment of his client. Moreover, he even admits to part of the charge against his client – that he lent other people's money to Ptolemy, whom he was

helping pay back Rome for its help in restoring him to power.⁷ There is only one non-criminal case that contains a focus on character and that is the civil case, the *Pro Caecina*.

That the subject of character should come up in civil trials is not necessarily a surprise. In cases with insufficient evidence the only thing that could be argued was character — the central question became “who would be more likely to be lying?” What is worthy of asking is why Cicero’s advocacy of *Caecina* should be any different than his two other civil speeches. The answer is, simply, that there was little else for Cicero to talk about. In his defense Cicero claims that he would have no problem defending *Caecina* on the charges if the prosecution were to have played fairly, implying of course that the prosecution was acting inappropriately, thereby justifying him to depart from precedent himself:

Nunc quoque in iudicio si causa more institutoque omnium defendatur, nos inferiores in agendo non futuros; sin a consuetudine recedatur, se, quo impudentius egerit, hoc superiorem discessurum.⁸

And so in this count, if he makes his argument for the sake of custom and established principles of all, we shall not be his inferiors in managing our case; but if he departs from all usage, the more impudently he conducts himself, the more likely to succeed shall he be.⁹

Instead, he claims that the prosecutor was not mounting a legal case against his client but merely acting out of effrontery. When Cicero says “though that is a most scandalous thing, they thought that the trial in this case would appear to be not about the dishonesty of Sextus Aebutius, but about civil law”¹⁰ we can see what is really going on here. The

⁷ *Rab Post.* 5: *nec suam solum pecuniam credidit, sed etiam amicorum.*

⁸ *Caecin.* 2.10-15.

⁹ Clark 1909 with minor alteration.

¹⁰ *Caecin.* 4.10-12: *Simul illud quod indignissimum est futurum arbitrati sunt, ut in hac causa non de improbitate Sex. Aebuti, sed de iure civili iudicium fieri uideretur.* Again, if we are to follow Damon, one

prosecutor, Sextus Aebutius claims to be to be making a point *de iure civili iudicium*, while Cicero suggests that what's really happening is that Sextus Aebutius is indulging his insolence (or wickedness).¹¹ Indeed, Cicero takes care to present Aebutius as disreputable,

Quam personam iam ex quotidiana cognoscitis uita, recuperatores, mulierum assentatoris, cognitoris uiduarum, defensoris nimium litigiosi, [...], inepti ac stulti inter uiros, inter mulieres periti iuris et callidi, hanc personam imponite Aebutio.¹²

Whose character you know from your daily life, gentlemen, a flatterer of women, a widow's advocate, an all too quarrelsome attorney, [...], useless and stupid among men, among women an experienced and shrewd lawyer, such a character should you ascribe to Aebutius.¹³

The character Cicero presents here is one of an ambulance-chaser, concerned more with money than with justice.

Two other patterns can be noticed regarding character. One is that the more co-advocates Cicero had, the more likely character was to play a role in his speech. Thus it is not just the severity of the case but the number of people defending it that could be prompting his focus on character. The other is that as time progresses Cicero's speeches became more and more focused on character and humor. It is possible that this is just the direction his experience took him. However, it also possible that the more politically prominent he became, the more he had to adjust his strategy. To be sure, it was a delicate

manner in which character might be involved in the speech is that Sextus Aebutius might intentionally have been depicted as a parasite. However, I think it's difficult to so given the fact that this is a case about money. It's impossible not to depict the other side as though they are improperly seeking money. Damon's argument is much stronger when it comes to the *In Uerrem* and the *In Pisonem* where the individuals she suggests are described as parasites are not Cicero's opponents but associates of theirs. See Damon 1997: 224-234.

¹¹ *De improbitate Sex. Aebuti*. It's interesting to note that Cicero claims at the end of 29 that part of the argument he is making was devised by someone else (*primum alium non me excogitasse*) and that he does not approve of it (*ne probatorem quidem esse me*).

¹² *Caecin*. 14.

¹³ Translation by Hammer, who sees this passage also as an attempt to associate Aebutius with effeminacy, such that he "is only as a man among women." Further, although he considers this passage to be an argument about character, he deems it comic. See Hammer 2013: 161.

balancing act accusing one of Sulla's freedmen of being in on a conspiracy to commit murder in 81 or 80. Yet, it wasn't personal for him. Whether his client was found guilty or not was not important for his political future other than that the more his reputation rose the more cases he won. Contrast that with his defenses of the mid to late 50s where he was at intense odds with Clodius and not only his reputation was at stake but his personal well-being. In such a heated situation proclamations and accusations of character were bound to come up more frequently – the more that emotions rise in an argument, the more likely that invective is going to be employed.

Not only do the criminal cases contain more focus on character, humor plays a more central role in them. The more serious the charge, the greater that role is. In such cases Cicero doesn't simply have more jokes but more central jokes, jokes that seem to be important to his case, jokes that seem to be employed to evade much in the manner that Quintilian describes. What's more, these jokes operate in the same vein as the humor we discussed in chapter two: Cicero often wins because of his quick wit. The wealth, appearance, and background of his client and himself may have played a role in his victories and losses, but wit played a role of paramount importance. Conversely, in his defenses in cases involving financial misconduct – the *lex Iulia de repetundis* (TLRR no. 305)¹⁴ in the case of Rabirius and the *lex Cornelia de repetundis*¹⁵ for Flaccus – Cicero utilizes character and humor far less than he does in cases of *ambitus* or *vis*.

Lastly, Cicero usually begins his criminal defenses by claiming that the prosecution is misguided or simply wrong. The exception to this is when he begins with

¹⁴ Passed in 59, the law seems to have been an anti-bribery law, limiting what could be given to a governor abroad. See Alexander 2002: 110.

¹⁵ Passed in 81 during Sulla's dictatorship. Its seriousness was less than that of earlier *de repetundis* laws given that the punishment for it did not involve exile. Op cit.: 79.

a proclamation about his client's good character, which he does in the *Pro Sestio* and the *Pro Plancio*. We thus have to ask ourselves whether those speeches share anything in common that would account for this. And on the surface there doesn't appear to be anything substantial. They are within two years of one another and both involve multiple prosecutors. However, there are plenty of other cases in the mid 50s with multiple prosecutors where Cicero does not begin with character. Also, whereas the *Pro Plancio* appears to have been motivated solely by politics, the charge against Sestius seems to have had some merit to it. Vatinius supplied to the court hard evidence in the form of transcripts of *contiones* that Sestius had delivered.¹⁶ Certainly the fury with which Cicero attacked Vatinius could be taken as evidence that Cicero felt his testimony was potentially detrimental to his client. The best explanation for their shared opening is that either Cicero simply felt that, for different reasons, both speeches called for opening with character or that Cicero was dissimulating. Whereas two years later *Pro Plancio*, Cicero seems to have been accurate in his claim that the prosecution was merely attacking the pedigree of his client, he may have been pretending this was the case in the *Pro Sestio*. In other words, Cicero opens the *Pro Sestio* with character because he is acting as though that was the only thing that the accusation against his client came down to – as though Sestius wasn't being charged with *vis* but merely said to be of questionable character and background. He would therefore be attempting to manipulate the context of the case in the minds of the jurors. We shall come back to this.

For now, let us sum up the pattern by saying that “the more serious the charge, the more character plays a role in the defense, and the more that character plays a role in the defense, the more humor that is utilized in the defense.”

¹⁶ This is the reading of Kaster 2006: 19.

3.4a Citizenship

Not surprisingly, there is little focus on the character of the defendant in the two extant cases Cicero took up on citizenship.¹⁷ Yet, citizenship in Rome was rarely considered on *ad hominem* bases. These are cases where the citizenship of someone already assumed to be a citizen is challenged, not altogether unlike the contemporary American tea party challenging President Obama's right to the presidency by claiming he was born abroad thus ineligible for office.¹⁸ As such, the only things to debate are family history, city of origin, residence, and ethnic identity. Indeed, this is what we see in the *Pro Balbo*: a complete focus on details.¹⁹ To make the case Cicero has to argue not that his client is deserving of citizenship, but that he is a citizen.²⁰ The same is true of the *Pro Archia* though character does seep in this defense given Cicero's fondness for the arts. His fondness for his client can be seen in the second section of the speech when Cicero states "all arts which are relevant to the human condition have the same bond rooted in community and are connected to one another as though some kind of kin."²¹ Connecting

¹⁷ Contrast this with citizenship in the contemporary United States. Among the requirements of U.S. Code § 1427 - Requirements of Naturalization is that a person be "of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States." According to the New York Times, the US favors immigrants who have served in the United States military (U.S. Military Will Offer Path to Citizenship, Feb. 14 2009). Moreover, at least one Atheist was advised to join a church lest her application for naturalization be rejected (ABC News, June 21st 2013).

¹⁸ Most vociferously pursued by a dentist, ironically enough an immigrant herself, Orly Taitz.

¹⁹ White (1973: 302) argues that Balbus ceased to be viewed as a citizen of his native Gades even before he left, thus part of Cicero's argument is the "doctrine of incompatibility: a man cannot be in two places at the same time." Thus Cicero argues that Balbus can change *civitas* if he so desires.

²⁰ It is interesting to note, however, that character does play a role in Cicero's defense. However, it is not that of his client. The *Pro Balbo* contains some of Cicero's characteristic evasion. Barber 2004 argues that Cicero deliberately avoided defending the character of Balbus and instead focused on Pompey since the former was widely unpopular and would thus be too difficult to defend on the ground of character. See p. 4-10.

²¹ *Arch. 2: Etenim omnes artes, quae ad humanitatem pertinent, habent quoddam commune uinculum, et quasi cognatione quadam inter se continentur.* Moreover, art itself is held up as an example of character. As Dugan as argued, Cicero takes the literary works of Archias and speaks of them as though they were

men and rooting them in community is clearly a service to the state and as such, a statement about character in the same fashion that Cicero elsewhere emphasizes his clients' offices and military accomplishments.

3.4b Financial misconduct

In the *Pro Rabirio*, character plays a small to moderate role.²² The case against Rabirius was related to another case, that of Gabinius, Piso's co-consul in 58. Gabinius, as proconsul in 57, was accused of leaving his assigned province of Syria to invade Egypt and restore Ptolemy (Ptolemy Auletes, a relative of Ptolemy II), who had been recently expelled by the people of Alexandria. It was alleged that his motivation for the invasion of Egypt was a bribe of 10,000 talents that Ptolemy offered. Rabirius became wrapped up in the affair by helping Ptolemy manage the debt that had been incurred by Ptolemy in his return to Alexandria. Rabirius was charged because he was alleged to have gained some of the money in his capacity as an assistant to Gabinius in Syria. Under the *Lex Julia de Repetundis*, he was liable to have that seized from him.²³ However, Cicero claims that Rabirius had, through no fault of his own, lost the money in a loan which he had made to none other than Ptolemy himself.

It is important to note that Rabirius was only incidentally charged with a criminal act. He was not guilty of extortion but of profiting from someone else who had been

imagines in the household of a Roman aristocrat, thereby depicting his client as though he were the ancestor from an elite family and, as a result, a true Roman citizen. See Dugan 2005: p. 40-43.

²² Powell (183) notes that Cicero's discussion of Rabirius' services to the state are part of the defense proper rather than attestation of good character.

²³ The *quo ea pecunia pervenerit* clause. See Alexander (2002: 111). Technically, the *Pro Rabirio* is not a judicial speech since Rabirius was accused by the tribunes in front of the *populus*. Nevertheless, the speech is a defense against criminal charges and before an audience. The fact that it was the *populus* rather than before a *quaestio* might have influenced Cicero stylistically but there is no reason to assume that he would have fashioned his defense with regard to content. See Mitchell 1979: 205 for more on this kind of case.

guilty of extortion.²⁴ Thus, the charges against him were of a less serious nature than if he had been charged directly with bribery. As a result, it should come as no surprise that there is less of a focus on Rabirius's character than our other bribery case. It is, however, not completely absent. In the very beginning of the speech Cicero refers to Rabirius as a foolish character, thereby priming the audience to see him as too dumb to be guilty of anything, merely a tool of Gabinius. Cicero mentions that the prosecution accused Rabirius of dressing like a Greek. While that could be pure invective, it is just as likely related to the charge of benefitting from bribery, based on the Roman belief that Greeks were luxurious: it would make sense to a judge or juror that someone who benefitted from Ptolemaic largess would act Greek.

The speech doesn't quite follow the pattern of our initial interpretation of the speeches. Cicero doesn't begin with a challenge to the prosecution. Rather, he begins by admitting that his client trusted the wrong people and was thus somewhat to blame. However, this could have been the Ciceronian equivalent of the modern "insanity defense." Nevertheless, he eventually goes on to question the details of accusers' claims and their interpretation of the law. Moreover, the speech's lack of central focus on character and lack of humor do meet our expectation for such a case, given that the charge was not particularly serious – Rabirius was only secondarily involved in extortion by profiting second hand from it.

The *Pro Flacco* differs from the *Pro Rabirio* in that Flaccus was charged directly with extortion, under the *lex Cornelia de repetundis*, as a result of his time as governor in Asia. The prosecution claimed that he imposed a levy on the population to build a fleet and then kept the leftover money, that he extorted money from certain cities, and that he

²⁴ Gabinius was eventually convicted and exiled. See Alexander 1990, case #297, p. 296.

had stolen gold from the Jewish community.²⁵ Given this difference in the nature of the charges it is not surprising that character plays a larger role in Cicero's defense of Flaccus than of Rabirius. In fact, Cicero opens the speech by claiming his client's character is beyond reproach, and character continues to play a large role in the speech, as we would expect given our claims about Ciceronian defenses.²⁶ The tendency Cicero has to begin a speech by questioning the merits of the prosecution is not visible but that absence makes sense. *De repetundis* cases, like *ambitus* cases,²⁷ were not uncomplicated as most Romans profited from their time administrating provinces abroad and the line between extortion and reward for services rendered was not always as obvious as it was when in the case of Verres. There would be less of a need as well as less of an impulse to take issue with a particular claim of the prosecution because the claims of the prosecution are not as cut and dried as they would be in cases of murder or public violence.

What is missing that we would expect to be present in a criminal defense with a moderate to large focus on character is humor. There is a minimal amount of it. At one point Cicero mocks the prosecution by claiming that whereas he had a small staff to investigate Verres, the current prosecution against Flaccus had an entire army – the implication being that, with so large a staff one could find evidence of wrongdoing against almost anyone. This is certainly not the most hilarious of jokes but it is an instance of sarcasm.²⁸ Cicero here is saying something that he doesn't exactly mean;

²⁵ *Flac.* 54-66.

²⁶ As noted by Powell (184) who says that Flaccus' good character was uncontested by the prosecution. Alexander (2002: 79) further describes the prosecution as "concentrating only on what is strictly germane to the charges of the case, vigorously collecting all available evidence, and disregarding the character and past life of the accused." This could, perhaps, be the result of Flaccus' patrician background.

²⁷ See below.

²⁸ Certainly sarcasm's primary characteristic is indignation, but that doesn't mean it can't be humorous as well. The determining factor seems to be the level of seriousness. Thus Witke has referred to Juvenal as a tragic satirist offering nothing more than pathos (Witke 1970: 113-151) because his satire is so critical and

everyone in the audience would know that the prosecution did not literally have an army. As such it was likely intended to bring about a smile but that is all. Also, unlike much of Ciceronian humor, this joke is not defensive – it serves no defensive purpose in that it does not deflect a *specific* allegation. The same can be said about his critical, and perhaps humorous tone, when he questions a Greek witness for the prosecution by asking “Where do we get that phrase ‘Testify for me and I’ll testify for you’? Is it thought to come from the Gauls or the Spaniards? No, it is so utterly Greek that even those who do not know the language know the Greek for this.”²⁹ Were the suspicions he wished to cast on the witness not framed as questions, this could be seen as simple denigration with no humor attached. However, with the sarcasm of asking whether this phrase comes from the Gauls or Spaniards and then the claim that everyone knows the Greek for this, it is more likely that this was designed to spark at least a few laughs. Nevertheless, with so little humor we cannot help but conclude that the *Pro Flacco* is an exception to the pattern we see in the rest of Cicero’s defenses.

3.4c Ambitus

Character plays a very large role in the *Pro Plancio*. Further, it resembles the *Pro Flacco*, in that despite the focus on character, the humor in Cicero’s defense doesn’t

aimed at actual perceived injustices. Contrast this with Cicero’s quip. First of all, his claim that the prosecution had an army is stated within a verbal contest whereas Juvenal’s is in response to nothing but his perception of social ills. That is to say, Cicero’s indignation, if we can even call it that, is limited to the case at hand; Juvenal’s is at society at large. Secondly, while no one could believe Cicero’s claim that the opposition had an *exercitus*, Juvenal’s rage comes off as real. Contrast Cicero’s tone with the opening of Juvenal’s first satire (24-30): *patricios omnis opibus cum prouocet unus quo tondente grauis iuueni mihi barba sonabat, cum pars Niliacae plebis, cum uerna Canopi Crispinus Tyrias umero reuocante lacernas uentilet aestiuum digitis sudantibus aurum nec sufferre queat maioris pondera gemmae, difficile est saturam non scriber.*

²⁹ Translated by Rees (2011: 87). The Latin is *unde illud est: 'da mihi testimonium mutuum'? num Gallorum, num Hispanorum putatur? Totum istud Graecorum est, ut etiam qui Graece nesciunt hoc quibus uerbis a Graecis dici soleat sciant.* Flac. 9-10. Riggsby (1999: 130) notes that this is part of a larger habit of Cicero’s when it came to *De Repetundis* trials: treat the testimony of any foreign individuals as suspect.

appear to be consequential.³⁰ However, unlike the *Pro Flacco*, there is a suitable explanation for this: it seems not to have been Cicero who was responsible for injecting character into the case.³¹ Contrary to the majority of Cicero's defenses, where the prosecution appears to have initially stuck *mostly* to the charges at hand, here the prosecution's initial charges were conveyed along with some invective.³² The case involves a dispute between two individuals who were up for the same aedileship. The loser of the election prosecuted the victor, Plancius, on a charge of *ambitus*. Cicero makes the issue of character the central aspect of the exordium where he would normally challenge the prosecution's claims and raise the stakes of case – arguing that the fate of the republic depends upon the outcome. Instead, he claims that Plancius has lived the

³⁰ According to Corbeill 1996 (p. 7n), however, Cicero refers to the prosecution's attempts to anticipate his jokes when he states in section 35 that he doesn't mind it when people misquote him but he strongly dislikes it when people attribute sayings of other, unworthy men to him. I'm not certain that the people mentioned are in reference to the prosecution and think it more likely that this statement stemmed from a larger, ongoing debate about Ciceronian tactics. See Paterson (2004: 82), where he notes that Cicero had been called out similarly in his defense of C. Cispinus in 56 BCE. Nevertheless, this passage certainly shows how important Cicero's reputation for wit was to him. There is one definite piece of humor in the speech, a joke offered in response to an insult directed at Cicero. Laterensis accused Cicero of going to Rhodes and then states "I have been" at some point. While we don't know where Laterensis says, Cicero states that he thought Laterensis was going to say "among the Vaccaeii." Since the Vaccaeii had a reputation for uncivilized behavior, Cicero is presenting a false choice: either he is soft and luxurious in the manner of the Greeks or Laterensis is a brute. See Craig p. 140-141.

³¹ Two other reasons might have played a role. For one, Cicero was on friendly terms with the prosecutor and thus might have been hesitant to mock him. Craig (p. 127) argues that Cicero deliberately avoided a *contentio dignitatis* lest it turn into a *contumeliosa oratio*. For another, as Steel 2010 has suggested that Cicero wasn't personally motivated to take the case and merely did so as a result of outside influence, in this case Caesar since Plancius was the son of one of his wealthy supporters. She notes that Cicero uses "stock commonplaces, such as his description of gratitude (80-81) and discussion of rumour (56-57)." See p. 43-44.

³² Interestingly enough, Craig 2004 (194-196) argues that "in a judicial speech concerning a question of fact, the *ad hominem* attacks against the defendant must be at least plausible because their value is essentially probative concerning the target's capacity for criminal behavior." Craig slightly revises this a mere page later by suggesting that invective may have been used widely outside the courts but was *particularly* successful when true. I agree with the former but I would argue that this applies to the courts as well. Just because invective that touched upon something recognized as true among the audience was the most effective type of invective does not mean that abuse with no substance was never employed. This should hold true in a Senate *contentio* or in a judicial proceeding. It may be that invective occurred more frequently outside the courts but to say that all or most *ad hominem* attacks against a defendant had to have some truth is to ignore the sheer amount of abuse we find Cicero employing himself and objecting to in the case of his opponents.

purest of lives, and has the most modest character, the highest amount of trustworthiness, self-control, piety, and integrity: *integerrimam uitam, modestissimos mores, summam fidem, continentiam, pietatem, and innocentiam*.³³ That he speaks so highly of his client so early in the speech makes sense given the central role his character played for the prosecution. Indeed, character seems to be about the only argument of the prosecution, judging by the admittedly biased evidence of Cicero's speech. Cicero sums up by saying "Laterensis is asking, and doing so emphatically, how Plancius surpasses him in courage, praiseworthiness, and merit."³⁴ According to Cicero, Laterensis is arguing that Plancius is guilty because he is of a lesser moral character than himself. Given the nature of the crime that Plancius was accused of committing, *ambitus*,³⁵ it is understandable that character debate would predominate over facts in this case. After all, the difference between gift-giving and bribery is a fine distinction, one that we ourselves have trouble defining today. Instead, Cicero claims that Laterensis is operating under a false assumption – namely, that if someone who is worthy is passed over them, that person who was elected, must necessarily be condemned.³⁶ Cicero portrays Laterensis as sulking from the belief that to lose an election is evidence that the people have rejected his worthiness and questioned his honor. However, the more likely explanation is that, because Laterensis was a *nobilis* and Plancius *eques*, Laterensis thought himself more

³³ *Pro Planc.* 3.4-5: *Quaerit enim Laterensis atque hoc uno maxime urget qua se uirtute, qua laude Plancius, qua dignitate superarit.* It is, of course, possible that Cicero's emphasis on the blamelessness of Plancius is deliberately misleading; that the prosecution employed little invective and Cicero's claims here are designed to make the audience think that it had. However, given the prosecution's apparent focus on class and Plancius' status as a *novus homo*, it seems fair to assume that *it*, rather than Cicero, brought up character.

³⁴ *Ibid* 6.1-2.

³⁵ Cicero's brother talks about this himself in his *Commentariolum Petitionis*. Further, given the fact that gift-giving was such a prominent part of Roman electioneering, it was difficult to prove short of obscene examples of bribery. See Mommsen 1899: 865 ff., Lintott 1990, and Fascione 2009.

³⁶ *Pro Planc.* 8.2-5: *nunc tantum disputo de iure populi, qui et potest et solet non numquam dignos praeterire; nec, si a populo praeteritus est quem non oportuit, a iudicibus condemnandus est qui praeteritus non est.*

deserving of office. Indeed, Cicero says “you will respond, I believe, that you leaned upon the brilliance and antiquity of your family, and did not think it important to go around canvassing.”³⁷ Given that any accusation of low birth involves assertions about parents and ancestors, it’s no surprise that Cicero spends some time praising Plancius’s father, a *publicanus*, an easy enough thing to do considering Italians weren’t taxed; *publicani* would have been viewed favorably as bringers of revenue to Rome. The accusations Laterensis made against Plancius’ father were likely mild. Yet, some of the other charges lobbed against Plancius were specific enough as to present a challenge for Cicero.

Laterensis accuses Plancius of bigamy, having a mistress strictly for his lust, *libidinis causa*, raping a mime girl (*mimula*), and breaking a criminal out of jail.³⁸

Laterensis didn’t just hurl the typical invective. He did his research, or at least came up with some creative accusations. And although Cicero, of course, claims that none of these things happened he doesn’t attempt to disprove them with what we would consider conventional evidence. He doesn’t challenge Laterensis on details, dates, or witnesses.

He doesn’t attempt to offer an alibi for any of the charges. The only point Cicero really

³⁷ Ibid. 12.7-8: *respondebis, credo, te splendore et uetustate familiae fretum non ualde ambiendum putasse.* This is an interesting statement for it implies that Plancius did “go around” on the campaign more than Laterensis and it links *ambitus* with the lower orders.

³⁸ Ibid 30.8-31.4: *Iacis adulteria, quae nemo non modo nomine sed ne suspicione quidem possit agnoscere. 'Bimaritum' appellas, ut uerba etiam fingas, non solum crimina. Ductum esse ab eo in prouinciam aliquem dicis libidinis causa, quod non crimen est, sed impunitum in maledicto mendacium; raptam esse mimulam, quod dicitur Atinae factum a iuuentute uetere quodam in scaenicos iure maximeque oppidano. O adulescentiam traductam eleganter, cui quidem cum quod licuerit obiciatur, tamen id ipsum falsum reperiatur! Emissus aliquis e carcere.* Yonge’s translation for this is “you impute adulteries to him which no one can recognize, not only by having ever heard any one’s name mentioned, but even by having heard a suspicion breathed against him. You call him twice-married, in order to invent new words, and not only new accusations. You say that some one was taken by him into his province to gratify his lust; but that is not an accusation, but a random lie, ventured on from the expectation of impunity. You say that an actress was ravished by him. And this is said to have happened at Atina, while he was quite young, by a sort of established licence of proceeding towards theatrical people, well known in all towns. O how elegantly must his youth have been passed, when the only thing which is imputed to him is one that there was not much harm in, and when even that is found to be false. He released some one from prison illegally.”

contests is the alleged jailbreak, but even then he doesn't deny it; he says that Plancius was merely following orders. Interestingly, something Cicero says later in the speech raises suspicion that there is some truth to some of these accusations. At the very beginning of section sixty-three, Cicero mentions that Cassius, the co-prosecutor, offered Plancius the opportunity to investigate whether he could find any vices in Laterensis.³⁹ While this could certainly be a bluff on the prosecutor's part, it implies a certain amount of confidence, confidence which then lends credence to his claims about Plancius. If Laterensis was confident that an investigation would reveal nothing suspicious in his character, then he must have been confident that he could find fault in Plancius. Instead, Cicero ignores the matter and moves on to argue that Laterensis was misusing the *Lex Licinia*, thereby suggesting that his case lacked merit and was instigated from resentment.⁴⁰ In many ways the *Pro Plancio* is an inversion of the typical Ciceronian defense. Because Laterensis began without a concrete accusation (of something prosecutable that is), there was less a need for Cicero to shift the debate towards character. To be sure, he does champion Plancius's integrity throughout the speech. But if the prosecution really did focus on character in its charge, then Cicero did not have to use character as a central argument against the charge. In cases, which we shall discuss below, where his client is less clearly being charged for political purposes and more apparently being charged because of a sincere belief in his guilt Cicero *relies* upon character. The argument in such cases is formulated around the claim that his client's character is so upright he could never have been guilty of what he is charged with. Here, although in the *Pro Plancio* character is partly present, what is also present is Cicero's

³⁹ *ibid.* 63.1: *Iubes Plancium de uitii Laterensis dicere.*

⁴⁰ The latter is 51.1-53.5. The former is 36.2-50.

claim that Laterensis is merely jealous and holds an entitled outlook. Since aspersions were cast upon the character of his client, Cicero did have to reply to them, but didn't have to dwell on them because he could challenge Laterensis on the merits of his case. Thus, although an inversion, the case is in keeping with one common Ciceronian tactic: avoiding replying to the opposition. Normally in his defenses Cicero begins with an attack upon the claims of the prosecutor. Here, if we are to trust Cicero – and we have no other option than to do so – there was no substance to the prosecution's claims and thus there was nothing he could reply to on that account. The only thing he could reply to was the aspersions cast upon his client's good name.

Like the *Pro Plancio*, the *Pro Murena* is a defense against the charge of *ambitus*. However, unlike the *Pro Plancio*, it begins in the traditional format – an initial denial of the legitimacy of the claims of the prosecution. The form this denial takes is to claim that the prosecution relied primarily on personal invective,⁴¹ in which case it is curious that Cicero doesn't begin the speech in the same way as the *Pro Plancio* and immediately affirm his client's good character.⁴² He does, however, shortly get to this matter and indeed focus on it such that the speech follows the pattern we have laid out. It begins with a challenge to the prosecution and then moves to a discussion of character. Cicero claims that Murena was a loyal son, and that he went to Asia to perform military duties,

⁴¹ *Mur.* 11.1-3: *Intellego, iudices, tris totius accusationis partis fuisse, et earum unam in reprehensione uitae, alteram in contentione dignitatis, tertiam in criminibus ambitus esse uersatam*. Fantham suggests the charges were of *uoluptas* and *luxuria* given Roman opinions on Asia, citing *Liv.* 34.4.3. Craig 2004 refers to this strategy as placing the prosecution in the position of “damned if they do and damned if they don't.” See p. 194. Regarding Cicero's response to this criticism, his strategy is to mock one of the prosecutors, Sulpicius, for his preoccupation with law as opposed to soldiering or orating (23-29).

⁴² Leeman remarks on the odd nature of Cicero's opening as well but he focuses on the religious elements therein. See p. 200-201, where he claims that “the normal periodic style of the prologue here assumes a character which recalls the style of traditional Roman prayers (*carmina*) within their rhythmic succession of cola and clusters of synonyms.”

not to partake in Eastern luxury.⁴³ He even goes so far as to say that Cato himself couldn't surpass Murena in worth, though he admits that Murena could not surpass Cato either.⁴⁴ Cicero goes on to describe Murena's military service at length as well as his professional accomplishments. The speech is thus devoted to character to the near exclusion of everything else. And as we have been arguing, *ceteris paribus*, the greater the focus on character, the more opportunities for humor. Thus it should come as no surprise that, as noted above, Cato referred to Cicero as a "funnyman" during the prosecution.⁴⁵ To Cato's accusation that Murena was a dancer, Cicero offers a clever if not strained response. Rather than deny the charge, Cicero claims that Cato doesn't have enough evidence to prove this accusation, stating that one can't be a dancer without also being a drunkard, madman, or partying feaster. And since Cato hasn't proven any of these, therefore, Murena could not possibly be a dancer. While this argument might not have satisfied anyone on the jury, it at least served to present Murena as something other than a degenerate – he might dance but at least he doesn't do so drunkenly or at Greek symposia. It accomplishes something simply by challenging the letter but not the spirit of the accusation and thereby altering the debate. Moreover, there is a lot of humor in the speech, as we would expect when character plays an important role. Also, as we have been observing in most of his defenses, Cicero doesn't deny the accusations in the

⁴³ *Mur.* 12. Fantham 2013 (p. 100) sees this discussion of character as "a foundation on which Cicero will set out the second element of the charge, the *contentio dignitatis* or contest in merit." She further remarks that this next section is two-fifths of the speech and that its focus on character is an attempt to sway the jury from considering the facts of the matter. I would just note that this focus on character was what allowed for the addition of humor to the speech. See p. 104.

