The Rise of the Centumviral Court in the Augustan Age

An Alternative Arena of Aristocratic Competition

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Scholars rightly hold that the restoration of social and political order under Augustus involved restricting certain arenas in which aristocrats had long competed for social prominence and power. Well-known examples include reductions in the number and intensity of competitive elections for magistracies; the eventual restriction of major military commands, along with the glory that could be derived from them, to Augustus' family and inner circle; and the slow drift toward an eventual monopoly by *principes* on prestigious public building (with donor's name attached) in the city of Rome. Here I focus on a fourth traditional arena of aristocratic competition—oratory—and consider how the opportunities for aristocrats to speak in influential and visible venues evolved between the era of Cicero and the death of Augustus. I focus on one particular venue, the centumviral court, and contend that this court's rise in status, starting in the Augustan age, can be understood as a consequence of larger changes over this period in the availability of prestigious venues for oratory.[1]

By the late Republic, oratory was second only to military achievement as a means of enhancing 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 orator's most desirable audiences were either large and

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1. I explored some of these ideas in preliminary form in Roller 2011, 197–9, 202–4, 208–11.

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public, or small and elite; ideally he could tap large public audiences that included elite elements. The most intense competition consequently occurred in three particular arenas that featured desirable audiences.[2] First, the Senate: the presiding magistrates, as well as magistrates-elect and those who had previously held a high magistracy (and perhaps more junior senators as well), could count on having the opportunity to express their views, and hence to sway this rather small but immensely powerful audience of peers on matters of state.[3] Second, public assemblies: magistrates could convene the people in a *contio*, to provide information and announcements, shape opinion, or urge particular courses of action. They could also convene the tribal, plebeian, or centuriate assemblies and harangue them prior to introducing legislation, conducting elections, or the like. The third key competitive oratorical arena was the courts, where aristocratic orators appeared as advocates. In the late Republic the most important of these were the *quaestiones perpetuae*, criminal courts overseen by praetors that dealt with major crimes of specific types. Here trials typically involved high-status persons, and impacted the *res publica* as such: *repetundae, maiestas, ambitus, peculatus*, and so on (though the standing court for homicide, the *quaestio de sicariis et veneficiis*, tried non-elites as well, due to the seriousness of the crime). Such trials were conducted before panels of judges, which consisted of varying combinations of senators, equestrians, and near-equestrians. The momentous issues and oratorical display also attracted spectators of every social class—the so-called *corona*—to watch, listen, express opinions, and evaluate the advocates as well as litigants. These great trials offered advocates the perfect combination of an elite audience (the judges) and a large public (the *corona*), rolled into one.[4]

Considerably less important as arenas of oratorical display were the civil courts, though civil proceedings were stitched deeply into the lives of many aristocrats, in Rome and in *municipia* throughout Italy. To serve as an advocate in civil cases on behalf of one's clients and friends was an (almost) inescapable duty of any aristocratic male, a duty rooted in the hierarchical exchange relations that sustained the Roman social order.[5] Such cases typically involved disputes about property, inheritance, status, identity, and the like. The litigants

2. van der Blom 2016, 26–45 offers an overview of these arenas, with further references.

3. Ryan 1998 passim discusses participation in relation to rank in the republican Senate; on p. 12 he summarizes his argument that low-ranking senators regularly spoke.

4. Steel 2017 discusses these audiences and their interactions with orators in the *quaestio*; see esp. 82–5 on the *corona.*

5. The existence of the *Lex Cincia de donis et muneribus* of 204 BCE, restricting gift-giving in return for advocacy, suggests not only that advocacy was routine, but also that it stood to bring successful advocates economic benefits. The provisions of the law are obscure, but presumably covered advocacy in both criminal and civil courts.

could be (and on average certainly were) of lower social status than in the largely senatorial-equestrian world of the criminal courts. The matters at issue tended to be narrow, impacting only the litigants and their families. Furthermore, the proceedings often took place before a single judge—the so-called *unus iudex*—or before a small panel of so-called *recuperatores*, and would probably convene at most a handful of people directly involved with or interested in the case, so the built-in audience for an orator was small. Finally, there was no fixed location for most civil tribunals. An *unus iudex* or panel of *recuperatores* apparently convened the litigants in whatever space—civic or domestic—was available and suitable for the case at hand; Vitruvius (6.5.2) leads us to believe, plausibly, that such trials commonly occurred at the house of the judge. Thus, even if a larger public were interested, it could not automatically know where a trial was being held, or whether the venue could accommodate spectators.[6]

One civil judicature, however—the centumviral court—was exceptional in several of these regards. This court had jurisdiction over inheritances, wills, and matters of succession generally, and employed a large panel of judges. While the name *centumviri*, "hundred men," was not exact, one tradition holds (probably incorrectly) that the court was originally constituted with a panel of 105 judges. By the age of Trajan, however, it is known to have employed up to 180 judges, who were commonly divided into two or four subpanels so that multiple trials could be conducted simultaneously. Little direct evidence about the status of the judges survives, but it seems probable that they were of at least equestrian or near-equestrian status, like the judges for criminal trials—indeed, centumviral judges may have been drawn from the same register (*album*) of potential judges from which the panels for the criminal courts were drawn.[7] Nor does any evidence survive regarding where this court convened prior to the late Augustan period. But it required a venue where the large panel of judges could convene, making a public and perhaps fixed location probable. This court will be discussed in greater detail later in the chapter.

