

Roller, Matthew B. 2011. "To whom am I speaking? The changing venues of competitive eloquence in the early empire." In W. Blösel and K.-J. Hölkenskap, eds., *Von der militia equestris zur militia urbana: Prominenzrollen und Karrierefelder im antiken Rom* (Stuttgart: Franz Steiner Verlag), 197–221.

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Von der *militia equestris* zur *militia urbana*

Prominenzrollen und Karrierefelder
im antiken Rom

Beiträge einer internationalen Tagung
vom 16. bis 18. Mai 2008 an der Universität zu Köln



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TO WHOM AM I SPEAKING? THE CHANGING VENUES OF COMPETITIVE ELOQUENCE IN THE EARLY EMPIRE

Earlier papers in this volume consider the fields of aristocratic endeavor that, in the middle to late Republic, established themselves as supplements or alternatives to military activity, long the central and most prestigious field. Here I discuss the continuing development of such fields from Augustus to Trajan. Of course, an entire volume (and more) could be devoted to *Der Wandel der Karrierefelder in der frühen Kaiserzeit*; here I can discuss only a few developments. I focus upon one primary field of aristocratic endeavor, namely oratory – or, more broadly, competitive eloquence. The arenas of competitive eloquence underwent significant change from the late Republic to early Empire, thanks to their connection with seeking and holding office, which were themselves transformed in the Imperial system. The character of the senatorial career and the image and practice of the orator were significantly altered, as certain competitive opportunities were constrained and others were created. Modern scholars often discuss these developments in terms of “decline”, appropriating a trope widespread in ancient texts. But other perspectives are available: how early Imperial aristocrats presented the condition of contemporary oratory depended upon their degree of investment in the forms of eloquence that suffered constraint, vs. those that flourished and proliferated. I contend that contemporary aristocrats’ engagement with new forms of eloquence was an attempt to diversify their opportunities to compete with one another, and to expand the range of audience types (especially large, public ones) who might observe and evaluate their performances. These developments, moreover, were continuations of processes under way since the middle Republic, though the directions they took in the early Empire were implicated with the distinctive social and political changes of this period.

1. Oratory and office holding in the late Republic

By the late Republic, oratory had become the aristocrat’s chief route, outside the military sphere, to enhanced status, prestige, and power. These advantages accrued to the orator who could sway audiences to accept his views on important matters and act accordingly. The most intense competition occurred in three particular arenas. In the senate, the orator sought to sway an audience of his peers during debate on matters of state. In public meetings (*contiones*), or in formal assemblies of the people (*comitia*) convened to vote on legislation or elect new magistrates, the aristocratic orator addressed an audience of primarily lower-status persons (notionally the *populus* as a whole) and sought their support for his

legislative or electoral agenda.¹ And in the public courts (*iudicia publica*), over which praetors presided – especially the *quaestiones perpetuae* – criminal cases involving high-status persons, and impacting the *res publica* as such, were tried before large senatorial-equestrian juries. Here, the momentous issues and oratorical display might attract spectators of every social class (the *corona*) to watch, listen, express opinions, and evaluate the advocates as well as litigants.² The civil courts, where lesser disputes between individuals were adjudicated, had lower visibility and prestige as arenas for aristocratic competition and display. The litigants were typically of lower social status than in the largely aristocratic world of the public courts; the matters at issue tended to be narrow, impacting only the litigants and their families, and perhaps allowing less scope for oratorical display; many such trials (the *centumviri* excepted) were conducted before a single judge or small panel rather than large jury; and such trials had no fixed location. These features probably reduced their visibility and appeal to audiences and aristocratic advocates alike.³

The Republican aristocrat's access to the most prestigious, competitive oratorical arenas was interwoven with his office-holding. An ambitious, gifted young orator stereotypically made his name by cocking a snook at established aristocrats. He might achieve this by prosecuting a high-status defendant, as Cicero did with Verres in the *quaestio de repetundis*; or by defending a purported victim of the powerful, as Cicero also did with Sextus Roscius, who was

- 1 On late Republican *contiones* and their rhetoric, Morstein-Marx 2004, Pina Polo 1996; on Republican legislative assemblies, Sandberg 2001.
- 2 Riggsby 1999, 151–171 discusses the function and conceptualization of late Republican *iudicia publica*. Brennan 2000, 416–424 discusses the Sullan and post-Sullan *quaestiones perpetuae*. Cic. Brut. 289f. describes the *corona*'s importance for the late Republican orator.
- 3 On the function and conceptualization of late Republican civil courts, see Frier 1985; for the categories in play here (*iudicium privatum*, *iudicium publicum*, *ius civile*, “criminal courts,” “civil courts,” which are not neatly distinguished), see Kaser/Hackl 1996, 1–3, 48f., 163–165. Lower visibility and prestige notwithstanding, civil cases must always have far outnumbered public ones. Serving as an advocate for relatives, friends, and close associates was an (almost) inescapable duty of aristocratic patrons, one deeply imbedded in the exchange relations that sustained the social order (David 1992, 171–211). Yet only four civil-trial speeches of Cicero survive (Quinct., Q. Rosc., Tull., Caecin.); the last from 69 B.C.E. One later private case is attested, the defense of Q. Mucius Orestinus on a charge of *furtum* in 65 or 64 (Alexander 1990 no. 213 = Crawford 1984 no. 16). Additional private cases must lurk among Cicero's numerous other attested cases where charge and court are unknown. We hear little about these cases, presumably, because trials in the *iudicia publica* and deliberative speeches before the people and senate were deemed more interesting and important. The same bias is visible more broadly in the late Republic: of 391 trials catalogued by Alexander 1990, only ca. 70 are probable civil cases (though for many other trials, the charges/procedures are uncertain). Conversely, just six types of trial – *repetundae*, *ambitus*, *vis*, homicide (*sicariis/veneficiis*, *parricidium*), *maiestas*, and *peculatus*, all handled by *quaestiones perpetuae* – make up 180 cases, nearly half the total. This bias, whereby aristocratic authors notice *iudicia publica* over civil cases disproportionately to likely actual frequency, results from these authors' greater interest in cases concerning their own social class and the activities of government.

prosecuted through Sulla's agents.⁴ If successful, the young orator would acquire friends and clients whom he might eventually mobilize – along with his own higher-ranking mentors – for support in standing for office; through intensive contact with voters he would further develop his social network. If elected quaestor, he would enter the Senate and witness senatorial debate. Provided he subsequently gained election to higher office, he would advance in the speaking order to become an influential voice. The avalanche of *ambitus* legislation and prosecutions in the late Republic attests to the ferocity of electoral competition, especially for the highest offices. Moreover, by the tenure of one or another magistracy he would be empowered to convene and address popular meetings and assemblies (*contiones* and *comitia*) where he would persuade, move legislation, and direct subsequent elections. As an aedile, he might further strengthen his relationship with the urban *populus* by sponsoring games; putting on a good show, at considerable personal expense, might enhance his chances in subsequent elections. And he would continue to appear as an advocate for friends and clients in the lawcourts, in cases public or civil. In each of these speaking venues, he would compete with other aristocrats: opposing them in the law courts, urging differing courses of action in the senate, *contiones*, and *comitia*; canvassing for himself or friends, against other candidates, during elections. Here, then, is a sketch of competitive aristocratic eloquence, its venues, and its key players during the late Republic.

2. Office holding and aristocratic competition in the early Empire

This pattern underwent significant change in the early Empire. I focus first on new modes of competition for public office. The transfer of elections into the senate upon Tiberius' accession severed senatorial aristocrats' direct, personal connection to non-elite voters, eliminating competition in cultivating and seeking honors (i.e., office) from the *populus*. Meanwhile, to replace popular elections, the system of imperial commendation was developing, whereby many officeholders were designated by the emperor in advance of the election, and entered their magistracies without canvassing at all. Those lacking commendation still canvassed, but only within the senate, whose vote was then (*de facto* or *de iure*) final. The popular voting assemblies apparently continued to meet, but merely to ratify the magistrates selected by senate and emperor.⁵ This arrangement directed ambitious aristocrats' competitive impulses toward seeking imperial commendation and/or the approval of their senatorial peers.⁶ Young aristocrats aspiring to a senatorial career needed first the emperor's concession of the *latus*

4 Cic. off. 2,51; Brut. 319.

5 Presumably magistrates still convened the electoral assemblies, but urged only predetermined outcomes. On the transfer of elections, Tac. ann. 1,14,4–15,1; Vell. 2,124,3; 2,126,2 (with Woodman 1977 *ad locc.*), Cass. Dio 58,20. On imperial *commendatio*, and for what follows on its relationship to the senatorial career, see Millar 1977, 300–313; Talbert 1984, 11–24.