⁴⁴ *Mur.* 15.

⁴⁵ Plut. *Cato Min.* 21. He quotes Cato in Greek as saying "ὦ ἄνδρες, ὡς γελοῖον ὕπατον ἔχομεν" which seems to approach the condemning tone of Gunnery Sergeant Hartman in Stanley Kubrik's *Full Metal Jacket* when he berates the protagonist of the film for mocking his authority during United States Marine Corps Recruit Training by asking "What have we got here, a fucking comedian?" In both cases the person mocked denies the legitimacy of making mockery in the first place.

prosecution's invective;⁴⁶ he merely makes counter claims, questions the motive of the prosecution, and criticizes its use of the law.

Further, given that Murena was not a *nobilis*, there is a discussion of lineage. One noticeable difference between the Pro Plancio and the Pro Murena is that Cicero's discussion of law is much weaker in the Pro Murena. It is littered with what at first seem like irrelevant statements. In fact sometimes it sounds as though he is merely trying to take up time:

Fuit enim quidam summo ingenio uir, Zeno, cuius inventorum aemuli Stoici nominantur. Huius sententiae sunt et praecepta eius modi. Sapientem gratia numquam moueri, numquam cuiusquam delicto ignoscere; neminem misericordem esse nisi stultum et leuem; uiri non esse neque exorari neque placari; solos sapientes esse, si distortissimi sint, formosos, si mendicissimi, diuites, si seruitutem seruiant, reges; nos autem qui sapientes non sumus fugitiuos, exsules, hostis, insanos denique esse dicunt; omnia peccata esse paria; omne delictum scelus esse nefarium, nec minus delinquere eum qui gallum gallinaceum, cum opus non fuerit, quam eum qui patrem suffocauerit; sapientem nihil opinari, nullius rei paenitere, nulla in re falli, sententiam mutare numquam.⁴⁷

For there was once a man of the greatest genius, whose name was Zeno, the imitators of whose example are called Stoics. His opinions and precepts are of this sort: that a wise man is never influenced by interest; never pardons any man's fault; that no one is merciful except a fool and a trifler; that it is not the part of a man to be moved or pacified by entreaties; that wise men, let them be ever so deformed, are the only beautiful men; if they be ever such beggars, they are the only rich men; if they be in slavery, they are kings. And as for all of us who are not wise men, they call away slaves, exiles, enemies, lunatics. They say that all offenses are equal; that every sin is an unpardonable crime; and that he does not commit a less crime who kills a cock if there was no need to do so, than the man who strangles his father. They say that a wise man never feels uncertain on any point never repents of anything, is never deceived in anything, and never alters his opinion.⁴⁸

⁴⁶ In reply to the charge of Cato that Murena was a "*saltator*," Cicero cleverly avoids denying it, while partially denying it, by claiming that Cato should have mentioned the reason why Murena danced. He claims that one only dances when not *sobrius* or *tempestiui conuiuii, amoeni loci, multarum deliciarum comes est extrema saltatio* (13.8-11). He then states that Cato is making an unfair charge because he hasn't provided evidence for any of these, implying that therefore Murena couldn't have been seen dancing. Cicero further dismisses insult when in response to Cato's claim that the Mithridatic war Murena fought in was basically a war fought against women, by stating that Cato's great-grandfather fought in Asia.

⁴⁷ *Mur.* 61.7 - 62.1.

⁴⁸ Albert Clark 1908.

What possible reason could Cicero have for listing sayings of Zeno?⁴⁹ Why state that “The strangling of a cock when there is need is no less a fault than strangling one’s father?” Cicero was trying to undermine Cato while still seeming to respect the man.⁵⁰ The way he accomplishes this is by mocking Stoicism rather than Cato himself. Yet he could have simply described the tenets of Stoicism. Instead he mentions a series of beliefs, all of which are actual criticism: Stoicism has contempt for anyone not perfect, punishes such people without restraint, considers anyone other than the wise man unworthy, and thinks all crimes are equal. Yet, the examples he gives of these beliefs are ridiculous. To forgive is the work of a fool and trifler, *stultus et levis*; even a man who is tremendously ugly, *distortissimus*,⁵¹ can be beautiful; and to kill a cock without cause is the same thing as patricide. These examples are intended to evoke laughter from their absurdity. The only difference between this and the usual Ciceronian humor is that it is being employed not as a defense against a charge but to soften up an accusation.⁵² Considering no other evidence than the speech, it appears as though Murena was either guilty or difficult to defend.⁵³ Cicero doesn’t seem to have a strong defense. In fact, the very first remark Cicero makes regarding the charge is “you make the accusation of

⁴⁹ Van der Wal 207: 187-189 calls this passage “a daring move by putting the most orthodox Stoic dogma into Cato’s mouth and subsequently ridiculing it.”

⁵⁰ This is also the argument of Leeman 1982: 196.

⁵¹ Fantham 2013 (p. 169) calls the superlative here “exceptional.” That exceptionalism serves to make the example all the more preposterous and thus humorous, for how could the most deformed man be the most beautiful? The adjective used is *formosus*, which is quite literally the opposite of *distortissimus*. Cicero could have chosen to say *pulcher* or *pulcherrimus*, which could take on an abstract sense of excellence. That he didn’t suggests a deliberate attempt to poke fun at this belief.

⁵² Craig 1986 recognizes the importance of humor in this passage although he sees it as more mocking than differential. He argues that Cicero is merely trying to place Cato outside the *mos maiorum* and thereby make the character of his client more appealing to the jury. Regardless, we find here humor being used in order to further an argument about character. See Craig 1986: p. 231.

⁵³ Leeman also argues that Cicero uses humor in the speech to compensate for Murena’s probable guilt. He does not explain, however, the way in which that humor operates or recognize it as a general pattern in Ciceronian defenses. See p. 210.

ambitus; I don't refute it"⁵⁴ raising suspicion that there was some merit to the claims of the prosecutors. Presumably he does consider what follows a denial of *ambitus* but the closest he gets to specifics is when he mentions seats at the circus Murena gave to his tribesmen.⁵⁵ The only real differences between these two speeches on *ambitus* is that, in the *Pro Murena*, the defendant was clearly guilty or Cicero couldn't (or didn't want to) give as good of a defense to Murena as he gave to Plancius. As a result the only thing he could do is fill the speech with a combination of fluff, vouches for his client's character, and humor to deflect the alleged insults that the prosecution directed at his client.⁵⁶ Despite this, he won the case as he did the case against Plancius.

3.4d Murder

In the *Pro Cluentio*, we find the pattern we have observed elsewhere. Cicero denies the charge of murder, champions his client's integrity, and then employs humor to mock the claims of the prosecution.⁵⁷ Cicero begins the speech claiming that even the prosecution was aware there was little evidence against his client. He states:

Animum aduerti, iudices, omnem accusatoris orationem in duas diuisam esse partis, quarum altera mihi niti et magno opere confidere uidebatur inuidia iam inueterata iudici Iuniani, altera tantum modo consuetudinis causa timide et diffidenter attingere rationem uenefici criminum, qua de re lege est haec quaestio constituta.⁵⁸

⁵⁴ *Ambitum accusas; non defendo.*

⁵⁵ Ibid 72-73. Cicero's reply to this is that there has never been a time when this wasn't done.

⁵⁶ The humor in the speech has caused some to wonder how it is that Cicero could joke so much throughout the speech given the political climate of 63 - the defense was in November of that year and thus the Catiline conspiracy had only been unmasked one month prior - and his serious appeals at the end of the speech. Humbert went so far as to argue that the reason for these two tones is that what we have as one speech was originally two "tours de paroles." I see no problem with opposing tones in a single speech. In fact, I expect it: given that *ambitus* was a serious accusation, Cicero would be more likely, *ceteris paribus*, to infuse his defense with humor. See Humbert 1925: 119-42 for the two speech theory.

⁵⁷ Kirby 1990 claims that this is the sole function of humor, "to undermine the ethos of the prosecution" (73). I would argue that it also serves to endear himself, and therefore his client, to the jury. It further demonstrates a sharpness of mind that the jury is likely to interpret as evidence of superior wit.

⁵⁸ *Clu.* 1.1-2

I noticed, judges, that the whole speech of the prosecutor was divided into two parts, part of which he seemed to me to be depending with great confidence upon the now old bias of the Junius trial, and the other part of which he seemed to make his argument timidly and with self-doubt on the charge of poisoning for the sake of custom only, for which law this court has been established.

The prosecution began zealously with bias, *invidia*, and ended treating the matter at hand, the accusation of poisoning. Thus, even if Cicero is accurately describing the prosecutor's speech, he admits that the second half of the speech was centered around the facts. And while Cicero claims he is going to follow the same approach, he immediately brings in character. He gives a narrative of events, to be sure, but throughout he demonizes the prosecutor, Oppianicus, accusing him of committing crimes himself. Further, he spends far greater time detailing these supposed crimes of Oppianicus than offering an alternative narrative from that of the prosecution. He ends the speech with a peroration that hardly mentions Cluentius, instead focusing on Oppianicus, whom he addresses as a "wicked man," *homo nefarius*.⁵⁹

But perhaps the greatest character study in the *Pro Cluentio* is Sassia, the mother of Cluentius. Sassia is painted by Cicero as the antithesis of everything motherly. He claims that she fell in love with her daughter's husband, forced her to divorce him, and then married him herself. Throughout the speech she is seen as a master manipulator, intent on destroying her own son. Cicero describes her journey from Larinum to Rome:

Iam uero quod iter Romam eius mulieris fuisse existimatis? quod ego propter uiciniam Aquinatium et Fabraternorum ex multis audiui et comperi; quos concursus in his oppidis, quantos et uirorum et mulierum gemitus esse factos? Mulierem quandam Larino aduolare, usque a mari supero Romam proficisci cum magno comitatu et pecunia quo facilius circumuenire iudicio capitis atque opprimere filium posset? Nemo erat illorum, paene dicam, quin expiandum illum locum esse arbitraretur quacumque illa iter fecisset, nemo quin terram ipsam

⁵⁹ Ibid. 201.4-5.

uiolari quae mater est omnium uestigiis consceleratae matris putaret. Itaque nullo in oppido consistendi potestas ei fuit, nemo ex tot hospitibus inuentus est qui non contagionem aspectus fugeret; nocti se potius ac solitudini quam ulli aut urbi aut hospiti committebat.⁶⁰

What do you think about this woman's journey to Rome? I've heard and discovered from many, because I live in the vicinity of Aquinum and Fabrateria; how many groans of men and women were stirred among these towns? That a woman from Larinum would fly down along the coast to set out for Rome with a great crowd and money in order to that she might be able to circumvent justice more easily and oppress her son. There was not one of all those people (I may almost say) who did not think that every place required purifying, by which she had passed on her journey; no one who did not think the very earth itself, the common mother of us all, polluted by the footsteps of that wicked mother. Accordingly, she could not stay long in any city; of all that number of people, who might have been her entertainers, not one was found who did not flee from the contagion of her sight. She trusted herself to night and solitude, rather than to any city or to any host.

This is dripping with humor. She is such a vile creature that she creates a circus wherever she goes. And wheresoever she sets foot subsequently requires ritual cleansing. The earth itself, our "common mother," was polluted by this wretch of a mother. Similarly, her husband, whom Cluentius was accused of falsely prosecuting by bribing the jury, is the object of much scorn. He is constantly referred to, sarcastically, as "that innocent of ours, Oppianicus" or "the singularly innocent Oppianicus."⁶¹

In one particularly famous passage Cicero succeeds at thoroughly ridiculing Bulbus by describing him in a culinary context:

Itaque, ut erat semper praeposterus atque peruersus, initium facit a Bulbo et eum, quod iam diu nihil quaesierat, tristem atque oscitantem leuiter impellit. 'quid tu?' inquit 'ecquid me adiuuas, Bulbe, ne gratiis rei publicae seruiamus?' ille uero simul atque hoc audiuit 'ne gratiis': 'quo uoles' inquit 'sequare; sed quid adfers?' tum ei quadraginta milia, si esset absolutus Oppianicus, pollicetur et eum ut

⁶⁰ Ibid. 192-193. Kirby describes this passage as "mock-seriousness" and tongue in cheek (p. 71). However, I would argue that it is much more than that. The images of the population of entire towns coming out to see this woman and the communal effort required to clean up after her is too absurd and insulting not to provoke laughter.

⁶¹ Ibid. 76: *illum vestrum innocentem Oppianicum* and Clu. 108: *innocentiam Oppianici singularem*.

ceteros appellet quibuscum loqui consuesset rogat atque etiam ipse conditor totius negoti Guttam aspergit huic Bulbo.⁶²

Therefore, as he had always been a blundering and a perverse fellow, he begins with Bulbus, and finding him sulky and yawning because he had got nothing for a long time, he gives him a gentle spur. “What will you do,” says he, “will you help me, O Bulbus, so that we need not serve the republic for nothing?” But he, as soon as he heard this—“For nothing,” said he, “I will follow whenever you like. But what have you got?” Then he promises him forty thousand sesterces if Oppianicus is acquitted. And he begs him to summon the rest of those with whom he is accustomed to converse, and he, the contriver of the whole business, adds Gutta to Bulbus.⁶³

As described by Ramsay Cicero is referring to two members of the jury, Gutta and Bulbus, and he puns on their names. A *gutta* is a vessel for oils, vinegar, or sauces; *bulba* is an onion or similar allium; *conditor* refers to the seasoning. Therefore the meaning is that Gutta has “cooked up the whole plot” and “sprinkled a little sauce over Bulbus” and as a result Bulbus “having been thus seasoned appeared by no means harsh in flavour to those who had tasted and swallowed a little bit of hope from his discourse.”⁶⁴ Not only is this a set of clever puns but it is directed at the jury. Given the fact that Cicero is making fun of the names of jurors while he is addressing them, there can be little doubt that this is intended to elicit laughter in addition to casting doubt on the narrative of the prosecution. Moreover, that laughter, in that it is challenging the prosecution, is serving the purpose we’ve been seeing elsewhere: silencing the opposition. It is to be admitted, however, that this is not in response to a specific charge against him or his client. If Cicero is justified in his claim that Bulbus and Gutta were in collusion, then what he says is technically a response, but it is not a play on their words. It is merely a play on their

⁶² Ibid. 71.

⁶³ Yonge 1856.

⁶⁴ Ramsay 1869: p. 184. As noted by Ramsay, those who had tasted or swallowed refers to the jurors to whom he had communicated. Fausset 1887 (131-132) points out that in Petronius’s dinner scene at Pet. Sat. 33 the onion comes at the end; therefore those who took a bite of Bulbus were doing so too soon or putting “the cart ahead of the horse” as Kirby says (74).

names and doesn't necessarily bear any relation to anything the prosecution said, so far as we know.

Cicero's defense of Gaius Rabirius on a murder charge also follows the pattern we expect. As in the *Pro Cluentio*, the focus on character is directed more at the prosecution than at his client. The case was unusual in that it addressed the murder of Saturninus which happened thirty-six years earlier. As could be suspected in such a case, the prosecution's motivation was both personal and political: Caesar was currently trying to weaken the Senate, and the prosecutor was the nephew of Saturninus's associates. The speech is interesting in that Cicero claims that he was being limited to thirty minutes to deliver it, which tells us that he was likely unable to talk about everything he wanted.⁶⁵ What we have, then, is what he likely considered to be the most important aspects in his defense.

Cicero opens the speech by asserting that it concerns much more than a case of accusing one senator of murder. Rather, he claims, that the prosecution was a direct attack on the Senate itself. The issue of character seems to have been brought up first by the prosecution, which, according to Cicero, claimed Rabirius didn't spare his own chastity or that of others.⁶⁶ He then jokes that the reason his time has been curtailed is that the prosecution is afraid he might talk too much about chastity – thereby intimating that the prosecutor is even more guilty of such behavior.⁶⁷ He further jokes that while his

⁶⁵ Indeed, Craig points out that the prosecution's attacks on the character of Rabirius were deliberately made in order to take up time: the more charges they made against him, the greater the list of replies he must make and therefore, the less time he could spend on each. See Craig 2004: p. 183.

⁶⁶ 3.8: *hunc nec suae nec alienae pudicitiae pepercisse*.

⁶⁷ 3.9: *Quin etiam suspicor eo mihi semihoram ab Labieno praestitutam esse ut ne plura de pudicitia dicerem*.

client did not murder Saturninus, he wished he had so that he could brag about it.⁶⁸

Cicero goes on to admit that his client took up arms against Saturninus but claims that it was lawful to do so and consequently, killing him must have been lawful too.⁶⁹ In so doing he slights the prosecutor, Labienus, in a witty remark upon Labienus' claim that his uncle was with Saturninus on the Capitol and died with them there. To this Cicero states that "no one has ever admitted such a thing: no one had been found so cast out by society, so abandoned, so bereft of common decent feeling, nay, of any pretense to such feeling, as to admit that he was in the Capitol with Saturninus."⁷⁰ These two witticisms – about the chastity of the prosecution and Labienus' boast about his uncle – are in response to central claims of the prosecution: that Rabirius was had a questionable character and that the murder was committed in the open, in front of others. That the prosecution may have been personally or politically motivated is beside the point. These two specific claims were relevant and Cicero's dismissal of them by jokingly mocking the one who made them only illustrates how important they were. Despite this, the humor he uses to dismiss them is remarkably effective. Again, a lack of denial and counterstrike is an incredibly powerful tool in sidestepping a serious accusation. The text breaks off soon thereafter so it's difficult to say whether the humor continued. But, there is every indication that it did given that there is nothing substantive in what follows, especially given the fact that this was such a belated trial. Instead, Cicero continues to denigrate Saturninus and claim that

⁶⁸ 6.18: *Utinam hanc mihi facultatem causa concederet ut possem hoc praedicare, C. Rabiri manu L. Saturninum, hostem populi Romani, interfectum!* Interestingly, right after saying this Cicero states that there was an outcry as a result of his words, to which he responds bizarrely that he is comforted, *consulatus*, that there are many inexperienced citizens: *nihil me clamor iste commouet sed consolatur, cum indicat esse quosdam ciuis imperitos sed non multos.*

⁶⁹ 6.19: *Si arma iure sumpta concedis, interfectum iure concedas necesse est.*

⁷⁰ 8.23: *Neminem umquam adhuc de se esse confessum; nemo est, inquam, inuentus tam profligatus, tam perditus, tam ab omni non modo honestate sed etiam simulatione honestatis relictus, qui se in Capitolio fuisse cum Saturnino fateretur.*

Rome should be thankful for the actions undertaken by Rabirius and those who stormed the Capitol.

3.4e Public Violence.

In the *Pro Sulla* there is much discussion of character, both Cicero's and his client's, along with a moderate amount humor – particularly when Cicero is replying to a charge made against him personally. And most of the speech is just that, a response to charges against him rather than his client. Indeed, since the case involved the charge of both *ambitus* and *vis* relating to the Catilinarian conspiracy, it is not surprising that Cicero himself plays as large role in the case, if not a greater role, than his client. The prosecutor in the case, Lucius Manlius Torquatus, apparently abused Cicero as much as the accused.⁷¹ Since Cicero had acquired a reputation for his harsh treatment of conspirators, the prosecution found it useful to criticize both Cicero himself and his decision to defend Sulla. As a result, a good portion of the speech is devoted not to Cicero's defense of Sulla but to Cicero's defense of himself. Cicero opens the speech by explaining why he has taken on the case, since he states that Torquatus claimed that he had never before defended someone associated with the Catilinarian conspiracy.⁷² To this end Cicero tries to distinguish Sulla from other individuals that Cicero prosecuted for their participation in the conspiracy. He claims that Sulla only tried to challenge the court himself, based on his own reputation, but that Autronius gathered together

⁷¹ Drummond (1999: 297-298) expresses confusion over such a tactic and attributes it to the innocence of Sulla and/or the "folly of youth." Yet, Craig (1993: 91) earlier offered a very reasonable explanation to this. Namely that it was a result of Torquatus' position relative to the defense. Since he was "faced with a *patronus* who was himself the strongest witness for the defense, it fell to Torquatus to discredit this witness as best he could."

⁷² Sulla was prosecuted under the *lex Plautia de vi*. See Lintott 1999: 116, who argues that it only involved cases of violence against individuals, as opposed to violence against the state.

gladiators and runaway slaves to riot.⁷³ To Torquatus' charge that Cicero is tyrannical and a foreigner, Cicero remarks flippantly that he can't be both since there has never been a foreign consul.⁷⁴ And later he claims that Torquatus ought to look in his own family tree if he is trying to find tyrants.⁷⁵ He further jokes that since the pool of political offices has shrunk due to new men like Cicero himself, if Torquatus should find himself in a race with a fellow patrician he should take care not to call him a foreigner accidentally lest he lose the support of the very people he is now criticizing.⁷⁶ All of these examples are classic Ciceronian evasions: an avoidance of denials, and a reshaping the charges to use against the prosecution. What's more they are clearly face saving to some of the most common accusations against Cicero – that he aspired to *regnum* and that he was merely a parochial equestrian. Even when Cicero eventually begins talking about Sulla, as he does at 72, shortly thereafter he switches back to himself at 83 and doesn't resume with Sulla until 89. It's possible that he felt this was necessary in his defense of Sulla. It's also possible that his vanity prompted him to talk about himself so much. However, Cicero might have been focusing on himself deliberately in order to

⁷³ *Gladiatorum ac fugitiuorum tumultu*. According to Craig, Cicero makes use of the dilemma in differentiating his testimony against Autronius and defense of Sulla by claiming that he himself can only be either untrustworthy in everything or completely trustworthy in everything (1993: p. 93).

⁷⁴ Craig interprets the accusation of *regnum* to be a deliberate mischaracterization of the prosecution's argument, with the real claim of Torquatus being that Cicero is defending a guilty man and he is thus a hypocrite for doing so. Ibid 94. In this case, Cicero's words at the end of this section on kingship are interesting. He says, according to Craig's translation, "If you think that this is tyrannical, then I admit that I am a tyrant; but if my despotic power, my tyranny, if some overbearing or arrogant utterance angers you, why do you not produce this rather than a prejudicial phrase and abusive slander?" Thus, Cicero has twisted a legitimate argument into slander and then turned around to ask why he doesn't make a legitimate argument. See p. 96.

⁷⁵ 27: *Si quaeris qui sint Romae regnum occupare conati, ut ne replices annalium memoriam, ex domesticis imaginibus inuenies*.

⁷⁶ 24: *quorum caue tu quemquam peregrinum appelles, ne peregrinorum suffragiis obruare*. The irony here is that peregrini could not vote.

avoid talking about Sulla because he found it easier to defend himself than someone who clearly had some small role in the conspiracy.⁷⁷

Only near the end of the speech does Cicero address the character of his client, something that even he remarks upon.⁷⁸ In fact, Cicero goes so far as to claim that character is the most important consideration when charges against someone are serious.⁷⁹ And, of course, he claims that Sulla's character is admirable, though he justifies his earlier conviction for *ambitus* by the remorse that he claims Sulla demonstrated after he was found guilty; in fact, he claims that he practically exiled himself.⁸⁰ Yet, among all his protestations of his client's good character, there is little of the humor related to it that, *ceteris paribus*, we would expect to find. The reason that all of the humor in this speech occurs when Cicero is discussing himself is obviously that Cicero's inconsistency in prosecuting Catilinarians was a central aspect to the prosecution.⁸¹ Moreover, when it comes to the defense of his client (rather than himself) he relies on a call to pathos, where humor would be counterproductive. He describes Sulla's young son as present at the trial and tells the jury that the boy is begging them to allow him to congratulate his father. He claims that Sulla will accept any punishment the jury should choose and he refers frequently to Sulla as tearful and saddened.⁸² In such a pathetic depiction of his client, there is no room for humor. However, as previously

⁷⁷ Cicero mentions in the speech that Sulla's name was mentioned in the letters intercepted by the Gauls in §36.

⁷⁸ 69: *Iam enim faciam criminibus omnibus fere dissolutis, contra atque in ceteris causis fieri solet, ut nunc denique de uita hominis ac de moribus dicam*. He also admits that he is moving on even though he has not answered all the charges. Berry 1996 (p. 274) suggests that this is an attempt to "keep the jury in a state of expectation."

⁷⁹ Ibid: *Omnibus in rebus, iudices, quae grauiiores majoresque sunt, quid quisque uoluerit, cogitarit, admiserit, non ex crimine, sed ex moribus eius qui arguitur est ponderandum*.

⁸⁰ 74 *ipse se exsilio paene multauit*.

⁸¹ Patterson sees raising the issue of the Catiline Conspiracy as absolutely necessitating Cicero's focus on himself; that Cicero wasn't merely trying to prove he had *lentitas* and *misericordia* for the sake of his own reputation but because successfully defending his client required it. See Patterson 2004: 89-90.

⁸² Sections 89-91.

observed, this case is in many ways more about Cicero than about Sulla. Seen in that light, it follows our pattern: Cicero challenges the prosecution and champions his own character, using humor to dismiss the claims of the prosecution.

The *Pro Caelio* also follows this same pattern. Caelius was charged with *vis* and Cicero uses character to contest that charge. He also uses humor on a number of occasions to deflect criticism of his client, and this humor is instigated by discussions of character. Moreover, he had to restrict himself largely to the character of his client because the prosecutor was of such a young age that Cicero could not abuse him as much as he normally would and not risk coming off as abusive; he thus focuses on the character of Caelius.⁸³ The prosecution surely attacked Caelius' morals and given his alleged affair with Clodia, if we are to take Catullan poetry to have some basis in historical fact,⁸⁴ it's hard not to think there could be some basis for such attacks. Yet, Cicero brilliantly brushes off this criticism in one stroke:

Nam quod obiectum est de pudicitia quodque omnium accusatorum non criminibus sed uocibus maledictisque celebratum est, id nam quod obiectum est de pudicitia quodque omnium accusatorum non criminibus sed uocibus maledictisque celebratum est, id numquam tam acerbe feret M. Caelius ut eum paeniteat non deformem esse natum. Sunt enim ista maledicta peruolgata in omnibus quorum in adulescentia forma et species fuit liberalis. Sed aliud est male dicere, aliud accusare. Accusatio crimen desiderat, rem ut definiat, hominem notet, argumento probet, teste confirmet; maledictio autem nihil habet propositi praeter contumeliam; quae si petulantius iactatur, conuicium, si facetius, urbanitas nominatur.⁸⁵

⁸³ Assuming St. Jerome was accurate in his claim that the prosecutor was seventeen (Chron. II 143g Schoene). The age of L. Sempronius Atratinus is one of the reasons David argues that prosecutors received the rank of those they successfully prosecuted. Yet the role of Clodia in instigating the prosecution and the risks that such a young man would have to be willing to take seem to mitigate that a little - a middle aged man risks less in going after a superior rank since half his life is behind him. See Dorey 1958, Cavarzere 2008, and Valverde Abril 2009 for the connection between the three lovers.

⁸⁴ Cat. 58 and 77. Stroth argues that Cicero made up the affair in order to raise questions about the reliability of Clodia as a witness for the prosecution. See p. 269-273.

⁸⁵ *Cael.* 6.5-10. As Austin (p. 51) points out, Gellius (xvii. I) cites this passage as an example of what he thought was great prose but which others criticized.

For as to the attacks which have been made on him on the score of chastity, which has been harped upon by all the accusers, not by regular charges, but by outcry and abuse; Marcus Caelius will never be indignant at that, so far as to repent of not being ugly. For those sort of reproaches are habitually heaped upon every one, whose person and appearance in youth is at all gentlemanly. But to vituperate is one thing, and to accuse is another. An accusation requires a crime in order to define the matter, to bind the man, to prove its charges by argument, and to confirm them by witnesses. But vituperation has no settled object except insult and if any one is attacked in that way with ill-temper it is called abuse; but if it is done with some sort of wit and mirth, it is then styled bantering.⁸⁶

In this quote we see denial, humor and counterattack all at once. Caelius attracts insults from others because he is so good looking. But how can he be blamed for his looks? And he is such a great guy that he doesn't even take the abuse badly. To top it all off, Cicero, the man who later accused Antony of having tried as a child prostitute to marry his pimp,⁸⁷ thinks this abuse goes too far and calls it defamation, *maledictio*, which has no point other than insult (*nihil habet propositi praeter contumeliam*), rather than an accusation.

Another defense that Cicero employs to ward off criticism of Caelius's character is to depict it as all the fault of Clodia. In classic fashion, he takes references to debauchery, affairs, misconduct, Baiae trips, parties, feasts, revels, concerts, music parties, and sailing and asks Clodia whether she is going to disprove such slander against her.⁸⁸

⁸⁶ C. D. Yonge, 1903.

⁸⁷ *Phil.* 2.44.