My claim that, in the late Republic, the civil courts were generally less able than the criminal courts to supply elite audiences, large public audiences, or the scope for oratorical display that ambitious orators sought can be illuminated with some data. First for Cicero: published speeches surviving complete or in fragments, plus attested speeches that leave no fragments but seem reasonably

6. Bablitz 2015 discusses possible domestic spaces for convening trials.

7. The *album*, once reformed by Augustus, included individuals of senatorial and equestrian census, as well as those just below equestrian census (*ducenarii*, with property of HS 200,000: Suet. *Aug.* 32.3, with Bablitz 2007, 92–100). If not drawn from the *album* itself, the *centumviri* were presumably drawn from a similarly elevated census pool. The only *centumvir* we can identify by name is Ovid, an equestrian (see later discussion).

likely to have been published, total seventy-seven. These speeches therefore circulated in written form, in all but one case (as far as we know) in accordance with Cicero's wishes. Perhaps additional published speeches lurk among those that are attested but leave no fragments; Cicero may also have delivered and published speeches of which no attestations or fragments survive whatsoever. But these seventy-seven seem likely to constitute, if not a complete list, then at least a substantial share of what Cicero himself thought worth preserving and propagating, as helping to support his positions and as enhancing his prestige as a leading orator and statesman. Of these, I count forty-one deliberative speeches, of which twenty-eight are senatorial, twelve contional (addressed to assemblies of the people), and one addressed to another audience; and thirty-six forensic speeches, of which thirty-one were delivered in criminal cases, and only five in civil cases (none of these centumviral).[8] Thus the oratory Cicero deemed worth bothering to write out and circulate was either deliberative, addressed to the Senate or a popular assembly; or forensic, with the criminal trials looming nearly an order of magnitude larger than the civil ones. A similar survey of attested Ciceronian orations that were probably or certainly left unpublished yields strikingly similar results—though the thin evidence for many of these speeches renders any effort to count and categorize them imprecise, and the following numbers are merely approximate. This survey yields thirty-eight likely deliberative speeches, of which twenty-four are senatorial, eleven contional, and three are addressed to other audiences; and thirty-two forensic speeches, of which twenty-nine are criminal and three civil (none centumviral).[9] To the

8. This data comes from my assessment of the speeches transmitted (largely) intact in the manuscript tradition, together with Crawford's catalogues of fragmentary Ciceronian orations (1994) and lost and unpublished orations (1984). Among the criminal speeches, the six *Orationes Verrinae* represent just one trial, as do the two fragmentary speeches *Pro Cornelio*; hence Cicero's trial count is slightly lower than his speech count. Among the speeches certainly or probably published, only the fragmentary *In Clodium et Curionem* was circulated contrary to Cicero's wishes: Crawford 1994, 227, with Cic. *Att.* 3.12.2 SB 57, 3.15.3 SB 60.

9. This data comes from my assessment of Crawford 1984; her own tallies (p. 12) differ slightly from mine. Surviving attestations do not always make clear what is at issue in a given speech, or even whether a speech as such is at issue—as opposed to a collection of remarks, whether prepared or impromptu, or a back-and-forth argument like the so-called *altercatio* that Cicero describes in *Att.* 1.16.8–10 SB 16 (which Crawford 1984, 106–10 lists among the "lost and unpublished orations," no. 30). Especially in the Senate, when a magistrate made remarks or a senator was called upon to express his *sententia*, the distinction between extended, structured remarks and a "speech" may be hard to draw. However, the vast majority of senatorial *sententiae* must have been quite brief and have fallen far short of being "speeches" (van der Blom 2016, 41). Ryan's catalogue of attested *sententiae* shows that Cicero intervened hundreds of times in senatorial debate between 70 and 43—and these are merely the attested interventions, and furthermore do not count his statements as a sitting magistrate, above all as consul in 63 (Ryan 1998, 364–75). Thus the *c.* 52 senatorial "speeches" of Cicero that survive whole or in fragments, or are attested but lost or unpublished, constitute only a small fraction of Cicero's total number of utterances in the Senate.

extent that these delivered but unpublished orations fill out a picture of Cicero's overall oratorical activity, they suggest that his published speeches are generally representative of that overall activity. Yet it strains credulity that he only served as an advocate eight times in civil trials. He must have been asked constantly to advocate for friends and connections in such trials (indeed we sometimes glimpse the dynamics of such requests), and it is difficult to imagine that he did not accede to such requests from time to time.[10] In particular, it beggars belief that Cicero never participated in a centumviral trial. Are we to imagine that none of his clients or friends was ever involved in a contested matter of succession, or that Cicero never felt obligated to assist in such a case? This absence is the more striking as the court was assuredly in existence in Cicero's day, and Cicero himself reveals that trials of considerable significance could take place in that court. For his dialogues *De Oratore* and *Brutus* mention at least four high-profile, highly visible centumviral trials dating to the late second or early first centuries BCE, in which leading orators of the day took part.[11]

