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AUGUSTUS' CLASSICISM: ORATORY AND ROMAN LAW IN CONTEXT¹

Summary: Traditionally, the place of oratory in Roman law has been approached from two points of view: its place in Roman litigation and the possible influence of rhetoric in Roman jurisprudence and its methodology.² I would like to focus on three main aspects of these two perspectives in the context of the age of Augustus. These are: first, the influence of rhetoric in Roman jurisprudence and its methodology; second, the impact of the Augustan *Lex Julia iudiciorum privatorum*, which affected the judicial procedure; and third, the effect of the so-called “Augustan Classicism”³ (concerning the debate about style in oratory) in the language employed in Roman litigation. All these aspects connect rhetoric and Roman law, here focusing on the Augustan age. To understand the discourse, it is necessary to clarify that while the term “oratory” refers to the process of giving a speech, being the theoretical frame that embodies diverse disciplines, such as the speech, the dissertation, or the conference, on the other hand, “rhetoric” must be understood as the method employed in oratory, by which the speaker tries to give the written or spoken language enough efficacy to delight, persuade or touch the audience or the reader.⁴ So, on one side we have the theory and on the other, the practice. These terms are going to be used in this paper depending on whether we refer to the theoretical science or the practice carried out by the diverse subjects. This paper will display the role of Augustus as an organiser, settling on practices that have been carried out before his procedural reform, and how his preference for a concrete style on rhetoric can also have been influential on the Roman procedure that was being employed at the beginning of the Empire.

Key words: oratory, rhetoric, Augustan Classicism, Atticism and Asianism, Roman judicial procedure

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² SANCHEZ-MORENO ELLART, C.: Oratory and Roman Law. In *The Encyclopaedia of Ancient History*. New York 2013, 4924–4926.

³ SPAWFORTH, A. J. S.: *Greece and the Augustan Cultural Revolution*. New York 2012, 18, this denomination also concerns the way of calling the classic art of the age of Augustus.

⁴ Cf. HORNBLOWER, S. – SPAWFORTH, A. – EIDINOW, E. (eds.): *Oxford Classical Dictionary*. Oxford 2012, 1276 (s.v. Rethoric, latin)

1. THE LIMITS OF THE PROCEDURE BEFORE AUGUSTUS: THE *LEGIS ACTIONES*

To gain a better understanding of the big change that produced the reforms of Augustus, it is important to describe succinctly the main features of the Roman procedure. To sum up, the earliest form of Roman civil procedure was called *legis actiones*. Its peculiar feature was the employment of prescribed oral words which were used in the stage of the trial before the magistrate. In this early procedural form all the proceedings were strictly formal, so a meaningless mistake could make the claimant lose the lawsuit.⁵ Gaius (120–178 AD?), a professor of law of the second century described this fact:

Gai. *Inst.* IV. 30: *Sed istae omnes legis actiones paulatim in odium uenerunt. namque ex nimia subtilitate ueterum, qui tunc iura condiderunt, eo res perducta est, ut uel qui minimum errasset, litem perderet*

But all these branches of statute-process fell gradually into great discredit because the excessive subtlety of the ancient jurists made the slightest error fatal.

This obviously makes the procedure not very useful for many of the litigants, not just because of this formal exigencies on the words used on the trial, but also because of the concreteness of the procedural schemes, that were not adapted to all kinds of daily situations.

As part of that, it is important to mention that the *legis actiones* were just accessible to Roman citizens, a situation that obviously was untenable in Augustan times, when the Empire was opened to the Mediterranean and was enlarging its frontiers day by day. This form of civil procedure was later superseded by a formulary process, with written *formulae* (a document which was given to a judge in a civil trial authorization to condemn the defendant). The *formula* was introduced by the *Lex Aebutia* (between 199 and 126 BC or even later)⁶ for one of the 5 older procedures (*legis actiones*, and to be more concrete, for the *legis actio per conductionem* [legal action for restitution]). I will come later to this topic when talking about the reforms on the procedure carried out by Augustus.

As it can be seen, there was no need for oratorical or rhetorical abilities for the performance of the *legis actiones*, because the pronounced words were prescribed, and that was how the claimant stated his position before the magistrate, without any opportunity for persuasion. In the next section, I would like to explain succinctly the importance of rhetoric for the procedure, to better understand how the reforms of Augustus set a pattern of behaviour that was necessary for the different subjects living in the Empire who wanted to achieve a legal solution for their problems. These two introductory points introduce the context that made necessary these Augustan reforms.

⁵ The *legis actiones* were the earliest form of Roman civil procedure about which we are relatively well informed. Its characteristic feature was the use of prescribed oral formulae which were used in the stage of the trial before the magistrate.

⁶ Gai. *Inst.* IV 30–31; and Gell. XVI 10. 8.

2. ROMAN LAW AND THE IMPORTANCE OF RHETORIC FOR ITS PERFORMANCE

In Quintilian's definition, rhetoric was described as "the art of persuasive speech".⁷ Rhetoric and declamation had come to Rome from Greece long before the government of Augustus. It seems that, in the beginning, Latin rhetoricians did not invent the subjects discussed in their schools, but that they adapted, with precise modifications, a set of cases formed in Greece at the end of the fourth century BC.⁸ As this set of issues increased in number, with some cases taken from Roman common life, they were progressively Romanized. As Cicero said, to achieve some success in Rome it was necessary that the orator hide his Hellenistic knowledge.⁹

But the Roman conception of oratory was not just limited to understanding it as a technique of speaking, but also as a moral virtue,¹⁰ because it showed the proper Roman man.¹¹ In the year 100 BC rhetoric started to be an essential element in the cultural formation, because it played an important role in providing the young male elite at Rome with the training and experience necessary to defend and maintain their