⁸⁸ *Cael.* 35: *Accusatores quidem libidines, amores, adulteria, Baias, actas, conuiuia, comissationes, cantus, symphonias, nauigia.* As Craig has noted, Cicero goes on to confront the jury with a false choice, a dilemma, when he says, speaking to the prosecution (Craig's translation) "And since in some mad and reckless frame of mind you have decided that these matters should be brought into the Forum and into this court, you must either disprove them, and show that they are false, or else you must confess that neither your accusation nor your evidence is to be believed. See Craig p. 111. Powell and Patterson 2004 also acknowledge the power of the dilemma in confronting Clodia, citing section 53 where Cicero claims that either she and Caelius were intimate and he told her what he wanted money from her for, or they weren't intimate and he didn't tell her. They say Cicero viewed this tactic as "an invincible form of argument" and note how well it served him in other cases. See p. 49. Seager (2011: 103-105) argues that in presenting

The Pro Caelio has a moderate amount of character discussion but its humor is so abundant that scholars have suggested it was modeled on New Comedy.⁸⁹ Most mentions of character are in regards to Clodius and Clodia, but so too the humor.⁹⁰ Geffcken has argued that it displays a comic cast of characters: Caelius is the naive *adulescens*, Clodius the pimp, Clodia the prostitute and a female *miles gloriosus* at once, and Herennius the “Catonic Puritan carrying his *gravitas* to absurdity.”⁹¹ All this serves to make Caelius out to be the unwitting victim of others. Granted, he may have lost control and fallen for a *meretrix*, but he was being manipulating by larger comic forces that he couldn’t control.

Moreover, Cicero consistently drops one liners directed at Clodius and Clodia. Of the two he says:

Quod quidem facerem uehementius, nisi intercederent mihi inimicitiae cum istius mulieris uiro — fratrem uolui dicere; semper hic erro. nunc agam modice nec longius progrediar quam me mea fides et causa ipsa coget: nec enim muliebris umquam inimicitias mihi gerendas putauī, praesertim cum ea quam omnes semper amicam omnium potius quam cuiusquam inimicam putauerunt.⁹²

And, indeed, I would do so still more vigorously, if I had not a quarrel with that woman's husband—brother, I meant to say; I am always making this mistake. At present I will proceed with moderation, and go no further than my own duty to my client and the nature of the cause which I am pleading compels me. For I have

this dilemma without pointing the jury in one direction or the other Cicero is making a greater attempt to harm Clodia than protect Caelius since one of the two options would clearly be better for him, namely that he did not tell her anything.

⁸⁹ In fact, Craig argues that the nine dilemmas in the speech serve to prevent the speech from being overwhelmed by its comic elements. Ibid p. 121.

⁹⁰ The only real praise that Cicero offers for Caelius is that he had conducted past, important prosecutions in the interest of the Republic, against a certain Gaius Antonius and a certain Lucius Calpurnius. See Burnand 2004: 280-281 for how Cicero is purposefully depicting Caelius as a young Cicero who will undoubtedly be of great service to the state in the near future.

⁹¹ Geffcken 1977: 44. Riggsby (1999: 101) would add to the humorous elements of the speech Cicero’s prosopopoeia of Appius Claudius Caecus (33-34) and the “battle of the baths” (61-67). While the former may indeed have brought forth smiles, the latter must have induced hearty laughter. Cicero describes men lying in wait in the baths only to jump out all at once in almost choreographed fashion upon the arrival of Licinius (*repente evolasse istos praeclaros testis sine nomine et tempore igitur ipso se ostenderunt, cum Licinius uenisset, pyxidem expediret, manum porrigeret, uenenum traderet*). Indeed, Cicero describes the scene has just depicted as more a buffoonery than comedy (*mimi ergo iam exitus, non fabulae*).

⁹² *Cael.* 32. Austin suggests that Cicero’s use of *amicam* could be a reference to the story that Clodia had wanted to marry him, but this is taking the passage too literally. The passage is quite clearly speaking of Clodia’s sexual relationships. *Amicam* is merely a euphemism for *meretricem* or worse, *scortum*. See p. 90.

never thought it my duty to engage in quarrels with any woman, especially with one whom all men have always considered everybody's lady-friend rather than anyone's enemy.⁹³

Clodius is guilty of incest and everyone has had sex with Clodia.⁹⁴ The *reprehensio* of "I am always making this mistake" reinforces the levity of his words. By stating this Cicero moves from outright abuse to humorous teasing. Thus Cicero avoids the charge of *maledictio*.⁹⁵ Later Cicero refers to Clodia as the Palatine Medea,⁹⁶ a particularly clever retort to the prosecution's addressing Caelius as a pretty Jason, *pulchellum Iasonem*.⁹⁷ The pattern laid out in the analysis above is evident here. First Cicero denies that the prosecution has a legitimate charge and he equates that charge with an attack upon his client's character which he then defends: for to claim that his client committed *vis* is to besmirch his character, and that character is unquestionable. In so doing, he avoids denying the charges of the prosecution either by explaining them away, as in the case of Caelius' good looks, or by turning to mockery to cast doubt upon the trustworthiness of the prosecution. There are few instances where Cicero twists the words of the prosecution to use against itself; however, as we see in other cases involving Clodius, this is not unsurprising given the intense animosity Cicero had against him – it's hard to make jokes about your mortal enemy.

⁹³ Clark 1908.

⁹⁴ See Geffcken 1977: 35-36 for her discussion of the passage

⁹⁵ He had just argued above (6.8-10) that there is a difference between abuse and abuse sprinkled with wit, the latter of which is permissible and he deems *urbanitas*.

⁹⁶ 6: Palatinam Medeam.

⁹⁷ Münzer (Pauly-Wissowa, Realencyclopädie iii, cols. 1266 ff. (s.v. *Caelius*, no. 35) argues that if Caelius is Jason, then his accuser, Clodia, would actually be Pelias, who attempted to ruin Jason. Austen (1988: 69) suggests that Atratinus had said that "Caelius had won his golden fleece and kept it" citing 30.13 where Cicero says *aurum sumptum a Clodia*.

The *Pro Sestio*, another case where Cicero's client was charged with *vis*, is also filled with discussions of character and humorous abuse of Clodius.⁹⁸ However, Cicero shared defense duties with three other advocates and given that his specifically assigned role was to promote Sestius's character, the rest of the defense likely involved tactics beyond the programmatic pattern for which we have been arguing. We cannot, thus, draw conclusions about Cicero's motive in his use of character. We cannot, for instance, know whether character and humor were the main components of the defense and Cicero's speech was simply the *coup de grâce*, or whether character arguments were merely minor finishing touches. Nonetheless, we can still consider to what extent humor is dependent upon character in the speech. We will find that it is that it is a great deal dependent.

Admittedly, some of the humor seems designed only to elicit a quick laugh. Cicero describes Clodius at one point as "that Tribune of the plebs [who] enjoyed great success in setting the commonwealth on its head, not through his own muscle – for what sort of muscle could a man have whose way of life had left him enervated from debauching his brother, having sex with his sister, and engaging in every unprecedented form of lust?"⁹⁹ The mention of vile sex acts alleged to have been done by one of the most prominent men in Rome was guaranteed to generate a few laughs. However, there may be more to this characterization than garnering easy laughs. Cicero describes Clodius as debauching his brother but merely having sex with his sister. He is said to have carried out a *flagitium*, a shameful act, on his brother, and been guilty of a *stuprum*, fornication, with his sister. It's possible the reason the act with the brother is described as

⁹⁸ Although, as Steel has noticed, Cicero does not name Clodius once. He merely uses adjectives derived from it and then only in the second half of the speech. See Steel 2007: 122.

⁹⁹ *Sest. 16*: is *qui tribunus plebis felix in euertenda re publica fuit nullis suis nervis—qui enim in eius modi uita nervi esse potuerunt hominis fraternis flagitiis, sororiis stupris*. See Kaster 2006 ad loc.

more heinous is because sex between brothers was considered worse than between brother and sister, but it's also possible this difference in description is an insult towards Clodia. Whereas a *flagitium* was something horribly shameful a *stuprum* was just illicit sex, such as with prostitute.¹⁰⁰ Cicero may very well not only be insulting Clodia by associating her with prostitution, but additionally mocking her by implying that this was to be expected. In other words, Cicero tells the audience that sex between brothers is an outrage but he doesn't need to tell the audience that sex with Clodia is an outrage – it's insulting enough in its own right.

When speaking of Clodius' allies, Gabinius and Piso, Cicero depicts the former as “dripping with perfumed oils, his hair crimped and curled, despising his accomplices in lust and the old despoilers of his oh-so-delicate boyhood, puffed up with conceit in the face of the usurers who hang about the ‘Well-Head’.”¹⁰¹ The vividness with which Gabinius is described here is satirical, from the oils to the curled hair and the mocking diminutive *aetatula*, tender age. Later Cicero describes Gabinius emerging from “shadowy brothel orgies, undone by drink, gambling, whoring, and adultery after being raised to the highest rank — against all expectation and thanks to others' resources — when in his drunken state not only could he not face the threatening storm, he could not even stand the unaccustomed sight of daylight.”¹⁰² The humor of the image of a drunk man stumbling out of a brothel into sunlight that he can't handle is obvious. And it is

¹⁰⁰ See Fantham 1991.

¹⁰¹ Kaster (2006: 158) notes that the Well Head was a meeting spot for parties involved in litigation. Sest. 18.3: *alter unguentis adfluens, calamistrata coma, despiciens conscios stuprorum ac ueteres uexatores aetatulae suae, puteali et faeneratorum gregibus inflatus*.

¹⁰² Kaster (2006: 50). Sest. 20.11-16: *subito ex diuturnis tenebris lustrorum ac stuprorum, uino, ganeis, lenociniis adulteriisque confectum? cum is praeter spem in altissimo gradu alienis opibus positus esset, qui non modo tempestatem impendentem intueri temulentus, sed ne lucem quidem insolitam aspicere posset*.

directed against Sestius's enemies. Of the other in the pair, Piso, Cicero also uses strong sarcasm but with opposing claims, stating:

Alter, o di boni, quam taeter incedebat, quam truculentus, quam terribilis aspectu! unum aliquem te ex barbatis illis, exemplum imperi ueteris, imaginem antiquitatis, columen rei publicae diceres intueri. uestitus aspere nostra hac purpura plebeia ac paene fusca, capillo ita horrido ut Capua, in qua ipsa tum imaginis ornandae causa duumviratum gerebat, Seplasia sublaturus uideretur. nam quid ego de supercilio dicam, quod tum hominibus non supercilium, sed pignus rei publicae uidebatur?¹⁰³

The other, O ye good gods! how horrible was his approach, how savage, how terrible was he to look at! You would say that you were beholding some one of those bearded men,—an example of the old empire, an image of antiquity, a prop of the republic. His garments were rough, made of this purple worn by the common people you see around us, nearly brown; his hair so rough that at Capua, in which he, for the sake of becoming entitled to have an image of himself, was exercising the authority of a decemvir, it seemed as if he would require the whole Seplasia to make it decent. Why need I speak of his eyebrow, which at that time did not seem to men to be an ordinary brow, but a pledge of the safety of the republic.¹⁰⁴

Whereas Gabinius is a caricature of the effeminate male, Piso is so much the opposite that he arouses suspicion. This polarity is what makes them at once both jokes and dangerous to the Republic: they lie too far from the norm to be trusted.

Although Cicero continues to mock Clodius, Gabinius, and Piso in strong language, they are not the only objects of his abuse. In describing what the prosecution was arguing had to be done to Sestius, Cicero says:

Et cohortari ausus est accusator in hac causa uos, iudices, ut aliquando essetis seueri, aliquando medicinam adhiberetis rei publicae. Non ea est medicina, cum sanae parti corporis scalpellum adhibetur atque integrae, carnificina est ista et crudelitas: ei medentur rei publicae qui exsecant pestem aliquam tamquam strumam ciuitatis.¹⁰⁵

¹⁰³ *Sest.* 19.

¹⁰⁴ Younge 1891, with corrections.

¹⁰⁵ *Sest.* 135.

Now the prosecutor has dared to urge you, judges, to ‘at long last be stern’, and ‘at long last apply a cure to the commonwealth’. It is not a cure when the scalpel is applied to a part of the body that is healthy and whole, it is cruel butchery: the people who cure the commonwealth are those who cut out a plague on the civil community as though it were a scrofula.¹⁰⁶

According to Cicero the prosecution has described Sestius as a disease that must be struck from the state for it to be healthy. Cicero turns that argument around, claiming that Sestius is not the disease but part of the healthy body and that to take the knife to that part would be cruel; that what needs to be cut out is the goiter, which we are told Vatinius had on his neck.¹⁰⁷ As a defensive strategy, this is a brilliant move. Cicero doesn’t dispute that there is a disease ravaging the citizen body; he merely substitutes Vatinius for his client as the diseased part to be excised. Since Vatinius had a goiter and Sestius was presumably healthy, the accusation sticks. The barb also works because it is funny. Cicero doesn’t mention Vatinius’s name; he merely refers to a destructive physical characteristic for which he was known. The statement is in reaction to a claim of the prosecution; it is indirect and thus less likely to cause offense; and it is unexpected in that Cicero was able to turn an analogy into a reality. To say that Sestius was like a disease is obviously a comparison, but when Cicero then says the disease is not Sestius but the conspicuous medical condition of a person who himself is dangerous to the state, Cicero seems to agree with part of the claim only to reveal at the end of the sentence that he’s referring to someone else. Indeed, the word for goiter, *struma*, is the second to last word in the sentence.

Although we can not know how early character was brought up in the defense given that we don’t have the first three speeches of that defense (for Cicero spoke fourth),

¹⁰⁶ Kaster p. 100.

¹⁰⁷ Mentioned at *Sest.* 135 and *Vat.* 39.

we can see that when Cicero refers to character in his speech he does so with humor. As with the *struma* passage above, Cicero doesn't disagree with a key assumption of the prosecution, which is that there were disruptive people subverting the Republic; Cicero merely denies that Sestius was among these. And the person he offers in Sestius' stead he depicts with such vivid abuse that the audience can't help but laugh along with the orator. And perhaps laughing with someone is the first step in coming to agree with someone.

Unsurprisingly, given the individuals involved, character figures prominently in the *Pro Milone* as well. But it is not in the normal fashion of Cicero's defenses for three very good reasons. For one, there was overwhelming evidence against Milo, from the location of the killing to his claim of self-defense when Clodius had already been wounded before the fatal blow. Secondly, although technically a defense of Milo, Cicero's speech, if it bore any resemblance to the surviving text which he composed years later, actually had the character of a prosecution of the late Clodius.¹⁰⁸ Thirdly, Cicero was defending the man who had killed his greatest enemy which no doubt increased the seriousness with which he approached the case. As a result of the last of these two factors, both of which relate to Cicero's extreme hostility towards Clodius, there is virtually no humor in the speech.¹⁰⁹ It also appears that the prosecution was similar to a Ciceronian defense where probative value is given great weight – Cicero describes the prosecution as claiming that Clodius never acted with violence and Milo

¹⁰⁸ Cicero accuses Clodius of: being unworthy of his family (Mil. 17, 55, 59, 18, 86), avarice (73-6), unacceptable sexual conduct (13, 72-73, 76, 85, 87, 89), mistreating his family (75-76), aspiring to *regnum* (35, 43, 76, 80, 87, 89), cruelty to citizens (3, 18-20, 24-26, 31, 37, 38, 40-41, 52, 73, 77, 87), and plunder of private and public property (3, 17, 50, 73-75, 76, 78, 87, 89, 95). See Craig 2004: 206-209 for a brief description to each of these.

¹⁰⁹ Another reason could perhaps be that though he had no problem proclaiming the evil of Clodius, he felt it improper to mock, in a jesting fashion, the deceased.

never without it.¹¹⁰ Thus, Cicero necessarily had to adopt an unusual defense. He begins not with a challenge to the prosecutor but with a partial narrative.¹¹¹ And the speech lacks any section uniformly praising Milo: instead Cicero peppers the speech here and there with positive attributes, almost as if he were afraid that we'd forget these attributes if given all at once. More than anything, however, Cicero focuses on drumming up pathos. Of course, he refers to Milo as a hero but it is almost by accident. In fact, he is depicted in the latter half of the speech more as an instrument of the Gods than an independent agent acting in the state's interest as a result of his good character.¹¹² While his discussion of his client's character is different than what we see in his other defenses, Cicero's focus on Clodius is in keeping with what we would expect. He describes in detail what he claims were the intentions behind his supposed machinations from his praetorship onward.¹¹³ Moreover, after section 71, Cicero devotes the rest of his speech to the character of Clodius.¹¹⁴ Nowhere do we see anything resembling a joke and although this seems surprising given the frequency with which Cicero employs humor to abuse him in his other defenses, it makes sense here because there was nothing to gain by it.¹¹⁵ What we have been seeing is that humor is a tool used to make charges against

¹¹⁰ *Pro Mil.* 36.2-3: '*Nihil per uim umquam Clodius, omnia per uim Milo*'. This is similar to the common Ciceronian tactic of responding to an accusation with a claim that his client's character would be incapable of such a act.

¹¹¹ Riggsby (1999: 109) suggests that this is similar to the *Pro Murena* but I would argue that there Cicero questions the motive of the prosecution to a greater degree, suggesting that it has an ulterior motive.

¹¹² §83-86 and 88-89. See May p. 243-246.

¹¹³ *ibid.* 24.1 - 30.

¹¹⁴ May 1979 argues that the reason for the nearly exclusive focus on character is that Cicero was trying to drive the jury into a fever of outrage against Clodius and sympathy for Milo. Thus any return to the evidence and Cicero's own narration of the case would detract from that. See p. 245-246. Indeed, Fotheringham 2013 suggests that the higher percentage of complex sentences in Cicero's *digressio* "may reflect a particular type of emotion." See P. 353.

¹¹⁵ It should be noted that Craig seizes upon one sentence in this section as evidence that advocates and prosecutors only employed invective when there was some truth to it. He translates this sentence as "I do not fear, gentlemen of the jury, lest inflamed by the hatred of my personal enmities I may seem to hurl these charges at him with more *verve* [Craig's italics] than veracity. He interprets this sentence as implying

enemies, but even more often to reply to charges. With Clodius dead, Cicero had already won to some extent. Upon taking up the case, he risked little other than harming his reputation as an advocate, a reputation already so stellar it couldn't be significantly be damaged by one loss. He owed it to his client to do his best to achieve an acquittal but given his animosity towards Clodius, he lost sight of his own role. It is thus not surprising that this is one of the only cases Cicero lost. If he had been able to divorce himself from the case and view Clodius merely as the victim whose death led to a charge against his client and nothing more than that, perhaps he could have taken himself less seriously and employed more humor.¹¹⁶ If Cicero had undertaken a more "Ciceronian" defense; perhaps Milo would never have developed his fondness for the fish of the Riviera.¹¹⁷

3.4f Parricide

The defense of Sextus Roscius was one Cicero's earliest, undertaken during Sulla's dictatorship. After Roscius's father was murdered, a freedman claimed that Roscius had committed the crime. Cicero's defense relies far less on character and humor than we would expect given the serious nature of the charge. Rather than

that Cicero expected the jury to be aware of and concerned with the truth of his claims. Moreover, he uses it to argue that Cicero was not trying to humiliate Clodius but provide probative evidence. I interpret this sentence slightly differently. It seems to me that Cicero is not stressing the accuracy of what he is about to claim but the fact that Clodius is so terrible that nothing he could say would appear be too strong of a condemnation. Thus, Craig is right that Cicero is saying he expects the jury to believe what he is about to say. However, he isn't saying this in order to praise the jury and its concern for veracity as much as he is trying to vilify Clodius as someone of such extraordinary criminality and perversion that no one could possibly doubt his claims to this. See Craig 2004: 187-213.

¹¹⁶ There is one possible joke in the speech. Cicero refers to the death of Clodius by saying (translation by Uria) "Nobody can bear with equanimity the death of P. Clodius. The Senate is in mourning; the knights grieve, the whole state is worn out with gloom; the municipalities weaken, the colonies are sad, even the fields themselves long for such a beneficent, such a useful, such a good citizen." It is no doubt possible that this was stated with too much contempt to be funny. However, if Cicero used a sarcastic intonation then he might have evoked laughter. See Lausberg 1998: 902-906 for this possibility.

¹¹⁷ Cass. Dio. 40.54.

champion his client's character, he merely states that neither Roscius nor his father hated the other.¹¹⁸ The only jokes he makes are sarcastic statements about those whom he claims carried out the act. He argues that two other relatives of the elder Roscius were the real perpetrators, and that they conspired with Sulla's freedman Chrysogonus in order to accuse his client and seize his father's property.

Cicero paints Roscius as a loving son and traditional Roman and contrasts this portrayal with the other Roscii, whom he claims are guilty of the murder, and Chrysogonus, whom he depicts as immoral and unsavory. However, he offers little other praise of Roscius. Although he occasionally mocks Chrysogonus with wit, the speech is largely devoid of humor. However, Byron Harries does see comedy influencing the speech. He claims that key words such as *ineptia* and *imago* (the Plautine word for mask in his earliest comedies) are evocative of comedy. He notes that Cicero mentions the comic poet Caecilius in his attempt to prove Roscius and his father got along.¹¹⁹ For in a rewriting of the Menandrian *Hypobolimanus*, a father favors a son who lives in the country over a son who lives in the city. Yet, there is no joke made, despite the very real possibility that Cicero's familiarity with comedy might have helped to shape the speech. The comic influence is therefore, just that. Simply because a speech is influenced by comedy does not mean that that speech is humorous.

Why should the *Pro Sexto Roscio Amerino* lack the traditional focus on the defendant's character that is traditional in criminal defenses? Given that Cicero was

¹¹⁸ Cicero claims that there is no evidence for this at *Pro Rosc. Am.* 40.2 Dyck 2010 (p. 112) suggests that this is in imitation of the *altercatio*. At the very least it's evidence of imaginative exchanges between Cicero and the prosecution.

¹¹⁹ Harries 2007: 136- 137. Ann Vasaly (1985: 9-17) sees humor in the speech as well, arguing that the defendant's personality is evocative of the rustic persona that dates back to Old Comedy, and that Chrysogonus and his associates are depicted as examples of the "urban scoundrels" found in New Comedy.

defending someone accused of parricide, of which he says “ I know that in such huge and atrocious affairs I can not speak appropriately nor cry out freely”¹²⁰ he may have felt constrained from speaking too highly of his client. Secondly, since Roscius was being accused by a powerful faction supported by Sulla, Cicero would risk incurring resentment or retribution by speaking too harshly of the opposition. Thirdly, this is one of Cicero’s earliest speeches. It’s entirely possible that his habits, what he found worked and didn’t, were still being formed. And as Shane Butler has argued, it was only when he developed aristocratic pretension that Cicero became focused on character, as an attempt to distance himself from the equestrian reputation for focusing on evidence.¹²¹ Fourthly, Cicero was not as deeply immersed in the political scene during this case as he was in cases later in his career. He had no Clodius to mock nor archenemies like Verres or Catiline to whom to compare his opponents to. Finally, as a young man, Cicero had less political capital and might therefore be less willing to risk offending someone who could benefit his career.

3.5 Conclusion about defensive speeches

There are some defenses that don’t fit this paradigm of denial, move to character, and utilization of humor, but for good reason that precludes us from discussing them. In perhaps the greatest departure from his normal tactics, in the *Pro Quinto Roscio Comoedo* Cicero focuses almost exclusively on the disputed facts of the case, challenging every assertion of the prosecution. There are two possible explanations for this. For one, the case involved a dispute between two former partners. Roscius, an actor, had teamed

¹²⁰ *Pro Rosc. Am.* 4.9: *his de rebus tantis tamque atrocibus neque satis me commode dicere neque satis grauius conqueri neque satis libere uociferari posse intellego.*

¹²¹ Butler 2002: 78-84.

up with Fannius to train Fannius's slave Panurgus to be an actor. The two men worked amicably together and were successful in promoting the slave's career. When the slave was eventually murdered they continued to work together for restitution. Difficulties arose only after Roscius worked out a deal with the accused murderer wherein he gained a farm from the killer which he then ran so successfully that Fannius came to think half of its value was owed to him. Thus, perhaps Cicero thought it unseemly or counterproductive to insult someone with whom his client had been so closely associated. The other possibility is that Fannius's case was so weak that Cicero had the luxury of sticking to the facts. And given the time elapsed between Roscius's deal with the murderer and the eventual success of the farm, spawning the plaintiff to take Roscius to court, this is certainly a possibility.¹²² In either case, it is easy to understand why character would not be a central feature in a dispute over profits. The same conclusions can be applied to the *Pro Publio Quinctio* which, although not a dispute between partners, was a disagreement between the brother of someone who had died and his former partner.¹²³ Likewise the *Pro Marcello* and *Pro Ligario* are less defenses than praise for Caesar, since they weren't charged with anything but rather chose Pompey's side and thus left the city.

To summarize, Cicero largely follows a paradigm in his defenses where he begins by challenging the merits of the prosecution or raising the stakes of the trial and then either proclaiming the virtuousness of his client's character or dismissing accusations against his client's character by addressing something other than the nature of those

¹²² We don't know how much of time elapsed as it's not stated in the text. But it had to be at least a couple years since the productivity of a farm could not be increased significantly in one season.

¹²³ As with the *Pro Caecina*, we could follow Damon and argue that Cicero depicts the prosecutor as a parasite but, as with the *Pro Caecina*, I think it's difficult to do so in a civil case involving money. See Damon 1997: 196-203.

accusations.¹²⁴ He only departs from this paradigm when the charge he is defending carries with it little to no moral opprobrium, when there are multiple prosecutors such that we can't speak of a Ciceronian tactic given the aggregate defense, or when there is an overwhelming reason not to focus on character, such as when his client too closely resembles the opposition or when the opposition was too politically powerful to challenge on grounds of character. When Cicero challenges the prosecution, he tends to do so mildly, focusing on *procedural* misconduct rather than *moral* conduct.¹²⁵ Lastly, Cicero tends to use discussions of character to evade discussing the merits of the case, and when he employs humor, especially defensive humor, to that end, he is enormously successful.

In addition to these observations, this loose yet conspicuous pattern can be seen to fit within the realm of Action Theory.¹²⁶ These judicial cases are political arenas in which social dramas – which can be viewed as focusing specifically on “face” – are carried out. The political players are transactional “Contact Teams” in that Cicero is only hired as an advocate in the belief that he can successfully defend his client and the prosecutor only takes up the case in the belief that he can win a conviction. The social drama that these political players negotiate is initiated by a confrontation (the charge) and encounter (the proceedings). The negotiation operates through a specific sort of “political symbolism,” one that focuses on character as an important determinant. This is in part due to the fact that, as Riggsby has argued, Romans thought character was relevant in judicial cases, but it is also due to the fact that the typical Ciceronian defense

¹²⁴ Craig has discussed this habit of evasion but has not suggested that humor played a role in it. Rather, he argues that Cicero employs the rhetorical tool of dilemma to present the jury with two false choices regarding his opponent, misrepresenting the prosecution's position in the process. See Craig 1993: p. 25.

¹²⁵ It should be noted that while Cicero does employ invective in the *Pro Rosc. Am.* (e.g. 17.5-10) it is directed not against the prosecution but against those whom Cicero claims are the real guilty parties.

¹²⁶ See p. 46-52 in chapter two above.

involves ignoring the details of the prosecution's charges and focusing on the character of his client and/or the prosecutor(s) – regarding the latter, this would only be on the rare occasion he feels the need to go beyond procedural criticism. Lastly, the rules to the social drama that takes place over character can be manipulated successfully through wit: to maintain face requires the ability to respond quickly to challenges and to do so in a way that casts doubt upon those challenging it.

Chapter Four: Quintilian's Assessment of Cicero

4.1 Introduction

In the previous chapter I have discussed how we can consider Cicero's humor a performative mechanism of power exchange. In this chapter I shall consider whether the most comprehensive theoretical discussion of humor's use in oratory, Quintilian, saw humor in the same fashion. Quintilian devotes the third section of book six of his *Institutio Oratoria* to a discussion of how the orator should make use of wit and humor. The majority of examples he provides are Ciceronian. However, his views on these examples are at best unclear and at worst seemingly contradictory, and thus merit further investigation.¹ Although he devotes a lengthy chapter to humor and wit, Quintilian wavers between dismissing it and championing it as an effective tool. As to the former, he mentions that Demosthenes was deficient in humor yet still a successful speaker. Furthermore, he states that he is wary of it, claiming that "the majority of humorous sayings are false" (*ridiculum dictum plerumque falsum est*).² However, as to the latter – the potentially effective use of humor – he sees it as relating to insults³ and he claims that "it has a most imperious force which is hard to resist" (*uim nescio an imperiosissimam et cui repugnari minime potest*),⁴ which can

¹ Beard (2014: 103-104) explains the ambiguity by suggesting that Quintilian found Cicero a little too humorous, citing Macrobius' appraisal of Cicero as a *consularis scurra*. However, for reasons discussed below, there are other explanations for this.

² Quint *Inst.* 6.3.6. In 12.9.9 he also says: *ea est enim prorsus canina, ut Appius, eloquentia, cognituram male dicendi subire*.

³ 6.3.8: *Habet enim, ut Cicero dicit, sedem in deformitate aliqua et turpitudine: quae cum in aliis demonstrantur, urbanitas, cum in ipsos dicentis reccidunt, stultitia uocatur*.

⁴ 6.3.8.

cause an argument to be won or lost and dispel anger.⁵ I shall argue that the reason for this apparent contradiction of claiming humor to be cheap and useful at the same time stems from his belief that humor is so powerful as to be unfair. Essentially, Quintilian verifies our argument about Ciceronian humor: having the better joke is better than having the better argument.

However, as opposed to the Ciceronian practice of excessive humor, which Quintilian claims was a widespread consensus,⁶ Quintilian thinks that as a result of humor's power, it ought to be used judiciously; namely that it ought to be used only in defense, as a retort to an accusation, rather than as simple abuse. I would further argue that Quintilian's favoring of defensive over offensive humor stems not only from his fear of humor's power but his admiration of wit overall; in other words, although he nowhere says so, his affection for retorts exists in part as a result of his belief that retorts demonstrate the power of humor much more than abuse.⁷ Anyone can heap insults upon an opponent and win a case. But, to have those insults repackaged and sent back in such a way as to carry the argument is a truly impressive talent.⁸ Furthermore, the retorts Quintilian most admires either avoid denial or come right out and admit to the original charge.

⁵ This is pretty close to what Cicero says in *De Orat* 2.216: *Suavis autem est et vehementer saepe utilis iocus et facetiae*.

⁶ At the opening of 6.3 Quintilian claims that, regarding humor: *nam plerique Demostheni facultatem defuisse huius rei credunt, Ciceroni modum*.