To cast broader light on the question of the visibility of the different courts, I surveyed the trials catalogued by Michael Alexander in his *Trials in the Late Roman Republic.* Alexander aims to include all trials attested in the century 149–50 BCE, and counts a total of 391. For my purposes, these can be divided into three groups: (1) For roughly twenty of these trials, the sources make neither the procedure nor the charges clear. (2) Over 300 are criminal trials of various sorts. Indeed, just six types of criminal trial—*repetundae, ambitus, vis*, homicide (*de sicariis/veneficiis, parricidium*), *maiestas*, and *peculatus*, all handled by *quaestiones perpetuae*—make up 180 cases, nearly half the overall total. (3) Roughly seventy are clearly or probably civil trials, and of these only four are centumviral—precisely the four mentioned in Cicero's dialogues, as noted earlier.[12] Alexander's catalogue omits several additional centumviral trials that

10. In *Att.* 1.1.3–4 SB 10 Cicero describes being asked, and declining, to serve as an advocate in a case of defrauding a creditor (*dolus malus*, a civil procedure defined just one year before this letter: Cic. *ND* 3.74 and *Off.* 3.58–61, with Fantham 2008, 330–3 and Dyck 1996, 565–73). Also, in *Att.* 1.20.7 SB 20 he describes accepting a gift of books from P. Papirius Paetus, which he says is allowed under the *Lex Cincia* (see n. 5 in this chapter)—suggesting that he had previously served as Paetus' advocate. Nothing else about this trial is known, which suggests that it was (if anything) a low-profile civil case not otherwise worth notice. The invectives against Cicero written long after his death accuse him of receiving large gifts and bequests (implied to be illegal) in return for his advocacy, though without discussing specific instances or indicating what types of advocacy might yield such gifts ([Sall.] *in Cic.* 4; Dio 46.6). However, no firmly attested legacy or bequest to Cicero comes from a person for whom he is known to have advocated in court. See Shatzman 1975, 70–3, 409–12.

11. *De Or.* 1.173–80, 1.238, 2.98; *Brut.* 144, 197.

12. See previous note; these are Alexander 1990, nos. 93, 360, 363, 364.

certainly or possibly date to his period.[13] But these additional trials barely affect the overall pattern that his catalogue clearly reveals. For, while his count shows a smaller imbalance between criminal and civil trials than is seen in the statistics for Cicero alone, civil trials remain substantially (and improbably) underrepresented relative to criminal ones. This imbalance presumably reflects the biases of the mostly elite authors who produced the texts that attest these trials. That is, these authors disproportionately attend to high-profile criminal trials concerning people of their own class and matters of government, and which involve complex, highly visible advocacy and oratory.

I am by no means the first person to notice our sources' bias against civil trials and the associated oratory. In Tacitus' *Dialogus*, written around 100 CE but with a dramatic date of around 75 CE, one of the interlocutors, Curiatius Maternus, describes the difference between the oratory of his own day and of Cicero's day as follows:

> Centumviral cases, which now hold first place, were so overwhelmed by the splendor of the other courts that no book [sc., containing a speech] that was spoken before the centumvirs is read—not of Cicero, Caesar, Brutus, Caelius, Calvus, or of any great orator—apart from Asinius' orations entitled *On behalf of Urbinia's heirs.* But these were delivered by Pollio himself in the middle of the Augustan age, after the enduring political calm of the time . . . had pacified eloquence itself, just as it had all else. (*Dial.* 38.2)[14]

This wording may imply that the great orators of the late Republic never spoke at all in the centumviral court; or, more likely, that they did so but their speeches were either unpublished or published but "unread," that is, simply not of interest to students, teachers, and orators of later times.[15]

13. These are the centumviral trial described at Val. Max. 7.8.1, dating perhaps to the early first century BCE; the Ciceronian-era trial described at Val. Max. 7.7.2; and (if the supplements are sound) the corrupt practice directed at the centumvirs described in Porph. *In Hor. Serm.* 2.1.49, also in the Ciceronian age. One further centumviral trial mentioned at Val. Max. 9.15.4, apparently involving someone impersonating Clodius and seeking his property, postdates January 18, 52 BCE, the date of Clodius' murder. Cf. n. 15.

14. *Causae centumvirales, quae nunc primum obtinent locum, adeo splendore aliorum iudiciorum obruebantur, ut neque Ciceronis neque Caesaris neque Bruti neque Caelii neque Calvi, non denique ullius magni oratoris liber apud centumviros dictus legatur, exceptis orationibus Asinii, quae pro heredibus Urbiniae inscribuntur, ab ipso tamen Pollione mediis divi Augusti temporibus habitae, postquam longa temporum quies. . . ipsam quoque eloquentiam sicut omnia alia pacaverat.*

15. So Güngerich 1980, 169. Tacitus clearly implies here that the court existed and was active in the era of Cicero, Calvus, etc. Whether he assumes this *ex silentio*, or actually had access to centumviral speeches by leading orators of that era that were published but "unread," is unclear.