6 For what follows, see Talbert 1984, 11–24; Hopkins 1983, 149–166.

clavus, and then his grant of a post in the vigintivirate. Of course the emperor could not keep track of all ambitious young men by himself, so these concessions were typically “brokered” by others, including senior senators who were well known to the emperor and served as mentors or patrons to the young men. Entry to the senate still came with the quaestorship. For this office some candidates received imperial commendation (often via “brokerage”), while others were granted permission to stand for election by canvassing within the senate. The same pattern held for tribunates, aedileships, and especially praetorships: for this office competition could be fierce, at least in the Julio-Claudian period, as there were far fewer posts than for junior magistracies. Imperial commendation alone could secure appointment to the posts open to ex-praetors, to the consulship, and to the powerful and important proconsular posts.

The competitive edge accompanying the quest for commendation or election is patent in early imperial texts. Velleius Paterculus, who with his brother – both new men – received imperial commendation for praetorships in 15 C.E., proudly writes (2,124,2) that they were designated “directly after men with consular ancestries and those holding priesthoods” (*proxime a nobilissimis ac sacerdotalibus viris*), and that they were distinguished by being the last praetors commended by Augustus and the first by Tiberius. Thus Velleius claims the favor of both emperors, while indicating exactly where this favor places them in the senatorial hierarchy: *after* the nobles and priests but *before* everyone else.⁷ Under Nero, childless senators allegedly sought an edge over other candidates by making fraudulent adoptions just before elections, then claiming the precedence granted to fathers under the Lex Papia Poppaea (Tac. ann. 15,19; cf. 2,51). More brutally, a senator could bring *maiestas* charges against another senator or equestrian, in order to eliminate a rival and/or ingratiate himself by posing as the emperor’s protector. Tacitus reports that, under Tiberius, four senators of praetorian rank collaborated to entice a distinguished equestrian into making treasonous statements (ann. 4,68–70). This they did, says Tacitus, “in their lust for the consulship” (*cupidine consulatus*) – i.e., expecting a commendation in return for exposing the “conspirator”.⁸

This competition for office by rising senators also enveloped the senior senators who supported them. The younger men might scramble to secure appropriate support (*suffragatio*) among senior senators, as cases alleging bribery and payments to influential senators suggest (Talbert 1984, 54). But once the *suffragatio* relations had been established, the older men were inexorably drawn into the competition. For, as a letter of Pliny illustrates (epist. 2,9), such men had staked their own credibility and influence as broker-patrons on their protégés’ success. Pliny had previously obtained the emperor’s commendation to the

7 On the honor of being *candidatus Caesaris*, cf. the epigraphic texts cited by Millar 1977, 305.

8 Commendation, adlection, and *ornamenta* of a higher rank are well-attested rewards from emperors to those who exposed conspiracies (real or imagined): Tac. ann. 2,32,1; 3,19,1; Rutledge 2001, 46–49. On prosecution as a competitive arena, see below. Commendation for otherwise pleasing the emperor: Suet. Tib. 42,2; Cal. 18,2; Claud. 40,2; Plin. epist. 8,24,8f.

quaestorship for a protégé, Sextus Erucius. Now Erucius seeks the tribunate: this time Pliny apparently obtained no commendation, but merely permission for Erucius to stand, requiring him to canvass in the senate (§2). Pliny regards the senate's upcoming vote as a referendum on himself no less than Erucius: for if the senate is not seen to hold Erucius in the same high regard Pliny does, then Pliny will appear to have misled the emperor about Erucius on the earlier occasion (§3). Thus Pliny risks losing credibility with the emperor and his own peers, and seeing his future support for candidates and requests for commendations taken less seriously. Pliny's own standing as an influential senior senator therefore hangs in the balance, right along with Erucius' hopes to become tribune: "I am wracked worry, and anxiety I never felt for myself I now endure for my *alter ego*. Moreover it is *my* credibility, *my* reputation, *my* standing, that is at risk" (§1). Because their fates are thus linked, Pliny himself must canvass vigorously for Erucius – approaching his friends, begging, attending *salutationes*, and the like: "I put to the test, with my requests, the degree of my authority and capacity to call in favors." Indeed, this very letter, addressed to Pliny's senatorial colleague Domitius Apollinaris, presents itself as an intervention in this gift economy. Pliny asks Apollinaris to join him in canvassing for Erucius: "Please consider it worthwhile to help me shoulder this burden; I'll return the favor if you ask."⁹ Elsewhere Pliny reports allegations of misconduct during senatorial canvassing, resulting in new rules and reforms to curb the influence of gifts and money. Trajan's introduction of a secret ballot for senatorial elections was such a measure; also, Trajan apparently resurrected the *lex Iulia de ambitu*.¹⁰ The view that electoral corruption was pervasive and required Republican-style measures against *ambitus* clearly evinces the ferocity of electoral competition in Pliny's day, even if exercised only within the senate and only among candidates lacking commendation.

9 More on the electoral efforts of candidates and their *suffragatores* at Plin. epist. 1,14,7; 2,1,8; 3,8; 3,20,3f.; 4,17,6–9; 6,6; 6,9; 8,23,2; 8,23,5f.; Tac. ann. 2,51; Mart. epigr. 12,29(26); Epikt. diss. 4,10,20f. Scholarly discussion of *suffragatio* at Millar 1977, 304–307, Saller 1982, 42–45 (and 74–78 on "broker-patronage"), and Flaig 1992, 104–107; see esp. Flaig 110–115 on the competition among the broker-patrons for influence and credibility with senate and emperor. Pliny, indeed, presents the competition among high-ranking *suffragatores* (people in his own position) as outshining the competition among the candidates proper: cf. epist. 3,20,4; 4,25,1; 6,6,9; paneg. 71.

10 Misconduct, expenditures, *ambitus* law: Plin. epist. 6,19,1–4, with Talbert 1984, 54–56; 342f. Secret ballot as remedy: epist. 3,20,7 (cf. 3,20,1–4 on the tumult of open voting), with Flaig 1992, 113. Plin. paneg. 69–71 describes how an election in the senate unfolds, with Trajan present.

3. Oratory and aristocratic competition in the early Empire

I turn next to oratorical arenas, beginning with popular meetings and assemblies. Compared with their late Republican predecessors, early Imperial officeholders found diminished scope for autonomous action in moving, advocating, and opposing legislation in *contiones* and *comitia*. Ordinary *tribuni plebis* progressively lost their legislative initiative in the 40s and 30s B.C.E.: the last attested tribunician law named for a non-emperor is a *lex Pacuvia* of 27 B.C.E. Augustus and his successors still legislated through this channel, however, as certain *leges Iuliae* were technically plebiscites moved by Augustus in virtue of his tribunician power.¹¹ Perhaps Augustus summoned informational/persuasive *contiones*, and then convened the tribal assembly for voting, as tribunes had long done – though without opponents addressing rival *contiones* or expressing opposition in Augustus' own, one imagines. Ordinary *tribuni plebis*, however, apparently no longer engaged in high-stakes, high-drama contional oratory while urging or opposing legislation. Regarding consuls, a few *leges* bearing consular (but not imperial) names are reported from the early empire; these laws were presumably brought before the tribal or centuriate assembly in the traditional way. But since all consuls now received commendation to enter office, the social dynamics of reciprocity would seem to rule out their proposing legislation autonomously – let alone in opposition to the emperor's wishes – and urging its acceptance in public meetings and voting assemblies.¹² This decline in comitial legislation did not, of course, mean the end of legislation as such. In its place came ever larger numbers of legally binding *senatus consulta*, which were debated exclusively within the senate, and some of which ratified imperial proposals delivered to the senate in speeches (*orationes*).¹³ Thus the senate, always a key venue for competitive oratory in the Republic, became ever more so in the early empire, as it increasingly assumed the legislative functions of the popular assemblies. As with elections, then, so also with legislation: the transfer of most deliberation and decision making from *contiones* and *comitia* to senate and emperor reduced officeholders' direct access to the broader public, and surely restricted their autonomy in speech and action when they did address public gatherings. Nevertheless, *contiones* were still summoned and addressed by

- 11 Pacuvian and Iulian laws: Rotondi 1912, 441–447; Siber 1970; Sandberg 2001 ends his survey of tribunician legislation in 31 B.C.E. so does not include these laws. Later *leges* in the early empire named for emperors may also be plebiscites. Pliny and Tacitus depict (non-imperial) tribunician action in the early empire as consisting only of *auxilium* and *intercessio*; convening *contiones* or the tribal assembly and moving legislation do not come into consideration (e.g. Tac. ann. 1,77; 6,47; 13,28; 16,26; cf. Plin. epist. 1,23,1).
- 12 Tribunes and consuls as legislators after Sulla: Sandberg 2001, 105–110. Early imperial consular laws: Rotondi 1912, 453–468 (excluding all laws bearing emperors' names); Siber 1970; Sandberg 2001, 82–84.
- 13 Millar 1977, 341–343 and Talbert 1984, 431–435 discuss senatorial and imperial initiative in legislating; Talbert 438–443 catalogues *senatus consulta* and imperial *orationes* from Augustus to Trajan.

aristocratic officeholders (among others), and still played a role in communicating information about governmental action, however much the competitive stakes of conational speech were reduced.¹⁴