⁷ 12.9.9: Quintilian elsewhere agrees with a saying of Appius that seconds this: *ea est enim prorsus canina, ut Appius, eloquentia, cognituram male dicendi subire*. "It's a dog's eloquence to try to abuse one's opponent."

⁸ Quintilian seems to think of this kind of humor as *uenustus* given the preponderance of the word in chapter three. For the same argument, see Krostenko 2001: 101. Cicero, on the other hand, calls humor that is dependent on the words of others *cavillatio* at *De Orat*. §218. Regardless of the alternative terminology, however, Cicero approves of humor in response. At §2.255 Cicero says "it's pleasant when in an altercation, a word is snatched by an adversary and then turned upon the very person who made the accusation" (*hoc tum est uenustum, cum in altercatione arripitur ab aduersario uerbum et ex eo*) and he cites the Catulus joke (see below) as an example.

Lastly, as will be discussed below, Quintilian will break any of the rules and advice he gives about humor for a really good joke.⁹ It is thus safe to say that he values humor not only as a weapon to be used in argument but as an end in itself: the right joke at the right time is evidence of technical mastery and this mastery can be enjoyed in its own right.

4.2 Targets of Humor

Quintilian wisely avoids any attempt to define humor. But he does define the various Latin words for wit and humor¹⁰ and eventually claims that there are three places to which humor can be directed in oratory: others, ourselves, and public, *res mediae*.¹¹ As we shall see below, there is some ambiguity as to whether Quintilian was referring to others and ourselves as *targets* or as *subjects*. For one can make a joke about oneself that is really an insult directed at another due to its sarcastic tone and vice-versa. However, given the grouping of his examples, it's much more likely that Quintilian is thinking of subjects. Jokes about *res mediae* are more difficult to glean the purpose of. Whereas jokes against others are clearly offensive in nature and jokes against oneself are defensive (or offensive if given in the manner advised by Quintilian), intermediary jokes can't be said to be either. If not for the purpose of defense or offense, jokes on *res mediae* must be non-adversarial – the sorts of jokes that

⁹ As he does with Cicero's response to an inquiry about what time Milo killed Clodius, and Cicero replied "too late."

¹⁰ 6.3.17-21. The words are *urbanitas*, *uenustus*, *salsus*, and *facetus*. For more on *uenustus* and *facetus* see Krostenko 2001: 40-51 and 59-64 respectively.

¹¹ 6.3.22-23. What exactly is meant by *res mediae* is unclear. Monaco (45) translates the description of this tripartite division as "il riso cerchiamo di farlo nascere o dagli altri o da noi stessi o da cose intermedie." Russell (2001:75) translates it at "neutral circumstances."

would lack targets, or at least targets whose senses of dignity could be offended. Thus, jokes about animals, ethnicities (as long as no one in the audience is of that ethnicity), or puns (again, as long as not to offend) would all fall under this category. In short, *res mediae* jokes would seem to be jokes that are not designed to wound. Their purpose then, could be anywhere from demonstrating wit or to provoking laughter for the merriment of the audience. They could also, of course, do both of these simultaneously. Of all the jokes in chapter three of book six there are few examples that could be classified as such,¹² and only one of those is not discussed here.¹³

4.3 Quintilian's Catalog of Jokes

In this catalogue I will not discuss all of the jokes Quintilian mentions. Many of them – I count seventy-nine in total – require no explanation. The twisting of someone's name into an insult,¹⁴ metaphors and wordplay,¹⁵ or jokes with modern analogs are simple enough to understand.¹⁶ Furthermore, some of the direct insults cited by Quintilian require no investigation.¹⁷ Also requiring no inquiry are mere references to jokes that are not actually repeated (so that we do not know what they are about),¹⁸ and those that are so incomprehensible to us that

¹² Jokes 14 and 15 below could be considered *res mediae* since they lack targets.

¹³ 6.3.52: Fabius Maximus referred to a gift, *congiarium*, from Augustus as an *heminaria*, "half-gift," because he thought it was too small. This could be considered an insult but Augustus is not *directly* the butt of the joke. The gift is.

¹⁴ 6.3.55-59. The most famous of those listed by Quintilian is that of Verres sweeping away (*uerreret*) the property of others.

¹⁵ 6.3.51-54: For example, Cicero's use of *Ludus* for brothel instead of school, and *magister* for debt-collector instead of teacher.

¹⁶ 6.3.67: A man being "so tall" that he hits his head on the Fabian Arch.

¹⁷ Caesar stating that his opponent looked like a Gaul at 6.3.38.

¹⁸ 6.3.39: Caelius' story about Decimus Laelius.

we are incapable of analyzing them.¹⁹ We shall therefore limit our discussion, ordered by type, to the jokes that elicit the most commentary from Quintilian in order to investigate whether Quintilian prefers certain types of humor over others and what he sees as the function of humor in argument.

4.3a: Jokes in Response to Criticism.

1.) After Cassius Severus' opponent reproached him for the fact that someone, a certain Proculeius, had forbidden him entry to his home Severus bested him by saying "do I go there anyway?"²⁰

2.) King Pyrrhus of Epirus questioned a group of young Tarentines, who had apparently made many denigrating comments towards him while dining. While calling them to account for their words, as Quintilian relates it, rather than deny that they had said anything critical, one of the youths shouted out "yes and if the bottle hadn't been empty, we should have killed you!"²¹

¹⁹ The mysterious yet unspeakable joke of Caelius involving a box (6.3.25) or Caelius describing someone as riding a dolphin like Arion (6.3.41).

²⁰ Quint *Inst.* 6.3.79: *numquid ergo illuc accedo?* The wit in this comeback stems from Severus' mocking of the charge. If Severus doesn't care that a particular person shut his door to him then the reproach doesn't work. This is likely the same Cassius Severus whom Tacitus considers to be abusive in his wit. Indeed, he says (*Ann.* 1.72) that Severus "defamed reputable men and women with shameless writings," *uiros feminasque inlustris procacibus scriptis diffamauerat*. In the *Dialogus* (§19), however, Tacitus claims that Severus gained his reputation for wit and abuse because the people wouldn't tolerate long and "confused speeches," *impeditissimarum orationum spatia*. He further refers to a popular demand for invective at §40. Seneca the Elder also approvingly reports some sayings of Severus. He mentions him describing the performance of an orator who had just declaimed in both Greek and Latin as *male καὶ κακῶς*. He also expresses wonder at how someone so gifted in wit could be so unsuccessful (*memini itaque me a Severo Cassio quaerere, quid esset, cur in declamationibus eloquentia illi sua non responderet*). D'Hautcourt 1995: 316 suggests that Cassius Dio has him in mind when he refers to Augustus seizing libelous books (βιβλία ἅττα ἐφ' ὅβρει) although he is not named by the historian.

²¹ 6.3.10. Whether the youths insulted Pyrrhus while dining with him or at an earlier dinner that Pyrrhus heard about is ambiguous. All we are given is a relative clause describing the youths as *multa de rege Pyrrho sequius inter cenam locuti*, "having said many things out of turn about king Pyrrhus during dinner." Plutarch tells this story in his *Life of Pyrrhus*. Pyrrh. 8.12: ταῦτ' ὃ βασιλεὺς· πλείονα δ' ἂν ἔτι τούτων εἰρήκειμεν, εἰ πλείων παρῆν οἶνος ἡμῖν. Likewise, Valerius Maximus says that the words of the youth were *nisi uinum nos defecisset, ista quae tibi relata sunt, prae iis quae de te locuturi eramus, lusus ac iocus*

3.) An exchange between Brutus and Lucius Crassus as described in Cicero's *De Oratore* must be quoted in full. In response to some criticism related to property management that Brutus had directed at him, Crassus had some pamphlets on law written by Brutus' father recited for the judges, and Crassus inserted comments along the way. Quintilian narrates it thus:

Ex libro primo: "forte evenit ut in Privernati essemus." "Brute, testificatur pater se tibi Privernatem fundum reliquisse." Deinde ex libro secundo: "in Albano eramus ego et Marcus filius." "Sapiens uidelicet homo cum primis nostrae ciuitatis norat hunc gurgitem; metuebat ne, cum is nihil haberet, nihil esse ei relictum putaretur." Tum ex libro tertio, in quo finem scribendi fecit – tot enim, ut audiui Scaeuolam dicere, sunt ueri Bruti libri – "in Tiburti forte adsedimus ego et Marcus filius." "Ubi sunt hi fundi, Brute, quos tibi pater publicis commentariis consignatos reliquit? Quod nisi puberem te, inquit, iam haberet, quartum librum composuisset et se etiam in balneis lotum cum filio scriptum reliquisset."²²

On an extract from the first book, [the following was read] "It chanced that we were in the Privernian district," his [Crassus's] comment was, "Brutus, your father bears witness that he has bequeathed you an estate at Privernum." Next, at the citation from the second book, "I and my son Marcus were on the Alban Hills," he observed, "See how a man as shrewd as any in our community had discerned the nature of this devouring gulf; he was afraid that, when he had nothing left, it might be thought that nothing had been bequeathed to him." Finally, on the words "I and my son Marcus happened to sit down together on Tiburtine land" being read out from the third and concluding book (for I have heard Scaevola say that the authentic volumes of Brutus are three in number), Crassus exclaimed, "Where are these estates, Brutus, which your father registered in his public memoirs as bequeathed to you? Why," he went on, "had you not already turned fourteen, he would have put together a fourth book, leaving it on record that he had also washed in his son's company at those baths!"²³

fuissent, "If we had not run out of wine, what you have been told we said would have seemed mere teasing in comparison to what we were about to say of you." The only difference between these accounts and Quintilian's is that Plutarch and Valerius Maximus say nothing of killing; their youths only state that they would have spoken more (implying abuse) had they had more wine. However, this difference is significant. The moral of the Plutarch and Valerius Maximus story is *in uino ueritas*, and thus clemency is necessary when dealing with insults brought on by inebriation, but for Quintilian the significance of the story is that humor can defuse heated confrontations. The moral there may well be *in ridiculo tutamen*.

²² *De Orat.* 2.224-5. The devouring gulf, *gurgitem*, refers to Brutus. The joke is that the reason Brutus' father documented so thoroughly what he was leaving to his son was that he figured his son was such a profligate that he'd sell it all so quickly that he feared that people would think he left him nothing.

²³ 6.3.64.

4.) In an interaction between an *eques* and Augustus, when the drinking and eating of the *eques* at the games bothered Augustus, he was roused to send him a note saying “if I want to dine, I go home: so should you” (*ego si prandere uolo, domum eo: Tu enim*), to which the *eques* replied, presumably in a note sent back to the princeps, “you are not afraid that you’ll lose your seat” (*non times, ne locum perdas*).²⁴

5.) An officer whom Augustus was dismissing dishonorably kept pleading with him by asking what he was to tell his father. Augustus replied, “tell him that I displeased you” (*dic me tibi displicuisse*).²⁵

6.) Also involving Augustus, but with the princeps on the receiving end of the joke: when an *eques* was accused by Augustus of squandering his inheritance, he said “I thought it was mine” (*meum putaui*).²⁶

7.) An unnamed accuser brought to the trial a painting depicting his opponent, Manius Curius in an unflattering light. It showed him in at least two poses, one naked and in jail, and the other being restored to freedom with his

²⁴ 6.3.63. Augustus would have been seated at an elevated position, on a *sella curulis* in a tribunal opposite the Vestal Virgins, from where he would have had an unobstructed line of sight. See Suet. *Aug.* 44. The very exclusivity of his position, however, is what makes the joke of the *eques* work. It draws attention to the absurdity of Augustus comparing his situation to that of the *eques*. See Jones 2008: 7-40 for more on the seating arrangements at Augustan spectacles.

²⁵ 6.3.64. According to Southern (2008: 163), the charge would have been one of *ignominiosa missio*. However, the only attestation to this term is in the Digest. 49.16.13.

²⁶ 6.3.74. The criticism of Augustus is the same as that of Brutus’ initial criticism of Crassus and Crassus’ counterattack. The suggestion is that one who can’t manage oneself can’t manage a state. C.f. the saying of Cato the Elder (Plut. *Mor.* 198F), “The worst ruler is one not able to rule himself,” Κάκιστον δ’ ἔλεγεν ἄρχοντα εἶναι τὸν ἄρχειν ἑαυτοῦ μὴ δυνάμενον. For more on the importance of having property to leave to one’s heirs, see Champlin 1991: 6-28.

friends paying his debts.²⁷ After this accuser brought this forth and showed it to the court, Manius's reply was simply "so did I never prevail?"²⁸

8.) When Domitia, the wife of an advocate named Passienus, protested at Junius Bassus's accusing her of cheapness by suggesting that she sold old shoes, Bassus replied "by Hercules, I have never said this, but I have said that you are accustomed to buying them" (*non mehercules, inquit, hoc unquam dixi; sed dixi emere te solere*).²⁹

9.) One Gabba, when accused of buying a five foot long lamprey, *quinque pedes longam murenam*, simply said "I'm not at all surprised at that, for they grow so long there that the fishermen wrap them around their waists instead of ropes."³⁰

²⁷ Gesner says, probably following Festus (see Valla 1996 p: 141) who noted *siparium est genus ueli mimici*, as paraphrased by Watson 1891 p.446: "that the curtain was divided into compartments, and that some scene of his life was represented in each compartment."

²⁸ 6.3.73: *ergo ego, inquit, "nunquam uici?* The insult here is that Curius was only released from jail through the intercession of his friends, thus demonstrating that he was not in control of his affairs. His response can mean only one thing if we are to interpret this as a joke: "so what if I was in jail? I'm free now."

²⁹ 6.3.74 The cleverness of the joke is that it initially appears to deny the accusation, and thus placate Domitia, but in fact ends up insulting her further. Surely it is worse to buy cheap shoes than to sell them. The cheap shoes one sells could have been quality shoes when they were first acquired. However, someone who buys cheap shoes never had any quality ones to begin with. Quintilian also references Passienus and Domitia at 6.1.50, where the wife, Domitia, forced her husband to take up a case against her own brother over money. It is merely speculation but it's not impossible that Domitia had a reputation as an harridan and that this was what provoked Bassus' ridicule of her. What little we know of her would back this up. Passienus left her to marry Agrippina the Younger, against whom she may have participated in an intrigue that brought about her own death at the hands of Nero in revenge. See New Pauly iv, coll 634ff. (s.v. *Domitia* no. 1). Of Passienus, we only know that his success as an orator was prevented by the dullness of his speeches. See Controv. 3.pr10: *Passienus noster cum coepit dicere, secundum principium statim fuga fit, ad epilogum omnes reuertimur, media tantum quibus necesse est audiunt*. See Syme 1986: 160.

³⁰ 6.3.80: *Nihil, inquit, mirum; nam ibi tam longae nascuntur, ut iis piscatores pro restibus cingantur*. Criticism for buying a large eel must imply an accusation of luxury. Gabba's response can be interpreted two ways. The first is that eels that big are common therefore to buy one is not luxurious. The second is that Gabba is deliberately misunderstanding the point of the accuser, such that he responds as though the accuser were merely expressing astonishment that Gabba bought a fish so big. The difference between these can be illustrated by imagining someone in organized crime being accused of massive racketeering. Were he to say "that's nothing relatively speaking" his defense is to claim that he is being unfairly prosecuted for a common practice. If, in contrast, he were to say, with a smile, "yes, we were running quite a racket" he would be mockingly dismissing the charge. See below for more discussion.

10.) Likewise, when Afer was pleading against a freedman of Claudius he was accused by his adversary of always speaking badly of the Caesar's freedmen, he simply said "yes but by God I'm not succeeding" (*nec mehercule, inquit, quicquam proficio*).³¹

11.) In addition, to a Philippus who had tried to make fun of a Catulus by playing on the fact that his name meant "puppy" by asking "why are you yelping?" Catulus simply replied "I see a thief" (*furem uideo*).³²

12.) When the famously ugly Sulpicius Longus said that his opponent did not have the face of a free man, Domitus Afer, presumably the advocate of said opponent, said "From this opinion of yours someone who has an ugly face is not free?"³³

13.) In Cicero's famous defense of Milo, the prosecution suggested Cicero's client had been lying in wait for Clodius and therefore kept repeating the question "when was Clodius slain?"³⁴ To this Cicero replied simply "too late" (*sero*).

14.) When a certain Sextus Annalis gave testimony against Cicero's client, the prosecutor asked "tell me, Marcus Tullius, what do you have to say about

³¹ 6.3.81. Afer's response must be read as self-deprecating. It's almost satirical in that it is a speaker who sees what he considers injustice in the world yet is powerless to effect change.

³² 6.3.82. This joke is also repeated at *De Orat.* 220: *Quid enim hic meus frater ab arte adiuvari potuit, cum a Philippo interrogatus quid lataret, furem se uidere respondit?*

³³ 6.3.32-33: *Ex tui, inquit, animi sententia, Longe, qui malam faciem habet, liber non est?* Presumably, this Afer is the famous orator of joke 10 above. This Sulpicius Longus is known to us only via Quintilian, but his claim that he was ugly is stated so strongly that he likely was famous for it. Quintilian calls him "most foul," *foedissimus*.

³⁴ 6.3.49: *quo tempore Clodius occisus esset?* Quintilian finds this joke offensive but too clever not to mention. In fact he says that "this response alone proves that we shouldn't reject all such [jokes]," *quod uel solum sufficit ut hoc genus non totum repudietur*.

Sextus Annalis?”³⁵ Cicero pretended to think that his questioner was asking about the sixth book of Ennius’s *Annals* and replied by quoting the famous opening of that book, “Unroll this great war from end to end” (*quis potis ingentis causas euoluere belli*).³⁶

15.) Similarly evasive, when asked what an unknown individual thought of a man who had been caught in the course of adultery, the individual said “he was slow” (*tardum fuisse respondit*).³⁷

16.) In defending someone accused of assault, an advocate asked the plaintiff whether he had a scar to prove the assault. When the plaintiff showed his thigh and revealed a conspicuous scar, the advocate remarked, “You should have shown your side” (*latus oportuit*).³⁸

17.) Also in a defense case, a certain Hispo responded to the accusation that he had been involved in really terrible crimes “*atrociora crimina*”³⁹ by saying “you are measuring me by your own standard” (*me ex te metiris*).⁴⁰

³⁵ 6.3.86: *dic, M. Tulli, numquid quid de Sex. annali?*

³⁶ The Ennius that we have and which makes more sense has *oras* rather than *causas*, since with the former fits together better with the *evolvere*. The unraveling of the margins has a much wider range of meaning; it suggests both the telling of the whole tale and creates the imagery of unrolling a scroll, thus hinting at the age and fame of the story about to be told.

³⁷ 6.3.87. The same joke is referenced in *De Orat.* 2.275, where Cicero claims the dissimulating individual was a certain Pontidius.

³⁸ 6.3.100: Lit: “your side was more fitting.” Most likely, the joke is that the plaintiff was expecting to see a minor scar and upon seeing a large one he implied that there was more scar than leg. It is also possible that the *latus* is an adjective referring to the size of the scar. However, if that were the case we would expect it to be *lata* since the word for scar, *cicatrix*, is feminine. A third possibility is that the joke is “he should have stabbed you in the side.” Lastly, since the wound was on the thigh and thus close to the genitals, it is possible that when the Plaintiff revealed his thigh he also revealed his genitals and the comment would mean something like “you should have showed it to us from your side.”

³⁹ 6.3.100: *Contumeliis Badius: umis AG: atrociora Halm: arbore MSS.* Despite the principle of *lectio difficilior*, the most sensible reading of this is Halm’s. Regardless, the nature of the joke doesn’t change unless the *arbore* is read, in which case the opportunity for a joke is hard to envision.

⁴⁰ The *ex te* here must be causal. Thus the retort declarative: “you measure me from yourself” or even “you measure me according to yourself.” It could even mean “above” or “after,” thereby strengthening the claim of the retort, that Hispo’s crimes pale in comparison to the crimes of the accuser. However, the causal *ex* is the most likely interpretation. In any event, the joke is something like “you would know.”

18.) When Cicero's virility was questioned upon the eve of his marriage to a much younger woman, Cicero replied by saying "she'll be a woman tomorrow," (*cras mulier erit*).⁴¹

19.) And when Hortensius, the advocate of Verres, said to Cicero regarding some of his claims "I don't understand these riddles" Cicero said "You ought to. You have a Sphinx in your house."⁴²

20.) Trachalus was told by Suillus that if something were true he would be sent into exile. His response was "If it is not true, you go back [into exile]."⁴³

21.) When someone accused one of Gaius Caesar's (the famous Caesar's father) clients of striking him in the thigh with a sword, Caesar said "what did you expect when you were wearing a helmet and breastplate?"⁴⁴

4.3b Insults in Response to Something Innocently Said.

⁴¹ 6.3.75. Plutarch mentions that Antony was one of the individuals who mocked Cicero for this and also that he was a homebody, unfit for the military or business. Thus, it's likely that the insult to which Cicero was replying was not that it was inappropriate for him to marry a young girl, but that he was too old to marry a young girl. See Plut. *Cic.* 41: "Antony, having recalled the marriage in his replies to Cicero's Philippics, says that he threw out the wife with whom he had grown old, and at the same time makes witty jibes upon the stay-at-home habits of Cicero, who was, he said, unfit for business or military service," Ἀντώνιος δὲ τοῦ γάμου μνησθεὶς ἐν ταῖς πρὸς τοὺς Φιλίππικοὺς ἀντιγραφαῖς, ἐκβαλεῖν φησιν αὐτὸν γυναῖκα παρ' ἣν ἐγήρασε, χαριέντως ἅμα τὴν οἰκουρίαν ὡς ἀπράκτου καὶ ἀστρατεύτου παρασκώπτων τοῦ Κικέρωνος.

⁴² 6.3.98: Hortensius: '*non intellego haec aenigmata*' and Cicero: '*atque debes cum Sphingem domi habere*'. This retort is also mentioned in Plutarch's *Moralia*. The joke is likely a reference not to the Sphinx as a guardian spirit (see Vermeule 1979: 171–5) but to its association with the Oedipus legend where she is a menace to Thebes. In such an interpretation, Verres is the Sphinx and Hortensius should know his riddles.

⁴³ 6.3.78: Suillus said *si hoc ita est, is in exilium*. Trachalus said *si non est ita, redis*. This is the same Trachalus that Tacitus claims worked for Otho. See Tac. *Hist.* 1.90. The accusation of Suillus is obviously that Trachalus has done something that merits capital punishment. The only way to interpret the response of Trachalus as a joke is to assume that Suillus had been in exile himself and thus had thus been convicted of a capital crime. With such a response Trachalus makes the jury aware that while he is being charged with a serious crime, Suillus has already been convicted of one, and therefore is not to be believed.

⁴⁴ 6.3.91: *quid enim faceret cum tu galeam et lorica haberes?* Quintilian claims that this joke operates through misrepresentation. He says that the proper response of Gaius Caesar would have been to ask the plaintiff why he was struck in the thigh, presumably in order to argue self-defense. Quintilian calls his response of "what else could have done?" an ironic fiction (*ex ironia fictio*). The joke is basically mocking the plaintiff by suggesting that he had brought the wound upon himself by wearing his armor.

22.) When Fabia, the wife of Dolabella, referred to herself as being thirty years old, Cicero is reported to have said “indeed this is the twentieth year I am hearing this” (*nam hoc illam iam viginti annis audio*).⁴⁵

23.) When Vatinius tried to demonstrate that his health had improved by claiming that he walked two miles every day, Cicero said “the days are definitely getting longer” (*dies enim longiores sunt*).⁴⁶

24.) Likewise with Vatinius, when Cicero heard that a false report that Vatinius was dead, he questioned one of the latter’s freedmen. He asked the freedman “is all okay?” and when the freedman replied that it was, Cicero said “so he’s dead then.”⁴⁷

25.) When Cicero was told by a man that his wife had committed suicide by hanging herself from a fig tree, Cicero said “do give me a branch from the tree that I may graft,” implying that the suicide was somehow joyous enough to merit celebrating the tree.⁴⁸

⁴⁵ 6.3.73.

⁴⁶ 6.3.77.

⁴⁷ 6.3.84.

⁴⁸ 6.3.88: *rogo des mihi surculum ex illa arbore ut inseram*. As pointed out by Russell (2001: 109n) figs were commonly used for suicide by hanging and jokes were made about them as a result. Thus, Cicero’s quip works in part because it incorporates previous jokes, one of which is incredibly similar and is mentioned in the *De Oratore*. In that (§278), a Sicilian says, upon being told of the death of someone’s wife says *amabo te, da mihi ex ista arbore quos seram surculos*. Similarly, but without the wife or the grafting, is a passage in Plutarch’s Life of Antony where a misanthropic Timon gives notice to the public that he is about to cut down a fig tree on his property. Timon says that since he knows it’s a site from which many people had previously hung themselves, he wants to give time for anyone who might want to do so before he takes it down. Ant. 70: ἔστι μοι μικρὸν οἰκόπεδον, ᾧ ἄνδρες Ἀθηναῖοι, καὶ συκῇ τις ἐν αὐτῷ πέφυκεν, ἐξ ἧς ἤδη συχοὶ τῶν πολιτῶν ἀπήγγξαντο. μέλλων οὖν οἰκοδομεῖν τὸν τόπον ἐβουλήθην δημοσίᾳ προειπεῖν, ἵνα, ἂν ἄρα τινὲς ἐθέλωσιν ὑμῶν, πρὶν ἐκκοπῆναι τὴν συκῆν, ἀπάγζωνται. What all of these jokes have in common is a misanthropic joy at the thought of someone else’s suicide via fig tree.

26.) When Pomponius pointed to a wound on his face he claimed to have suffered in battle, Gaius Caesar (again, the father of Caesar) said “you shouldn’t look back when you’re running away” (*nunquam fugiens respexeris*).⁴⁹

4.3c Direct Insults

27.) Without naming the individuals involved Quintilian gives his approval to the phrase “you are more lustful than a eunuch” (*libidinosior es quam ullus spado*).⁵⁰

28.) Likewise, when Helvius Mancina was aggressively attacking Gaius Julius and the latter grew tired of the abuse, he responded by suggesting that Helvius had lost control and become manic. He said “I’ll show you what you look like” and then he pointed to a Cimbric shield on display above a shop in which there was an image of a man resembling Helvius, thereby associating him with a people thought to be wild and out of control.⁵¹

⁴⁹ 6.3.75. Wounds on the front of the body, of course, were considered evidence of fighting bravely, whereas wounds on the back were assumed to be suffered while running away. What Gaius Caesar does here is cut down his opponent simply by bringing up the possibility that there was more than one way to be wounded. For more on the display of scars and their position on the body among Romans, see Evans 1999: 83-90.

⁵⁰ 6.3.64. There are a number of interrelated reasons for the association of sexual appetite with eunuchs. For one, there is the tradition of the Sumerian/Assyrian palace eunuch, *lú.sag/ša rēši*, who could be trusted around women without supervision since they were incapable of creating illegitimate heirs. Given this dynamic in which there is an implicit assumption that the Eunuchs are going to have sex with the women over whom they are watching, the association of them with sex, and therefore lust, is natural. For a brief discussion of eunuchs in Mesopotamia, see Ambos 2009: 1-7. For another reason more immediately linked to the Roman world, castration may at times have been a punishment for adultery see Richlin (1992: 216), where she cites Valerius Maximus 6.1.13. If this were the case, the association with lust is even stronger than the palace eunuch as a non-threatening sexual partner. For, what better evidence of concupiscence could there be than someone whose desires were so great that he was willing to risk losing his testicles for sex?

⁵¹ Quintilian takes this from *De Orat.* 2.66: *ut meum illud in Helvium Mancinam “Iam ostendam cuiusmodi sis;” cum ille “ostende, quaeso,” demonstraui digito pictum Gallum in Mariano scuto Cimbrico sub nouis.* Part of the insult of calling a speaker wild stems from the expectation that an orator be in complete control of his voice, body, and gestures. See Gunderson 2000: 78-83 for the degree of self-mastery expected in Roman oratory.

- 29.) Cicero made a quip about an opponent when he said “what does this man lack other than wealth and virtue” (*quid huic abest nisi res et uirtus?*).⁵²
- 30.) Cicero also said to the son of a cook “I too will favor you” (*ego quoque tibi fauebo*).⁵³
- 31.) And to someone with a severe father he said “I wonder why your father...left us someone like you, so variously colored” (*miror quid sit quod pater tuus...te nobis uarium reliquit*).⁵⁴
- 32.) Afer said of an opposing advocate,, “for the sake of pleading causes the man is excellently...dressed” (*homo in agendis causis optime...uestitus*).⁵⁵
- 33.) Publius Oppius said of a family, the Lentuli, who always had children smaller than their parents “they will eradicate themselves by being born” (*nascendo interitum*).⁵⁶

⁵² 6.3.84. Thus the man doesn’t have anything if he lacks the most important qualities of property and good character. Heinemann 1921 reads *uirus* and others read *uirtus*. While *uirus* would certainly be the *lectio difficilior*, it would be pushing the boundary of the principle to read that since we know that at least one person, Quintilian, considers this a joke and it can’t be seen as a joke with *uirus*. The same line is mentioned at *De Orat.* 2.281 and given that *uirtus* is used there as well, this is the safest reading.

⁵³ 6.3.47: Based on the similar sound between *quoque* “also” and *coque*, the vocative form of “cook,” *coquus*. The insult is not merely that of a comparison to a low status job. As early as Middle Comedy cooks were associated with conniving and bragging, both hinted at in the adjective frequently used to describe cooks, ἀλαζονικός. Arnott (1996:22) refers to comedic cooks as “combining arrogance, self-confidence, irritability, and above all a claim to expertise in matters both culinary and extra-curricular.” As to why there are no cooks in Old Comedy, Dobrov (2002: 175) argues that the *servus callidus* was originally a free “hireling,” and that as the “boundary between cooks and slaves softened...so did the boundary separating them in the theatre.”

⁵⁴ 6.3.48-49: Translation of Russell. The joke is “How could someone so severe leave such a colorful (black and blue from beatings) son?”