What happened to the venues of prestigious oratory from the Ciceronian age through the Augustan age? Deliberative oratory certainly persisted, above all in the Senate, where it in fact became ever more important as this body engrossed legislative and electoral functions previously carried out by popular assemblies. Correspondingly, however, opportunities for magistrates to harangue the people were curtailed. Regarding lawmaking, ordinary tribunes of the plebs lost their legislative initiative early in the Augustan period; the last attested tribunician law named for a non-*princeps* dates to 27 BCE (though *principes* continued for some time to legislate through the tribunician channel by virtue of their own *tribunicia potestas*). Regarding *contiones* and electoral assemblies, which magistrates traditionally convened and addressed on matters of state, the traditional process seems to have persisted, with some modifications, through the Augustan age and in some respects beyond. But the high drama of politicians at loggerheads addressing rival *contiones* and advocating for contrasting forms of action—that staple of republican politics—was broadly speaking no longer to be found. The reasons are complex and somewhat intangible. One factor is the beginnings of the system of "commendation," in which certain magistrates, particularly the higher ones, were handpicked by the *princeps*. This process ensured that at least some key magistrates were reasonably aligned with the *princeps*' priorities, and were less likely to speak dramatically in opposition to him; it also likely reduced the direct engagement with the people and intensity of canvassing for many candidates.[16] Overall, the opportunities for aristocrats to compete in deliberative oratory before large public audiences, at least on matters of state, seem to have been reduced in ways both direct and indirect, from at least the 20s BCE.

The story is not so different for the criminal courts. Some *quaestiones perpetuae* continued to function into the principate, under a praetor's jurisdiction as before. In principle, these courts might still have provided an arena for aristocratic advocates to display their eloquence and compete before elite juries and large public audiences. Indeed, the migration of the praetors' courts from the *forum Romanum* to the *forum Augustum c.* 2 BCE must have provided a more comfortable and capacious setting for high oratory in the late Augustan age.[17] However, no later than the principate of Tiberius, jurisdiction over the highest-profile cases, *repetundae* and *maiestas*, was transferred to the Senate, functioning as a court. When such cases involved the *princeps*' own appointees rather than senators, the *princeps* heard the cases himself. Trials held inside

16. On the prehistory of the *commendatio* system, and on other ways Augustus tilted the electoral playing field to his own advantage, see Jones 1955, 12 and passim.
17. On these courts' locations, see Bablitz 2007, 13–34.

the Senate house, or before the *princeps* in his residence, assuredly provided advocates a highly distinguished audience. But neither venue was open to the public; hence the *corona*, the all-important public part of the late republican orator's audience, was eliminated. Another high-profile *quaestio*, dealing with *ambitus*, continued to operate into the Augustan age and beyond, thanks to ferocious competition in certain elections that continued to involve contested voting. Indeed, new legislation was introduced to counter *ambitus* as late as 18 BCE (Jones 1955, 12–13). Yet, as the higher magistracies came to be appointed under the *commendatio* regime, the overall stakes and prominence of *ambitus* trials must have declined. The remaining *quaestiones* may have experienced competition from newer tribunals: for example, the *praefectus urbi*, an office of Augustan invention, had general jurisdiction over matters of public order, and in due course began to hear criminal cases that could equally have come before a *quaestio*.[18] Quite possibly the *corona* could still gather in the praetor's or prefect's courts for attractive trials. But the overall tendency is still clear: trials for many serious, high-profile political crimes were moving into venues that restricted or excluded the large public audiences that used to gather to watch the show, and the apparent stakes of such trials were diminished. Aristocratic advocates consequently saw their opportunities curtailed for regular contact with large, engaged, interested public audiences.

The civil courts, in contrast, apparently did not undergo major jurisdictional or procedural change from late Republic through the Augustan period. The kinds of cases litigated in those courts, as described earlier, emerged from durable socioeconomic structures that were less impacted by the changing political order than were the mechanics of government and office holding, with which the *quaestiones* concerned themselves. By the same token, however, civil trials were not generally as conducive to competitive aristocratic oratory as criminal trials.

This, finally, is the point at which the centumviral court's distinctive features begin to make themselves felt. With jurisdiction over matters of succession, this court employed a large panel of judges, probably of considerable wealth (near-equestrian status and above), as previously noted. A further distinctive feature of this court was its continued use of the archaic *legis actio* procedure, in a period when most other courts had long since adopted the formulary system. This is one of several features that lead some scholars to consider this court quite ancient. From a strictly legal point of view, a plausible explanation for the retention of this archaic procedure is that condemnations under the "modern"

18. See n. 39.

formulary procedure were normally assessed in monetary terms. But disputes over inheritances, by their nature, involve contestations over particular items in the estate—a specific piece of land, improvements on that land, the property's actual furnishings and equipment, and so on—for which a monetary equivalent may not be easy to determine, or even relevant. Hence, perhaps, the preference for a procedure that did not require monetary condemnations. Also, this procedure may have given the judges, unconstrained by the terms of a formula, greater discretion in the decisions or settlements they could conclude, which in turn may have given advocates greater scope to deploy persuasive eloquence.[19] Finally, a court of this size needed a fixed location. By the 40s CE, it was centrally and prominently installed in the Basilica Julia, on the south side of the *forum Romanum*, with plenty of room for public spectators. But it may have resided there as early as 12 CE, when a lengthy restoration due to fire damage was completed.[20] Prior to this we have no evidence for where the court convened. But, by the middle of the Augustan age (at the latest), we begin to hear about trials in this court, and speeches delivered there, as we almost never do in the previous two generations, when the court is all but invisible in our surviving sources.