The early imperial senate also assumed important legal jurisdictions, becoming a key arena for forensic oratory. A few late Republican criminal courts (*quaestiones*) continued to function into the imperial age under a praetor's jurisdiction. In principle, these courts might still have provided an arena for aristocratic advocates to display their eloquence and compete before attractively large and distinguished audiences – large senatorial/equestrian jury panels, and potentially numerous onlookers (the *corona*). These courts probably convened in the *forum Romanum* until they were relocated to the *forum Augustum* ca. 2 B.C.E. – potentially offering a grand spectacle in either location.¹⁵ However, by the reign of Tiberius, jurisdiction over the highest profile cases, *repetundae* and *maiestas* – at any rate, those cases involving senatorial defendants (the emperor himself heard cases involving imperial appointees) – was transferred to the senate functioning as a court. Trials held inside the *curia* made senators not only into judges of the guilt or innocence of the accused, but also into the audience for the advocates' oratorical performances. But the *curia* was not open to public onlookers; hence the *corona*, that essential component of the late Republican orator's audience, was eliminated. *Ambitus*, another high-profile charge with a Republican *quaestio perpetua*, was largely eliminated with the end of contested comitial elections. The remaining *quaestiones* may have experienced competition from other tribunals: thus, while the *quaestio de adulteriis* apparently continued to function for several centuries, the emperor himself sometimes took jurisdiction over adultery cases; and the court of the *praefectus urbi*, with general jurisdiction over matters of public order, may have offered an alternative venue for certain charges (*vis*, *peculatus*, homicide, poisoning) that could equally have come before a *quaestio*.¹⁶ Perhaps the *corona* could still have gathered in the courts remaining

14 I know no study of imperial-era public meetings and assemblies, though the topic is rich (cf. Pina Polo 1996 and Morstein-Marx 2004 for the late Republic). My own superficial survey – a word-search for *contio* in imperial Latin texts; Greek texts not systematically examined – shows emperors as the primary speakers addressing both popular meetings and military assemblies, also called *contiones*. In some texts, however, regular magistrates still address popular assemblies in Rome itself: CIL 6,32323,26–27; Suet. Tib. 32; Claud. 22; Tac. ann. 5,4; 11,1; cf. Ios. ant. Iud. 19,158f. Also, generals other than emperors address *contiones* of soldiers they command: Tac. ann. 15,26; hist. 3,9; 3,32; 3,60; 4,57f. (for emperors' speeches to troops, see Campbell 1984, 69–88). Finally, provincial governors (senators and equestrians) must have routinely addressed the locals via *contiones*, though such activity is rarely described (but see Caes. civ. 2,18,3; CIL 3,392; P.Oxy. 2435 recto). No surprise, then, that early imperial aristocrats still regard the *contio* as a living oratorical venue: Sen. dial. 3,16,5; 4,17,1; 4,25,4; Quint. inst. 3,8,7–11; 6,1,16f.; 12,10,70; 12,11,1 (cf. Tac. dial. 41,1, suggesting reduced frequency and importance).

15 On these courts' locations, Bablitz 2007, 13–34.

16 Kunkel 1963 briefly discusses the fate of the *quaestiones perpetuae* under the early empire. On the jurisdiction of the senate functioning as a court, see Talbert 1984, 460–480 (esp. 463–466 on the obsolescence of the *maiestas* and *repetundae* standing courts).

under the praetor's jurisdiction, or in the prefect's court, to hear cases and watch advocates perform (see n. 44). But the migration of the most serious, high-profile cases into venues that excluded such audiences certainly altered the nature and stakes of the *iudicia publica* as competitive arenas for aristocratic advocates. They did not lose *all* unmediated contact with the people in forensic settings, any more than in contional and comitial ones. But as with elections and legislation, aristocrats' exposure to large public audiences – the sort that could confer praise, legitimacy, and rewards in return for virtuoso oratorical performances – was reduced.

With elections, debate on most matters of civic concern, and adjudication of the most important criminal charges now carried out within the senate, the focus of competitive aristocratic eloquence turned inward, away from public audiences and toward other members of the aristocratic group. The senate became the primary audience judging an orator's success or failure, conferring or withholding rewards and legitimacy for any given performance. The emperor was also part of this judging community: whether he was present at sessions of the senate, or absent but apprised of its doings, senators regarded themselves as performing under his gaze as well as one another's.

Some scholars assert that the imperial order trivialized senatorial debate. It is argued that Augustus stripped away the senate's traditional prerogatives in the weightiest matters – oversight of foreign policy, war and peace, and public finances – and took these matters into his own administration. On whatever matters remained, the emperor's own influence, and his power to reward and punish, assured that any view he expressed would prevail. In short, the argument goes, the imperial order sharply restricted the issues that the senate could take up, the openness of its debate, and its latitude in decision-making.¹⁷ Texts are easily marshalled to support this view. Pliny speaks of the fear that gripped the Senate under Domitian (who generally attended its sessions). It was impossible, he says, to debate serious matters openly, for saying what one actually believed was dangerous; safety required making or assenting to statements that one did not believe. And all statements were hedged with elaborate praises of the emperor.¹⁸ Tacitus paints a similar picture of senatorial debate under Domitian (Agr. 45,2), but not only then: he delights in noting and condemning adulation of all emperors. Indeed, when he expressly discusses competitive eloquence among senators, it is almost always a case of senators vying to produce the most abject flattery or propose the most outrageous honors.¹⁹

Yet such texts must be treated with caution. Whenever Pliny laments the emasculation of the Domitianic senate, the sequel contains a contrasting image of vigorous and free senatorial debate under Trajan, who (we are led to believe) has

17 On this argument, Talbert 1984, 163–174 (with further references); Dupont 1997, 44f.; Rutledge 2007, 117–120.

18 Plin. epist. 8,14,8f.; paneg. 54,3f.; 76,3f.; also Epikt. diss. 1,2,19–24; 4,1,139f.

19 Ann. 3,47; 3,57; 3,65; hist. 1,47 all explicitly allege competitive flattery by senators (similarly ann. 16,22; cf. 3.31). Q. Haterius' attempted flattery at ann. 3,57 backfires: cf. 3,59; 6,3.

restored all its ancient prerogatives and power. That Pliny is developing a rhetorically powerful but highly schematized contrast between “bad” and “good” *principes* should make us cautious of accepting the resulting representation of the senate’s condition under either imperial type – especially since Pliny’s purpose is, precisely, to praise (flatter?) Trajan by the comparison.²⁰ Tacitus, too, is interested in deliberative senatorial oratory: he provides considerable information for the reign of Tiberius (especially in *Annales* 1, 3, and 6), though less for Claudius and Nero, and very little for the long year 69 in the *Historiae*. Yet his explicit criteria for inclusion are “an opinion outstanding for virtue or strikingly disgraceful,” or, emphasizing the negative pole, “any decree of the senate that is novel in its flattery or utterly base in its grovelling.”²¹ The latter criterion may account for his attention to competitive flattery. Yet the positive pole of the first criterion may account for his attention to Thrasea Paetus and Helvidius Priscus. In these men’s words he seems to find the *honestae sententiae* that redound to their authors’ glory – for *gloria*, a positive reputation among contemporaries and posterity for outstanding performance in some ethical category, is an attribute competitively pursued, gained and preserved.²² Tacitus also allows that senators sometimes debated “as if the Republic still existed” (apparently meaning openly and vigorously); perhaps these instances too evince “outstanding virtue.”²³ Finally, when Tacitus graces a senator with a composed speech (especially when paired with an opposing speech), he presents this utterance as especially compelling, hence a competitive triumph.²⁴ So, without denying the undoubtedly great influence of an emperor’s expressed wishes, I find the “cowed and trivialized” thesis of early imperial senatorial debate overstated. Our texts offer many representations at odds with this thesis – representations suggesting vigorous, competitive oratory on substantive matters, not merely in flattery.²⁵

As a corollary to this thesis, some scholars contend that vigorous oratory moved into the forensic domain – both within the senate, with its important *repetundae* and *maiestas* jurisdictions, and in the traditional courts (see below).²⁶ Assuredly, the criminal court of the senate was a venue for heated oratorical competition among aristocratic advocates. Prosecuting the great and powerful remained, as for Cicero, a way of making one’s name – the venue for such

20 Compare the passages in n. 18 with their sequels: epist. 8,14,10; paneg. 54,5–7; 76,6–9. Would Tacitus condemn Pliny’s moves (especially in the *Panegyricus*) as outrageous novelties in flattery? If so, Tacitus is equally guilty: compare Agr. 45,2 with 44,5. Pliny’s double bind – that his outraged description of a malevolent, speech-constraining power dynamic is itself caught up in, indeed instantiates, the very dynamic it decries – is well discussed by Bartsch 1994, 148–187.

21 Tac. ann. 3,65 (Woodman/Martin 1996, 451–456 discuss this difficult passage); 14,64.

22 Thrasea: ann. 13,49; 14,48f.; 15,20–22; 16,22 alleges empire-wide interest in his doings. At 16,25f., much of the debate about his proper course of action turns on how best to preserve and augment his *gloria*. Helvidius: hist. 2,91; 4,4 (explicitly wins *gloria*); 4,10; 4,43.