⁵⁵ 6.3.84. I have added the ellipsis for emphasis. Quintilian provides no pause, despite the fact that the delivery of such a statement would necessitate one. The joke stems from the fact that it starts out sounding like it will be a large compliment given the *optime*. We expect something related to arguing or, even more likely, *uersutus*, experienced – thanks to Matthew Roller for this suggestion. But when we encounter “dressed” we see that it only the most superficial of compliments and therefore more of an insult.

⁵⁶ 6.3.67.

34.) Nero said of one of his servants, whom he considered a thief, that there was no one most trusted in his house than that servant “since nothing whatsoever was locked or sealed against him.”⁵⁷

35.) In an apparent proverb, it was occasionally said that when something bad happens to a person of ill-repute, one could respond to his pleas for help by saying “let someone who doesn’t know you help.”⁵⁸

36.) Cicero, when examining the witness Sextus Clodius Phormio, in the *Pro Caecina*, said that he was “no less black and no less confident than Terence’s Phormio.”⁵⁹

4.4: Analysis

The reasoning behind the kinds of jokes and insults Quintilian favors and those of which he disapproves is hard to untangle. At times he’ll condemn a joke only to praise a similar joke later. For instance, he condemns Cicero’s pun [30] involving the son of a cook yet he commends Cicero’s likening a witness to a character in a comedy of Terence simply because they shared the same name. However, after an analysis of these jokes and what Quintilian has said about them, one thing will become clear: Quintilian appreciates creative jokes that further one’s own argument or challenge the argument of one’s opponent. Thus,

⁵⁷ 6.3.50-51: *nulli plus apud se fidei haberi, nihil ei nec clusum neque signatum esse.*

⁵⁸ 6.3.98: *tollat te qui non nouit.*

⁵⁹ *Caecin.* 27.10. The reference to the witness’s confidence must be a sarcastic comment on his truthfulness and reliability. The reference to him being black is not as clear but likely refers to his character. As noted by Russell who cites OLD s.v. 9 and the fact that the Greek μέλας functions the same way. He also, however, suggests that the adjective could be used as a result of the character of Phormio in Terence wearing a black mask, or a play on the fact that the witness was a banker since the color black was associated with copper coins, citing Mart. 1.99. See p. 91 n53. I would argue that given Quintilian’s preferences in humor, the first option is the most likely. A simple reference to a mask or copper coin would be mere insult, where as a reference to character relates to the argument, and thus of more value to forensic oratory.

merely playing upon someone's name would be a cheap insult; but to play on the name of a witness who was giving particularly damning testimony in a reference to an old play would be appropriate, if not admirable.

All of the above jokes take an accusation, or in the case of Augustus and the young soldier, complaint, and do one of two things: (1) admit to it in such a way as to make light of the accusation, or (2) admit to the accusation by deliberately misunderstanding it. Falling into the latter category are Cicero's comment about his young wife [18] and his comment about Fabia [22], his reading of Ennius [14], his response to Vatinius' exercise [23], Afer's comment about Longus' ugly face [12], Bassus' response about Domitia's shoes [8], Crassus' reciting statements of Brutus' father [3], Severus' "do I go there anyway," [1] and finally Manius' "did I never win [7]?" The remaining fall into the former category, admitting and trivializing (1).

In the Manius joke [7], I take *vici* here to mean prevail in the sense of win, get out of jail and get his clothes back. By his reply, "did I never prevail" it is evident that his accuser was attacking his character rather than specifically charging him with gambling, an unusual case to bring given the prevalence of gambling in *popinae* and *cauponiae* and references to it in other speeches we know to be about charges [see figure 1].⁶⁰ But he pretends that his accuser is claiming that he never got out of jail. As a result, while not admitting to the official charge of his accuser, he is admitting to a character flaw. By questioning his accuser regarding whether or not he got out, he takes some of the sting out of

⁶⁰ The reference to gambling habits in an attempt to criticize the character of his opponent was a common tactic of Cicero. He does this throughout the Philippics (2.23, 2.27, 2.39, 2.41, 3.14, 13.2), In Catilinam (2.10, 2.23), and once in the In Verrem (2.13).

the charge – he may be a gambler but at least he is clever. It seems then that Quintilian’s idea of denying is basically to reply to an insult in a joking fashion. However, some could take the way Manius jokes as an affront. To make light of a well-acknowledged character-flaw among the Roman elite could well be to question the values of his judge or judges. And this is something that Quintilian himself had warned against earlier in the chapter when he says “there are certain judges too serious to endure much laughter,” *sunt etiam iudices quidam tristiores quam ut risum libenter patiantur*.⁶¹ Likewise, following this very warning, Quintilian claimed that a jest directed against an opponent could backfire as a result of the possibility that it could be applicable to the judge as well.⁶² If this is the case, one would think that Quintilian would be aware that a particular character flaw could be, rather than applied to the judge, one that he held in particular contempt. Thus, if the joke has the possibility of backfiring, and Quintilian still approves of it, the best explanation for his approval of it is that it is clever. Even when the joke does not accomplish anything – I will later argue that this does neutralize the charge in a way Quintilian doesn’t acknowledge – it is still useful simply by demonstrating wit. And as such, Quintilian considers it a denial.⁶³

In the case of Severus[1], where he responds to an accusation that he had been denied entry into Procleius’ home by noting that he never went there

⁶¹ 6.3.31.

⁶² 6.3.32: *solet interim accidere, ut id quod in aduersarium dicimus aut in iudicem conueniat aut in nostrum quoque litigatorem; quanquam aliqui reperiuntur, qui ne id quidem, quod in ipsos recidere possit, euitent.*

⁶³ It may also be the case that Quintilian thought of Manius’s reply as a denial because it could be received such that it made the accusation improbable. In other words, he could view the reply as, rather than making fun of the accusation or dismissing it, a challenge to the probability of the charge. Manius’s point would then be that it is unlikely that one would never win and to say so is obviously an exaggeration.

anyway, Severus turns the liability of being seen as someone denied entry into the asset of being seen as someone who is judicious in where he goes. In doing so, however, he is agreeing to the claim that someone had declared him *persona non grata* at his home and thereby giving slight credence to the accuser. However, at the same time he also claims that the truth of it doesn't matter because he would never go to Procleius', the implication being that Procleius had a questionable character. He thus turns the question of being being shunned by someone into the question of whom one associates with. What was a question about his reputation becomes a question of how careful he is with his friendships. Again, this is the same as Caesar's remark about Semiramis. Although both Severus' and Caesar's remarks could be interpreted as admissions there is a difference between them for Quintilian: in Severus' case, the admission is depicted not as a defensive strategy but as an opportunity to poke fun at his accuser. While this may be true of Caesar's response as well, the fact that the shame associated with effeminacy is so much greater than the shame of being denied entry to a friend's house suggests otherwise. A Roman with aspirations to be thought a real man would certainly react defensively at the charge.

When it comes to Crassus [3], his client had been accused of mismanaging his inheritance. His response is not to deny that accusation but to claim that Brutus has been worse in this regard. He distracts the audience by mocking Brutus's selling of estates left to him by his father.⁶⁴ Quintilian sees this as an

⁶⁴ Which Quintilian later makes clear when he says at the end of 6.3.44: *et tum paterna emancupare praedia turpius habebatur*. The theatricality of this exchange does not put Quintilian off, as it logically might given his aversion to "overly dramatic and clownish sarcasm," *dicacitas etiam scurrilis et scenica* (6.3.29) and this probably is due to its critical tone.

example of how lengthy displays of wit can be effective. Since, rather than pure abuse or obscenity, which is usually not in reply to something stated in his framework, Quintilian consistently remarks that the superior form of humor is wit that appears effortless,⁶⁵ and this clearly seems effortless from the quickness with which Crassus appears to have inserted his own commentary,⁶⁶ it receives his approbation. In any event, this is clearly an instance of humor being used to get out of a difficult situation. Brutus charges Crassus' client with squandering his wealth and Crassus pretends the charge was that he squandered *more* wealth *than his client had squandered*. We see similar dissimulation in the response of the *eques* to Augustus' criticism of profligacy [6]. By saying "I thought it was mine" he turns the original accusation into something it wasn't. The original accusation of Augustus was based on the belief that one was supposed to die with more to his name than when he was born, that the *eques* should have saved his inheritance rather than spend it. However, the response of the *eques* implies that the criticism of Augustus was that he had spent someone else's money. The *eques* makes it appear as though Augustus had meant something other than what it clearly meant. No one who heard this exchange could have thought that Augustus was accusing the *eques* of theft. The retort would not confuse anyone into thinking that Augustus had made a claim about ownership yet somehow it still works. It doesn't matter that Augustus' criticism still stood; it matters that the *eques* had a

⁶⁵ 6.3.33: "let it not seem pre-prepared and created at home" (*ne praeparatum et domo allatum uideatur*). On the superiority of wit over abuse: 6.3.13, 6.3.19, and 6.3.28. In regard to effortlessness, Quintilian says at 6.3.26 *nihil enim est iis, quae sicut salsa dicuntur, insulsius*. He also says that jests must never appear *praeparatum et domo adlatum* at 6.3.33.

⁶⁶ The interjections amid the reading of the documentation must have come quickly to create a counterpoint. With one person reading aloud at a moderate pace and Crassus inserting comments with quick bursts, attention is drawn to the contradictions.

response to it. If saving for one's heirs was unassailably important then we would not expect Quintilian to find this amusing. We would expect Quintilian to mention that the *eques* was punished or rebuked by Augustus, but there is no mention of this. The joke doesn't actually distract anyone; it challenges a core cultural value and still we assume it succeeds. This is all the more remarkable given the fact that the *eques* doesn't appear concerned with the criticism or that it came from Augustus, someone who based a great deal of his authority on claims to the moral high ground. It is easy to see why Quintilian might view this as a *defensio*.

The Hispo joke [17] functions in the same manner as the Crassus and *eques* jokes. The original criticism of him was that he had committed terrible crimes.⁶⁷ However, in his reply it is assumed that it was not about whether he committed *atrociora crimina* but whether his *atriociora crimina* were less offensive than his accuser's.

When it comes to dealing with the boasts of the other side, Quintilian suggests neither denial nor admission but making light of them.⁶⁸ He brings up the case of a cousin of Caesar's father saying, [26] "you shouldn't look back when you're running away," *nunquam fugiens respexeris*.⁶⁹ This is not a joke made out of harmless teasing, such as Cicero's, nor a joke designed to show off one's wit at no target in particular. Pomponius had obviously claimed that he had

⁶⁷ This operates in much the same fashion as the Suillus retort. We don't know anything about what the charges against Hispo were. In fact, the only case in which he was involved that we know was one where he was the plaintiff along with Caepio Crispinus against Granius Marcellus. See New Pauly s.v. Romanus Hispo no. 1. Furthermore, he appears in Seneca the Elder as someone inclined towards abuse, as in the case of Cassius Severus. See Sen. *Controv.* 2.5.20 and 9.3.11.

⁶⁸ 6.3.75: *eleuandi ratio est duplex, ut aut nimiam quis iactantiam minuat*.

⁶⁹ 6.3.75.

served the Republic at great risk to himself and pointed to a scar on his face as an attempt to prove that. Gaius Caesar could have challenged how he received the scars simply by claiming that Pomponius got them in flight. He could have also phrased it as a leading question, “did you not receive that while turning away from the enemy?” However, by challenging Pomponius with something stated as though it were advice, the reply becomes a joke and it is this that makes the retort work. If he had not replied as though offering advice, he would have opened up the possibility for debating the matter. Pomponius could have noted the date he received his wound, those who saw him receiving it, and who the enemy was who gave him it. By giving sarcastic advice, Gaius Caesar shuts down the debate for he can pretend that he was only joking but still put out an alternative message to the jury. They laugh, they don’t necessarily expect the debate to continue, they don’t interpret the retort as overly abusive, and all the while they are reminded that there are cowardly ways someone can be wounded in the front.

Related to the Gaius Caesar joke is Cicero’s response when he was mocked about his marriage [18] – Quintilian clearly considers them similar since he repeats the same verb by omission that he used for the Gaius Caesar joke, *minuo*. The retort of Cicero was in response to the fact that he, a sexagenarian, was marrying a young girl. The accusation must be along the lines of perversion, that Cicero was aberrant for his interest in so young a girl, along with the suggestion that in being too old for her, he might not be capable of consummating the marriage. By responding “she’ll be a woman tomorrow,” Cicero acts as though the original accusation was about her rather than him, as though she was

the one insulted and not Cicero while also, by the way, asserting his virility. Whereas Gaius Caesar is introduced as a way to cut down an opponent's boast, Cicero's retort is a way to blunt the edge of a charge. Although these are very different actions, they are linked by the fact that they both serve to diminish something said by their adversary. Quintilian oddly links the Cicero retort to something else Cicero said, in response to the habit Curio had of beginning his speeches by apologizing for his youth, about which he said "his openings words get easier everyday."⁷⁰ These two jokes seem very different. One, the marriage joke, is in response to an accusation made by another and the other, on the speeches of Vatinius, is a simple insult against someone not engaged in any argument with Cicero. The only thing they have in common is that they are both in response to something said by an opponent. Whereas we might differentiate jokes from comebacks, Quintilian only distinguishes between jokes based on someone else's words and jokes that aren't verbally tied to their targets. Of the former, jokes that play on the words of someone else, he says, "some call this type of saying 'consequent'," *hoc genus dicti consequens vocant quidam*.⁷¹ That is to say, these jokes depend on the words of others – those of Pomponius, the individual who taunted Cicero, and Vatinius. When categorizing humor, we think from the perspective of the humor's target. We refer to "knock knock" rather than "who's there" jokes. Quintilian seems to categorize humor from the perspective of the joker. And from that perspective, both Cicero's retort and his insult are based on the words of others, one being the words of someone

⁷⁰ 6.3.76: *facilius cotidie prohoemium habere*.

⁷¹ 6.3.76.

challenging him and the other those of a political rival. However, it is notable that the majority of the jokes Quintilian describes are in response: fifty-six out of his seventy-nine total jokes can be considered “consequential” since they are based on something someone else has said. Cicero’s quip about Fabia being thirty for the twentieth time; Bassus’ deepening the insult toward Domitia by denying that he said she sold cheap shoes and instead claiming that he said she bought cheap shoes; and Gaius Caesar’s “you should never look back when running away,” all of these are “consequential.” At the end of this “consequential” section he cites a response of Cassius Severus who had been criticized by the praetor for insulting a particular friend of Caesar who happened to be an Epicurean. Severus simply said, “I don’t know who insulted him, and I think they were Stoics,” *nescio...qui conviciati sint, et puto Stoicos fuisse*.⁷² Rather than lessening (*minuo*) or coming up with a double meaning (*ratio duplex*), this transfers blame. It doesn’t make light of it or change the nature of it; it simply implies that Severus thought this matter had nothing to do with him.

Notable among his “consequential” jokes, out of fifty-nine of them, the ones he discusses the most are ones that follow quickly in response to *an accusation*. The response of the *eques* who Augustus thought should not be drinking at the games, that the princeps didn’t have to worry about losing his seat, was in response to an accusation. As was the case with the retort of Manius when he was shown a painting of himself in disreputable situations as a result of his gambling. Again, his “*nunquam vici*” [7] makes light of a charge, as Cicero’s

⁷² 6.3.78.

response to criticism of his young wife, but also refuses to change the subject of the joke.⁷³

The majority of the jokes that are replies to accusations are not challenges, however. Most of the retorts are admissions that trivialize the accusations.⁷⁴

Regarding the joke that the *eques* made to Augustus about seating [4], we see the same formula as the jokes discussed above. The *eques* admits that he is eating in public and therefore breaking a social code but by stating that he is only doing so because he fears losing his seat makes Augustus' accusation seem insensitive. There is no hint as to what the reaction of Augustus was but the joke cleverly masks impudence with praise. To challenge the princeps on a question of decorum is certainly provocative but the fact that in so doing he alludes to Augustus' immense and conspicuous power softens the blow. Add to this the fact that it is clearly a shrewd remark and it is difficult to imagine how Augustus could have continued to be annoyed. Any action he took against the knight would have appeared excessive. The urge to chastise dispels quickly upon laughter.

Immediately after this jest, Quintilian relates the response of Augustus to the soldier he was dismissing. That response, "tell him I displeased you," is nearly the opposite of the knight's in terms of power structures. Whereas Quintilian had just mentioned a joke in which someone with little power mildly challenges someone of much greater power, he now describes a joke in which someone of great power challenges someone with much less power [5]. In the first case, the joke is to challenge with a reference to a positive quality: I am not

⁷³ The jokes in response to an accusation are 1-4, 6-13, 15-21.

⁷⁴ 1,4,6, perhaps 9 if we interpret Gabba's words as boastful, 10-13, 15-16, 19, and 21.

going to stop eating because you are so powerful that you do not have to worry about losing your seat if you go home. In the second, the joke is to challenge with self-deprecation: you can speak to your father as though you are more powerful than me but this just shows how immature you are. Both jokes silence criticism but because of the different directions of the jokes, towards one of higher power versus one of lower power, one must use different kinds of humor. Also, both jokes are designed to shut up – to get the other side to cease complaining. Obviously it would have been untenable for the knight to say “quit complaining; you’re rich.” But it would have been nearly as untenable for August to say, “shut up, you child.” Both would give rise to anger and not helped the situation. If Augustus had spoken bluntly, the officer would have walked off with a grudge and anyone else present might have thought the princeps had acted too severely. However, by undermining the premise of the officer’s complaint the officer is much less likely to bear ill will. What’s more, anyone present would have laughed and expressed admiration for someone so powerful (seemingly) making fun of himself. Jests can win friends and influence people.

Regarding the youths of Tarentum [2], the king found this retort so funny that his anger was mitigated.⁷⁵ The youth who stated this was insulting himself and his fellow guests. His admission implies that they did not have the courage to slay the king without drink, making them appear cowardly, indecisive, and capricious. However, by also admitting they had been about to kill him, they also

⁷⁵ 6.3.10: *Documento sunt iuvenes Tarentini, qui multa de rege Pyrrho sequius inter cenam locuti, cum rationem facti reposcerentur et neque negari res neque defendi posset, risu sunt et oportuno ioco elapsi. Namque unus ex iis 'immo', inquit, 'nisi lagona defecisset, occidissemus te', eaque urbanitate tota est invidia criminis dissoluta.*

insult Pyrrhus. The youth's statement indicates discontent with the king, a lack of fear that he would punish them for their insults, and thereby implies the king was weak. Also, just as part of the insult of Caesar was that if he was a woman, then the Senate was being dominated by a woman, here part of the insult is that Pyrrhus was nearly killed by drunken young men. Matthew Roller has interpreted this account within the context of "convivial exchanges between aristocrat and ruler"⁷⁶ that can go wrong, arguing that it is an example of one manner of speech, the offensive words of the youths, being replaced by a joke that the king receives "as a replacement for the offensive speech."⁷⁷ In such a scenario this was never about killing. The youths were drunk, were too loose with their words, the king called them out for it, and they saved face with a joke. In other words, this is an example of a redressive action (see chapter two).

It seems to me, however, that the language used by Quintilian in his account suggests that the intended killing and the escape from punishment for it are the main points. Quintilian says, literally, that "when they were called to account for the deed and the matter could not be denied nor defended," *cum rationem facti reposcerentur et neque negari res neque defendi posset*. The first part of this is in the form of official, judicial charges with *facti* being a genitive of charge. What's more, that Quintilian uses the singular *facti* implies that there is something in particular that the youths were being called to justify. Lastly, if Quintilian were thinking of words as the matter that the youths were being summoned for, why not say that? Why not *verborum* or *dictorum*? In the end,

⁷⁶ Roller 2001: 165.

⁷⁷ Ibid.

however, regardless of whether the issue is the words or the threatened action of the youths, the most significant aspect to Quintilian's account of Pyrrhus is that it is another example of humor used to get out of a difficult situation.

The effectiveness of the Gabba joke, that eels are so large where he bought his five foot one that fishermen wear them as belts, [9] is in part in the absurdity of fishermen using fish as belts. Quintilian refers to this joke as a lie bested by a lie, *eluditur...mendacium quoque mendacio*.⁷⁸ Likewise, he claims that lies may be countered with false confessions, and for this he cites two very sensible comebacks. The way these retorts work is clear. Both avoid denial while keeping up criticism. The prosecutor Domitius Afer admitted to going after Caesar's freedmen, but in claiming that he never succeeded he renders the objection irrelevant by suggesting that they deserve it - they are so egregious that no matter how much he goes after them, he still has to go after them more. He also ends up insulting himself slightly and, as such, this is an example of a redressive action – by admitting to a lack of success he implies that he is failing and thus the accuser can consider himself to have saved face (see chapter two). As for Catulus, he not only doesn't deny that he barks [11], he embraces it but then provides a very reasonable explanation for what would spur a dog to bark: an intruder or thief. Indeed, Quintilian himself cites this joke as an example for how avoiding denial can be an effective way to reply to a charge.⁷⁹

⁷⁸ 6.3.80. Part of the effectiveness of this comeback is that it is such a large lie. It thus works similar to the phrase attributed (possible misattributed) to Goebells: "the bigger the lie the more they believe." For more see "Aus Churchills Lügenfabrik," *Die Zeit ohne Beispiel* (Munich: Zentralverlag der NSDAP. 1941), pp. 364-369.

⁷⁹ 6.3.81: *Cui uicinum est non negare quod obicitur, cum et id palam falsum est et inde materia bene respondendi datur*. I would simply add that this is more useful than Quintilian acknowledges. He says that this is useful when the charge is obviously false, *palam falsum*, and the nature of the charge, *materia*,

Regarding Cicero's response to Fabia [22], that he has been hearing that she is thirty for twenty years, it's difficult to consider this an admission, despite the fact that Quintilian claims that it is. Cicero is saying "you're not really thirty." However, the particles suggest Cicero is agreeing.⁸⁰ Without the *nam* it could be viewed as an outright contradiction. With the *nam* Cicero is agreeing with part of what Fabia has said, that she has said she was thirty. This is agreement in name only. How are we to explain Quintilian's odd definitions of what constitutes admitting and challenging? One can't be thirty for twenty years. Is he strictly concerned with the language of agreement and disagreement rather than the content involved? This jest, as with one we shall see below, doesn't admit as much as it outright mocks the premise to which it is replying. To admit something sarcastically is to admit nothing at all. For Caesar to agree with an insult that had been hurled at him in the past is an admission. Cicero's reply is outright mockery. Does Quintilian have radically different definitions or is he being loose with his words?

In considering the way in which the Manius (did I never win?) [7] and Cicero (she'll be a woman tomorrow) [18] jokes are determined to be both denial (and thus in some way directed against ourselves) and agreement, the conjunctions which connect the quotes to those to which they are replying seem to be playing a role. The Manius quip begins with an *ergo*, thus making whatever follows deductive: if what you have shown in the painting is true then this is

allows it. My argument is that denying the charge is almost always the most useful strategy. Quintilian also says in §6.3.79 that ridicule can be evaded by more ridicule, *eluditur et ridiculum ridiculo*.

⁸⁰ See Kroon 1995: 144-168, where she claims that *nam* has three distinguishable usages: backward-linking, forward-linking, and affirmative. Here, the *nam* would be backward-linking — "Indeed what you have said is correct for..."

evidence that I was released from debtor's prison. Likewise, Cicero's response to Fabia begins with a *nam*, making the rest of his reply confirmative and explicative. Although *ergo* is certainly not a conjunction of denial, it is the only explanation for why Quintilian considers this quip a denial since what follows implies agreement. And the fact that *nam* is confirmative by nature would explain referring to Cicero's joke about age as an agreement. But the nature of the actual jokes seems to be the opposite of what Quintilian claims. Either he is hung up on the conjunctions or he has a very different view of the implications of Manius and Cicero's jests.

A rudimentary answer can be found in another jest [18] Quintilian calls a denial. This is a denial in name only. Bassus' response to Domitia's complaint about his comments on her shoes [8] is that he never said she sold cheap shoes but merely bought them. Bassus' words suggest that he is denying Domitia's claim, as evidenced by the *mehercules*. But what he claims he said instead is much more insulting than what was alleged to be said. On the one hand, any reply that is to some extent a successful challenge can be thought of by Quintilian as a denial. The one commonality in the jests that Quintilian regards as denials is that they all serve the interests of the jester. Manius [7] throws off his accuser and Bassus turns anger against him into humor [8]. What sets Cicero's joke about Fabia [22] apart is not that it is a denial, though this is what Quintilian claims. What sets it apart is that it is offensive rather than defensive. Cicero has nothing to lose as the matter is not about him but Fabia. Were he to say nothing about her age there would be no consequence of importance to him. Perhaps he might regret missing

an opportunity for a jab, but his reputation would not suffer. Whether or not Quintilian views something as denial really comes down to the stakes of the matter. When they are great, it's a denial. When they are irrelevant, it can be something else. Even when it may appear that there are no stakes in the context of the jests, if there is a remote possibility of them, Quintilian considers those jests to be defensive.

Quite a few jests that Quintilian reports seem to have little purpose other than to abuse one's opponent or show off one's cleverness, even at the risk of contradicting one's own claims. Quintilian so admires the *sero* joke [13] that he says "it alone justifies that this kind [of joke] is not to be rejected completely" (*vel solum sufficit, ut hoc genus non totum repudietur*) yet by saying this Cicero agrees with the prosecutor's claim that Milo had lain in wait. A large part of his defense of Milo was, of course, that Clodius deserved to die and that Milo had done the republic a service for eliminating him. But he also takes pains to claim that the run-in occurred because Clodius had lain in wait for Milo. This doesn't help his case, which he of course eventually lost. Yet Quintilian finds it to be a brilliant display of wit precisely because it is such a quick comeback and it is hard to imagine that the audience didn't laugh hysterically at it. This gets to the heart of what Quintilian sees humor as being: a deterrent against abuse, a tool to mislead audiences, but most importantly, something to be admired in its own right such that effective use of it can inspire confidence in and a positive predisposition towards an orator. Humor is a quality that not only is difficult for audiences to

resist, but is also likely to elicit in audiences such approval of the joker that it is inclined to view his position with favor, Cicero's loss notwithstanding.

In the eunuch joke [26], wherein someone is claimed to be more lusty than a eunuch, Quintilian claims that what he finds funny here is the surprise that we get when we reach the end of the sentence, since the expectation is that the comparison is going to be to a satyr. Although eunuchs could be associated with illicit sexual activity, they were not conventionally thought of as in a state of constant sexual arousal. What Quintilian would normally disapprove of – to be considered libidinous was not good for one's reputation so the joke starts out very pointedly⁸¹ – he admires here because of the replacement of something expected with something unexpected, similar to Afer's quip about the orator who was brilliantly...dressed [32].

Although their subject matters may be serious, the jokes Quintilian lists don't rely on highlighting the seriousness. Moreover, although all of these cases involve some degree of acting, they are all what we would call deadpan. The person doing the simulating or dissimulating acts in earnest. This is most likely what sets apart this kind of humor for Quintilian. The orator can make these kinds of jokes with a solemn look rather than taking up an unseemly countenance. Quintilian gives another example of irony, similar to simulation and dissimulation, in the form of an unusual exchange between the elder Gaius Caesar and one or two parties in a conflict, an exchange that is interesting because of its

⁸¹ Williams 2010 (2nd edition of his 1999 monograph, which remains the best source for discussions of Roman manhood). Gunderson 2000 also continues to be an authority for this.

sexual nature (joke [21] in the catalog). Quintilian reports the exchange as follows:

est et illa ex ironia fictio, qua usus est C. Caesar. nam cum testis diceret a reo femina sua ferro petita, et esset facilis reprehensio, cur illam potissimum partem corporis uulnerare uoluisset: “quid enim faceret,” inquit, “cum tu galeam et loricam haberes?”⁸²

There is a sort of fiction which comes from irony, which Gaius Caesar used. For when a witness said that his thighs had been attacked by the defendant with a sword, and the [following] reprimand would be easy, “why did he wish to wound that part of the body in particular,” Caesar said “well, what could he do when you had your helmet and cuirass?”

It is difficult to tell what role Caesar’s father was playing in this exchange, whether he was the prosecutor, the defendant, a judge, or simply an onlooker. It does, however, make it clear that he is the one who is making the joke. But what is the joke exactly and what happened that elicited the joke? It seems that a witness claimed that the accused had gone after the witness’ thighs with a sword. While this could be as simple as one person swinging his sword at another’s thighs, there are more salacious interpretations. For one, the sword could be a euphemism for the penis and thus the joke could refer to sexual assault. For another, the *ferrum* could be a sword but the thighs could be a euphemism for the anus or genitalia. Thus, out of three possible interpretations of what happened, two are sexual assaults and one is a simple physical assault. Taking these odds in consideration with Gaius Caesar’s words, this is potentially a sexual matter, and at the very least some members of the audience may have taken it as such. His response of “what else could he do?” not only makes light of the whole thing but also suggests intentionality. Although there are other possibilities, interpreting

⁸² 6.3.91-92.

this strictly literally raises more questions than it answers. The literal interpretation would turn the joke into an outright admission at the very root of the case. It would be one thing if the response was an admission *and* a repackaging, but it is only an admission. As such it is tantamount to mocking the law, or at the very least the court at hand, itself. To see in this exchange sexual overtones makes much more sense, especially given the use of words we know had sexual connotations.⁸³ It involves no denial and turns the accusation into an absurdity by jokingly admitting to it. The only difference between this joke and the Semiramis comment of his son is that one could be an admission of sexual aggression while the other is certainly an example of sexual passivity.

Just as Caesar *fi*ls made light of the accusation that he was a woman in the Semiramis comment, to some extent admitting it, here Caesar *père* offers a defense that does the same thing. The only difference is that the admission here, though legally less permissible, is less embarrassing than his son's admission to being feminine: in terms of the law, it's better to be the victim of rape than the rapist; but, in terms of reputation, it's better to be the rapist than the victim. However, given that this exchange seems to have taken place in a judicial setting, with the *testis* and the *reus*, it is an odd defense. Caesar is defending the reputation of the accused when he should be defending the charge. Again, what we see here is the deliberate preference given to humor over argument and evidence.