⁷ Quint. Inst. or. II 15: *Quid sit rhetorice. Quae finitur quidem variae, sed quaestionem habet duplicem, aut enim de qualitate ipsius rei aut de comprehensione verborum dissensio est. Prima atque precipua opinionum circa hoc differentia, quod alii malos quoque viros posse oratores dici putant; alii, quorum nos sententiae accedimus, nomen hoc artemque, de qua loquimur, bonis demum tribui volunt. Eorum autem;* also describes it as that Arist. *Rhet.* 1355a 12; but the first reference to rhetoric in Roman literature comes from Ennius, *Ann.* 308. Rethoric was sometimes referred with the metaphor of dressing up, of ornament, in Cicero's letters Cic. *Ad Att.* 1: 14; 1: 17; 2: 12; 2: 20. For further information about this metaphor, see WISEMAN, R.: Ancient Roman Metaphors for Communication. *Metaphor and Symbol* 22.1 (2007) 69.

⁸ SANTA CRUZ TEJEIRO, J.: Influencia de algunas disciplinas no jurídicas en el Derecho romano. *AHDE* 27–28 (1957–58) 343 – 398, here 347, despite of this quotation made in the text, we have to underline that we don't agree with the author in this article, because he thinks that rhetoric and law are both different disciplines, and that there was not connection between them.

⁹ Cic. *De orat.* II 36. 153: *Tum ille "verum" inquit "ex me audies, Catule: semper ego existimavi iucundiorum et probabiliorem huic populo oratorem fore, qui primum quam minimam artificum alicuius, deinde nullam Graecarum rerum significationem daret: atque ego idem existimavi pecudis esse, non hominis, cum tantas res Graeci suscipere, profiterentur, agerent seseque et videndi res obscurissimas et bene vivendi et copiose dicendi rationem duros hominibus pollicerentur, non admoveere aurem et, si palam audire eos non auderet, ne minueres apud tuos civis auctoritatem tuam, subauscultando tamen excipere voces eorum et procul quid narrarent attendere. Itaque feci, Catule, et istorum omnium summam causas et genera ipsa gustavi.*" ("You shall hear from myself, Catulus: I have always thought that an orator would be more accepted by the Roman people, who in the first place employ as little artifice as possible, and so not giving at all a Greek sense to it. At the same time, when the Greeks undertook, professed, and executed such great things, when they offered to teach mankind how to penetrate the most obscure subjects, to live virtuously and to speak eloquently, I thought it the part of an irrational animal rather than a man, not to pay them some degree of attention, and, if we cannot venture to hear them openly, for fear of diminishing our authority with our own fellow-citizens, to catch their words at least by listening privately, and hearkening at a distance to what they stated; and thus I have acted, Catulus, and have gained a general notion of the arguments and subjects of all their writers.")

¹⁰ GUNDERSON, E.: *Staging Masculinity: The Rhetoric of Performance in the Roman World.* Michigan 2000, 67ff. And according to Neumeister, also the orator can choose between the rules of oratory that he wanted to follow up, not to take it as binding principles, as he declares in NEUMEISTER, C.: *Grundsätze der forensischen Rhetorik gezeigt an Gerichtsreden Ciceros.* München 1964.

¹¹ RICHLIN, A.: Gender and Rhetoric: Producing Manhood in the Schools. In DOMINIK, W. (ed.): *Roman eloquence, Rethoric in Society and Literature.* London 1997, 74–90.

position in public meetings. It cannot be doubted that the jurists received in their youth lessons on rhetoric, which familiarized them with the exegetic figures of the rhetoricians.¹² The most important thing to be pointed out here is that this information had an influence not in the building of the structure of the procedural formula, but in the instilling of rhetorical knowledge in the lawyer, which was reflected in his performance in judicial practice.¹³

Since eloquence continued to be regarded as a virtue, increased rhetorical importance was given to less controversial oratorical forms, including minor judicial cases and the art of declamation in schools and at home.¹⁴ This influence of rhetoric in Roman law can be appreciated in such examples as the long speeches of Cicero (106–43 BC),¹⁵ on the *de magia* of Apuleius (124–170 AD), on what can be reconstructed from the speeches of Plinius the Younger (61–113 AD), the *Controversiae* of Seneca the Elder (54 BC – 39 AD), the *Declamationes* attributed to Quintilian (35–100 AD), or even in the speeches for judicial defence found in one papyrus from Roman Egypt.¹⁶

As can be seen, all these authors lived and died before and after Augustus. So, as a last point, we can quote one case that supposed a before and after on the importance of Rhetoric for Roman cases. Originally, however, the debate about the relationship between rhetoric and its possible influence in Roman law started with the lawsuit called *Causa Curiana* (92 BC, more or less), concerning pupillary substitution (the appointment by the father of a substitute for his child, instituted as an heir in his testament). We know from Cicero¹⁷ that this case involved Lucius Licinius Crassus, who represented, Curius, the defendant, and Quintus Mucius Scaevola, who defended the family of the deceased.

The positions were clear from the outset: “Scaevola would argue for his client strictly on the basis of the text itself and amplify for the benefit of the court the inviolability of the Law. Crassus’ position was equally clear: he would certainly expound on the claims of intention but he would also have to address the juridical question in order to persuade the judges that he was not asking them to render an unprincipled

¹² A clear example of this example are the declamations attributed to Quintilian, or the so called “pseudo-Quintilian”, school notes from students that are an evidence of the importance of rhetoric for the procedure. For some literature related, it can be recommended the article from BREIJ, B.: Pseudo-Quintilian Major Declamations: Beyond School and Literature. In *Rhetorica: A Journal of the History of Rhetoric*, special issue: An International Project on the Pseudo-Quintilianic *Declamationes maiores*, 27.3 (2009) 354–369.