23 E.g., ann. 1,77; 3,60; 13,28.

24 Noteworthy deliberative speeches by senators: ann. 2,33; 14,43–45; hist. 4,7f.

25 See n. 17.

26 Parks 1945, 24–42; Crook 1995, 180f.

prosecutions had merely moved from the *quaestiones perpetuae* to the senate. Tacitus particularly notes how young or obscure men rose to prominence via prosecution.²⁷ As in the Republic, the lack of a state prosecutor meant that laws could only be enforced when individuals pressed charges; the state's own mechanisms for self-regulation depended on people undertaking prosecutions. New in the early empire, however, was a profit motive: since a portion of the *bona damnatorum* now went to successful prosecutors, an ambitious new man with small financial resources could make not only his name, but a fortune with which to sustain the expense of a senatorial career. The word *delator* – a term of abuse widespread in Flavian and Trajanic (but not Julio-Claudian) literature – refers, as Steven Rutledge has shown, to a stereotype of the upstart senator who brings charges against his betters in hopes of financial gain and/or imperial favor. Lacking all concern for actual innocence or guilt, and pursuing only his own advantage, he is feared and hated by all.²⁸ The *delator*, in short, engages in aristocratic competition using illegitimate tactics. But backlash against alleged *delatores* confirmed that prosecuting also carried social risks; in general, defense advocacy remained, as in the Republic, closer to mainstream aristocratic values.²⁹ At any rate, the idea that senatorial trials provided the ingredients for vigorous, dramatic oratory – prominent figures, capital charges, much money and prestige at stake – seems well-grounded. However, the fact of being “forensic” rather than “deliberative” is not what makes this oratory so vigorous, as the distinction is far from absolute. *Maiestas* charges often pertained to the emperor's personal standing and prestige, while *repetundae* charges concerned the legitimacy of the entire imperial system. Tacitus indicates that emperors sometimes expressed their views in such cases and influenced verdicts, just as in nonjudicial deliberation. Moreover, when a senatorial trial revealed a problem in administrative structure or procedure, a corrective *senatus consultum* might follow.³⁰ Thus forensic and deliberative contexts for oratory were readily blurred in the early imperial senate.

The younger Pliny offers lively descriptions of the drama and competitive ethos of senatorial trials. In epist. 2,11, he reports that he and Tacitus were assigned to represent the provincials in prosecuting Marius Priscus, a former proconsul of Africa. Priscus had already pled guilty to extortion; now he was charged with accepting bribes to inflict corporal punishment on Roman citizens in

27 Rutledge 2001, 16 and n. 44 for references.

28 See, e.g., Tac. ann. 1,74; 3,66; hist. 4,42 for the development and exploitation of this stereotype. Rutledge 2001, 9–16 provides an illuminating social/semantic discussion of the *delator*, with sources; also 35–44 (financial rewards of prosecution), 46–52 (gaining proximity to the emperor; cf. Flaig 1992, 114f.). Talbert 1984, 54–66 describes the financial burdens of the senatorial career, noting that they account for why extortion from provincials and prosecution for personal gain were so persistent, and so readily suspected.

29 Indeed, prosecution was often cast as a defense of persons wronged by a patent malefactor. Thus Cicero “defended” the Sicilians against Verres’ depredations; likewise Pliny describes a prosecution speech as *libros quos de Helvidi ultione composui* (epist. 9,13,1; cf. the multiple motives acknowledged in §2).

30 E.g., Tac. ann. 3,51; 3,69; 14,41; 15,20–22; cf. Plin. epist. 6,5, where the procedural issue arises during the trial.

his province (§§2, 8). The trial took place over three days in January, 100 C.E. Pliny carefully notes that the senate is well-attended in January, that the case's gravity aroused particular interest, and that Trajan himself presided as consul (§10). Pliny modestly confesses some anxiety at the prospect of such a large, prestigious, highly engaged audience – even though, as he scrupulously reminds his addressee, his oratory in the senate has always been successful (§11). In this case, moreover, he faced a particular challenge: Priscus, priest and consular, having already been condemned on a lesser charge, now inspired sympathy as a great man brought low (§§12–13). But once Pliny began to speak, he says, all difficulties vanished. The speech was well received (*adsensu audientium*), and the emperor himself expressed gratifying concern for the strain that five hours of heated oratory placed on Pliny's delicate physique (§§14–15). At trial's end the defendant was convicted, and the consul designate conveyed the senate's thanks to Pliny and Tacitus for effectively discharging their assigned duty. Other consuls-designate and consulars concurred with this *sententia* (§19). In this narrative, we note Pliny's care to emphasize the high stakes of the oratorical event, his triumph over the challenges posed by the situation, and the approval of the highest ranking members of the audience (including the marks of friendly concern from the emperor). Equally noteworthy are his efforts – subtle but unmistakable – to evade the stigma associated with prosecution. He stresses that he and Tacitus were assigned this role (*iussi*, §2; *iniuncta advocazione, mandatis partibus*, §19 – i.e., they did not prosecute voluntarily), and that the defendant's guilt was patent to all. And by stressing that the leading senators thanked them at the end, he conveys that their senatorial peers did *not* hate and fear them for prosecuting (successfully). Another subtext is that these thanks were *all* the compensation Pliny and Tacitus received: i.e., they did not enrich themselves with shares of the vanquished defendant's property.³¹ In short, Pliny bends over backwards to assert, “we are not *delatores*.” The tactics they use to compete in the senatorial court are legitimate, and the glory conferred by their success here is valid. In other letters too, Pliny narrates dramatic senatorial trials in which he served as prosecutor or defense advocate. When prosecuting, he always parades his scrupulous reckoning of obligations, his success in the event, and the praise he receives from all legitimate judging parties; defense advocacy requires no such special pleading.³² For Pliny, the senatorial court is patently a premier venue for enhancing status through competitive oratory. The glory, renown, and influence he gains from being judged positively by his peers (and superior) is intensely satisfying to him. Other senatorial orators mentioned in Tacitus' works resemble Pliny in this respect.³³

31 This is clearer in epist. 3,9,23, reporting another successful prosecution: the warm thanks that Pliny and his co-prosecutor Albinus received from the senate is the *dignum solumque par pretium tanti laboris*.

32 Epist. 3,4; 7,33 elaborately justify decisions to prosecute; note also the defensive and self-aggrandizing moves of epist. 3,9; 9,13. Epist. 4,9; 5,20 narrate trials in which Pliny served as defense advocate. Epist. 6,29 examines the circumstances that justify taking up a case.

33 In epist. 9,23,1f. Pliny says that his oratory has won the greatest *laus* and *fama* in the senate

The civil courts have a different history from the *iudicia publica* and senatorial court discussed so far. These courts apparently did not undergo major jurisdictional or procedural change between late Republic and early Empire. The kinds of cases litigated there – succession, contract, property, delict – emerged from durable socioeconomic structures that were less obviously impacted by the imperial dispensation than were the mechanics of government and officeholding, the concerns of the *iudicia publica*. If Kelly's statistical study is valid, up to half of all civil cases were adjudicated by an *unus iudex*, the procedure known as *iudicium privatum*; most remaining cases, when involving wills and succession, came before the centumviral court; and a small remnant were heard by panels of *recuperatores*.³⁴ Dramatic, crowd-attracting cases no doubt came occasionally before an *unus iudex* or the *recuperatores*, hence might provide a platform for oratorical display. But most private cases probably involved non-elite litigants disputing about property, contracts, and the like, and generated little public interest. Regarding venue, there was no fixed location for the tribunal of an *unus iudex* or panel of *recuperatores*. These courts apparently convened in whatever space – civic or domestic – was available and suitable for the case at hand. There is no indication that these procedures, proportions, and practices changed significantly between late Republic and early Empire.³⁵

What does change strikingly is the prestige of the centumviral court. All but invisible in Cicero's day,³⁶ it begins to gain visibility and prestige in the Augustan³⁷

and centumviral court (see below): these, for him, are the principal arenas for competitive aristocratic eloquence. Tacitus, too, presents the senatorial court as a venue for high-stakes trials with high drama; e.g. ann. 3,7–19; 4,28–30; 4,34f.; on Aper in the *Dialogus*, see below.