Let us examine how this court emerges in the Augustan period. As we saw earlier, Maternus in Tacitus' *Dialogus* suggests that Asinius Pollio's speech *On Behalf of Urbinia's Heirs* was among the first prominent centumviral orations of the modern era. The *terminus ante quem* for this trial is Pollio's death in 4 CE. Four further attestations of this speech survive in Quintilian. Quintilian informs us that the opposing advocate was T. Labienus, that Pollio mocked Labienus' Latinity, and that Pollio declared that Labienus' advocacy itself constituted evidence for the badness of the other side's cause (Labienus supposedly earned the nickname "Rabienus" for his vicious attacks on all and sundry). As Pollio and Labienus were both considered leading orators of the day (see the following), there may have been significant public interest in watching them clash

19. On the court's antiquity, see Kaser and Hackl 1996, 52–3; Kelly 1976, 5–8. On reasons for and consequences of the *legis actio* procedure persisting in the centumviral court, see Gagliardi 2002, 135–64 (with discussion of the various scholarly positions) and Kelly 1976, 27–34; Parks 1945, 51 notes the opportunity this procedure may have created for advocates to unfurl their eloquence. If this is correct, however, it seems all the stranger that Cicero published no centumviral speeches. Of the five speeches from civil trials that Cicero certainly or probably published, three were delivered before the *recuperatores* (*Caecin.*, *Tull.*, and another lost *Pro Tullio* [Crawford 1984 no. 7]); and two before an *unus iudex* (*Quinct.*, *Rosc. Com.*)—all conducted under formulary procedure. Furthermore, Cicero himself implies that advocacy conducted before an *unus iudex* calls for a more modest and restrained style than in higher-profile courts or in deliberative oratory: *Opt. gen. or.* 10; *Or.* 72; *Fam.* 9.21.1 SB 188.

20. On this basilica, see Giuliani and Verduchi 1993; for its location and physical layout see Bablitz 2007, 61–70.

and exchange insults, which may partially account for the trial's high profile.[21] But the case itself also involved considerable drama, as Quintilian's descriptions make clear. A woman named Urbinia had died, leaving her estate to some heirs. A man purporting to be Urbinia's long-lost son Clusinius Figulus subsequently appeared and claimed the inheritance. Labienus apparently advocated for this claimant, while Pollio advocated for the testamentary heirs (hence his title, *Pro heredibus Urbiniae*). Pollio contended that the purported Clusinius was an impostor fraudulently seeking the property—that he was actually a slave named Sosipater, owned by Pollio himself, no less. The main issue in this case, Quintilian says, was therefore "who this man is . . . whether he is Clusinius Figulus, son of Urbinia" (*Inst.* 7.2.4–5)—a kind of Martin Guerre or Roger Tichborne case *avant la lettre*. Quintilian further says that this case manifested a structure called *coniectura duplex*, which means that each side has its story and sticks to it. He summarizes the competing stories as follows:

> So it is in the case of Urbinia, where the claimant says that Clusinius Figulus, Urbinia's son, got away after the battle line in which he stood was defeated; that he underwent various adventures, was even imprisoned by the king, and finally returned to Italy and his fatherland among the †Margini† and was recognized there. Pollio, conversely, said he served two masters in Pisaurum as a slave, practiced medicine, after manumission involved himself in someone else's slave household that was for sale, and was bought by himself [sc. Pollio], at his [sc. the claimant's] request to be his slave. (*Inst.* 7.2.26)[22]

Let me emphasize three points about this trial and the passages attesting it. First, Pollio's speech survived. Quintilian obviously possessed a text of this speech, knew it, taught it, and could refer to it as if he expected others also to know it. Tacitus evidently knew it as well. Does the survival of a speech indicate that the case was celebrated at the time, or that the court in which it was delivered was important? Based on Cicero's practice, I conjecture that Pollio

21. Rabienus: Sen. *Controv.* 10 pr. 5 (and §§4–8 in general, with recent discussion by Echavarren 2007, 171–3 and Balbo 2004, 1.201–21; on the Urbinia fragments, see Balbo 2004, 1.210–15 and 218–21). Pollio insulting Labienus: Quint. *Inst.* 4.1.11, 9.3.13.