¹³ JOLOWICZ, H. F.: Academic Elements in Roman Law. *Law Quarterly Review* 48 (1932) 171–190, “it would be impossible *a priori* to suppose that the theory (rhetoric) remained without effect on the development of Law, when we consider how common it was for the young romans of the upper classes to be trained in rhetoric and that sometimes the same man, as in the case of Servius Sulpicius Rufus, was famous about both as a lawyer and as orator”.

¹⁴ KENNEDY, G.: *The Art of Rhetoric in the Roman World (300 BC–AD 300)*. Princeton 1972, 303–304.

¹⁵ WATSON, A.: *The Law of the Ancient Romans*. Dallas 1970, 7.

¹⁶ CROOK, J. A.: *Legal Advocacy in the Roman World*. London 1995, 58–118 (the whole appendix describes several sources).

¹⁷ Cic. *De invent.* 2. 122; Cic. *De or.* 1. 36, 1. 80; Cic. *Brut.* 39. 144, 52. 149–155; Cic. *Caecin.* 18. 52; Cic. *Top.* 44; Quint. *Inst. or.* 7. 6. 9–10.

decision.”¹⁸ Traditionally, this contraposition of these two pleas has been radically distinguished: Scaevola used the strictly legal interpretation of the law, and Crassus employed his rhetorical abilities to enforce the logical interpretation of the case. This way of interpreting both views would argue that Crassus' argument was based in Oratory and Rhetoric, while Scaevola's was based on knowledge in Law. Crassus finally won the lawsuit, and this event set up a new wave of interpretation of legal cases, not based on the written words of the deceased, but on his intent.

This case happened before the age of Augustus, and settled the precedent of a necessity for the development of the Roman procedure: acting on a case by case basis and the need for a lawyer, whose defense can be significant for the final result of the trial, rather than just basing the trial on the pronouncement of certain words. At this point, and taking into account the importance of oratory in the knowledge of a lawyer as well as rhetoric for litigation, because it can determine the result of the trial in its final step. Here rhetorical abilities were necessary in order to perform one's profession such as a politician or lawyer,¹⁹ wherein the professional has to persuade an audience through their rhetorical practice. On this basis, we shall show that if a lawyer wanted to use an oratorical style according to the fashion of the Principate, he had to follow the oratorical debate promoted by Augustus, through a cultural phenomenon which has been labelled as “Augustan Classicism”, that it is going to be described in the next section.

In the following paragraph I am also going to deal with the Augustan reform of procedure through the enactment of the *Lex Iulia iudiciorum privatorum*. This law fixed a new form of litigation which worked in a case-by-case basis and was composed of two stages, one of which was characterised by the employment of rhetorical abilities by the lawyer. The Augustan reform is a key point on the way to understanding the litigation, a way that included the employment of both juridical and rhetorical abilities of different participants. This change does not just enrich the procedure because of the possibility of using other methods of juridical defence, such as proper oratorical argumentation, but also makes the procedure more adaptable to different cases.

3. ORATORY IN AUGUSTAN ROME

3.1. “Augustan Classicism”

The so-called “Augustan Classicism”, was a classicizing mood particularly detectable in two distinct fields: art commissioned by the regime²⁰ (such as the architectural

¹⁸ VAUGHN, J. W.: Law and Rhetoric in the Causa Curiana. *Classical Antiquity* 4.2 (1985) 208–222, here 213–214.

¹⁹ STEEL, C. E. W.: *Roman Oratory*. Glasgow 2006, 20.

²⁰ Concerning art, it is the key assumption of ZANKER, P.: *The Power of Images in the Age of Augustus*. Michigan 1988, 239–240: “The intention was to create a kind of super-culture, which would combine the best traditions of both Greek and Roman culture, Greek aesthetics with Roman propriety and *virtus*.”

Caryatids from the Augustan *forum*); and debates in Augustan Rome about style in oratory. These subjects are also linked with the complex situation regarding relations between Rome and Greece.

According to Wallace-Hadrill,²¹ part of the cultural revolution of Augustus was a dialogue with Roman ideas about Hellenism suited to Roman usage,²² a dialogue in which the most important theme was Rome itself.²³ Wallace-Hadrill characterized the collapse of the old system and its replacement with a new political dispensation – the Augustan Principate – as a *mutatio morum* or ‘cultural revolution’, where culture is defined as ‘the sum total of practices and beliefs that differentiate one people from another’.²⁴ The Roman conquest of Greece led not to fusion but to reciprocal exchange, a process of dialogue with one another, but giving more importance to the one or the other, depending on which style was being imitated, Roman or Greek.

One of Spawforth’s main arguments was that the transformation of Roman Greece into a classicizing ‘museum’ was a specific response of the provincial Greek elites to the cultural politics of the Roman imperial monarchy.²⁵ Against a background of Roman debates about Greek culture and Roman decadence, Augustus promoted the ideal of a Roman debt to a ‘classical’ Greece rooted in Europe and morally opposed to a stereotyped Asia. As Wallace-Hadrill said, “Augustus tried to bind together a fragile Roman world not only by military force but also by common values, values derived from Roman tradition and consciously stamped with Romanness”.²⁶

In relation to society, oratory was a matter of crucial importance in Rome’s political life, and a highly useful skill for any politician. From the Principate of Augustus onwards, politicians and lawyers must give public speeches, despite the fact that many decisions were made behind closed doors among small groups whose deliberations were not recorded in writing. Although Augustus tried to hide this with an appearance of continuity within the Republican institutions,²⁷ the power of the emperor was note-

It was to be an exemplary culture, as Vitruvius wrote, worthy of the rulers of an empire and a model for the ruled.” MACMULLEN, R.: *Romanization in the Time of Augustus*. Yale 2000, 2.