- 34 Kelly 1976, 74f.; 90–92. Though focusing on the late Republic, Kelly derives his statistics from *responsa*, *rescripta*, and *decreta* mentioned in the Digest; hence his figures are equally valid (or invalid) for the early Empire and late Republic.
- 35 Our texts offer varied impressions of the visibility of and venues for private trials. Cic. de orat. 1,173 (dramatic date 91 B.C.E.) envisions major cases tried before an *unus iudex* in a civic venue. Vittr. 6,5,2 remarks that an aristocratic *domus* may need to accommodate *privata iudicia* (projecting the owner as *unus iudex*, and his *domus* as trial venue). Sen. dial. 5,33,2 seems to imagine such cases argued in a basilica. Quint. inst. 6,4,5–7 speaks of dramatic private cases with applauding crowds, implying a suitably spacious, accessible venue. But in Tac. dial. 39,1f., Maternus speaks deprecatingly of the *auditoria et tabularia* in which most advocates now plead; at 39,3 he laments the oratory-wrecking behavior of today's *unus iudex*. On venue see Frier 1985, 204; Bablitz 2007, 33f.
- 36 Cicero never mentions participating in a centumviral trial himself (see n. 3); however, the interlocutors in de orat. 1,173–80; 1,238; 2,98; Brut. 144; 197 speak of highly visible centumviral cases argued by leading orators of the late second/early first century B.C.E. These are the only centumviral trials found in Alexander's catalogue of late Republican trials (nos. 93, 360, 363, 364; however, the centumviral trials at Val. Max. 7,7,2 and 7,8,1 are also late Republican). In Tac. dial. 38,2, Maternus seems to suggest that late Republican orators did plead centumviral cases, but the prestige and importance of the *quaestiones perpetuae* was such that only these speeches are now read (Güngerich 1980, 169f.; Mayer 2001, 207).
- 37 Several Augustan-era centumviral cases were celebrated: the oratorical competition between Asinius Pollio and T. Labienus regarding Urbinia's heirs (Tac. dial. 38,2; Quint. inst. 4,1,11; 7,2,4f.; 7,2,26f.; 9,3,13); the declaimer Albucius Silus' fiasco when pleading against L. Arruntius (Sen. contr. 7,pr,6f.; Suet. gramm. 30; Quint. inst. 9,2,95; Kaster 1995, 322f.; Berti

age and Julio-Claudian period,³⁸ and finally emerges in Flavian and Trajanic texts as a premier forensic arena for contemporary aristocratic advocates – a place where glory and renown were competitively sought in the public eye.³⁹ The younger Pliny says he launched his career with a case he successfully argued, against powerful interests, in this court (epist. 1,18,3f.). Elsewhere he reports having argued numerous cases here, some insignificant and others important. Inevitably, he relates many self-aggrandizing anecdotes about his centumviral trials: he notes the great public interest certain cases generated, and the praise and acclaim his performances as advocate or witness won from the judges, the *corona*, or his friends.⁴⁰ Indeed, as an arena for competitive reputation-building, the centumviral court is as important for Pliny as the senatorial court. Martial and Statius also produce poems, addressed to aristocrats with whom they have (or hope to establish) an exchange relationship, praising the addressees' centumviral prowess. Martial thus flatters Pliny (epigr. 10,20, cf. Plin. epist. 3,21) and Silius Italicus (7,63); he also cultivates Pliny's *bête noire* Regulus (6,38, cf. 2,74). Statius praises Rutilius Gallicus (silv. 1,4,24f.) for the wisdom he brings to this court, and Vitorius Marcellus (silv. 4,4,39–45) for his prominence there, evidenced by the clients who throng his vestibule seeking his advocacy. The court's importance in this era as a venue of aristocratic oratorical display is underscored by Quintilian's remark (inst. 4,1,57) that the judges expect advocates to deliver especially well-crafted speeches here, by Maternus' explicit assertion in Tacitus' *Dialogus* (dramatic date 75 C.E.; composed a quarter century later) that the centumviral court has the highest prestige among contemporary courts, and by Pliny's implication that centumviral speeches required a loftier, more refined, perhaps more passionate style than speeches delivered before an *unus iudex*.⁴¹

2007, 144–149, Echevarran no. 41); also the (probably) triumphal or Augustan-era trial, said to generate great interest, at Val. Max. 9,15,4.

38 Ovid, writing from Tomis (Pont. 3,5,7–26), says he read a centumviral speech by Cotta Maximus Messalinus, the Tiberian senator. Another contemporary senator, C. Sallustius Crispus Passienus (twice consul, PIR² P 146), pled centumviral cases and received an honorific statue in the Basilica Iulia (Suet. p. 290 Roth = Sch. Iuv. 4,81; on this venue see below). Finally, Pliny the younger relates an anecdote (epist. 2,14,9) involving the prominent senator/orator Cn. Domitius Afer (cos. 39, d. 59; PIR² D 126; Rutledge 2001, 220–223), whose centumviral speech was interrupted by hired applauders in a different section of the court. The prominence of these advocates, and the hiring of applauders (Bablit 2007, 126–140), suggests the court's rising prestige in the Julio-Claudian period.

39 Kelly 1976, 35–39.

40 Pliny often argues cases before the *centumviri*: epist. 2,14,1; 6,14,2 (*harena mea*). Minor cases: epist. 2,14,1. Major cases, generating great public interest: epist. 6,33,2–5; 4,16,1f. Praise/applause he garners: epist. 1,5,7; 1,18,4; 4,16,2f.; 6,23,11; 9,23,1.

41 Plin. epist. 6,33,8f.: *sunt multa ... elata, multa pugnacia, multa subtilia. intervenit enim acerbis illis et erectis frequens necessitas computandi ac paene calculos tabulamque poscendi, ut repente in privati iudicii formam centumvirale vertatur*. Here, *privatum iudicium* seems to mean a court presided over by an *unus iudex*. Cf. Quint. inst. 5,10,115 for the stylistic difference implied here; also Frier 1985, 206f., 262–268 for its manifestation in late Republican civil courts.

The reason for this court's rise in prestige and visibility is perhaps close at hand, if the trend described earlier is correct: namely, that changes in other oratorical arenas restricted aristocrats' access to large public audiences – the people who, throughout the Republic, had been the most important judges of aristocratic oratory and bestowed the most valuable rewards for success. The centumviral court, having undergone no apparent changes in jurisdiction or procedure, marks an exception to this trend. The court employed large jury panels in four divisions (though the name *centumviri* is apparently not exact), and the composition of these panels was somehow thought representative of the whole *populus*. Moreover, by at least the 40s C.E., this court was established in the Basilica Iulia at the heart of the *Forum Romanum*.⁴² In this central, highly visible, easily accessible location, it was no doubt easier to attract the *corona* whose engagement and applause was so crucial to aristocratic orators. Maternus, in Tacitus' *Dialogus*, makes an argument compatible with this, contending that the centumviral court's prominence is due only to the eclipse of the Republican *iudicia publica* and the truly important cases they handled (38,2).⁴³ Yet, as Tacitus and Maternus "know", the senatorial and imperial courts assumed key jurisdictions of the *iudicia publica*; the important cases as such and the oratorical competition they inspired did not simply disappear. The point, rather, is one that Maternus makes shortly thereafter, in a different context: he declares that orators need din and applause even more than actors do, and notes that in the (g)olden days huge crowds of interested onlookers flocked to the public trials, believing that the verdicts mattered to them (39,3–5). It accords with this view to attribute the centumviral court's prestige in the Flavian and Trajanic era to its being the chief remaining oratorical arena where aristocrats could count on performing and competing before a large jury, and where the cases being argued were, with some regularity, significant enough to attract a *corona*.⁴⁴ Thus this court bucks the

42 Size and composition of jury panels: Kelly 1976, 1–5; David 1992, 465f. Arrangement of the four divisions within the Basilica Iulia: Bablitz 2007, 61–70. This building, initiated by Iulius Caesar, burned, restored, and rededicated in 12 C.E. (Giuliani/Verduchi 1993), may have received the *centumviri* at this time. For Augustus created new venues for other courts, notably in the Forum Augustum (Bablitz 2007, 14–28); the Basilica Iulia may have been part of the same general project. A firmer *terminus ante quem* is the statue of Passienus Crispus supposedly erected in the Basilica Iulia (n. 38). For Passienus (d. ca. 47 C.E.) was presumably commemorated in the venue of his successes.

43 Also Crook 1995, 184f.

44 The courts of the praetor and *praefectus urbi* likely still admitted broad public audiences and theoretically allowed this sort of oratorical display. The praetor's court apparently still employed large senatorial-equestrian juries, per the Augustan reforms (Talbert 1984, 463; Sherwin-White 1966, 309). Tiberius as emperor sometimes attended the praetor's court, an indication of its continuing significance (Tac. ann. 1,75,1; cf. Suet. Tib. 33; Cass. Dio 57,7,6). Plin. epist. 7,6,7–13 speaks of pleading a homicide case in a praetorian court "before a huge crowd: for the case was notorious, and there were leading lights on both sides" (§9; Sherwin-White 1966, 409f.). Yet this is Pliny's only significant discussion of this court; his focus is on senatorial and centumviral oratory. Pliny mentions the court of the *praefectus urbi* (whose development and jurisdiction is difficult to untangle: Tac. ann. 14,41) just once, at epist. 6,11, describing a competition in eloquence between two young advocates. The diversion of key

larger trend under the early Empire – observed earlier in relation to elections, the comitial legislative process, and other courts – to restrict aristocratic orators' access to mass audiences and to turn orators instead towards an audience of their social peers for judgment and validation.