22. *Utraque enim pars suam expositionem habet atque eam tuetur, ut in lite Urbiniana petitor dicit Clusinium Figulum filium Urbiniae acie victa in qua steterat fugisse, iactatumque casibus variis, retentum etiam a rege, tandem in Italiam ac patriam suam †marginos†* [Marrucinos *Cuper*] *venisse atque ibi agnosci: Pollio contra servisse eum Pisauri dominis duobus, medicinam factitasse, manu missum alienae se familiae venali inmiscuisse, a se rogantem ut ei serviret emptum.* Cuper's conjecture places the alleged Clusinius in the ancestral territory of the Asinii (see André 1949, 9–10 for their origins, with Catull. 12.1, Livy *Per.* 73), which could help explain Pollio's claim of prior acquaintance with the man as actually being his own slave.

published this speech because he thought it showed him off to good competitive advantage as an advocate delivering an oration in an important case and court (and likely because he won the case, though the outcome is not attested). The second point is that the advocates were prominent. Pollio was a major cultural and political figure of this era, and Labienus too was well known as an orator, historian, and declaimer. Indeed, Pollio and Labienus both figure in Seneca the Elder's collection as declaimers or as critics of declamation[23]—declamation itself having emerged, between the triumviral period and the principate of Tiberius, as an important venue for competitive aristocratic eloquence (see later discussion). The centumviral court in this era could thus bring two men renowned for eloquence into dramatic competition as advocates. The third point is that the case has a strikingly declamatory flavor. Not only do the tangled tales of adventure and (mis)recognition that Labienus and Pollio weave positively reek of a declamatory *thema*, but we might also reflect that some of the fantastic, novelistic settings and backstories of the *controversiae*—sons or fathers who are exiled, captured by pirates, or the like, are possibly rumored to be dead, but eventually return home to wrangle over inheritances—were training students to argue inheritance cases, which fell under the centumviral court's jurisdiction.[24] However fantastic and fictionalized these declamatory "cases" and the "laws" governing them may be, the Urbinia case reminds us that reality could be equally fantastic. That such topics and themes featured regularly in Roman declamation, hence in the rhetoric of the schools, during and around the Augustan age, suggests that these kinds of cases, and the court in which they were tried, were important, and perhaps increasingly so, at this time.[25]

A second celebrated Augustan-era centumviral trial further illustrates how the world of the court was entangled with the world of declamation. Seneca the Elder offers a brief character sketch of Albucius Silus, a prominent Augustan declaimer and teacher of declamation (*rhetor*) who also sometimes took up "real" court cases. At some point Albucius served as defense advocate in a centumviral trial in which, it seems, the claimant was contesting an unfavorable will left by his father. Albucius, urging that the will be preserved as written, painted the claimant as an impious son who was neglectful of his filial

23. On these figures in Seneca, see Echavarren 2007, 79–81, 171–3.

24. For such declamatory *themata* in this period, see, e.g., Sen. *Controv.* 1.6, 3.3, 4.3, 5.2, 5.4, 6.2, 7.1.

25. Quintilian (*Inst.* 9.2.33–5) discusses another inheritance case in which Pollio served as advocate—presumably in the centumviral court—and quotes him capping a *sententia* delivered by the opposing advocate. This, then, is another Augustan-era centumviral trial sufficiently famous that a speech or speeches were still read a century later. Pollio is also quoted from an unspecified speech in an inheritance case at Quint. *Inst.* 9.2.9.

obligations, implying that he was justifiably passed over. In hopes of bringing opprobrium upon him, and in full declamatory mode, Albucius said, "Would you like to settle the case with an oath? Swear, but I will give the terms: swear by the ashes of your father, which are unburied; swear by his memory," and so on—Seneca calls this a *locus*, a piece of boilerplate declamatory rhetoric.[26] Now, under Roman civil law, a party can win an action simply by swearing on terms offered by the other side.[27] The claimant's advocate, L. Arruntius, said, "We accept the terms; he will swear." Albucius objected, "I was not offering terms, it was a figure of speech!" But Arruntius refused to yield, and the *centumviri* were eager to go home. They declared that they would find for the claimant if he swore the oath on the terms Albucius had dictated. The claimant swore, and thus Albucius lost the case. Thereafter, says Seneca, Albucius never again spoke in the forum.[28] This story appears more briefly in Suetonius' sketch of Albucius in *De Grammaticis et Rhetoribus*, and Quintilian also refers to it. While these authors both evidently got the story from Seneca, Quintilian calls it a "famous tale," *fabula nota*, which might suggest it was known more widely.[29]

Does this tale suggest that the prestige of the centumviral court was rising in the Augustan era? Here there is no indication that a speech or speeches survived, but only the memory of an *altercatio*, or back-and-forth argument, between the two advocates. Both were, however, quite prominent in this era: Albucius above all as a *rhetor*, and Arruntius as an orator and politician—and whether the L. Arruntius in question here is the consul of 22 BCE or his homonymous son, consul in 6 CE, makes little difference in this regard.[30] As with Pollio and Labienus, here too it speaks to the prestige and visibility of the centumviral court that it was an arena in which two such advocates could collide, compete, and cause people to notice what happened. But this story is really about the

26. Sen. *Controv.* 7 *pr.* 6–7: *nam in quodam iudicio centumvirali . . . induxit eiusmodi figuram* [sc. *iurisiurandi condicionem*] *qua illi omnia crimina regereret. placet, inquit, tibi rem iureiurando transigi? iura, sed ego iusiurandum mandabo: iura per patris cineres, qui inconditi sunt, iura per patris memoriam; et executus est locum.*