²¹ WALLACE-HADRILL, A.: *Rome’s Cultural Revolution*. New York 2008, 255–256; SPAWFORTH (n. 3) 4ff.

²² GABBA, E.: Political and Cultural Aspects of the Classicist Revival in the Augustan Age. *Classical Antiquity* 1.1 (1982) 64: “the heavy stress on the classical age of Greece can be better explained, even in the case of the Second Sophists, precisely in the sense suggested by Dionysius: as an exaltation of Greek glory within the framework of an acceptance of Rome’s empire”.

²³ BOWERSOCK, G. W.: *Augustus and the Greek World*. Oxford 1965, 75: “The core of a Roman’s view of Greek life was *mollitia* and *otium*. This view by no means denied the vast erudition which Greeks brought to the Romans; indeed, erudition was nourished in an atmosphere of luxury and leisure, time to savour experience and then to reflect upon it.”

²⁴ WALLACE-HADRILL, A.: *Mutatio morum: the Idea of a Cultural Revolution*. In HABINEK, T. – SCHIESARO, A. (eds.): *The Roman Cultural Revolution*. Cambridge 1997, 3–22, here 9.

²⁵ SPAWFORTH (n. 3) 2 and 79.

²⁶ WALLACE-HADRILL, A.: *Augustan Rome*. Bristol 1993, 97.

²⁷ This appearance was preserved because one of the things which characterized *res publica* (as distinct from dictatorship or triumviral rule) was that the determination of who should command which army stationed in the provinces now lay, ostensibly at least, with the *publicum consilium*, the Senate. Cf. TALBERT, R. J. A.: Augustus and the Senate. *Greece and Rome* 31(1984) 55–63; LACEY, W. K.: *Augustus and the Senate: 23 B.C. Antichthon* 19 (1985) 57–67, *inter alia*.

worthy in the innovations and schemes provided by him. Augustus did not set out to limit freedom of speech or suppress oratory, but his enormous personal power was inhibiting and could not help but affect the conditions of oratory in public speeches.

A common tactic of Augustus was to disguise his innovations by reference to the Roman past, as if he were thereby following the *exempla maiorum*. Augustus, in his record of achievements, pointed out that he did not accept any office which was contrary to ancestral custom (*nullum magistratum contra morem maiorem delatum recepi, Res Gestae* 6. 1),²⁸ and that he also preferred to follow the “example of our ancestors” (*maiorum nostrorum exemplo, Res Gestae* 27. 2).²⁹ He had employed that tactic concerning his new social regulations:³⁰ “what connects the new laws to old values are the *exempla*, ideals and images simultaneously part of an imagined Roman past and an imagined Roman future”.³¹

The same strategy was used for oratory, because in this kind of Augustan Classicism, one of the most important fields was the debate about style in oratory, distinguishing between the less favoured (at least in theory) “Asian style”,³² and the beloved “Attic style”.³³ This preference was related as well with this Augustan ideal of Rome rooted in ancient Greece, and in this fashion, emulating their concise way of expression. In this debate, the Emperor set the tone by cultivating a direct matter-of-fact way of speaking, in which the graces of style were sacrificed to the intelligibility of the discourse.³⁴ That is why he encouraged the employment of the intelligible Attic style, instead of the florid, complicated Asian style in oratory. I am going to briefly explain both styles to better understand this preference by the emperor.

Asianism originated at Pergamum. Romans used the term “Asian” to impute to others an oratorical floridity which Romans saw not merely as Greek by definition but specifically as the hallmark style of the oratory of Hellenistic Asia Minor.³⁵ To summarize, “Asian style” in oratory referred to a complicated and crooked style in the use of words. Asianism had a significant meaning in Roman rhetoric since the major

²⁸ COOLEY, A. E.: *Res Gestae Divi Augusti. Text, Translation and Commentary*. Cambridge 2009, 131.

²⁹ WALTER, U.: *Mos maiorum*. In *The Encyclopedia of Ancient History*. Vol. VIII. New York 2013, 4595–4596, to be more concrete, in this fragment of the *res gestae*, Augustus was comparing his actions to the ones of Mark Anthony, cf. COOLEY (n. 28) 231.

³⁰ *Lex Papia Poppaea* and *Lex Iulia de maritandis ordinibus*.

³¹ MILNOR, K.: Augustus, History, and the Landscape of the Law. *Arethusa* 40 (2007) 7–23, here 10; the same Augustus told that in his *Res Gestae*, concerning his innovations in Law, 8. 5: *Legibus novis me auctore latis multa exempla maiorum exolescentia iam ex nostro saeculo reduxi et ipse multarum rerum exempla imitanda posteris tradidi*.

³² This style was quoted by Cic. *Brut.* 51: *nam ut semel e Piraeo eloquentia evecta est*.

³³ Dion. Hal. *De antiq. orat.*, praef. 1–3, also in the book (1. 1. 4; 7. 3. 1) we could find how the author connects the social structure within the Greek cities; how Asianism conquers and gains support among the untutored masses, and classical, prudent oratory belongs to the upper classes.

³⁴ CLARKE, M. L.: *Rhetoric at Rome*. London 1953, 100.