4. Advocacy or poetry? Alternative arenas of competition in Tacitus' *Dialogus*

The Flavian/Trajanic aristocrat-orators who produced the texts discussed above believed that the conditions of oratory had changed since the age of Cicero. Their own discourse about this change – followed, often enough, by modern scholars – is framed in terms of “decline:” whether it has occurred, and if so, how. In Tacitus' *Dialogus*, the exchange between Maternus and Aper, itself cast in these terms, recapitulates my argument so far and provides a transition to the discussion of novel, emerging arenas of competitive eloquence in section 5 below. Maternus, a senator of distinguished lineage (11,3f.) and leading orator, has composed and recited a tragedy called “Cato” (2,1; on recitation see below). He thereby offended powerful people (*potentes*), and everyone is talking about it. Two friends, Iulius Secundus and Marcus Aper – themselves leading orators – call at Maternus' house the next day, and find him editing the very text he had recited. Secundus asks (3) whether he proposes to retract or alter the parts that gave offense, to reduce the danger to himself. By no means, Maternus replies: in fact, he is preparing to recite another tragedy, a “Thyestes”, that will say whatever the “Cato” left unsaid (implying that it will give further offense).⁴⁵ Aper now reproaches Maternus for neglecting his duties as advocate and orator: while he writes and recites tragedies, friends and clients are clamoring for his services in the law courts. Maternus replies (4) that he dreams of walking away from the confines of these courts (*omissis forensium causarum angustis*) and of cultivating poetry's “loftier and holier eloquence” instead (*sanctiorem illam et angustiore eloquentiam*). This opening exchange provides the ideological framework within which Maternus and Aper develop their positions subsequently. Aper contends that the traditional role of the orator/advocate is intensely satisfying and rewarding for its contemporary practitioners, while Maternus, to justify rejecting this role, argues the opposite.

Aper's first speech (5,3–10,8), a celebratory account of contemporary oratory and its practitioners, illuminates the question of shifting venues for aristocratic competition.⁴⁶ Aper presents the contemporary orator in the traditional guise of a great patron. His atrium is filled each morning with callers, themselves of high

jurisdictions to other courts, as discussed above, likely accounts for these courts' diminished status as competitive venues.

45 The identification of the offended *potentes* is debated (Bartsch 1994, 102f.; Gallia 2009), but not crucial for my argument.

46 Champion 1994, 155–158 and Goldberg 1999, 229–231 likewise note the traditional, status-focused rhetoric of Aper's first speech. Aper's second speech deals more narrowly with style and pertains less to the current argument.

status, seeking his services as advocate. Mobs of clients accompany him in public. He commands enormous respect in the lawcourts: he experiences the joy of rising before a rapt audience, ready to take on whatever emotion he chooses to evoke (6,2–4). No day is more satisfactory than one on which he defends someone in court, successfully pleads a centumviral case, or defends imperial freedmen and procurators before the emperor (7,1). For Aper, oratory is apparently identical with advocacy: he speaks only of forensic contexts, and of the social activities and structures linked with advocacy. Perhaps this focus accounts for his characterization of eloquence as a set of weapons and armor with which to harry enemies and protect friends (5,5f.).⁴⁷ Aper also dilates upon the fame and prestige that accrue to orators. They are known throughout the city: parents point out the great orators to their children, as do the ignorant masses. Their renown penetrates even to cities and towns outside Rome, and visitors from such places seek out the orators of whom they have heard (7,3f.). Indeed, the fame of some – he names his contemporaries Vibius Crispus and Eprius Marcellus – extends across the whole world. These men, having obscure and impoverished municipal origins, became immensely wealthy and famous, and are now counted among the emperor's *amici* (8,1–3). Aper acknowledges that he too is a *homo novus*, and leaves the impression (without explicitly saying so) that his own entry into the senate and rise to the praetorship is owed to his oratorical talent and success (7,1f.).

Aper then turns to critiquing poetry in the same social terms. A poet makes Agamemnon or Jason speak eloquently: whom does he thereby place under obligation? Who attends his *salutatio* or accompanies him in public? And when a poet recites, even if he enjoys success, his praise endures but briefly, procuring no durable *amicitiae*, *clientelae*, or *beneficia* (9,1–4). Indeed, far from cultivating his social connections, a poet must flee society and retreat to the solitude of “woods and groves” if he hopes to produce anything worthwhile (9,6). And even if a poetic recitation becomes the talk of the city, the poet will never gain the empire-wide fame that the successful advocate procures (10,1–3). For Aper, then, the aristocratic poet who rejects advocacy fails in his social obligations and loses the social rewards of his eloquence, however great it is. Hence Aper urges Maternus to return to advocacy – the only proper vehicle for an eloquence so great as Maternus', and the only way he can resume his proper social obligations and reap their benefits.⁴⁸

Against Aper's attack, Maternus defends the prestige and visibility of poetic composition and recitation, as well as the distinctive rewards that attend the poet. Maternus recalls reciting an earlier tragedy (perhaps a “Nero”), by which he “broke the power” (*potentiam fregi*) of one Vatinius, a creature of the emperor Nero (11,2). His current *gloria* and *notitia*, he suggests, are due to this recitation rather than to his oratorical efforts (11,3). It follows that the uproar caused by his

47 In Cic. de orat. 1,32, when Crassus employs the metaphor of oratory as weapons, he is talking about *all* contemporary oratorical arenas (*forum, subsellia, rostra, curia*). Aper's use of the metaphor is therefore more pointed.

48 On Aper's critique of Maternus, see Goldberg 1999, 230; Gallia 2009, 190.

“Cato” reproduces his earlier success, and proves the social efficacy of his eloquence in his chosen field of activity – after all, it is from concern for the social consequences of this success that Secundus and Aper have come calling!⁴⁹ Fame, then, is his. He grants that such success does not win retinues, offices, and the like, which he seems to concede as the reward of successful advocacy. But such rewards, he argues, have their downsides. Contemporary advocacy is a bloody, tawdry affair, focused on destroying others and on the orator’s personal gain (11,3–12,2; 13,4, evoking the “delator” stereotype). Maternus turns the exemplary force of Epirus Marcellus and Vibius Crispus, whom Aper adduced as admirable models, on its head: they are entirely unenviable, says Maternus, because they fear and are feared, and occupy a political position that satisfies neither the emperor nor their senatorial peers (13,4). As for oratory being a weapon for frightening and harming one’s opponents, so it is, and this is the problem (12,3). He invokes Vergil as the model of a “withdrawn” poet who shunned the social rewards Aper celebrates, yet still enjoyed imperial favor and wide fame (13,1f.). He also identifies rewards distinctive to such a poetic praxis: access to a pure, prelapsarian eloquence, cultivated without harm to others and far from the throngs of clamoring clients in the bustling city (12,1f.; cf. 4,2).⁵⁰ Maternus, in short, shares Aper’s desire for fame and glory (that is, to be acknowledged as successful in his chosen arena of competition), and can plausibly claim to have achieved it. But he does not crave the particular rewards of successful advocacy that motivate Aper.

This exchange of speeches brings us to this paper’s title. If early imperial aristocrats posed themselves the question, “To whom am I speaking?”, in the sense of “Before what audiences, or in what venues, should the contemporary Roman aristocrat compete in eloquence with his peers, and thereby seek the fame, glory, and prestige that are its rewards?”, Aper and Maternus provide divergent answers. Aper espouses the radically conservative view that aristocrats should simply focus on forensic oratory, whose traditional social rewards are ever present to reap. Maternus’ position is equally radical but opposite: aristocrats should turn away from delivering speeches entirely, embrace poetry as an alternative form of eloquence, and through poetry seek rewards that are significantly, though not entirely, different.⁵¹ These extremes in fact bracket a spectrum of intermediate

49 For Maternus’ poetic recitations as a vehicle for political attacks, see Bartsch 1994, 102–104; 200–202; Gallia 2009, 189–192.

50 One paradox of Maternus’ position(s) in the *Dialogus* is that he praises poetry for its distance from tawdry sociopolitical concerns, while acknowledging that his poetry is a vehicle for attacking the powerful. Aper himself notes this paradox (10,6f.).