⁸³ *Testis* does have sexual connotations as it is occasionally used instead of *testiculus* or *coleus*. However, there's no reason to think it means anything other than "witness" here. *Ferrum*, *peto*, *uulnare*, on the other hand, all have sexual overtones. See Adams 1982: 67 s.v. *testis*, 152, 212 n.1 s.v. *peto*, and s.v. *uulnus*.

We see this preference at work even more explicitly in the example Quintilian gives shortly after the Gaius Caesar remark, namely the response of an advocate upon being shown a scar on the plaintiff's leg [16]. It's possible that the response "do you have a leg down there or is it all scar?"⁸⁴ was made in frustration, without intention of challenging the plaintiff. But, it's almost too funny a remark to be made simply out of frustration. And, even if the advocate was speaking to himself or complaining about his luck, the joke still has an effect. The remark is tantamount to admitting that the plaintiff was right, and this seems to place the reputation of the defendant above the question of his guilt or innocence. In fact, if the remark of the defendant's advocate had been taken literally by the audience, be that jury or judge, it would increase the severity of the situation, despite the fact that the Romans did not have different categories of murder, or indeed the concept of murder as a crime.⁸⁵ For although there was no technical term for murder nor subcategories of it, it is inevitable that the degree of an assault would be taken into consideration, as is evidenced from the XII tables to the Justinianic Code.⁸⁶

⁸⁴ I think this is the most likely interpretation of *latus oportuit*. The second most likely is the genitalia interpretation – that the advocate was saying that the plaintiff should have taken greater care not to reveal his manhood. What I find the most implausible interpretations are that: the *latus* is an adjective describing the scar, "you're right; that's big," or that the *latus* refers to the place that the defendant should have wounded the plaintiff.

⁸⁵ This is to assume that the trial was one of assault, as noticed by Mommsen 1899: 613 and discussed by Gaughan 2010: 67-89. Gaughan does of course acknowledge the punishment by murder by the state upon a traitor, as might occur through the *iudicia populi* and after the *lex Sempronia ne de capite ciuium iniussu populi iudicaretur* through the assembly, as well as the *duumuii perduellionis*.

⁸⁶ Warmington 1935 Table VIII: *si membrum rup<s>it, ni cum eo pacit, talio esto. manu fustiae si os fregit libero, CCC <assium>, si seruo, CL <assium> poenam subito si iniuriam faxsit, uiginti quinque poenae <asses> sunt.* From this we can clearly see that the social status of the victim of assault related to the damages that had to be paid. But it is also evident from the *membrum* versus *os* differentiation that the more dangerous assault merited violent reprisal, whereas the perpetrator of a lesser assault could get away with a fine. Moreover, it is simply hard to imagine that scratched skin from a slap could be viewed as equivalent to the breaking of bones or damage to central organs.

The humor that Quintilian admires the most is that kind in which one “takes an opinion or words in a way other than intended,” and he deems this “the most charming of all this material” (*genus decipiendi opinionem aut dicta aliter intellegendi, quae sunt in omni hac materia vel uenustissima*).⁸⁷ The examples he gives for these kinds of jokes are very similar to what I called “disguised” jokes, in that they don’t begin as jokes; rather they end as jokes by putting something unexpected at the end. For instance, the Cicero joke [29] about the man lacking in nothing but wealth and virtue and the Afer joke [32] about the orator who is excellently dressed both fall into this category for Quintilian.

To these jokes, Quintilian adds what he considers the most funny:

Plurimus autem circa simulationem <et dissimulationem> risus est quae sunt uicina et prope eadem; sed simulatio est certam opinionem animi sui imitantis, dissimulatio aliena se parum intelligere fingentis.⁸⁸

But the loudest laughter of all is produced by simulation and dissimulation, proceedings which differ but little and are almost identical; but whereas simulation implies the pretence of having a certain opinion of one's own, dissimulation consists in feigning that one does not understand someone else's meaning.

What’s interesting about this kind of humor is that it sounds highly dramatic, something which Quintilian elsewhere disapproves of.⁸⁹ One either pretends to hold an opinion one doesn’t really hold, or one pretends to misunderstand something that one in fact understands perfectly well. For the former Quintilian cites an advocate pretending to think a female witness is a man and for the latter

⁸⁷ 6.3.84.

⁸⁸ 6.3.85.

⁸⁹ 6.3.9: *cum uideatur autem res leuis et quae ab scurris, mimis, insipientibus denique saepe moueatur, tamen habet uim nescio an imperiosissimam et cui repugnari minime potest*. See also, 6.3.29: *dicacitas etiam scurrilis et scenica huic personae alienissima est*.

he cites Cicero's response [14] quoting Ennius in response to the prosecutor's question about a witness named Sextus Annalis.⁹⁰

In addition to jokes Quintilian praises, it is worth considering the jokes of which he disapproves. These are notable for their complete lack of argumentative value. He suggests that Cicero went too far in some jests and mentions several that he found uncouth. Quintilian also disapproves of simple name-calling. He gives the following examples: an Acisculus is called Pacisculus because of a compact he made; a Placidus is called Acidus for his ill temper; and a Tullius is called Tollius for being a thief.⁹¹ It seems clear that it is the simple association that he dislikes.⁹² However, he does find it funny when the associations are of actions rather than names, thus he approves of Cicero's depiction of Verres sweeping away wealth from Sicily⁹³ and Afer's referring to an orator who was rushing about needlessly, to and fro, as not pleading but overdoing it.⁹⁴ Although there doesn't appear to be anything particularly more inventive verbal associations, it's possible that such puns could be presented in such a way as to appear more extemporaneous. The action of a play on the word *verro* presents the audience with an image whose vividness can distract from its lack of spontaneity.

4.5 How Humor Should Be Used

⁹⁰ For the woman treated as though she were a man, see the end of §85.

⁹¹ 6.3.53. He also mentions in 6.3.55 all the jokes based on Verres' name that Cicero employed.

⁹² Interestingly, however, he approves of associating individuals with the names of those with poor reputations whom they resemble. He mentions Lentulus Spinther and Scipio Serapio at 6.3.57.

⁹³ 6.3.55.

⁹⁴ 6.3.54: *non agere dixit sed satagere*. While the verb *satagere* literally means "to do just enough" (satis + ago) it often meant, to overdo it. Thus here Afer is playing on the verb *agere* sarcastically and saying "he's certainly trying."

Quintilian views humor in oratory as a means to rebuff accusations, inject levity into a boring case, and occasionally to align jurors with the orator.

Laedere numquam uelimus, longeque absit illud propositum, potius amicum quam dictum perdendi. In hac quidem pugna forensi malim mihi lenibus uti licere. Nonnumquam et contumeliose et aspere dicere in aduersarios permissum est, cum accusare etiam palam et caput alterius iuste petere concessum sit. Sed hic quoque tamen inhumana uideri solet fortunae insectatio, uel quod culpa caret uel quod redire etiam in ipsos qui obiecerunt potest. Primum itaque considerandum est et quis <et> in qua causa et apud quem et in quem et quid dicat. Oratori minime conuenit distortus uultus gestusque, quae in mimis rideri solent. Dicacitas etiam scurrilis et scaenica huic personae alienissima est: obscenitas uero non a uerbis tantum abesse debet, sed etiam a significatione. Nam si quando obici potest, non in ioco exprobranda est. Oratorem praeterea ut dicere urbane uolo, ita uideri adfectare id plane nolo. Quapropter ne dicet quidem salse quotiens poterit, et dictum potius aliquando perdet quam minuet auctoritatem. Nec accusatorem atroci in causa nec patronum in miserabili iocantem feret quisquam. Sunt etiam iudices quidam tristiores quam ut risum libenter patiantur. Solet interim accidere ut id quod in aduersarium dicimus aut in iudicem conueniat aut in nostrum quoque litigatorem, quamquam aliqui reperiuntur qui ne id quidem quod in ipsos reccidere possit euitent. Quod fecit Longus Sulpicius, qui, cum ipse foedissimus esset, ait eum contra quem iudicio liberali aderat ne faciem quidem habere liberi hominis: cui respondens Domitius Afer 'ex tui' inquit 'animi sententia, Longe, qui malam faciem habet liber non est?' Uitandum etiam ne petulans, ne superbum, ne loco, ne tempore alienum, ne praeparatum et domo allatum uideatur quod dicimus: nam aduersus miseros, sicut supra dixeram, inhumanus est iocus. Sed quidam ita sunt receptae auctoritatis ac notae uerecundiae ut nocitura sit in eos dicendi petulantia; nam de amicis iam praeceptum est. Illud non ad oratoris consilium, sed ad hominis pertinet: lacessat hoc modo quem laedere sit periculosum, ne aut inimicitiae graues insequantur aut turpis satisfactio. Male etiam dicitur quod in pluris conuenit, si aut nationes totae incessantur aut ordines aut condicio aut studia multorum. Ea quae dicet uir bonus omnia salua dignitate ac uerecundia dicet: nimium enim risus pretium est si probitatis inpendio constat.⁹⁵

Our jests should never be designed to wound, and we should never make it our ideal at once lose a friend sooner than lose a jest. Where the battles of the courts are concerned I am always better pleased when it is possible to indulge in gentle raillery, although it is, of course, permissible to be abusive or bitter in the words we use against our opponents, just as it is permissible to accuse them openly of crime, and to demand the last

⁹⁵ 6.3.28-35.

penalty of the law. But in the courts as elsewhere it is regarded as inhuman to hit a man when he is down, either because he is the innocent victim of misfortune or because such attacks may recoil on those who make them. Consequently, the first points to be taken into consideration are who the speaker is, what is the nature of the case, who is the judge, who is the victim, and what is the character of the remarks that are made. It is most unbecoming for the orator to distort his features or use uncouth gestures, tricks that arouse such merriment in farce. No less unbecoming are ribald jests, and such as are employed upon the stage. As for obscenity, it should not merely be banished from his language, but should not even be suggested. For even if our opponent has rendered himself liable to such a charge, our denunciation should not take the form of a jest. Further, although I want my orator to speak with wit, he must not give the impression of striving after it. Consequently he must not display his wit on every possible occasion, but must sacrifice a jest sooner than sacrifice his dignity. Again, no one will endure an accuser who employs jests to season a really horrible case, nor an advocate for the defense who makes merry over one that calls for pity. Moreover, there is a type of judge whose temperament is too serious to allow him to tolerate laughter. It may also happen that a jest directed against an opponent may apply to the judge or to our own client, although there are some orators who do not refrain even from jests that may recoil upon themselves. This was the case with Sulpicius Longus, who despite the fact that he was himself surpassingly hideous, asserted of a man against whom he was appearing in a case involving his status as a free man, that even his face was the face of a slave. To this Domitius Afer replied, "Is it your profound conviction, Longus, that an ugly man must be a slave?" Insolence and arrogance are likewise to be avoided, nor must our jests seem unsuitable to the time or place, or give the appearance of studied premeditation, or smell of the lamp, while those directed against the unfortunate are, as I have already said, inhuman. Again, some advocates are men of such established authority and such known respectability, that any insolence shown them would only hurt the assailant. As regards the way in which we should deal with friends I have already given instructions. It is the duty not merely of an orator, but of any reasonable human being, when attacking one whom it is dangerous to offend, to take care that his remarks do not end in exciting serious enmity, or the necessity for a grovelling apology. Sarcasm that applies to a number of persons is injudicious: I refer to cases where it is directed against whole nations or classes of society, or against rank and pursuits which are common to many. A good man will see that everything he says is consistent with his dignity and the respectability of his character; for we pay too dear for the laugh we raise if it is at the cost of our own integrity.⁹⁶

⁹⁶ The translation is that of H.E. Butler. 1920-1922.

Although Quintilian acknowledges the power of humor and seems to agree with Cicero that humor has its basis in pointing out the faults of others, he goes on at length here to argue that jests should be avoided unless in the middle of a forensic debate (*in pugna forensi*)—but even then he thinks they should be mild.⁹⁷ However, he approves of abuse, *in aduersarios*, in the most extreme terms by speaking harshly and full of insults, *contumeliose et aspere dicere*. Moreover, when Quintilian brings up the matter of invective in oratory and how to respond to it, it is interesting to note that the immediately preceding section is about the importance of not seeking applause for the sake of applause.⁹⁸ This is all rather confusing when taken with what else Quintilian has said: jests are basically directed against others and thus should never be made, but they are indeed useful and can be made in court and not only made but made harshly and with abuse. The one thing we can say about this is that Quintilian not only approves of the use of jests in court, but deems them appropriate and natural in such a context. What seems to be the key to it all, as he explains later, is the identity of the person to whom or about whom the joke is made. As long as that person is an opponent of yours you may abuse him at will. However, if he (or she) is a third party then

⁹⁷ This is interesting given that in book one (1.8.7-8) Quintilian recommends that young men read comedy, contending that this contributes greatly to eloquence because there are many different characters and emotions in the comedic genre. LaCourse Munteanu (97-99) claims that Quintilian is thinking of humor here as a means of manipulating the emotions of the jury rather than questioning the character of an opponent. I would argue, however, that Quintilian's recommendation is related more to character than to emotion. By reading comedy one could encounter the full spectrum of good to bad behavior and see how jokes are made about actions. Jokes in New Comedy are, after all, almost exclusively at the expense of others.

⁹⁸ Quin. Inst. Or. 12.9.

abuse would be inappropriate.⁹⁹ And while Quintilian might prefer that it all be kept light, he realizes that abuse is often of a serious nature in the real world. Despite the broad and seemingly contradictory pronouncements Quintilian makes, the final say is in where humor should be employed and what kind comes down to context. One must be aware of one's opponent and audience when saying anything negative.

Quintilian proceeds to explain to the reader the sort of jokes that are appropriate *and effective* in forensic oratory. By looking at what kinds of humor Quintilian sees as related, what he considers funny, and why he favors certain humor in certain contexts, we can begin to form a theory of what we might call "purposeful humor." What we find is that the common denominator in the jokes Quintilian admires is that they are retorts, hence defensive, that turn an accusation around on itself. Moreover, the reason he admires such jokes is twofold: they are the most clever kind of humor because they have to be made extemporaneously and they are more gentlemanly than pre-planned, offensive insults.

Quintilian does not specify any purpose for making jokes at our own expense and in fact suggests that we not do so. He claims:

In se dicere non fere est nisi scurrarum et in oratore utique minime probabile: quod fieri totidem modis quot in alios potest, ideoque hoc, quamuis frequens sit, transeo.¹⁰⁰

To speak against oneself is unbecoming for all except clowns, and in an orator it is to be done as little as possible: this thing can be done in the same number of ways as insults against others and therefore I am passing by it, though it's frequent.

⁹⁹ Cicero's abuse of Clodia would be unfair according to this logic, since he insults her in multiple speeches and in only one of them, the *Pro Caelio* where she is a source of contention, is she directly involved. Indeed, Quintilian reproaches Cicero at the opening of this chapter, 6.3.2-3, for being too quick to insult.

¹⁰⁰ 6.3.82.

Although he mentions self-mockery as a specific direction that humor can take in an argument, he says that only a jester would make fun of himself.¹⁰¹ Yet, clearly other orators did not agree with this, since he also says that such joking about oneself is *frequens*. In looking at the jokes that Quintilian discusses, he seems to approve of false self-deprecation. Indeed, such jokes appear only on the surface to be against ourselves. What they do is admit to the insult of the original joke in such a way as to misinterpret the intent of it and turn that misinterpretation back against the person who made the original joke. This, of course, is exactly what Caesar did during his humorous exchange in the Senate. Whether or not it was intentional, the Semiramis comparison was slightly absurd, and it had the effect of both deflecting the criticism and insulting the Senate at the same time.

4.6 Conclusion.

In *Institutio Oratoria* 6.3 Quintilian tries to create a typology of forensic humor, even though he rightly admits that such an enterprise is nearly futile given humor's endlessly creative nature.¹⁰² However, there are a number of commonalities running through the types of humor he applauds as well as the types he finds fault with. The humor that he lauds is almost always functional,

¹⁰¹ Beard (2014: 103) claims that there were two basic kinds of humor, that of *urbanitas* and that of the jester or mime (*scurra* or *mimus*). Her argument is that the Roman aristocracy had a sense of humor associated with wordplay and other Romans had one associated with mockery and imitation. While this may be true, I would still argue that if it is considered *urbanitas* to misinterpret an accusation or admit to it and then turn it around on the accuser, then non-aristocratic Romans had just as much appreciation for *urbanitas* as Quintilian. It is only a matter of comprehension – though I would argue that, unless the joke hinges on a literary reference that wasn't widely circulated orally, the average Roman could pick up such jokes easily.

¹⁰² 6.3.101: *sed repetam necesse est, infinitas esse tam salse dicendi quam severe, quas praestat persona, locus, tempus, casus denique, qui est maxime uarius.*

whether that function is to make an argument or simply to one-up an opponent. Never does Quintilian cite a joke whose only purpose is to make people laugh. This should not be surprising given that the subject with which he is concerned is oratory, an utterly practical, outcome-oriented speech genre. However, many specific instances of jokes he discusses come from beyond the realm of the courts. Many jokes are simply about one-upmanship, as is the case with the quip uttered by the knight at the games, whom Augustus criticized for eating and drinking in public. Yet even then there is some forensic value for the orator-in-training: for the joke's chief success lies in the fact that it is an example of a subordinate figure disarming a superior. Another common thread in the jokes of Quintilian is that nearly all respond to someone else's words.¹⁰³ As he himself states, "jokes are by far more charming in response than in attack," *sunt enim longe uenustiora omnia in respondendo quam in prouocando*.¹⁰⁴ The only unprovoked joke Quintilian mentions is Cicero's jest about Fabia turning thirty for the twentieth time. What's more, of jokes made in reply to criticism, the majority of those he cites contain some degree of admission of guilt but succeed by "changing the conversation," as public relations experts have coined it. The one thing uniting all the jokes Quintilian cites is that they all have the effect of taking a person or a person's

¹⁰³ This is likely the type of humor mentioned at *De Orat.* 218: "As there are two kinds of wit, one spread regularly through all of a speech, the other pointed and concise; the ancients denominated the former humour, the latter jesting. Each sort has but a light name, and justly." *Etenim cum duo genera sint facetiarum, alterum aequabiliter in omni sermone fusum, alterum peracutum et breve, illa a ueteribus superior cauillatio, haec altera dicacitas nominata est.* In such a dichotomy, Quintilian admires jesting, *cauillatio*, over humor, *dicacitas*. Just as Cicero remarks, although neither can be taught, jesting cannot be prewritten whereas humor can be. Interesting to our purposes, Cicero links the use of humor to cases where one doesn't want to challenge the dignity of the opposition. Thus, we might contrast the *Pro Murena*, in which Cicero was careful not to offend the prosecutors yet clearly depended on humor (at least according to Cato's assessment of Cicero's defense), with the last three of his *vis* defenses, the *Pro Caelio*, *Pro Sestio*, and *Pro Milone*, which are full of jests and abuse of the prosecution.

¹⁰⁴ 6.3.13

argument down a peg. The only differences between such jokes are the contexts in which they occur.

Chapter Five: Evasive Humor outside the Courts.

5.1 Introduction

We have seen how both Cicero, in practice, and Quintilian, in theory, thought humor to be a powerful tool in argument when used appropriately. For Cicero, that was anytime his argument required it; for Quintilian, it was in self-defense. Further, when we look at the humor in Cicero's defense speeches, we see that it is closely tied to character (and Quintilian affirms this association by the quips he reports Cicero as having said), and that the humor used by Cicero that Quintilian most appreciated was the turning around of an insult and applying it to one's opponent. From these facts we have concluded that the strategic deployment of humor was both a common and effective practice of Cicero and, judging by the jokes of others for which Quintilian has the most enthusiasm, likely a few other successful advocates such as Domitius Afer and Q. Lutatius Catulus. This makes sense given that the short supply of honor among Roman aristocrats created a great deal of verbal competition, and that verbal competition often leads towards a concern with saving face. And as a result of the presence of an audience judging that competition, power was negotiated not simply through the logic of arguments presented, but by subjective rhetorical performance – as we have seen, audiences often respond to humor as much as, if not more than, objective lines of reasoning.

But the negotiation of power was not limited to the courts. For if it was present in the courts, where there was at least a pretense of pursuing truth according to Riggsby, it would most likely have been present wherever there were verbal arguments judged by third parties. Thus, we would expect there to have been humor used in negotiations amongst family, within the patron-client relationship, within philosophy, poetry, politics, religions, marriage, and friendship. In short, humor was probably used wherever that there was a third party – an audience – and an articulate individual with a sense of humor and social intelligence appealing to that audience. In this chapter, we shall consider some of these non-judicial contexts for humor in arguments.

5.2 Ciceronian Oratory Beyond the Courts

In *Pisonem* 72-75:

Qui modo cum res gestas consulatus mei conlaudasset, quae quidem conlaudatio hominis turpissimi mihi ipsi erat paene turpis, 'non illa tibi,' inquit, 'invidia nocuit sed uersus tui.' *Nimis magna poena te consule constituta est sive malo poetae sive libero.* 'Scripsisti enim: "cedant arma togae."' Quid tum? 'Haec res tibi fluctus illos excitauit.' At hoc nusquam opinor scriptum fuisse in illo elogio quod te consule in sepulcro rei publicae incisum est: 'UELITIS IUBEATIS UT, QUOD M. CICERO UERSUM FECERIT,' sed 'QUOD UINDICARIT.' Uerum tamen, quoniam te non Aristarchum, sed Phalarin grammaticum habemus, qui non notam apponas ad malum uersum, sed poetam armis persequare, scire cupio quid tandem in isto uersu reprehendas: 'Cedant arma togae.' 'Tuae dicis,' inquit, 'togae summum imperatorem esse cessurum.' Quid nunc te, asine, litteras doceam? Non opus est uerbis sed fustibus. Non dixi hanc togam qua sum amictus, nec arma scutum aut gladium unius imperatoris, sed, quia pacis est insigne et oti toga, contra autem arma tumultus atque belli, poetarum more tum locutus hoc intellegi uolui, bellum ac tumultum paci atque otio concessurum. Quaere ex familiari tuo Graeco illo poeta; probabit genus ipsum et agnoscet neque te nihil sapere mirabitur. 'At in altero illo,' inquit, 'haeres: "concedat laurea laudi."' ¹ Immo me hercule habeo tibi gratiam; haererem enim nisi tu me expedisses. Nam, cum tu timidus ac tremens tuis ipse furacissimis manibus detractam e cruentis fascibus

¹ *Linguae* is read instead of *laudi* in PS Sall. In *Cic.* 6 but, as Nisbet points out, this too often has a negative association in Cicero. Nisbet, p. 142, n.20. Regardless of the reading, the meaning is the same: arms giving way to speech.

lauream ad portam Esquilinam abiecisti, iudicasti non modo amplissimae sed etiam minimae laudi lauream concessisse. Atque ista oratione hoc tamen intellegi, scelerate, uis, Pompeium inimicum mihi isto uersu esse factum, ut, si uersus mihi nocuerit, ab eo quem is uersus offenderit uideatur mihi perniciēs esse quaesita. Omitto nihil istum uersum pertinuisse ad illum; non fuisse meum, quem quantum potuissem multis saepe orationibus scriptisque decorassem, hunc uno uiolare uersu.

At a certain time he praised how things were carried out in my consulship, praise which as it was of the vilest of men was almost foul to me. “It was not these things that gave offense,” he said, “it was your poetry.” *Too strong a punishment was established when you were consul for a poet either bad or free.* For you wrote “let arms yield to the toga.” Yeah, and so what? This is what excited the storm against you. But I think that it was never written in that elegy which when you were consul was inscribed on the tombstone of the republic “May it please you that because Marcus Cicero has written verse,” but “because he has given punishment.” However since we have you as our teacher – not an Aristarchus who puts a note next to a bad verse, but a Phalaris who pursues the poet with arms – I want to know what fault you find with the verse “let arms yield to the toga.” You say, he says, that the greatest general must yield to your toga. What now, you ass, am I to teach you literature? I would need not words but a whip. I did not say this gown in which I’m cloaked, nor the arms of the shield and sword of one general, but since the toga is a sign of peace and leisure, and contrawise arms of tumult and war, when I spoke in the manner of poets I wanted it to be understood that war and tumult would give way to peace and leisure. Check with your friend, that Greek poet: he will approve of and recognize this type of language, nor will he be surprised that you know nothing. “But in the next part,” he says, “you get caught (when you say): ‘let the laurel branch submit to praise’.” Heaven help me, I owe you a thanks; I would be caught unless you had helped me. For when you, timid and trembling, with your kleptomaniacal hands threw off the laurel that you had seized from bloody fasces towards the Esquiline gate, you showed that the laurel had conceded not only to the greatest but also to the most trivial praise. But you still wish, you rogue, it to be understood that Pompey was made hostile to me on account of this verse; in such a way that, if the verse had harmed me, he whom that line offended, by him it would seem that my destruction was sought. I say nothing about the verse not referring to him, that it’s not my way to injure this man in one verse, whom I often honored as greatly as I could in many speeches and texts. But for now, let’s say that he was offended: would he not have taken this one little verse with my great many books of his praises? Do you think about what, among whom, and about whom you speak?

This passage, which Cicero delivered to the Senate in 55 BCE, was not part of a formal prosecution. It is simple invective that stems from the blame which Cicero placed on

Piso for his role in Cicero's exile, from which he had returned less than two years earlier. It is, to some extent, a cheap shot since Piso, although somewhat liable for the exile, certainly was not the primary instigator of it.

In this passage we have a description of the criticisms that Cicero claims Piso made of him. These cannot be taken at face value given Cicero's skill at misrepresentation. However, the charges are ones we see time and again regarding Cicero: that he was vain, that his handling of the Catiline conspirators was cruel and illegal, as well as that he insults those of higher station.

Cicero quotes Piso as saying "it wasn't the resentment that harmed you but your verses" (*non illa tibi, inquit invidia nocuit sed versus tui*). This is, however, an odd way of putting it. Nisbet cites section 75 of the Pro Milone to claim that *non illa tibi invidia* means "*non illarum rerum invidia*." The text there reads as follows:

Sed ausum esse T. Furfanio dicere, si sibi pecuniam quantam posceret non dedisset, mortuum se in domum eius inlaturum, *qua invidia huic esset tali viro conflagrandum*; qui Appium fratrem, hominem mihi coniunctum fidissima gratia, absentem de possessione fundi deiecit;

But he dared to say to Furfanius, that if he did not give him as much money as he demanded, he would carry a dead body into his house, *and so raise a storm of unpopularity against him*;² who turned his brother Appius, a man connected with me by the most faithful friendship, while he was absent out of the possession of his farm;

In this passage something culturally unacceptable or taboo is threatened, to bring a body into another's home and thereby pollute it, which then, through various communicative channels, gives rise to (*conflagrare*) *invidia*. The communicative channels, the agency,

² Or, more literally: "by which unpopularity (from the body) there would be an uprising against such a man."

are not explicitly stated in either, but a good guess is that the method is word of mouth.³ There is almost the sense that the *invidia* has some agency of its own. It's not only people expressing disgust at the threat that makes the *invidia* spread; it does so itself almost in the same way that we think of gossip as spreading.⁴ *Invidia*, it seems, not only carries with it the meaning of "envy" or "hatred" but also an association with the verbal expression of that envy or hatred.

In the *In Pisonem* passage, however, there is no *conflagrare*, which according to the TLL is a common sort of imagery for *invidia* along with chaotic, out-of-control growth,⁵ and additionally, the agency is directly stated, the *versus*. Whereas in the *Pro Milone* it is a threat that causes *invidia* to spread like fire, in the *In Pisonem* Cicero's poetry causes him harm. But what exactly is wrong with Cicero's poetry? Is it tasteless, vain, or something else? One of the more commonly cited reasons is that his words were insulting to Pompey.⁶ This is unsatisfactory as a complete explanation for a number of reasons,⁷ but most importantly, it hardly seems a harsh affront, even for the sensitive ego of a competitive Roman aristocrat. They were roughly the same age and Pompey had given Cicero reason to be upset with him for not helping to prevent his exile. Having had

³ One thinks of Labeo's discussion of gatherings at one one's house for the purpose of shouting in the Digest (47.10), as well as of Catullus 17, which Wray claims was meant to be an example of the practice of communal abuse delivered at the abused's house (2001: 137-40).

⁴ *Invidia* thus spreads in the same way as *fama* does in *Aen.* 4.173-177 as it races through Libya, growing more and more powerful until it reaches the clouds: *Extemplo Libyae magnas it Fama per urbes, Fama, malum qua non aliud uelocius ullum: mobilitate uiget uirisque acquirit eundo, parua metu primo, mox sese attollit in auras ingrediturque solo et caput inter nubila condit.*

⁵ For example: *Cluent.* 136, *Sest.* 140. Also, *Lucr.* 5.1126 *e summo, quasi fulmen, deicit ictos invidia*, *Sen. Dial.* 6.15.5 *tantam turbam non potuisse sine invidia*, *Liv* 6.4.11 *qui in eadem inuidiae flamma fuisset, De Orat* 3.8 *ardentem inuidiam.*

⁶ Nisbet 1987, Ramsey 2003.

⁷ Dugan (2005: 63) argues that Piso deliberately misinterpreted the phrase *cedant arma togae*. The way this misinterpretation worked, Dugan suggests, is that Piso took Cicero as the *imperator togatus* and Pompey the *imperator armatus*, thereby implying that Cicero's words meant that he had made Pompey yield to him.

three consulships and three triumphs, Pompey had a greater claim to *auctoritas* than Cicero. What is wrong with bragging about besting such a person?

Someone who insults a person of a higher rank is always open to the charge of being a social climber. However, that is likely not what is happening here. Piso is unlikely to be suggesting Cicero should have refrained from insulting Pompey because of Pompey's preeminence. Rather Piso is suggesting that Cicero should have refrained from insulting him due to his own humble background. Cicero's status as a *novus homo* was something to which Cicero was highly sensitive and it would have been in Piso's interest to bring this up. Cicero's response is to change the meaning of the insult from one of status in terms of background to status in terms of oratorical skill and reasoning - his home turf. He first reminds the audience who his real enemy is, though he avoids mentioning his name explicitly: Clodius, not Pompey. He does so by very cleverly referring to Clodius' destruction of his house, monumental as that was,⁸ not by calling it a *monumentum* but a *sepulchrum rei publicae*. He then quotes from the preamble to Clodius' bill, which was inscribed in the shrine housing a statue dedicated to Liberty on the property of Cicero's destroyed house.⁹ The effectiveness is similar to Caesar's retort in that it achieves the goal of changing the audience's perception of Piso's accusation.¹⁰ Instead of implying that Piso's accusation was that Cicero was comparing himself to Pompey, Cicero's response implies that Piso's accusation was that Pompey was responsible for Cicero's exile and the destruction of his property. His next step is to detract from the accusation further by talking not of respect or the lack thereof, but of poetry.