27. See Kaser and Hackl 1996, 266–9, Berti 2007, 145–7, and Kaster 1995, 322 for discussion and sources.

28. Sen. *Controv.* 7 *pr.* 7 (continued from n. 26): *quo perfecto surrexit L. Arruntius ex diverso et ait: accipimus condicionem; iurabit. clamabat Albucius: non detuli condicionem; schema dixi. Arruntius instabat. centumviri rebus iam ultimis properabant. Albucius clamabat: ista ratione schemata de rerum natura tolluntur. Arruntius aiebat: tollantur; poterimus sine illis vivere. summa rei haec fuit: centumviri dixerunt dare ipsos secundum adversarium Albucii si iuraret; ille iuravit. Albucius non tulit hanc contumeliam, sed iratus calumniam sibi imposuit: numquam amplius in foro dixit.*

29. Suet. *Gram. et rhet.* 30.5; Quint. *Inst.* 9.2.95. Balbo 2004, 1.113–15 discusses these fragments of Albucius. See also Berti 2007, 144–9; Echavarren 2007, 50–4; Kaster 1995, 313–16 and 321–2.

30. The two Arruntii: *PIR*[2] A 1129–30. For alternative scholarly positions regarding which Arruntius was Albucius' opponent, see, e.g., Lebek 1966, 364–9, Balbo 2004, 1.68–9, and Echavarren 2007, 72–4.

clash between the culture and practice of the declamatory schools, on the one hand, and of the "real" courts, on the other. That the centumviral court stands as the typical instance of a "real court" in this tale—as the neutral backdrop against which Albucius' inept declamatory flourish can be posed—attests to this court's centrality in contemporary thinking about the scope and structure of the court system as a whole.[31]

One further text illuminating the status of the centumviral court survives from very late in the Augustan era. In his poem *Ex Ponto* 3.5, published in 13 CE, Ovid—in exile on the Black Sea—says that he has received and read with pleasure the text of a speech, delivered in the centumviral court, by M. Aurelius Cotta Maximus Messalinus. Cotta was a grandee: the son of Augustus' close associate M. Valerius Messalla Corvinus, he was a senator under Augustus and Tiberius, held the consulship probably in 20 CE, and eventually served as proconsul of Asia.[32] He must be rather young as Ovid addresses him here. Ovid writes, "I have read . . . the eloquent words you spoke in the crowded forum . . . and had I not erred, had my Muse not chased me away, your own voice might have presented the work I read, and perhaps I might have sat, as I used to, as one judge of your words out of the hundred men. . . ."[33] Since Ovid mentions elsewhere that he served as a *centumvir* and also as an *unus iudex* (*Tr.* 2.93–6), here he may be punning on these alternative forms of civil jurisdiction, declaring that he is "one judge" of Cotta's eloquence even as he sits among the *centumviri* who constitute the jury for the trial in question. In any case, the dynamic described by Ovid recalls Cicero sending Atticus texts of his speeches to review, or, a century later, Pliny circulating drafts of speeches to his own literary friends for comment, on the way to publishing them. I conjecture that Cotta too was aiming to publish his speech, hence sought his famous literary friend's assessment of the effort so far. It seems clear here that, by the late Augustan period, a young orator of high rank could imagine—and a solicitous friend could flatter the idea—that a reputation for eloquence could be burnished by

31. Kelly 1976, 34–9 discusses how the centumviral court became the prototypical instance of civil justice as such in the period from Domitian to Hadrian. But Seneca's anecdote seems to depend for its point on precisely such a view of this court already in the Augustan age or shortly after. Schwartz 2015 discusses the clash between forensic and declamatory culture as revealed in a different Senecan anecdote.

32. See *PIR*[2] A 1488.

33. Ov. *Pont.* 3.5.7–8, 21–4: *legimus . . . | dicta tibi pleno verba diserta foro. | . . . at nisi peccassem, nisi me mea Musa fugasset, | quod legi tua vox exhibuisset opus, | utque fui solitus, sedissem forsitan unus | de centum iudex in tua verba viris . . . .* The *forum plenum* of v. 8 might possibly suggest that the court was by now established in the Basilica Julia in the *forum Romanum*.

delivering a speech in the centumviral court with a substantial *corona* watching (the "crowded forum"), and that publishing the speech would help secure that reputation. Pollio seems to have made a similar calculation a couple of decades earlier in publishing his centumviral speech *Pro heredibus Urbiniae*—but Cicero, two or three generations earlier, never made such a calculation.