³⁵ WISSE, J.: Greeks, Romans, and the Rise of Atticism. In ABBENES, J. G. J. – SLINGS, S. R. – SLUITER, I. (eds.): *Greek Literary Theory after Aristotle. A Collection of Papers in Honour of D. M. Schenkeveld*. Amsterdam 1995, 65–82; SWAIN, S.: *Hellenism and the Empire*. Oxford 1996, 22–23.

part of the teachers of rhetoric who came to Rome at the end of the 4th Century BC were Asiatic Greeks.

On the other hand, Atticism was a rhetorical movement that started in the 1st century BC. This fact has been portrayed as a return to Classical methods after what was perceived as the pretentious style of the Hellenistic, Sophist rhetoric and called for a return to the approaches of the Attic orators. Although the plainer language of Atticism eventually became as ornate as the perorations it sought to replace, its original simplicity meant that it remained universally comprehensible throughout the Greek world. The Atticists imitated the simple style of the orator Lysias, but during the reign of Augustus, the Greek critic Dionysius of Halicarnassus explains that Romans developed a different concept of Atticism.³⁶

With this encouragement, Augustus pretended to not only promote a clearer way of speaking by orators, but also – as I have mentioned before – to promote the ideal of a Roman debt to a ‘classical’ Greece rooted in Europe and morally opposed to a badly-stereotyped Asia. These debates stemmed from a momentous turning point in the development of Latin rhetoric,³⁷ which became teachable precisely in this period and thus available as a special skill. By mastering Latin rhetoric, individuals could rise in Roman society.

Augustus specifically idealized Greece of the fifth and fourth centuries BC, and also tried to adopt this oratorical style himself, as Suetonius described in his *Divi Augusti*,³⁸ saying: *genus eloquendi ... elegans et temperatum* (he cultivated a “style of speaking that was chaste and elegant”). This Augustan style of oratory has been opposed to Mark Anthony’s style, qualified by Plutarch as Asiatic; “He adopted what was called the Asiatic style of oratory, which was at the height of its popularity in those days and bore a strong resemblance to his own life, which was swashbuckling and boastful, full of empty exultation and distorted ambition”.³⁹ Concerning Mark Anthony’s style, Suetonius describes the rejection of the Asiatic style of oratory:

M. quidem Antonium ut insanum increpat, quasi ea scribentem, quae mirentur potius homines quam intellegant; deinde ludens malum et inconstans in eligendo genere dicendi iudicium eius, addit haec: “Tuque dubitas, Cimberne Annius an Veranius Flaccus imitandi sint tibi, ita ut verbis, quae Crispus Sallustius excerpserit ex Originibus Catonis, utaris? An potius Asiaticorum oratorum inanis sententiis verborum volubilitas in nostrum

³⁶ Dion. Hal. *De ant. or. praef.*; SAMELLAS, A.: *Alienation: The Experience of the Eastern Mediterranean (50–600 A.D.)*. Bern 2010, 334; Dionysus explains this phenomenon in a paradigmatic way; since the death of Alexander, Greek rhetoric entered a crisis, developing a theatrical and unphilosophical style, until Rome brought back this style to its old splendour. According to him, Romans rehellenized the Greeks that they have conquered; KIRCHNER, R.: *Elocutio: Latin Prose Style*. In DOMINIK, W. – HALL, J. (eds.): *A Companion to Roman Rhetoric*. Oxford–Malden–Carlton 2007, 194. It is not clear how far his ideas were influenced by the Roman version, although he does connect a return to the classic norms established by the Attic orators with Augustus’ defeat of Mark Antony and Cleopatra at Actium.

³⁷ HORROCKS, G.: *Greek: A History of the Language and Its Speakers*. Chichester–Malden 2010², 100, this movement was a returning point from the vacuousness of the Asianism.

³⁸ Suet. *Aug.* 86. 1.

³⁹ Plut. *Ant.* II 5.

sermonem transferenda?” Et quadam epistula Agrippinae neptis ingenium conlaudans: “Sed opus est,” inquit, “dare te operam, ne moleste scribas et loquaris.”

As for Mark Antony, he [scil. Mark Antony] calls him a madman, for writing to be admired rather than to be understood. Then, going on to ridicule his perverse and inconsistent taste in choosing an oratorical style, he adds the following: “Can you doubt whether you ought to imitate Annius Cimper or Veranius Flaccus, that you use the words which Sallustius Crispus gleaned from Cato’s *Origines*? Or would you rather introduce into our tongue the verbose and unmeaning fluency of the Asiatic orators?” And in a letter praising the talent of his granddaughter Agrippina he writes: “But you must take great care not to write and talk affectedly.”

This Augustan advice followed a certain logic, due to the fact that, since the words are extensions of a speaker, not calling attention to them with a florid style helps to keep focus upon the speaker.⁴⁰ The Asiatic style was characterized in contrast to the studied simplicity of the Attic school of orators. Referring to the phenomenon in the Greek writing style of the imperial period, the “Attic” element in oratory clearly refers to more than narrow grammar and vocabulary,⁴¹ it refers a plain and unadorned style of composition, but also it is used as a term for approbation for the Roman heirs of the great figures of the Classical Greek tradition (beloved authors such as Lysias, Demosthenes, Xenophon and Isocrates). In the preface to a work dating to the period of the emperor Augustus, the theorist and historian Dionysius of Halicarnassus (30–10 BCE)⁴² writes in vigorous term the superiority of Attic rhetoric before of the new Asiatic variety.⁴³ In this text Dionysius talks about the importance of the study of the attic orators and not of decadent orators of his time:

ἐν γὰρ δὴ τοῖς πρὸ ἡμῶν χρόνοις ἢ μὲν ἀρχαία καὶ φιλόσοφος ῥητορικὴ προπηλακιζομένη καὶ δεινὰς ὕβρεις ὑπομένουσα κατελύετο, ἀρξάμενη μὲν ἀπὸ τῆς Ἀλεξάνδρου τοῦ Μακεδόνοιο τελευτῆς ἐκπνεῖν καὶ μαραινέσθαι κατ’ ὀλίγον, ἐπὶ δὲ τῆς καθ’ ἡμᾶς ἡλικίας μικροῦ δεήσασα εἰς τέλος ἠφανίσθαι: ἑτέρα δὲ τις ἐπὶ τὴν ἐκείνης παρελθοῦσα τάξιν, ἀφόρητος ἀναιδεΐα θεατρικῆ καὶ ἀνάγωγος καὶ οὔτε φιλοσοφίας οὔτε ἄλλου παιδεύματος οὐδενὸς μετεληφύια ἐλευθερίου [...] ὥσπερ γὰρ ἐν ἐκείναις ἢ μὲν ἐλευθέρα καὶ σώφρων γαμετὴ κἀθηται μηδενὸς οὔσα τῶν αὐτῆς κυρία, ἑταίρα δὲ τις ἄφρων ἐπ’ ὀλέθρῳ τοῦ βίου παροῦσα πάσης ἀξιοῖ τῆς οὐσίας ἄρχειν, σκυβαλίζουσα καὶ δεδιττομένη τὴν ἑτέραν: τὸν αὐτὸν τρόπον ἐν πάσῃ πόλει καὶ οὐδεμιᾶς ἦττον ἐν ταῖς εὐπαιδευτοῖς “τουτὶ γὰρ

⁴⁰ LAUER, I.: Augustan Rhetoric: The Declining Orator. *Advances in the History of Rhetoric* 6.1 (2003) 31.

⁴¹ WHITMARSH, T.: *The Second Sophistic*. Oxford 2005, 49ff.

⁴² Dion. Hal. *Ant. Rom.* I 7. 2: “I arrived in Italy at the very time that Augustus Caesar put an end to the civil war, in the middle of the one hundred and eighty-seventh Olympiad (...).”

⁴³ Dion. Hal. *De ant. or.* 1.

ἀπάντων τῶν κακῶν ἔσχατον” ἡ μὲν Ἄττικὴ μοῦσα καὶ ἀρχαία καὶ αὐτόχθων ἄτιμον εἰλήφει σχῆμα, τῶν ἑαυτῆς ἐκπεσοῦσα ἀγαθῶν, ἡ δὲ ἐκ τινῶν βαρᾶθρων τῆς Ἀσίας ἐχθὲς καὶ πρῶην ἀφικομένη, Μυσῆ ἢ Φρυγία τις ἢ Καρικόν τι κακόν, ἢ βάρβαρον Ἑλληνίδας ἡξίου διοικεῖν πόλεις ἀπελάσασα τῶν κοινῶν τὴν ἑτέραν, ἡ ἀμαθὴς τὴν φιλόσοφον καὶ ἡ μαινομένη τὴν σῶφρονα.

In the period before us, the philosophical rhetoric was subverted: trampled underfoot, made to suffer terrible insults. Since the death of Alexander of Macedon, it began to waste away and die; in our time, it has all but finally disappeared. Another form has usurped its place, unbearable in its theatrical shamelessness, unmanageable, lacking in philosophy or in any other freeborn education, secretly manipulating the ignorance of the people [...] It is as though in their houses the one were sitting there, a free, temperate wife, mistress of none of her own property, while the other, a mad prostitute, only there to destroy the household, thought to lord it over all the property, intimidating the other and treating her like nothing. Similarly, in every city – and nowhere less than in those that are full of education (that is the worst of all evils) – the Ancient, Attic, indigenous Muse has taken on the garb of the dishonoured, exiled from her own property; the other, who arrived yesterday or the day before from one of the pits of Asia (a Mysian, or perhaps, or Phrygian, or some Carian horror) has seen fit to set up a home in Greek cities, driving the former out of their common property: the ignorant driving out the philosophical, the lunatic driving out the sane.⁴⁴

With this assertion of Dionysius, we can see how, in the Augustan age, Attic oratory was encouraged in preference to Asiatic. Dionysius is one of the clearest representatives of Roman classicism. But in the Augustan period writers started to make a more systematic use of the works of the classical past by taking them as models for their own texts, and rejecting the artistic style of the immediate past.⁴⁵

Other clear example of the importance of this fashion in the Principate, can be seen in the *Controversiae* of Seneca the Elder, books in which the author criticizes the Asian style in oratory and argued in favour of the Attic style⁴⁶. I have found a description and critique to Asianism in *Contr.* I 2. 23,⁴⁷ IX 1. 12f,⁴⁸ IX 6.16,⁴⁹ as opposed to

⁴⁴ Translation WHITMARSH (n. 41), for a commentary on the fragment, see HIDBER, T.: *Das klassische Manifest des Dionys von Halikarnass: die Praefatio zu De oratoribus veteribus. Einleitung, Übersetzung, Kommentar.* Stuttgart 1996, 49.

⁴⁵ HIDBER (n. 44) 24.

⁴⁶ LANFRANCHI, F.: *Il diritto nei retori romani.* Milan 1939, 30ff. The law in the *controversiae* is sometimes Roman, sometimes Greek, but much belongs exclusively to the operative world of trials, fact that makes this work an essential tool to understand the procedures of its time.