⁸ For more on this see Roller 2010.

⁹ Nisbet 1961: 140-1.

¹⁰ However, unlike Caesar's retort, Cicero is clearly in denial mode.

Not only does Piso get it wrong about who his own enemies are, Cicero turns Piso's criticism of the meaning of his poetry into criticism of the style of his poetry, making Piso out to be an ignorant yet harsh critic of literature. By claiming that Piso mistook a metonymical reference to the toga as a symbol of republican governance for Cicero's personal toga, Cicero takes Pompey out of the picture all together. The issue thus becomes one of Piso's intelligence. Piso, in as much as we can reconstruct from Cicero's words, never said anything about the toga literally. In fact, it appears that the basis of his criticism was that the toga very much stood for something, just as Cicero is claiming here. However, it was not Republicanism but rather Cicero himself. It is a classic straw man argument. And it is one that is contradicted by the very next part of his poem that Cicero claims Piso has also misunderstood. For in the words *concedat laurea laudi*, the *laurea* clearly refer not to war *in general*, as Cicero claims of the *arma* above, but to generals *in general*.¹¹ However, Cicero does not let this impediment stop him.

Cicero's retorts do not form a straight line. They arc back around themselves and the audience in the most illogical, yet convincing of ways. And the way they do this is by his frequent claiming that his accusers are ignorant both of his and their own words as well as the reality they represent. In so doing Cicero continually shifts the nature of the debate. It goes from an issue of being too open with one's words to disrespect and social climbing and then to the meaning of poetry. And Cicero further hammers at his opponent's supposed misunderstanding of literature by telling him that he can find out that metonymy is a perfectly valid poetic tool by checking with his Greekling teacher.

This habit of trying to deflect criticism by claiming the charge was composed with poor oratorical skill is perfectly illustrated by the beginning of *Pis.* 75.9, with the

¹¹ As pointed out by Nisbet 1961: 141 n. 111.

question “*quid tu, apud quos, tu de quo dicas, intelligis?*” Three things that must be considered by the orator when speaking – what he says, his audience, and his subject. Cicero is not only refuting Piso’s claims, but in his traditional fashion, he’s insulting Piso’s rhetorical ability as well—something he does so often, he nearly conflates the two things. It’s almost as if Cicero takes the opposite approach to the Caesarian one, in two different manners. In an highly unusual move for Cicero, he makes a denial. But for another, he claims the misunderstanding is due to his adversary’s idiocy. He draws attention to the contest, to the rhetorical competition, thereby ensuring hostility and further debate. It is not a strategy that calms tensions and wins friends. It widens differences and creates resentment. Could it be that what really bothered Cicero’s opponents was that he insulted their rhetorical training and intelligence? If so, the content of the claim did not matter. If this were the case, it would explain Caesar’s success. Caesar’s responses not only defused but they gave credit to the individuals who insulted him. Caesar’s response says “good one, but...” Cicero’s response says “you’re an idiot, you prove my point; you’re flat out wrong.” Nowhere is this strategy more patent than in the *Philippicae*.

5.3 *Philippicae*

5.3a) Second Philippic

In the second Philippic Cicero wrote some of his most famous invective. In it, he accuses Antony of being a drunk, a child (and adult) prostitute, generally dissolute, greedy, tyrannical, and utterly inept when it comes to reasoning and speaking. In the first

half of the speech, Cicero discusses the charges Antony laid against him. In five of those charges he makes a point of belittling Antony's rhetorical ability.

1.) Quid habes quod mihi opponas, homo diserte, ut Mustelae tamen Seio et Tironi Numisio uideris? Qui cum hoc ipso tempore stent cum gladiis in conspectu senatus, ego quoque te disertum putabo, si ostenderis quo modo sis eos inter sicarios defensurus. Sed quid opponas tandem, si negem me umquam ad te istas litteras misisse? Quo me teste convincas? An chirographo? in quo habes scientiam quaestuosam. Qui possis? sunt enim librari manu. Iam inuideo magistro tuo, qui te tanta mercede quantam iam proferam nihil sapere doceat.¹²

What do you have that you can throw at me, you eloquent man, as you appear at least to Mustela Tamisius, and to Tiro Numisius? These men are standing at this very time in the full view of the senate with their swords; I will think you eloquent as well if you will show how you would defend them if they were charged with being assassins. But what would you say in response if I were to deny that I ever sent those letters to you? By what evidence could you convict me? By my handwriting? Handwriting is something in which you have a lucrative knowledge. How can you prove it? For the letters are in the hand of a slave. I now envy your teacher, who for all that payment, which I shall mention presently, has taught you to know nothing.

2.) Tam autem eras excors ut tota in oratione tua tecum ipse pugnares, non modo non cohaerentia inter se diceres, sed maxime diiuncta atque contraria, ut non tanta mecum quanta tibi tecum esset contentio. Uitricum tuum fuisse in tanto scelere fatebare, poena adfectum querebare. Ita quod proprie meum est laudasti; quod totum est senatus reprehendisti. Nam comprehensio sontium mea, animaduersio senatus fuit. Homo disertus non intellegit eum quem contra dicit laudari a se; eos apud quos dicit uituperari. Iam illud cuius est, non dico audaciae – cupit enim se audacem – sed, quod minime uolt, stultitiae, qua vincit omnis, cliui Capitolini mentionem facere, cum inter subsellia nostra uersentur armati, cum in hac cella Concordiae, di immortales, in qua me consule salutare sententiae dictae sunt, quibus ad hanc diem uiximus, cum gladiis homines conlocati stent?¹³

But you are so insane that throughout the your whole speech you were fighting with yourself, so that you said things that had nothing to do with each other, but which were disjointed and contradictory, so that the argument was not as much with me as with yourself. You confessed that your stepfather had been implicated in so much wickedness and yet you complained that he had been punished. And in this way you praised what was uniquely my achievement, and blamed that which was wholly the act of the senate. For the seizing of the guilty was mine, the investigation was the senate's. But this eloquent man does not understand that the man against whom he is speaking is being praised by him, and that those among

¹² *Phil.* 2.8-9.

¹³ *Phil.* 2.18-19.

whom he is speaking are being criticized by him. But now what a thing, I will not say of audacity (for he wants to be audacious) but (and that which he least wants) of idiocy, in which he surpasses all men, that he makes mention of the Capitoline Hill, when armed men are occupying space between our benches, when there are such men in this temple of Concord, immortal Gods, in which while I was consul helpful opinions were given, thanks to which we are all alive to this day.

3.) At etiam quodam loco facetus esse voluisti. Quam id te, di boni, non decebat! In quo est tua culpa non nulla. Aliquid enim salis a mima uxore trahere potuisti. 'Cedant arma togae.' Quid? tum nonne cesserunt? At postea tuis armis cessit toga. Quaeramus igitur utrum melius fuerit libertati populi Romani sceleratorum arma an libertatem nostram armis tuis cedere. Nec vero tibi de uersibus plura respondebo: tantum dicam breuiter, te neque illos neque ullas omnino litteras nosse;¹⁴

At one time you wished to be clever. Good gods, how little did that suited you! And in this you are not a little at fault. For you could have derived some amount of wit from your wife, the mime. "Arms to the gown must yield." Well, have they not yielded? But afterwards the gown yielded to your arms. Let us ask whether it was better for the arms of wicked men to yield to the freedom of the Roman people, or that our liberty should yield to your arms. I will reply no more to you about the verses: I shall only say briefly that you do not understand them, nor any other literature;

4.) Sed stuporem hominis uel dicam pecudis attendite. Sic enim dixit: 'Brutus, quem ego honoris causa nomino, cruentum pugionem tenens Ciceronem exclamavit: ex quo intellegi debet eum conscium fuisse.' Ergo ego sceleratus appellor a te quem tu suspicatum aliquid suspicaris; ille qui stillantem prae se pugionem tulit, is a te honoris causa nominatur? Esto; sit in uerbis tuis hic stupor;¹⁵

But look at the the stupidity of this guy, or I should say of this brute beast. For thus he said "Brutus, whom I name for the sake of his honor, holding the bloody dagger, shouted to Cicero: from which it must be understood that he aware of the assassination." Am I therefore called wicked by you, I whom you suspect suspected something; and the one who openly held the dripping dagger in front of himself, is he named by you for the sake of his honor? Let it be. Let this idiocy exist in your words.

5.) Haec ut conligeres, homo amentissime, tot dies in aliena uilla declamasti? quamquam tu quidem, ut tui familiaris simi dictitant, uini exhalandi, non ingeni acuendi causa declamitas. At uero adhibes ioci causa magistrum suffragio tuo et

¹⁴ *Phil.* 2.19-20.

¹⁵ *Phil.* 2.30.

compotorum tuorum rhetorem, cui concessisti ut in te quae vellet diceret, salsum omnino hominem, sed materia facilis in te et in tuos dicta dicere. Uide autem quid intersit inter te et auum tuum. Ille sensim dicebat quod causae prodesset; tu cursim dicis aliena. At quanta merces rhetori data est!¹⁶

So that you might collect all these [arguments], most oblivious of men, that you spent so many days in another's villa declaiming? However, indeed, as your friends are wont to say, you often declaim, not for the sake of sharpening your intelligence, but for working off the effects of wine. And, indeed, you keep near you a teacher for the sake of jokes, appointed by your vote and your companions, a rhetorician, to whom you give license to say whatever he wishes against you, an altogether witty man, but the material for speaking against you and against your friends is plentiful. See how far apart you and your grandfather are. He was accustomed to speak sensibly such that he aided the case; you speak at random the words of another. And how much money has been given to rhetorician!

Why does Cicero keep shifting the argument to rhetoric? As mentioned above, of course, it is natural for him to want to shift the ground to where his talents lie. Another reason is that, as we have been noting about Cicero throughout this study, although he occasionally rejects an accusation he prefers not to answer accusations with denials. However, there are likely ulterior motives as well. If Cicero had staked his claim to power on his oratory and statesmanship because he was continually being insulted on the grounds of his humble origins, his falling back upon rhetoric may be more than simply trying to change the debate. Knowing that he could never compete with someone from an old Roman family, he tries to offer an alternative to questions of family as the basis for statesmanship with questions of oratorical and political capability. This is an element to John Dugan's argument about Ciceronian self-fashioning. However, I would place less value on Dugan's principal contention, namely that Cicero had posterity on his mind and was both trying to achieve a "textual fixity"¹⁷ and set an example for the future, than on

¹⁶ *Phil.* 2.42-3.

¹⁷ Dugan 2005: 52.

the observation that he was offering an alternative set of values to those of the established elite.¹⁸

However, if Cicero were really trying to advance a different paradigm, wouldn't he acknowledge what was happening? Why do we not more often see Cicero admitting that he was from a modest background, but then state that capability and character matter more than background? By not recognizing the other side's argument, he doesn't frame his side as an argument either. It could also be that he sincerely believes in the importance and rightness of his position. It may also be a reflexive self-defense mechanism that serves a purpose useful only to him, self-denial. If every time Cicero hears abuse directed towards his status he responds with a reaffirmation of the prominence of oratory, he could simply be lying to himself about the nature of the abuse. If every time someone calls you ugly you respond with "no, I'm intelligent," you aren't actually engaging in any debate about whether beauty or intelligence is more to be valued. You are simply countering with "but I have this other quality."

5.3b Thirteenth Philippic

In the thirteenth Philippic Cicero responds to all the charges Antony made in a letter he sent to Hirtius that Hirtius later turned over to Cicero. For most of the speech, Cicero simply quotes Anthony's charges against him and replies:

'Uictum Ciceronem ducem habuistis.'

Eo libentius 'ducem' audio quod certe ille dicit inuitus; nam de uicto nihil laboro. Fatum enim meum est sine re publica nec uinci posse nec uincere.

'Macedoniam munitis exercitibus.'

Et quidem fratri tuo qui a uobis nihil degenerat extorsimus.

¹⁸ According to Butler (2002: 78-84), Cicero attempts to shed his equestrian image, gained and on display in his early speeches, the *Pro Quinctio* and *Pro Sexto Roscio Amerino*, for a more noble one by emphasizing his rhetorical abilities.

'Africam commisistis Uaro bis capto.'
Hic cum Gaio fratre putat se litigare.
'In Syriam Cassium misistis.'
Non igitur sentis huic causae orbem terrae patere, te extra munitiones tuas
uestigium ubi imprimas non habere?¹⁹

Charge: You have the conquered Cicero as a general.

Reply: I hear 'general' willingly because he says it unwillingly; concerning the
'conquered' I could care less. For it's my fate that without the Republic I am not
able to conquer or be conquered.

Charge: You are fortifying Macedonia.²⁰

Reply: Indeed, we have wrested it away from your brother who strays little from
you.

Charge: You entrusted Africa to Varus who has been captured twice.²¹

Reply: This guy thinks he's arguing with his brother Gaius.

Charge: You sent Cassius to Syria.²²

Reply: Do you thus not feel that the world lies open to this cause, that outside
your home base you have nowhere to plant your foot?

'Apuleiana pecunia Brutum subornastis.' Quid? si omnibus suis copiis excellentem
uirum res publica armasset, quem tandem bonum paeniteret? Nec enim sine
pecunia exercitum alere nec sine exercitu fratrem tuum capere potuisset.²³

Charge: You supplied Brutus with Apuleian money.

Reply: So? If the Republic had armed an excellent man with all of its troops,
what good man would regret it? For without money he could not have fed his
army nor capture your brother with it.

'Ser. Galbam eodem pugione succinctum in castris uidetis.'

Nihil tibi de Galba respondeo, fortissimo et constantissimo ciui: coram aderit;
praesens et ipse et ille quem insimulas pugio respondebit.

'Milites aut meos aut ueteranos contraxistis tamquam ad exitium eorum qui
Caesarem occiderant: et eosdem nec opinantis ad quaestoris sui aut imperatoris
aut commilitonum suorum pericula impulistis.'

Scilicet uerba dedimus, decepimus: ignorabat legio Martia, quarta, nesciebant
ueterani quid ageretur; non illi senatus auctoritatem, non libertatem populi
sequebantur: Caesaris mortem ulcisci uolebant, quam omnes fatalem fuisse
arbitrabantur; te uidelicet saluum, beatum, florentem esse cupiebant.²⁴

¹⁹ Cic. *Phil.* 13.30.11-20.

²⁰ In reference to the Senate supporting the taking of this away from Antony by Marcus Brutus. See Cass. Dio. 47.23-25.

²¹ Shackleton Bailey (2009: 264n. 54) notes that Varus was captured at Corfinium in 49 and assumes the second time was in Caesar's Africa campaign in 46.

²² Cass. Dio 47.26-30,

²³ 13.32.12-16.

²⁴ 13.33.10-13.34.1. This is the only source that claims Galba was a participant in Caesar's murder.

Charge: You watched Galba in camp girt with the same dagger.

Reply: I shall say nothing about Galba, a most brave and reliable citizen; he will make himself present for you and that dagger will respond to your charge.

Charge: You drew together soldiers, either mine or veterans, as though for the purpose of ending those who slew Caesar, and then you drove those same soldiers who didn't know the dangers to that of their quaester or general or fellow soldiers.

Reply: Of course we hoodwinked and ensnared them. The fourth Martian legion was ignorant; the veterans did not know what was being done. They were not following the authority of the Senate nor the liberty of the people. They wanted to avenge Caesar's death, which they all decided was their fate; clearly they wanted you safe and sound!

In none of the above replies to Antony's charges does Cicero offer a denial. He interprets what was a criticism as a compliment, that is to say he interprets a positive FTA as though it were a compliment. It is true that some of Antony's charges could indeed be seen as positive attributes from the perspective of someone hostile to Antony. For example, the charge that Cicero had sent money to Brutus, that he was fortifying Macedonia, and mustered soldiers on false pretenses to go after Antony. However, some of Antony's accusations can be considered negative regardless of political leanings.

When Antony refers to Cicero as a *dux* he is surely being sarcastic since Cicero never served as general and took no part in Pompey's campaign against Caesar.²⁵ The *victum* must, however, be in reference to Pharsalus. Thus Antony is drawing attention to Cicero's uselessness outside the forum. Cicero's response is to mischaracterize Antony's sarcasm as an honest assessment of Cicero. When one pauses to think rationally about this, the retort doesn't appear to work. Cicero was never a general, so why would he imply that Antony addressed him as one? If Cicero and Antony were exchanging words in each other's presence, Antony could simply respond with a "you don't understand sarcasm, do you?" Since Antony was not present, however, Cicero gets away with the deliberate mischaracterization of Antony's point. While not the most

²⁵ In fact, Plutarch (*Cic.* 38) depicts him as harmful to morale at Pompey's camp.

clever of Cicero's retorts, his reply meets the most basic requirement in a verbal exchange: it shuts down an avenue of attack. That he does so disingenuously doesn't matter for in verbal debates appearances are more important than substance.²⁶

5.4 *Altercatio*: Verbal contests with Clodius

Given Cicero's status as a prominent political voice, it is not surprising that we find examples of him using humor to make arguments as a politician rather than an advocate. In the only reference to a late Republican *altercatio* of which we know,²⁷ a letter to Atticus, we see Cicero using humor to make an argument to an audience.

Sed quid ago? Paene orationem in epistulam inclusi. Redeo ad altercationem. Surgit pulchellus puer, obicit mihi me ad Baias fuisse. Falsum, sed tamen quid hoc? "Simile est," inquam "quasi in operto dicas fuisse." — "quid" inquit "homini Arpinati cum aquis calidis?" "Narra" inquam "patrono tuo, qui Arpinatis aquas concupiuit;" nosti enim Marianas. "Quousque" inquit "hunc regem feremus?" "Regem appellas" inquam "cum Rex tui mentionem nullam fecerit?" Ille autem Regis hereditatem spe deuorarat. "Domum" inquit "emisti." "Putes" inquam "dicere: iudices emisti." "Iuranti" inquit "tibi non crediderunt." "Mihi uero" inquam "xxv iudices crediderunt, xxxi, quoniam nummos ante acceperunt, tibi nihil crediderunt." Magnis clamoribus adflictus conticuit et concidit.²⁸

But what am I about? I have copied almost a speech into a letter. I return to the duel of words. Up gets our prettyboy, and throws in my teeth my having been at Baiae. It wasn't true, but what did it matter? "It is as though you were to say," replied I, "that I had been in disguise!" "What business," quoth he, "has an Arpinate with hot baths?" "Say that to your patron," said I, "who coveted the watering-place of an Arpinate." For you know about the marine villa. "How long," said he, "are we to put up with this king?" "Do you mention a king," quoth I, "when Rex made no mention of you?" He, you know, had swallowed the inheritance of Rex in anticipation. "You have bought a house," says he. "You would think that he said," quoth I, "you have bought a jury." "They didn't trust you on your oath," said he. "Yes," said I, "twenty-five jurors did trust me, thirty-

²⁶ Just as physical appearance can supersede logic (c.f. the first Kennedy-Nixon debate where television viewers thought Kennedy's performance outshined Nixon's disproportionately to those listening to the debate), verbal dexterity and quickness can outweigh reason.

²⁷ Most *altercationes* are late imperial and Christian. For the earliest possible *altercatio*, see Bruns, J. E. 1973: 287-294. For *altercationes* in general, Quintilian has a discussion of them in the small chapter four of book six. See also Canellis 1997: 253-255 for a modern overview.

²⁸ *Att.* 1.16.8-10.

one didn't trust you, for they took care to get their money beforehand." Here he was overpowered by a burst of applause and broke down without a word to say.²⁹

Cicero's replies are interesting. In our interpretation, however, we must consider the fact that the audience for whom this exchange took place was everyone within hearing distance of Cicero and Clodius. Thus, their words were designed to appeal to the sensibilities of those who with *magnae clamores* pronounced Cicero the winner of the exchanges.

In his very first reply to a charge of Clodius, that he had been at Baiae, Cicero does what we have been observing in his speeches: he avoids denial. In his narration to Atticus he denies having been there but not to the audience for whom he was speaking. To them he merely says "It's as though you meant to say I was in disguise." While this appears cryptic Shackleton Bailey sensibly interprets it as a reference to the *Bona Dea* affair, translating Cicero's response as "Is that like saying I intruded on the mysteries?"³⁰ With such a reply Cicero minimizes the relevance of visiting Baiae in relation to the illicit invasion of a religious rite from which men are forbidden. This is almost an admission, playing on the idea of furtiveness. It's as though Cicero is saying "yes, I lurked around Baiae but you lurked around Caesar's wife as she conducted a ceremony to which you were forbidden."

The next exchange pursues the Baiae accusation. But since Clodius has failed to get traction by claiming that Cicero was someplace he normally mocks, he now switches the insult to one of background, and says "what was someone from Arpinum doing at the warm springs?" This is exactly what happens in the verbal contests of Honduras: the unsuccessful speaker fails to get an insult to stick and so moves to another topic, one

²⁹ Shuckbergh E.: 1895.

³⁰ Shackleton Baily 1999: 87

related if possible. Cicero's response, while not as clever as his first, is a sufficient deflection. To say "tell that to your patron, who was keen to get the land of someone from Arpinum" is to weaken Clodius' accusation because it claims that someone close to him was in the same situation as Cicero. The "patron" in question is Curio; the analogy may be inaccurate but at the very least it casts suspicion upon Curio and thus Clodius.³¹ After this exchange, Clodius again switches the topic.

When Clodius cries out "how long are we to endure this king?" it is almost as though he is thinking of the present verbal exchange rather than Cicero's political influence. Cicero's retort hinges on linking the accusation that he is a *rex* with a *rex* attached to Clodius. He finds it in Clodius' brother-in-law, Q. Marcius Rex, who left him out of his will. This insult would not work were it not for the linking word *rex*. With no connection to Clodius' words, Cicero's response would be no different from that of an Honduran who, having called someone a *maricón* and failed calls them a *diablito*. Cicero wins these exchanges because he plays on a word or concept in Clodius' insult and counterattacks with that rather than a denial. Thus, when Clodius accuses Cicero of buying a house beyond his status, Cicero says "it's not like I bought a jury."

5.5 Catullus

There is wide agreement among scholars of Catullan poetry that the poet did not simply write for himself or posterity, but for a contemporary audience.³² There are numerous poems where Catullus addresses not only his social equals, but also other

³¹ Little is known about Curio's background other than that his ancestors came from prominent plebeian stock. There is no evidence to suggest that he was from Arpinum. For more, see Dettenhofer (1992: 34-63) who has pieced together much information about Curio but not his birthplace.

³² See Pedrick 1993 for a good overview of the role of the audience in Catullus.

poets.³³ Some of the time these addresses are friendly, but elsewhere we can sense competitiveness with other poets engaged in the same pursuit. These fall neatly into Wray's reading of competitive poetics at play in Catullus.³⁴ There are certain Catullan poems, however, that seem just nasty and have been read as just that.³⁵ I shall go through some of the poems that I find to be the most indicative of the verbal dynamics we have observed in Cicero. Let us start with Catullus 28.

Pisonis comites, cohors inanis
 aptis sarcinulis et expeditis,
 Uerani optime tuque mi Fabulle,
 quid rerum geritis? Satisne cum isto
 uappa frigoraque et famem tulistis?
 ecquidnam in tabulis patet lucelli
 expensum, ut mihi, qui meum secutus
 praetorem refero datum lucello,
 'o Memmi, bene me ac diu supinum
 tota ista trabe lentus irrumasti.'
 sed, quantum uideo, pari fuistis
 casu: nam nihilo minore uerpa
 farti estis. pete nobiles amicos.
 at uobis mala multa di deaeque
 dent, opprobria Romuli Remique.

Piso's Company, a penniless staff, with
 lightweight knapsacks, scantily packed,
 most dear Veranius you, and my Fabullus too,
 how goes it with you? Have you borne frost
 and famine enough with that sot? Which appear
 in your tablets — the profits or expenses?
 So with me, who when I followed a praetor,
 inscribed more gifts than gains. "O Memmius,
 well and slowly did you throat rape me,
 from behind, day by day, with the whole of that
 beam of yours." But, from what I see, you've
 suffered the same; for you have been crammed

³³ Catullus 35, 40, 50, 55, 95, 116, et al.

³⁴ Wray 2001. Catullus 116 is a good example of the poet actively vying with another poet to create the better verse.

³⁵ Marilyn Skinner (1992) sees Catullus 11, 37, and 58 as purely misogynist texts which arose as a strategy used by males in order to cope with the competitive environment in which they lived.

with a cock no smaller. Courting friends of
high rank! But may the gods and goddesses heap
ill upon you disgraces to Romulus and Remus.³⁶

First of all, let us note that this poem is addressed to two of Catullus' friends, or at the very least, two individuals about whom Catullus has nothing but good to say.³⁷ They are both mentioned in poem 12 as the two individuals who sent as a gift to the poet the napkins that Asinius Marrucinus stole.³⁸ Fabullus also appears in the very next poem of the corpus as an invited guest of Catullus,³⁹ and Vatinius is described in 9 as "*Verani, omnibus e meis amicis antistans mihi milibus trecentis*."⁴⁰ They both appear together again in 48, where Catullus is lamenting that Piso preferred Porcius and Socraton to them.⁴¹

The poem takes place in a context where the poet and the addressees have found themselves in the same situation – they are all suffering from their experiences with inhospitable praetors. As such, Catullus can get away with insulting his friends with the understanding that he is joking. And insult he does. Although he admits to having been raped by Memmius, he says that Fabullus and Veranius "have been stuffed by no less a

³⁶ Smithers, L.C. 1894, with modification.

³⁷ This is not to say that Catullus could not speak badly of his friends. As Quinn (1999: 45) remarks "exaggeratedly abusive language is not uncommon among friends, particularly if they are of Catullus' violent temperament, and there are hints in the *Furius* poems, and in other violent poems, that the abuse was not meant to wound." While I would agree that abusive language can be common among friends, it occurs only in certain contexts. For instance, it is particularly common in the United States Marines, where humor, especially homoerotic humor of both a threatening and self-deprecating sort, is extremely common. Although no academic studies have explored this, it has been remarked upon in film and print. See Evan Wright's *Generation Kill*, turned into a seven part HBO miniseries by David Simon, in which one Marine proclaims "Man! We Marines are so homoerotic. That's all we talk about! You ever realize how homoerotic this whole thing is?" The book and the series were the result of Wright's time spent embedded with a platoon of Reconnaissance Marines, commanded by, incidentally, a Classics graduate, Nathaniel Fick, during the 2003 invasion of Iraq. For more on this phenomenon in the Israeli military, see Kaplan 2005: 571-595.

³⁸ 12.14-16: *nam sudaria Saetaba ex Hiberis miserunt mihi muneri Fabullus et Veranius*

³⁹ 13.1: *cenabis bene, mi Fabulle, apud me...*

⁴⁰ 9.1-2.

⁴¹ 48.3-4: *vos Veraniolo meo et Fabullo verpus praeposuit Priapus ille?* Note the friendly diminutive for Veranius.

cock” (*nihilo minore verpa farti estis*).” By employing the double negative here, Catullus implies that his friends suffered worse than he did – they “were fucked by an even bigger tool.” Thus Catullus comes off as the most fortunate of the three. The question, however, is why does the poet admit to having been orally raped? Is it to temper the insult of his friends that he is about to voice a few lines down in the poem or is there something else going on here?

Many have seen in this admission of the poet a controversial embrace of effeminacy by dint of the poet’s candor in confessing that he played the passive role.⁴² I find this to be unlikely and follow Adams in taking *irrumare*, and indeed all of the abuse in the poem, as metaphorical.⁴³ The question still remains, however. Even if Catullus is speaking metaphorically, why does he include himself as a recipient of abuse? One possible explanation is that this poem is in response to a letter sent by Fabullus or Vatinius in which it is insinuated that Catullus was “screwed” and this is the poet’s response to that accusation. Rather than deny the charge made by his friends and thus look like he is hiding something, he admits to it, but then goes on to say, “yeah but you got screwed worse.” This is of course an argument *ex silentio*, but it explains why the poet would refer to himself in terms that he usually reserves for his enemies.⁴⁴

⁴² Fitzgerald 1995 and Nappa 2001 both suggest this. Nappa states that in the poem the “*irrumatus* is not the victim of rape so much as a willing *pathicus*” (96). He goes on to say “the sexual mistreatment envisioned does not appear to wound or even seriously offend Catullus and his friends. The tone...reflects bitterness only at the men’s lack of financial success; the elaborate descriptions of pathic sex involve no mention of shame, hatred, or disgust” (99-100). Likewise, although Fitzgerald does not believe that any sexual act took place, he says that “this passage need not be describing a real sexual act for *irrumasti* to retain something of a literal force. The graphic detail in these lines cannot simply be reduced to emphasis” (68). He concludes that “the leisurely *irrumatio* causes the language of aggression to teeter over into the language of pleasure, so that the usual distribution of roles is smudged as the poet speaks the aggressor’s pleasure” (69). Amy Richlin (1981: XXX) says of *irrumare* that it is always literal.

⁴³ Adams 1982: 127.

⁴⁴ There exists also the possibility that this poem is more socially empathetic. In such a reading, the message is not that Catullus fared better but that he sees his friends fared as badly as he did. Thus the message is “Welcome to the Club! I suffered much myself!” Thanks to Josh Smith for this reading.

Furthermore, it makes sense in the context of other poems in the corpus where there is explicit mention made of Catullus engaged in trading insults with friends by poetry or missive. Let us turn to a few.