So there is, I think, some reason to believe that the centumviral court began to emerge in the mid- to late-Augustan period as an arena for high-prestige oratory, a status it lacked over the prior couple of generations. Or perhaps, rather, we should say that this court began to re-emerge after many years of eclipse, and reclaim the prominence it seems to have enjoyed around the turn of the first century BCE.[34] Why should this happen? I argued earlier that the changes in other oratorical arenas had restricted aristocrats' access to large public audiences, which constituted one key source of prestige. The other type of high-prestige audience—relatively small but high-ranking—remained easy enough to reach, and indeed became ever more so as the Senate and *princeps* assumed jurisdiction over certain criminal cases. But the attraction of the centumviral court, whose jurisdiction and procedure seem to have remained largely unchanged amidst all the turmoil,[35] was its large, socially elevated jury panel(s) and its capacity to draw and accommodate public audiences, at least for certain trials. That this court did not employ a formulary procedure may also have made it more congenial for oratorical display. Finally, it bears considering whether struggles over succession in wealthy families were not always and by nature of interest to a broad public, and whether the eclipse of such trials in the Ciceronian era is not the anomaly rather than the baseline—in other words, whether the particularly tumultuous politics of this era, and the resultant stream of electric criminal trials in the *quaestiones*, rendered the centumviral court and its succession cases less visible and prestigious than they would otherwise have been, and than they actually were in the generations preceding and following.[36] In one sense, then, the argument made by Tacitus' character Maternus, discussed earlier, goes in the right direction: the centumviral court emerged from the shadows as higher profile criminal courts lost prominence.[37] But the key issue, I suggest, is raised by

34. See n. 11.

35. According to Suet. *Aug.* 36.1 and Dio 54.26.6, Augustus in 13 BCE transferred the authority to convene this court from ex-quaestors to the *decemviri stlitibus iudicandis*. The aim and consequences of this reform are unclear, but it suggests fine-tuning rather than wholesale reform.

36. I thank Alex Dressler for raising and discussing this provocative question.

37. Tac. *Dial.* 38.2 (n. 14); Crook 1995, 184–5.

Maternus later, 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 criminal trials, believing that the verdicts mattered to them.[38] By late in the principate of Augustus, the centumviral court was among the chief venues where aristocratic orators could still expect to find the all-important *corona* (at least for high-profile trials) in addition to worthy competitors and a high-status jury.[39] The younger Pliny's vivid descriptions of centumviral trials in the age of Trajan, with major orators competing and huge crowds thronging the Basilica Julia to watch and hear, represents a further evolution in the court's prestige.[40] This ascent, however, builds on foundations laid in the Augustan age.

This rise in prominence of the centumviral court in the Augustan age is just one aspect of an overall reconfiguration of the economy of eloquence in this era, as I have argued elsewhere. Political change from the age of Cicero into the principate, spanning across the Augustan age, caused some traditional contexts for eloquence to diminish or disappear, while leaving others largely unaffected. But new forms sprang up in place of those that withered. The increasing visibility, starting in the triumviral period, of declamation as a more-or-less public activity pursued by adult aristocrats, and of the public recitation of literary works in progress, represent further aspects of this reconfiguration. Declamation and recitation were effectively new arenas in which aristocrats could display their eloquence and compete with one another before audiences of various sizes and social composition.[41] The image Seneca the Elder presents of aristocratic oratory

38. Tac. *Dial.* 39.4: *oratori autem clamore plausuque opus est et velut quodam theatro; qualia cotidie antiquis oratoribus contingebant, cum tot pariter ac tam nobiles forum coartarent, cum clientelae quoque ac tribus et municipiorum etiam legationes ac pars Italiae periclitantibus adsisteret, cum in plerisque iudiciis crederet populus Romanus sua interesse quid iudicaretur.*

39. As noted earlier, the courts of the praetor and *praefectus urbi* likely still admitted broad public audiences and may still have allowed for oratorical display. Praetorian courts still employed large senatorial-equestrian juries, per the Augustan reforms (Talbert 1984a, 463; Sherwin-White 1966, 309). Tiberius as *princeps* sometimes attended praetorian courts, an indication of their continuing significance (Tac. *Ann.* 1.75.1; cf. Suet. *Tib.* 33; Dio 57.7.6). Likewise, Pliny (*Ep.* 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, 409–10). Yet this is Pliny's only significant discussion of this court; senatorial and centumviral oratory loom much larger for him. As for the court of the *praefectus urbi* (whose development and jurisdiction is difficult to untangle: Tac. *Ann.* 14.41), Pliny mentions it just once, at *Ep.* 6.11, describing a competition in eloquence between two young advocates.

40. Pliny often argues cases before the *centumviri: Ep.* 2.14.1, 6.12.2 (*harena mea*). Minor cases: *Ep.* 2.14.1. Major cases, generating great public interest: *Ep.* 6.33.2–5, 4.16.1–2. Praise/applause he garners: *Ep.* 1.5.7, 1.18.4, 4.16.2–3, 6.23.11, 9.23.1. See also Kelly 1976, 35–9.

41. Roller 2011, 211–19 (on literary publication, recitation, and declamation); 2018 (on recitation in the age of Trajan and Hadrian). See also Roller 2015, 15–28 (on senatorial oratory).

and eloquence in the Augustan and Tiberian age, and that Pliny the Younger presents of such oratory under Nerva and Trajan, reveal lively and diverse cultures of competitive writing and speaking—lacking certain activities and venues that were prominent in the age of Cicero, to be sure, but supplemented by activities and venues that emerged subsequently.

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