⁴⁷ Sen. *Contr.* I 2. 23: *Hybreas, inquit, cum diceret controuersiam de illo qui tribadas deprehendit et occidit, describere coepit mariti adfectum, in quo non deberet exigi inhonesta inquisitio: ἐγὼ δ' ἐσκόπησ' ἂν πρότερον τὸν ἄνδρα εἰ γεγέννηται τις ἢ προσέρραπται. Grandaus, Asianus aequae declamator, cum diceret in eadem controuersia, num ideo occidi ut adulteros non paterentur? dixit: εἰ δὲ φηλόρρενα μοιχὸν*

Atticism, *Contr.* X 5. 21.⁵⁰ Maybe the author simply loved this style, but the fact is that he connected with the fashion of this era, and shows how beloved was the Attic style in literature, as opposed to the Asian style.

Taking a quick look through the work of one characteristic author of the Augustan era, namely Vergil, it can be noticeable what an idealized idea of the orator this author was proposing:

*Sic ait, et dicto citius tumida aequora placat,
collectasque fugat nubes, solemque reducit.
Cymothoe simul et Triton adnixus acuto
detrudunt navis scopulo; levat ipse tridenti;
et vastas aperit syrtis, et temperat aequor,
atque rotis summas levibus perlabitur undas.
Ac veluti magno in populo cum saepe coorta est
seditio, saevitque animis ignobile volgus,
iamque faces et saxa volant – furor arma ministrat;
tum, pietate gravem ac meritis si forte virum quem
conspexere, silent, arrectisque auribus adstant;
ille regit dictis animos, et pectora mulcet,
sic cunctus pelagi cecidit fragor, aequora postquam
prospiciens genitor caeloque invectus aperto
flectit equos, curruque volans dat lora secundo.*

(Verg. *Aen.* 1. 142–156)

Thus he speaks, and swifter than his word he calms the swollen seas,
puts to flight the gathered clouds, and brings back the sun.

ἐλαβον; In hac controuersia de sacerdote non minus obscene dixit Murredus fortasse dum repellit libidinem, manibus exceptit. Longe recedendum est ab omni obscenitate et uerborum et sensuum. quaedam satius est causae detrimento tacere quam uerecundiae dicere. Vibius Rufus uidebatur cotidianis uerbis usus non male dixisse: ista sacerdos quantum militi abstulit!

⁴⁸ Sen. *Contr.* IX 1. 12f: *Illa non est similis sed eadem, quam dixit prior ADAEVS, rhetor ex Asia-nis, non proiecti nominis, deinde ARELLIVS FVSCVS: ACHARISTOS SOI DOcho, KALLIA; OUCH OIDAS, POU MOI TEN CHARIN EDOCHAS;*

⁴⁹ Sen. *Contr.* IX 6. 16: *Omnes declamatores aiebat uoluisse aliquid novi dicere illo loco, quo nominabat noverca filiam consciam. dixit, inquit, HYBREAS: TI OUN; EFEUSATO CHATA TES IDIAS THUGATROS; OUCH. ALLA CHATA TES EMES. Hanc sententiam FVSCVS ARELLIVS, cum esset ex Asia(nis), non casu dixit sed transtulit, ad uerbum quidem: quid ergo? inquit, mentita est de filia sua? Immo de mea. Modestius hanc sententiam vertit HATERIVS: quid ergo? mentita est? quidni illa mentiretur de accusatoris sui filia?*

⁵⁰ Sen. *Contr.* X 5. 21: *Sed et Graeci illam subrupuerunt: EVCTEMON, qui dixit: PROMETHEU, EPI SE TIS PUR CHAI ANTHROPON; sanius quam Glycon ADAEVS: PROMETHEU, SE TIS GRAFON ANTHROPON AFANIZEI. DAMAS corruptissime: DICHAIOS, PROMETHEU. DIA TI GAR PUR ECHLEPTES ANTHROPO; CRATON furiosissime, qui dixit: PROMETHEU, NUN EDEI SE PUR CHLEP-SAI. hic est Craton, venustissimus homo et [pro homo et] professus Asianus, qui bellum cum omnibus Atticis gerebat. cum donaret illi Caesar talentum, in quo viginti quattuor sestertia sunt Atheniensium more: E PROSTHES, FESIN, E AFEL', INA ME ATTICHON E. hic Caesari, quod illum numquam nisi mense Decembri audiret, dixit: OS BAUNO MOI CHRE; et (cum) commendaretur a Caesare Passieno nec curaret, interroganti, quare non complecteretur tanti viri gratiam: ELIOU CHAIONTOS LUCHNON OUCH APTO.*



Augustus as Neptune, cameo (21mm), 31–27 BC
(Francis Bartlett Fund, Courtesy Museum of Fine Arts, Boston)

Cymothoe and Triton with common effort thrust the ships from the
sharp rock;
The god himself upheaves them with his trident,
Opens the vast quicksands, allays the flood,
and on light wheels glides over the topmost waters.
And as, when off-times in a great nation tumult has risen,
The base rabble rage angrily, and now brands and stones fly,
Madness lending arms;
Then, if happily they set eyes on a man honoured for noble
character and service,
they are silent and stand by with attentive ears;
he with speech sways their passion and soothes their breasts

This simile of the orator emphasized the function of the ideology of the orator in the Augustan age. The portrayal of the hero (in this case, Neptune) embodies the model of brevity and simplicity promoted by Augustus. The orator commands men and nature with his voice, calming the sea with a command (*dicto*) and governing of the hearts and souls through words (*dictis*). Neptune, who restores the winds to their cave and the sea to its calm, just as a man grave with piety restores order when sedition has arisen in a great people. The cosmos is luckily saved in this opening scene by the ability of Neptune to persuade the escaped winds to return to their cave. Vergil compares Neptune's restraint of the storm winds to a pious statesman's restraint of sedition in a great people.