12
Marrucine Asini, manu sinistra
non belle uteris in ioco atque uino:
tollis linthea neglegentiorum.
hoc salsum esse putas? fugit te, inepte!
quamuis sordida res et inuenusta est
non credis mihi? crede Pollioni
fratri, qui tua furta uel talento
mutari uelit; est enim leporum
disertus puer ac facetiarum.
quare aut hendecasyllabos trecentos
exspecta, aut mihi lintheum remitte,
quod me non mouet aestimatione,
uerum est mnemosynum mei sodalis.
nam sudaria Saetaba ex Hiberis
miserunt mihi muneri Fabullus
et Ueranius: haec amem necesse est
et Ueraniolum meum et Fabullum.

Marrucinus Asinius, you do not use your
left hand nicely amid the jests and wine:
you make off with the napkins of the careless.
Do you think this is witty? It escapes you, fool,
how coarse a thing and unbecoming it is!
Don't you believe me? Believe your brother Pollio
who would willingly give a talent to divert you
from your thefts: for he is a lad skilled in pleasantries
and clever talk. Therefore, either expect
three hundred hendecasyllables, or return me
my napkin which I esteem, not for its value but
as a pledge of remembrance from my comrade.
For Fabullus and Veranius sent me napkins
as a gift from Iberian Saetabis; these I must
love even as I do Veraniolus and Fabullus.⁴⁵

This poem has recently been seen as emblematic of the elegance and urbanity that seem to characterize so much of the Catullan corpus.⁴⁶ In the context of *in ioco atque vino* we

⁴⁵ Smithers, C. 1894.

see the words *belle*, *salsus*, *lepor*, *disertus*, and *facetia*. Likewise, the opposite of these words appear: *ineptus* and *inuenustus*. It is easy to imagine the Greek-influenced *convivium* setting from which such a poem could have arisen.⁴⁷ Nevertheless, as William Fitzgerald has pointed out, this poem does not present the poet as the consummate *lector*. This poem is a response to an act that was made in an attempt to be witty. To be sure, the poet does call this act *inuenustus*, but it is important to note that he does not say why.⁴⁸

In all probability, Asinius' theft was somewhat witty. It seems rather unlikely that one of the Catullus's friends would be so poor that he had to steal napkins to supply his own *domus*. Catullus even admits that it is a joke by calling it *inuenustus*. He is simply trying to save face by twisting the pilfering of a napkin into something sordid. He is, in other words, competing for the upper hand in wit with Asinius, and having lost one round, changes the nature of the contest to one of urbanity and sophistication, so that it looks like Asinius has forfeited or committed some sort of foul. We thus have in poem 12 two individuals competing for eminence. Both are trying to shift the contest to terms that are the most favorable to them and it should come as no surprise that the terms of Catullus are poetic. There are no fixed rules of behavior laid out here. Catullus is not saying that theft is always "loutish" but he is trying to make it out as such in this instance.⁴⁹ Fitzgerald observes that this competition is indicative of the importance at the

⁴⁶ It has also been read as a reflection of the tension over gift giving, along with 13 and 14. See McMaster 2010: 355-379. Nappa (1998: 385-397) sees in the same vein as Krostenko's analysis, that the poem serves to demonstrate Catullus' *elegantia*.

⁴⁷ For the development of these words in the first century B.C.E., see Krostenko 2001, who argues that they were taken from the vocabulary of traditional Roman mores and reapplied to a world that had been changed by all the luxury pouring in from the Greek East.

⁴⁸ Fitzgerald remarks on the *furtum inuenustum*: "by the end of the poem we are none the wiser as to why it isn't [witty], nor as to what distinguishes it from his brother's *lepores* and *facetiae*, or the company's *ioci*; instead we have witnessed a dazzling series of maneuvers that have shut Asinius out of the elegant world it has created" (95-96). Fitzgerald further notes that making a fuss about a napkin is "hardly urbane" (94).

⁴⁹ Fitzgerald 1995: 96.

time placed upon individuality.⁵⁰ Neither Asinius nor Catullus (although we only have one side in poem 12) are charging the other with a violation of some fixed rule of behavior. They are simply jostling for position in terms of status. This is indicative of the same social forces that we see at play in the verbal contests of 1960s Harlem and 1970s Honduras, where the primary motivation for participation in it is to stake out one's identity.⁵¹

Uarus me meus ad suos amores
uisum duxerat e foro otiosum,
scortillum, ut mihi tum repente uisumst,
non sane illepidum neque inuenustum.
huc ut uenimus, incidere nobis
sermone uarii, in quibus, quid esset
iam Bithynia, quo modo se haberet,
ecquonam mihi profuisset aere.
 respondi, id quod erat, nihil neque ipsis
nunc praetoribus esse nec cohorti,
cur quisquam caput unctius referret,
praesertim quibus esset irrumator
praetor, nec faceret pili cohortem.
'at certe tamen,' inquiunt 'quod illic
natum dicitur esse, comparasti
ad lecticam homines.' ego, ut puellae
unum me facerem beatiorem,
'non' inquam 'mihi tam fuit maligne,
ut, prouincia quod mala incidisset,
non possem octo homines parare rectos.'
at mi nullus erat nec hic neque illic,
fractum qui ueteris pedem grabati
in collo sibi collocare posset.
hic illa, ut decuit cinaediorum,
'quaeso,' inquit mihi 'mi Catulle, paulum
istos commoda! nam uolo ad Serapim
deferri.' 'mane,' inquit puellae,
'istud quod modo dixeram me habere,
fugit me ratio: meus sodalis,
Cinnast Gaius, is sibi parauit.
uerum, utrum illius an mei, quid ad me?

⁵⁰ Ibid: 97.

⁵¹ Parks 1985: 440. See the ethnographies at the end of chapter two as well as my conclusion at the end of chapter five for more.

utor tam bene quam mihi paratis.
sed tu insulsa male et molesta uivis,
per quam non licet esse neglegentem.⁵²

Varus had led me from the forum where
I was relaxing to see his love,
a whore or so it seemed at first
not without charm or grace;
we came to talk about this and that,
how things in Bithynia were,
whether I profited there and
I answered as it was, that neither
the praetors nor their staff returned
any wealthier than when they left,
especially when they had an
irrumator for a praetor, who didn't
give a lick about his men.
"But surely you must have got
some slaves for your chair for
I hear this is where they're from.
I act as though I was lucky and
did well and say "it didn't go so
badly that I was not able to get
eight, straight-backed men from
the province which fell to me."
But I didn't have one, here or there,
able to lift the foot of a broken sofa
onto his shoulder. She says, as befits
a catamite, "Please do lend me some,
my Catullus, for I want to go to the
temple of Serapis. "Wait" I say to
the Girl, "what I just said, that was
a slipup. A buddy of mine, Gaius
Cinna, he bought them. But whether
they're mine or his, what difference is it?
I use them as though they were mine;
but you are an annoying little tart
around whom one must be on guard.

As was the case in Poem 28, the subject here is how well Catullus did while in Bithynia.
Just as he admits to doing as poorly there as Veranius and Fabullus, here he grudgingly

⁵² Cat. 10.

admits to a girl that he might not have come back as well off as he initially claimed.⁵³ However, unlike poem 28, there is no accusation in this poem. The girl never challenges him. Rather, the poet gets trapped in his own lies, and his initial solution to that is to try to talk his way out of it and claim that the slaves are as good as his. Why then does he immediately switch gears and call her a mouthy irritation? By stating that one has to be on guard around her (*per quam non licet esse negligentem*), he clearly implies that he was lying. The answer lies in the power of admission. Were the poet to walk away after such an exchange, he would have lost faith. The girl must have known, though she is depicted as rather clueless, that he was lying once he started backtracking. Although insulting her reveals Catullus' lack of slaves, it also allows him to maintain face. The second half of the poem is about the poet's positive face, the way he wants to be perceived – namely, as having profited from his service abroad. However, the girl's request threatens this face and his only response is to challenge her face, even if that means revealing he lied.

These three poems of Catullus, and others, suggest that the poet was engaged in verbal contests with his friends, colleagues, and even women on the street, and that there were stakes to the outcome of those contests. Catullus' face is challenged in all three poems. In the Bithynia poems the challenge involves wealth, while in the *convivium* poem it involves the poet's claim to his own property. And in all three he responds with an admission and a counterattack. In poem 10 he replies “yes I got fucked but you got fucked harder;” in poem 12 his retort is “yes, you stole my napkins but if you don't give

⁵³ Quinn (1972: 224) has argued that there is no reason to doubt that this was a real experience of Catullus. Given the similar context between this poem and 28 it makes sense to me that it would have been inspired by an actual encounter. Skinner (1989: 19) sees this poem as Catullus' attempt to criticize the status quo of the Roman social system. It seems to me that such a reading takes away from the poem more than it gives: if we are to interpret the poem as a complaint, the self-deprecating humor of it is lessened.

them back I'll attack you in verse;" and in poem 10 he responds by saying "okay, so I was lying but you're an impudent little girl."

5.6 Plutarch's *Apophthegmata*

There is a vast difference between the *Apophthegmata Romana* attributed to Romans prior to Cicero's time and those roughly contemporary with him or later.

Consider the following saying attributed to the elder Scipio:

Πετιλλίου δὲ καὶ Κοΐντου πολλὰ πρὸς τὸν δῆμον αὐτοῦ κατηγορησάντων, εἰπὼν ὅτι τῇ σήμερον ἡμέρᾳ Καρχηδονίους καὶ Ἀννίβαν ἐνίκησεν, αὐτὸς μὲν ἔφη στεφανωσάμενος ἀναβαίνειν εἰς τὸ Καπετώλιον θύσων, τὸν δὲ βουλόμενον τὴν ψῆφον ἐκέλευσε φέρειν περὶ αὐτοῦ· | καὶ ταῦτ' εἰπὼν ἀνέβαινεν, ὃ δὲ δῆμος ἐπηκολούθησε τοὺς κατηγοροὺς ἀπολιπὼν λέγοντας.⁵⁴

When Petillius and Quintus brought before the people many accusations against him, he remarked that on this very day he had conquered the Carthaginians and Hannibal, and he said that he himself, with a garland on, was on his way up to the Capitol to offer sacrifice, and he bade anyone who so wished to give in his vote about him. With these words he went his way, and the people followed after, leaving behind his accusers still speaking.

This is not the kind of retort we find in Cicero. While we don't know what the accusations were and thus cannot be certain whether his response is denial or evasion – though it's a reasonable assumption to think it was regarding Hannibal and thus a denial. Scipio doesn't employ any humor or attempt to turn the criticism back on the accusers. His response isn't lighthearted but rather an assertion of his worthiness as a general and citizen. His response is to suggest that the accusations against him are petty and that everyone agrees with him.

The majority of Roman sayings prior to Cicero are either challenges to someone's character or assertions about one's own character; they are not responses to accusations

⁵⁴ 196F-197A. Cf. *Mor.* 540F; *Plut. Cat. Mai.* 15, *Polyb.* 23.14, *Livy* 38.50-51, *Gell.* 4.18.

that call into question character.⁵⁵ One exception is a retort of the younger Scipio. When a rival for the censorship claimed that Scipio only knew the names of the people he claimed to know, he responded “You are right, for I’ve not tried to know many but to be unknown by no one,” ἀληθῆ λέγεις’ εἶπεν· ‘ἐμοὶ γὰρ οὐκ εἰδέναι πολλοὺς ἀλλ’ ὑπὸ μηδενὸς ἀγνοεῖσθαι μεμέληκεν.⁵⁶ This is the classic Ciceronian script, greatly approved by Quintilian: an apparent admission but in fact a misinterpretation of the accusation that suggests some fault on the accuser’s part. In this case, the accusation is that Scipio isn’t really a friend of those whom he claims as supporters. However, the response, that he had tried not to be unknown, assumes that the accusation was that he was too illustrious. The retort is akin to saying “I can’t help it if I’m famous” and is successful for the very reasons discussed in chapters three and four: it avoids denial – which makes one look guilty – and it shifts the ground to one upon which its utterer has an advantage, in this case Scipio’s fame. It is noteworthy that this retort of Scipio’s took place within the context of a competition for office. Competition creates a set of social rules that can be manipulated through humor. Without competition, humor is no less abundant but it is rarely used to challenge another’s authority.

It is not until Cicero that we begin to see Plutarch citing an increasing number of jests made in retort. His fourth through sixth sayings of Cicero are all responses to criticism:

3.) Οὐέρρου δὲ υἱὸν ἔχοντος οὐκ εὖ κεχηρμένον ἐφ’ ὥρᾳ τῷ σώματι, τὸν δὲ Κικέρωνα λοιδοροῦντος εἰς μαλακίαν καὶ κίναιδον ἀποκαλοῦντος, ‘ἀγνοεῖς’ εἶπεν ‘ὅτι προσήκει τοῖς τέκνοις ἐντὸς θυρῶν λοιδορεῖσθαι’.

⁵⁵ Wortley (2011: 223-239) also notes that in the *Apophthegmata* Plutarch has an overwhelming interest in stories of relaxation, hospitality, and entertainment. Perhaps it is not surprising that Plutarch would be less interested in political or personal barbs given that the rest of the Plutarch corpus is nearly devoid of it.

⁵⁶ *Mor.* 200D.

When the son of Verres who had been far from wholesome as a boy, [publically] chastised Cicero for weakness and called him a catamite, Cicero said “don’t you know that it is fitting for children to be scolded behind closed doors?”

4.) Μετέλλου δὲ Νέπωτος εἰπόντος πρὸς αὐτὸν ὅτι ᾽πλείονας μαρτυρῶν ἀπέκτονας ἢ συνηγορῶν σέσωκας ᾽καὶ γὰρ ἔστιν ᾽φη ᾽πλείον ἐμοὶ πίστεως ἢ λογιότητος’.

When Metellos Nepos said that he had killed more men in his testimony than saved by his advocacy, Cicero said “true, for I have more credibility than eloquence.”

5.) Ἐρωτῶντος δὲ τοῦ Μετέλλου τίς αὐτοῦ πατήρ ἐστι, ταύτην ᾽φη ᾽τὴν ἀπόκρισιν χαλεπωτέραν σοὶ ἢ μήτηρ πεποίηκεν. ᾽ῆν γὰρ ἡ τοῦ Μετέλλου ἀκόλαστος.

When Metellus was asking him who his father was, Cicero said, “your mother has made that answer difficult [for you].” For his mother was not blameless.

Although these are the only humorous retorts out of twenty-one sayings reported by Plutarch, this is more than 200 percent greater in frequency than any other individual quoted – the Scipio retort was out of twenty-three total of his sayings. Despite Caesar’s quip about Semiramis, Plutarch reports no riposte of his, nor does he for Augustus. The lack of argument-based humor in the empire is something that Brian Krostenko has remarked upon.⁵⁷

Outside the sayings of the Romans but elsewhere in Plutarch’s *Apophthegmata*, we find the same lack of character-based humor. The only exception is a saying attributed to Alcibiades. Plutarch claims, as he does in his life of Alcibiades,⁵⁸ that when as a young man he was pinned down in a wrestling hold Alcibiades bit his competitor in the arm. Upon escaping the boy told him he bit like women and Alcibiades said “not

⁵⁷ Krostkenko 2001: 296-303.

⁵⁸ Plut. *Alc.* 2.2.

really, more like a lion.”⁵⁹ First of all, what sets this retort apart from the rest of Greek sayings listed by Plutarch is that it is in response to a moral condemnation. In all of the other examples we see, outside the Roman ones, there is no response. Those sayings that are condemning in nature are spoken by individuals to whom one couldn’t respond – kings, military commanders, and despots. It would be dangerous and self-damaging to challenge such individuals. The fact that we have two peers arguing over a much desired cultural trait, physical strength, makes this situation stand out from the contexts of all the other sayings in Plutarch. And while it lacks the language of an admission – it says οὐ μὲν οὖν not just οὖν – it comes close in that Alcibiades compares himself to something so outrageous as to be unbelievable. If his wrestling companion thought Alcibiades bites like a woman, the logical response would for him to say he bites like a man. In such a scenario we could envision a fight, verbal or physical, to follow. However, to say that he bites like a lion could not have been met with anything other than laughter. It’s hard to imagine his fellow wrestler pressing the issue or saying anything in response other than “keep telling yourself that.” As such, Alcibiades’ response does what a lot of Ciceronian and Quintilianic examples that we have been discussing do: it shuts down the debate. By taking it to the level of the absurd Alcibiades disarms a possible confrontation.

5.7 Concluding Remarks on Roman Verbal Competitions

Nearly all of our evidence for the strategies we have been discussing comes from the first century BCE. The retorts of Romans from earlier times that have been handed down to us are decidedly different than they are. While Cicero and Catullus were skilled

⁵⁹ 86D1-3: Ἀλκιβιάδης ἔτι παῖς ὄν ἐλήφθη λαβὴν ἐν παλαιίστρα· καὶ μὴ δυνάμενος διαφυγεῖν ἔδακε τὴν χεῖρα τοῦ καταπαλαίουτος· εἰπόντος δ’ ἐκείνου ‘δάκνεις ὡς αἱ γυναῖκες’, ‘οὐ μὲν οὖν’ εἶπεν ‘ἀλλ’ ὡς οἱ λέοντες.’.

verbal competitors who occasionally made admissions or claims to behavior outside normally deemed acceptable, judging by the *Apophthegmata*, the early Cornelii, Aemilii, and Fabii seem to have responded to criticism by asserting their adherence to acceptable behavior. What's more, the retorts of Cicero and Catullus often are concerned with style. Piso insults Cicero's hubris for writing poetry to himself and Cicero responds with stylistic criticism of Piso's argument. The girlfriend of Varus challenges Catullus on his possession of slaves and Catullus responds by suggesting that the girl was acting in a manner that befitted a catamite and calling her annoying. In contrast, when the elder Scipio is accused, he reminds the audience that he had conquered the Carthaginians and Hannibal. While it is true that Cicero often reminded juries and his fellow senators of his past service to the state, he rarely stopped there. Why did the elder Scipio? While there is absolutely no reason to assume that earlier Romans were less oratorically gifted, there is reason to assume that aristocratic competition was less intense at his time and earlier. The Marian reforms in 107, which allowed a wider range of citizens to enlist, caused the army to swell and thereby gave more power to generals with *imperium* than had previously been the case, in addition to solidifying loyalty among the troops. As a result, those who succeeded in their military careers gained more clients and became more powerful. The stakes were raised and the attraction of political office became more intense. It seems a safe assumption that the more competitive an environment was, the more invective one would find therein. Moreover, as the amount of invective rises, so too would the diversity in responses to that invective. What's more, the population of Italy alone more than doubled over the last two centuries of the Republic.⁶⁰ This dissertation has argued that it is the attitude of audiences, and their tendency to be

⁶⁰ Storey 1997: 996-997.

influenced by humor, that determines verbal competitions. The audiences of judicial and senatorial debate in the mid first century were undoubtedly more diverse than they were one hundred years earlier. Such increased diversity would no doubt create a more permissive environment for new and increasingly sophisticated responses to denigration.

Conclusion

I have tried to demonstrate that in verbal contests, which exist in all societies but particularly in highly competitive ones, one tactic is prized and privileged above the rest: avoiding denial and responding to accusations with counteraccusations, ideally relating to something said in the original accusation. Essentially I am arguing that, in verbal contests, style surpasses content in strategic importance. However, it is worth noting that not all arguments are verbal contests. We define verbal argument as a verbal competition between two or more participants with at least one audience member witnessing, and where the stakes are significant. Many arguments are not of great significance for the participants. Academic arguments, for example, are rarely zero-sum games. While an academic argument successfully made may result in greater influence and increased financial support, it is rarely at the expense of someone else. Likewise, an argument over the best restaurant in a particular region is unlikely to affect social standings. It could have this effect if the two persons arguing were restaurateurs, critics, or individuals who defined themselves by their culinary tastes. But, for most, such an argument has little effect upon face. If there is an appeal to an audience and a winner is recognized, the benefits in such situations are slight, as is the harm to the recognized loser. Countless additional examples of relatively inconsequential arguments exist but we need not list

them. We only need state that we are concerned with arguments that involve great potential losses and gains. Criminal cases and competitions over face where there is a clear winner and a clear loser are perfect examples. And unlike regular arguments, it is worth listing other verbal contests that carry high social stakes.

After judicial cases, the verbal contest with the greatest stakes would likely concern political power. Thus political debates, responses to attack ads, or simple interaction in the case of non-democratic societies would all fall into that category.⁶¹ After contests over political power we might place competition between firms for a lucrative contract. In exchanges between the two competing firms and the deciding entity there exists great potential for not only financial loss but face loss as well.⁶² After political and financial power, the only remaining place where power may be negotiated is reputation. Verbal contests over reputation could take place in any number of contexts but one of the most common in the West would have to be in the arts. Thus a rap, singing, dancing, or modeling contest could, if won, ensure or hinder a future career.⁶³ However, given that rap is the only format where accusations and counter accusations are exchanged between participants, it is the only genre where truly verbal contests could exist with language similar to Cicero or Catullus. Consider the “rap battle” in the film 8

⁶¹ Regarding non-democratic societies, or more specifically totalitarian societies, it is difficult to predict where verbal contests should take place. It might be in party meetings, social situations, or professional interaction. This has been discussed by Syme (1939: 505) in the Roman world. See also Roller (2011: 202-219) who convincingly argues that as the opportunity to make a name for oneself through oration in the *quaestiones* diminished, aristocrats turned to recitation. Aristocratic competition and promotion in authoritarian regimes has also been discussed in the modern world where the same forces push competition to take place in increasingly private contexts. Such systems of government are examples of what Weber called “charismatic bureaucracies.” See Constan 1958: 400-401.

⁶² For instance, if one firm’s performance were so poor it would likely hurt future opportunities.

⁶³ It is likely that the popularity of such competitions in reality television is due to audience recognition of their stakes. The audience does not watch such competitions for the enjoyment of the performances, though this may certainly occur. It watches to observe the social drama unfold. For more on the dynamics of competition in reality television, see Barton 2007.

Mile where the white rapper Eminem is mocked by his opponent on account of background. His response is familiar to us by now:

This guy ain't no mother-fuckin MC
I know everything he's got to say against me
I am white, I am a fuckin bum, I do live in a trailer with my mom

My boy Future is an Uncle Tom
I do got a dumb friend named cheddar bob who shoots
Himself in the leg with his own gun
I did get jumped by all 6 of you chumps
And Wink did fuck my girl
I'm still standin here screamin "FUCK THE FREE WORLD!"
And never try and judge me dude
You don't know what the fuck i've been through

But I know something about you
You went to CRANBROOK, that's a private school
Whats the matter dawg, you embarrassed?
This guy's a gangsta?
His real name's Clarence

And Clarence lives at home with both parents
And Clarence's parents have a real good marriage
This guy dont wanna battle, he's shook
Cause ain't no such thing as halfway crooks!
He's scared to death
He's scared to look in his fuckin yearbook, fuck CRANBROOK

Fuck a beat I go accapella
Fuck a papa doc, fuck a clock, fuck a trailer, fuck everybody
Fuck y'all if you doubt me
I'm a piece of fuckin white trash I say it proudly
Fuck this battle I don't wanna win, I'm outtie.⁶⁴

We see here a very Ciceronian and Catullan response to insult. Rather than challenge the notion that he is “white trash,” the rapper accuses his opponent of something related that he thinks the crowd will consider even worse: inauthenticity. Eminem not only

⁶⁴ Eminem. Shady Records/Interscope. 2002. The similarities between the competitiveness of ancient poets and contemporary rappers have been noticed by others. See Eideneier 1999.

admits to being a “bum...in a trailer with my mom,” he revels in it by stating that anyone who doubts him can “fuck a papa doc, fuck a clock, fuck a trailer, fuck everybody.”

What does Eminem have to do with Cicero and Catullus, aside from the occasional similar response to abuse? What are the similarities between the verbal contests of boys in 1960s Harlem, and 1970s Honduras and Turkey, as discussed in chapter 2 above? The only discernable commonality is that they each stood slightly in opposition to what we consider typical Roman values. Cicero eschewed the military, citing his oratory and statesmanship rather than citing martial triumphs as justification for political prominence; the persona of Catullus also rejected the military, pursuing instead literary delights with his “trivial soft poetry,” *versiculi molliculi*.⁶⁵ Eminem challenged the view that rap and hip-hop were exclusively black forms of expression. The Black youths of 1960s Harlem and the Hondurans of the 1970s were denied opportunities due to a variety of reasons ranging from racism to poverty and drugs, yet found a way to stake a claim towards recognition through verbal dexterity.⁶⁶ Likewise, Turkish boys’ “extremely low status in the men’s society is essentially equivalent or analogous to the low status of women.”⁶⁷

There are two more commonalities among the cultures studied by sociolinguists that have the verbal contests we have been discussing: they are all cultures that esteem masculinity.⁶⁸ What’s more, all of the cultures studied were in the midst of volatile

⁶⁵ Cat. 16.

⁶⁶ Not enough is known about the participants in study of Turkish boys. We are told by the study’s authors that they were eight to twelve years old and from all over the country, including Istanbul, Ankara, Adana, Erzurum, and Izmir, but their socioeconomic status and other pertinent demographic data are omitted.

⁶⁷ Dundes, Leach and Özkök 1970: 345.

⁶⁸ For Harlem, see Doss 1998 who argues that the Black Panthers tried to appeal to African American men’s conceptions of themselves as potent and physically resisting an oppressive government. Regarding Honduras, machismo has long been studied in Latin America but it has been investigated in connection with gang violence and the illegal drug trade by Brenneman 2009. As for Turkey, Dundes, Leach and

change. Labov started his fieldwork in Harlem in 1965, the same year as Johnson's Voting Rights Act and a time of rent strikes and race riots.⁶⁹ In fact, in 1964 Harlem saw a riot that injured 118 people and went on for six nights in a row. The New York Police Department took the riot so seriously that it called up "five hundred policemen, including the tactical patrol force, of which all members were trained in judo, under age thirty, and over six feet tall."⁷⁰ Honduras in 1977 was similarly tumultuous. Eight years earlier El Salvador had invaded in what became known as the "Football War." In 1972 the elected President was overthrown in a coup by Osvaldo Lopez Arellano, the second military coup in the previous fourteen years. Less than three years later, in 1975, Alberto Melgar Castro overthrew Arellano. Although Castro's junta was largely progressive in its ideology, its agricultural reforms broke down completely and his administration was rocked by drug and bribery scandals.⁷¹ In the early 1970s, Turkey was also going through a turbulent period. The struggle over Cyprus was about to boil over, culminating in the 1974 Turkish invasion. Meanwhile, since the end of World War II, millions of peasants had left the country to find little work in the cities and settled in *gecekondou*,⁷² temporary settlements similar to the *favelas* of Brazil.

Let us return to the anecdote involving Julius Caesar with which we began this study. If we are to believe Plutarch, Caesar was accustomed to dealing with insults about

Özkök (1970: 344) argue that hyper-masculinity is one of the primary motivations behind the game. They say "Turkish psychology or personality concerns an apparent paradox. On the one hand, Turkish world view is said to be fatalistic, so that individuals are almost totally dependent upon the wishes and whims of a higher power, for example, the Will of Allah and the inevitability of Kismet (fate). On the other hand, there appears to be a very positive attitude toward aggression. Courage and strength are highly valued male ideals. One of the most popular national sports is wrestling, and military deeds are greatly esteemed. Many Turkish boys look forward with great anticipation to their military service." It is also worth considering the military history of the Turkish people whose conquests sweeping down from the steppes of Central Asia merit deeming them aggressive.

⁶⁹ Labov 1972: xiv.

⁷⁰ *Encyclopedia of American Race Riots* s.v. New York City Riot of 1964: p. 479.

⁷¹ See Pozas & Del Cid 1980: 645.

⁷² See Avci 2012.

his manhood. His loose belt, scrupulous grooming, and tendency to scratch his head with one finger all opened him up to criticism, chiefly that of softness (*mollitia*).⁷³ As such, there is little Caesar could have said to deny any accusation that he was effeminate. There was simply too much evidence that could be thrown at him to the contrary. As a man, his only viable options upon having had his manhood challenged were to demonstrate his manhood by deed (literally jump on the head of someone, for example) or to admit to the accusation in some manner. However, as a politician, only the latter option was feasible lest he incur greater resistance. Furthermore, apparent admission is a more effective way to maintain face than attempting to prove the opposite of an accusation. As we have attempted to demonstrate, an admission shuts down debate. And, coupled with a retort that puts a twist on the original accusation, such as noting that Semiramis and Amazons once ruled Asia, it completely disarms the accuser. In Quintilian, this tactic is referred to as wit (*urbanitas* or *dicacitas*). The fact that such a tactic works says much less about the person who employs it than it does about the audience who hears it. It suggests that that audience has either a relativistic outlook, in which the simple binaries of man versus woman or good versus evil break down, or an unusually high regard for wit. Wit and humor not only dispel emotions,⁷⁴ they inspire affection and can supplant reasoned argument when employed at the right time.

⁷³ For his grooming habits and dress, see Plut. *Caes.* 45.2. For more on the meaning of scratching one's head with one finger, see Lucilius 882-4; Sen. *Ep.* 52.12; Juv. 9.133.

⁷⁴ The classic example being from the Homeric Hymn to Demeter. After Persephone has been taken to Hades, Iambe cheers up the grieving Demeter with a vulgar joke. *Hymn* 6.202-205: πρίν γ' ὅτε δὴ χλεῦης μιν Ἰάμβη κέδν' εἰδυῖα / πολλὰ παρασκώπτουσ' ἐτρέψατο πότνιαν ἀγνήν, / μειδῆσαι γελάσαι τε καὶ ὕλαον σχεῖν θυμόν: / ἦ δὴ οἱ καὶ ἔπειτα μεθύστερον εὖαδεν ὀργαῖς.

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Curriculum Vitae
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Academic Positions

Adjunct Instructor of Classics, University of Oregon, 2002-2003.
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Teaching Experience

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Instructor. "Elementary Greek." 2011-2012. Johns Hopkins University.
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Fellowships and Awards

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Hodson Fellow. Spring 2007. Johns Hopkins University.
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2004-2005.
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Pascal Prize for Excellence in Latin. University of Oregon Department of Classics.
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Talks Given

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Professional Experience

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Lecture Organizer. James Poultney Memorial Lecture, Johns Hopkins University. Spring 2005.