51 Aper’s defense of contemporary oratorical style against Ciceronian/late Republican style (16,4–23,6) marks him as a “modernist,” yet his commitment to advocacy and its social rewards is profoundly conservative. Maternus, in (apparently) abandoning his public career and advocacy duties entirely, and pursuing an altogether different endeavor, is considerably more innovative. See Stein-Hölkeskamp in this volume for early imperial senators who abandon public careers – though there is no close parallel to the choice Maternus is represented as making.

positions that early imperial aristocrats could and did occupy. In Tacitus' Rome, the idea that an aristocrat might invest his eloquence in forms more diverse, and perhaps less ephemeral, than delivering speeches was hardly novel. Senators began producing written versions of delivered speeches, and also writing historiography, in the late third century B.C.E.; historical writing (particularly in Latin) remained a heavily senatorial preserve right down to Tacitus' day. The writing and publishing of poetry emerged as an aristocratic diversion in the first century B.C.E., as did other forms of writing – philosophical dialogues, technical and theoretical treatises, and epistles. This ever-broadening franchise in literary writing is partially accounted for by the monumental qualities of the written word – its capacity to capture certain dimensions of eloquence, to transmit that record to wide audiences across space and time, and hence to secure the author's claim to exemplary eloquence. But such activity is entirely compatible with pursuing a public career and delivering speeches orally. Indeed, it provides a vehicle for socially and politically expedient self-fashioning – a channel for supplementing, enhancing, and modifying the civic persona that one constructs through one's activities as a magistrate, patron, and orator. Many, perhaps most, late Republican and early Imperial senators exploited literary writing to such ends; Cicero is merely the most spectacular and obvious example.⁵² Tacitus himself, following neither of his characters' advice, pursued a senatorial career that carried him to the consulship and, later, the proconsulship of Asia, while also writing historiography. The younger Pliny, likewise a consular senator, produced written versions of his speeches, a collection of studied epistles, and (as he reports in his letters) collections of poetry. Neither figure would have looked out of place 150 years earlier, either in combining literary activities with traditional aristocratic occupations like officeholding and oratory, or in using their literary production to refine, corroborate, and revise the civic persona presented via officeholding and oratory.⁵³ The *Dialogus*, then, raises the key issue of how changes in early Imperial society and politics relate to changing fields of aristocratic endeavor and competition. But by staging a debate between two extreme positions, this text presents false dichotomies regarding the kinds of activities that are opposed to one another, the degree of exclusivity of those activities, and the innovativeness of some in relation to others. In particular, the suggestion that writing poetry is an

52 At certain moments, certain senators might judge politically engaged oratory to be dangerous or irrelevant, and declare their literary activities to be an alternative to or replacement for the traditional oratorical arenas (on various aspects of this problem see Stein-Hölkeskamp 2003, 315–323; Leach 1999; Osgood 2005, 534–539). But not all senators assess circumstances, risks, and opportunities in the same way, and not all make the same choices. Moreover, when an aristocrat-orator addresses such matters in a literary text, he is patently using that text to comment upon his oratorically constructed civic persona. Thus literature continues to discharge its function of supplementation and commentary, regardless of perceived political circumstances.

53 On the politics of Tacitus' acid historiographical voice, in relation to his conventional public career, see now Sailor 2008. On the politics of Pliny's literary self-fashioning in his letters – Ciceronian orator, Catullan poet – see Riggsby 1995 and Roller 1998.

innovative activity for an aristocrat, both opposed to and irreconcilable with traditional forensic oratory, is quite false.⁵⁴ The early empire indeed witnessed innovations in competitive eloquence, as the *Dialogus* implies. But they are not exactly where it suggests.

5. New arenas for competition in eloquence: recitation and declamation

To observe such innovation, I suggest looking to recitation and declamation – forms of specifically oral performance, lying outside of traditional oratory, which engaged aristocrats beginning in the triumviral period. Recitation is the oral reading of a written work before an audience. Starting in the 30s B.C.E. we hear of non-senatorial poets reciting their work, whether to select audiences in “private,” controlled spaces, or in civic venues like auditoria, fora, and baths for open, undifferentiated audiences. We hear of two aims: attracting attention and applause; and gaining candid, critical suggestions for revision of the work in progress, looking toward the publication of a polished, written version.⁵⁵ For these reciters, the trope of being impecunious, hence seeking wealth as well as fame, is often present. When the poet-reciter is senatorial, the focus is rather on reciprocal social obligations and other social rewards.⁵⁶ Asinius Pollio is reportedly the first senator to recite his own works, probably also in the 30s–20s B.C.E.⁵⁷ Over the next 150 years, further prominent senators are reported as reciting their literary compositions.⁵⁸ It seems likely that most early Imperial senators who wrote literary texts also recited, occasionally or frequently, before select or open audiences, seeking applause and/or critical feedback.

Pliny the Younger, himself a high-ranking senator, richly describes in his letters the contemporary culture of aristocratic recitation. He speaks of reciting written versions of his orations, as well as Catullan-style polymetric poetry; he

54 So Dominik 1992.

55 Hor. sat. 1.4,22–25; 1.4,73–78; ars 472–476 (different venues and audiences); epist. 2.1,219–223; ars 438–452 (auditors offering critical suggestions). Also Sen. contr. 10,pr,8; suas. 6,27; Pers. 1; Petron. 90; 91,3; Mart. 3,45; 3,50; 4,6; 11,52; Iuv. 1,1–14; 7,39–47. Vergil reciting: Serv. Aen. 4,323; 6,861; Gell. 6,20,1.

56 E.g., Serv. Aen. 6,861; Iuv. 7,79–87; Tac. ann. 3,49; dial. 9,5. Markus 2000, 171–174 discusses the trope of poverty; for the gift-exchange dynamic among elites, Dupont 1997, 52–55; Roller 1998, 291–294 and n. 51.

57 Sen. contr. 4,pr,2: *nec illi ambitio in studiis defuit: primus enim omnium Romanorum advocatis hominibus scripta sua recitavit*. Dalzell 1955 discusses the historical and interpretive difficulties of this sentence.

58 Senatorial reciters: Cotta Maximus Messalinus (recites poetry: Ov. Pont. 3,5,37–42); Cremutius Cordus (history: Tac. ann. 4,34; Suet. Tib. 61,3); Servilius Nonianus (history and oratory: Tac. ann. 14,19; dial. 23,2; Plin. epist. 1,13,3); Lucan (epic: Suet. vita Lucani); Pomponius Secundus (tragedy: Plin. epist. 7,17,11f.); Claudius, before and during his principate (history: Suet. Claud. 41); Nero, as emperor (poetry: Tac. ann. 16,4); Curiatius Maternus (tragedy: Tac. dial. 2f. and passim). Cf. next n., and Stein-Hölkeskamp, this volume.

also mentions other senators and equestrians who recite their own poetry, history, or orations.⁵⁹ Pliny insists that literary production in general, including recitation, is firmly contained within the realm of “leisure,” *otium*, while the activities that constitute one’s public career, along with one’s duties as a patron and advocate, are the “serious” activities, the *negotia*, that define the socially and politically engaged aristocrat. Thus he deems recitation less consequential than traditional aristocratic oratory. He also deems recitation of a work in progress less consequential than publishing that work in completed, polished form. For he overtly claims that recitation is instrumental, aiming to elicit candid evaluations of a provisional text that, after revision, will yield a reputation-enhancing literary monument. Yet he acknowledges that, when he enunciates his own text before an audience that judges it against similar performances by others, he enters into the prototypical and highly consequential situation of competitive oral performance.

These complexities are best illustrated in Pliny’s minute descriptions of the social dynamics of recitation. He explores the conflicted nature of the reciter’s desire for candid criticism *and* praise – the latter readily granted by auditors who wish to be polite, yet who face the same conundrum when reciting themselves. There would be no premium on receiving praise, however, unless everyone involved realized that the audience’s critical judgments have the potential to escape the confines of the event. So although Pliny claims to seek glory not from recitations of works in progress, but from their eventual published versions, he nevertheless gladly reports to the readership of his letters the praise that his works in progress receive during recitations – praise that, on the “provisionality and candor” model, should never have circulated outside the venue where it was voiced. Therefore, while the ideology of recitation makes it a “backstage” activity that merely supports the “real” performance of publishing a completed work, always creeping in to undercut this ideology is the recognition that recitation itself is a performance. Its uncanny resemblance to traditional venues for competitive aristocratic oratory creates opportunities for authorial reputation-building.⁶⁰

This “mission creep” is especially visible where the social stakes of reciting are expressed in language drawn from the traditional competitive arenas of oratory and politics. The elder Seneca says that Asinius Pollio revealed his *ambitio in studiis* by reciting before an invited audience (contr. 4, pr. 2) – that is, Pollio’s recitations are presented as a kind of canvass, a quest for approval and

59 Pliny’s recitations of his speeches: epist. 2,19; 3,18,4; 4,5; 5,12; 7,17. Poetry: epist. 4,19(?); 5,3; 7,4,7; 9,34. Senatorial acquaintances who recite: Silius Italicus (epic: epist. 3,7,5); Aquilius Regulus (orations: epist. 1,5,2–4; 4,7,2); the future senators Calpurnius Piso and Sentius Augurinus (epist. 5,17; 4,27). Equestrians: Passennus Paulus (poetry: epist. 6,15); Titinius Capito (poetry: epist. 8,12). Uncertain: Octavius Rufus (epist. 1,7; 2,10). The unnamed reciter of explosive histories at epist. 9,27 may be Tacitus (Sherwin White 1966, *ad loc.*) Pliny also knows Martial (epist. 3,21), who often discusses reciting.

60 Roller 1998, 289–300 and Dupont 1997, 45–52 discuss these matters. On the interactions between and differing interests of author/reciter and audience, Valette-Cagnac 1995, 14–17; Roller 1998, 291–294; Barchiesi 2004, 22–24. Parker 2009, 202–208 helpfully expounds the ideology of recitation, but neglects countervailing practice.

rewards from his audience. Pliny says that when Pomponius Secundus, the Claudian-era senator and poet, was urged by friends to delete a passage contrary to his own view, he declared *ad populum provoco*, and recited the text to a larger public audience, by whose evaluation he abided (Plin. epist. 7,17,11f.). This “appeal to the people” refers to the ancient *iudicium populi*. The friends’ judgment corresponds to the magistrate proposing a capital penalty following a preliminary hearing, while the second recitation to the larger, public audience corresponds to the defendant’s appeal to the centuriate assembly. Humor is obviously present here, as only verses of poetry are threatened with “capital” punishment. Yet the metaphor does assimilate these performances, underscoring their similar social stakes: namely, approval by the judging audiences. Finally, if we credit Tacitus’ portrayal of Maternus, a recitation may explode out of the “private” realm of *otium* and into the fully civic sphere, laden with sociopolitical consequence even exceeding that of traditional oratory.⁶¹

A second novel form of competitive oral performance that began to engage Augustan aristocrats is declamation. This is a mode of rhetorical training whose characteristic form consists of two specific exercises. The first, *suasoriae*, are exercises in deliberative oratory, while the second, *controversiae*, are fictive legal cases providing training in forensic oratory. From the triumviral or early Augustan period, these exercises formed the apex of Roman rhetorical education: students (young elite males, mostly) practiced it for several years in their mid-to-late teens with a teacher called a *rhetor*, as the last stage of formal schooling before apprenticing with a practicing advocate (the *tirocinium fori*).⁶² The elder Seneca provides fascinating sketches of the social world of Roman declamation in the Augustan and Tiberian period. At its center were the schools where *rhetores* taught their adolescent charges. Also participating, however, were adult males who were neither teachers nor students: they offered their own declamatory performances in non-scholastic venues, and attended performances of their peers, of *rhetores*, and of students inside and outside the schools. In all venues, Seneca indicates, there was lively debate about how to treat themes, and much praise and criticism of particular declaimers’ efforts.

Some senators were involved in this culture, as declaimers themselves and/or as critically engaged auditors. Senators who declaimed were of course adults and no longer under a *rhetor*’s supervision, but performed in non-scholastic venues before invited or open audiences. Why should these men pursue their schoolboy exercises? Scholars who accept the thesis of oratorical “decline” see this phenomenon as fueled by the eclipse of proper oratory: declamation served as a new mode of public speech replacing the traditional modes that were allegedly swept away under the imperial regime.⁶³ But as we have seen, while early

61 Even here, however, Secundus can imagine that Maternus is editing his poem in light of its reception in the recitation – deleting the dangerous parts before publication (Tac. dial. 3,2). For the *iudicium populi* see Jones 1972, 1–39.

62 Similar exercises existed earlier, under other names; the particular training structure and distinctive terminology described here emerged in the Augustan age (Bonner 1949, 20–31).

63 E.g., Sussman 1978, 12–15; Hömke 2007, 106f.; Berti 2007, 146f. Cf. Sen. contr. 1 pr. 6f.

imperial oratory was circumscribed in some traditional venues, it proliferated in others: at any rate, assertions of “decline” and the end of traditional public speech are overstated and mischaracterize the changes that occurred.⁶⁴ A survey of senatorial aristocrats whom Seneca represents as declaimers is helpful in clarifying declamation’s attractions and its social stakes for such men. Asinius Pollio, says Seneca, never admitted a crowd when declaiming (*numquam admissa multitudine declamavit*, contr. 4, pr. 2) – though he must have declaimed for invited audiences, for Seneca heard him and discusses his style (4, pr. 3f.). T. Labienus rebuked Pollio for losing his courage: having once received a triumph, Pollio now evidently feared the people’s judgment on his declamatory efforts (4, pr. 2). This remark implies that declamation before public audiences was an arena for competitive display, where reputations could be made or lost. Seneca himself speculates that Pollio lacked confidence – corroborating Labienus’ charge that he feared for his prestige and standing, should a public audience applaud another aristocrat’s declamations more warmly. Alternatively, Seneca suggests, Pollio was content to declaim for exercise, but disdained to seek glory in an arena so inferior to “real” oratory, his *métier* (4, pr. 2). Indeed, Seneca adduces Pollio rarely as a declaimer, but occasionally as an engaged critic and judge of other declaimers’ efforts.⁶⁵ This pattern – only declaiming privately for exercise, but nevertheless attending other declamations as auditor/critic – holds for other prominent Augustan and Tiberian senators, including Augustus himself.⁶⁶ If such men declined to seek glory from declamation, they helped create and sustain a culture of competitive reputation-building by attending and judging others’ declamatory performances.

Other senators had no such qualms, but embraced declamatory performance as a fully competitive enterprise holding out renown, glory, and enhanced prestige as rewards of success. Q. Haterius, Iunius Gallio, Iunius Otho (“pater”), Varius Geminus, and Vibius Rufus, all praetorian or consular senators, are among Seneca’s most quoted declaimers. For each, Seneca reports declamatory strategies or *sententiae* that garnered praise or criticism from the audience (whether open, invited, or unspecified), or that Seneca himself praises or criticizes (for his own connoisseurship enhances the competitive atmosphere).⁶⁷ A closer look at Q. Haterius must suffice to exemplify the whole group. Suffect consul in 5 B.C.E., leading senator, and orator noted for his unrestrained style, Haterius is moderately

64 Equally overstated is the distinction sometimes drawn between scholastic “pedagogical” declamation and (adult) “show” declamation: Parks 1949, 62f.; Bonner 1949, 39f.; Sussman 1978, 12–15; Berti 2007, 149–154; Hömke 2007. Exercise and display (i.e., pursuit of applause and glory) are both, to varying degrees, central to performance by both students and adults.

65 Echavarren no. 45 for Pollio in Seneca. Proper declamatory *sententiae* only in contr. 7,1,4; 7,1,22; 7,6,12.

66 Augustus: Echavarren no. 145. Similar pattern for the consulars M. Aemilius Lepidus(?); Mam. Aemilius Scaurus, Paullus Fabius Maximus, Munatius Plancus, Messalla Corvinus, L. Vinicius (Echavarren nos. 11, 13, 110, 188, 277, 289).

67 Echavarren nos. 128, 156, 157, 280, 288. Another dozen, less-quoted declaimers are certainly or probably senators. On the social status of Senecan declaimers, see Echavarren 2007, 359–369.

prominent in Seneca's collection. Unlike Pollio, Haterius admitted public audiences to his declamations, which he delivered *ex tempore*. Seneca remarks upon his rapid delivery, inventiveness, and indiscipline regarding order. He also reports evaluations of Haterius by Augustus and Iunius Gallio (the latter's judgment shared by Messalla Corvinus and Tiberius), and he cites one *sententia* that was widely joked about. These remarks indicate that Haterius pursued and gained a reputation for eloquence from his declamations no less than from his oratory – and attained, in both arenas, a reputation for great but disorderly talent.⁶⁸

What declamation and recitation share, and possibly accounts for early imperial aristocrats' interest, is the prototypical situation of Roman oratory itself as described in sections 2–3: the opportunity to speak before an engaged judging audience – of peers and friends, or a larger public – and to compete with other aristocrats for fame and rewards. The ideology of recitation insists on its being a provisional performance, an editing exercise on the way to the polished book on which the author's reputation “really” depends. Declamation too is notionally a propaedeutic activity, a set of exercises on the way to delivering real speeches.

Yet, in the triumviral or early Augustan age, these “backstage” activities were taken up and pushed “frontstage,” to become competitive arenas in their own right, by senatorial aristocrats who otherwise pursued traditionalist careers as magistrates, senators, and orators. As such careers demonstrate, these new arenas for competitive eloquence supplemented, but did not supplant, the traditional oratorical arenas. The latter assuredly underwent modification in the early empire, but the voices of “decline,” such as Tacitus' Maternus, have left a false impression of their true situation. The emergence of these new arenas is not so different from the longer-term aristocratic uptake of literary writing, as sketched in section 4. Here too, a leisure-time or backstage activity emerged over time as a “frontstage” venue for high-stakes competition among its practitioners.⁶⁹ If recitation and declamation replaced any *particular* aspect of traditional oratory thought lacking, perhaps it was the reduction in opportunities for orators to address a broad, public audience, as discussed in section 3. For these venues provided additional opportunities to invite and address such audiences (though here too more intimate audiences were sometimes preferred). Experimentation with new competitive venues also extended beyond eloquence: some aristocrats appeared in the amphitheater (the *real* “arena”) as gladiators, displaying military rather than oratorical virtues; some also sang or acted on stage, extending their poetic literary activities. Further examination of these innovations in aristocratic competition would yield a fuller perspective on those discussed in this paper.⁷⁰

68 Haterius: PIR² H 24, Echavarren no. 128 for full citations.

69 Their subsequent histories, however, may differ. Recitation thrives into the second century C.E. at least; adult declamation is scarcely mentioned after the elder Seneca (but see *laus Pisonis* 84–96, with Seel 1969, 73f.; Quint. inst. 10,5,14; Tac. dial. 14,4; and Fantham 1999, 221–224 on the whole question).

70 E.g., Flaig 2003, 232–260 discusses early imperial aristocrats appearing as gladiators and actors, with further references.

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