Neptune calming the storm is compared to a pious man ruling the spirits of the multitude with words. He does it with his brief, clear speech. This is a clear analogy between the God Neptune and the Emperor Augustus, who with his fluent and concise discourse calms the people as a leader-hero. Vergil combines two major images

of Augustan propaganda: the mighty lord of the Sea, and the pious Roman statesman in the old republican tradition. In the words of the author: “just as when disorder arises among the people of a great city and the common mob runs riot, wild passion finds weapons for men’s hands and torches and rocks start flying; at such a time if people chance to see a man who has some weight among them for his goodness and his services to the state, they fall silent, standing and listening with all their attention while his words command their passions and soothe their hearts – so did all the crashing of the sea fall silent”⁵¹

Lengthy speeches are not required no rule,⁵² the words with which Neptune disarms the rebels are words reminding of power to punish, like the words of the pious man that disarm the furious multitude.⁵³ And in this role we can see the strong rule of Augustus, the man who bring peace to the Empire. Also, it is necessary to say that Neptune was traditionally related to Pompey, but Neptune had obviously abandoned Sextus Pompey at Naulochoi and gone over to Octavian’s side, one more reason to understand this reference to Neptune as a hero like a referent to the glorious emperor Augustus.⁵⁴

Augustan propaganda concerned Greek oratory (or, better, the Attic style in oratory) as an affair of the Empire.⁵⁵ The emperor, directly or indirectly, determined careers in oratory, politics, jurisprudence, and the military.⁵⁶ This had a lot to do with the style employed in litigation by lawyers, who probably wanted to achieve fame. This is the approach followed by Zanker, who characterized Augustus as being influential upon every aspect of Roman life. Rhetoric played an important part in the intellectual and aesthetic life of the Augustan age, and in this fashion-judicial oratory was flourishing it is not clear what this means at the rhythm of slight changes.⁵⁷ All these ideas can suggest a hidden way for making lawyers and orators collaborate with authority. Emilio Gabba, summarized the phenomenon in an easy and understandable way: “The revived classical ideals represent, even more than they had before, the basis for moral, cultural, and political unity among the ruling class, and no longer only within the Greek cities. These ideals, shared by Rome, pave the way to an ever-deepening acceptance of the new imperial society. The increasing adherence obviously results in open and diligent collaboration with authority.”⁵⁸

⁵¹ SANDIN, P.: *The Man of Authority. Images of Power in Virgil’s Aeneid*, 1. 50–156. Skåneförlaget 2000, 189, 192.

⁵² LAUER (n. 40) 30.

⁵³ ADLER, E.: *Vergil’s Empire. Political Thought in the Aeneid*. Oxford 2003, 101, 111.

⁵⁴ ZANKER (n. 20) 39, 53.

⁵⁵ In the most recent scholarship on rhetorical texts, the question of rhetoric in granting ideological power has begun to be explored, as for example stated by GLEASON, M.: *Making Men: Sophists and Self-Presentation in Ancient Rome*. Princeton 1995; or BLOOMER, W. M.: *Schooling in Persona: Imagination and Subordination in Roman Education. Classical Antiquity* 16 (1997) 57–78; LINTOTT, A.: *Romans in the Age of Augustus*. Oxford 2010, 147.

⁵⁶ WHITE, P.: *Poets in the New Milieu: Realigning*. In GALINSKY, K. (ed.): *The Cambridge Companion to the Age of Augustus*. Cambridge – New York 2005, 321–339, here 327.

⁵⁷ KENNEDY (n. 14) 301.

⁵⁸ GABBA (n. 22) 53.

It may have been a logical way to act, taking into account the fact that the new Empire was being built, and that the milestones of the new society which would form the people of this Empire were also being laid. This classical ideas and cultural reforms had obviously an influence on the legal procedure that has just been reformed by Augustus, and on which the knowledge of oratory and the practice of rhetoric were getting an important role.

3.2. Reforms in procedure and the *Lex Iulia Iudiciorum privatorum*

In the first section it was mentioned that the first Roman procedure, the *legis actiones*, were first altered by the *Lex Aebutia* (129 BC, more or less), that introduced the formulary procedure for the *condictio* (a claim for restitution), thus modifying this formalistic procedure. In this section, I shall explain how the formulary procedure was extended and formally settled by the *Lex Iulia iudiciorum privatorum* of 17 BC⁵⁹ (hereafter, the *Lex Iulia*). This *formula* consisted of a document which was given to a judge in a civil trial authorization to condemn the defendant, “if certain factual or legal circumstances appear proved, or to absolve him if this is not the case” (*si paret ... condemnato, si non paret, absolvito*).⁶⁰

There have been many discussions about the initial scope of the *Lex Aebutia*, concerning whether what was finally settled by *Lex Iulia* was already provided by it or not,⁶¹ but what it is clear is that, although the *formula* may have been used before the *Lex Iulia*, it brought an enormous change to the procedure⁶² that had been employed before. It established the formulary procedure as the official and legitimate one. It was a definitive organizing initiative, that settled finally the formulary procedure and which provided more safety to the civil trials and higher guarantees of success for the claimer (because the procedure was more adaptable to several circumstances).

We have evidence of the *Lex Iulia* not in its original source, but from quotations in some literary and legal sources, a fact that has allowed some scholars to recon-

⁵⁹ Quoted in Cass. Dio LIV18. 2–3; D. 5. 1. 2. 1 (Ulp. lib. 2 *ad edict.*); and D. 48. 14. 1. 4 (Modest. lib. 2 *de poenis*).

⁶⁰ BERGER, A.: *Encyclopedic Dictionary of Roman Law*. Philadelphia 1953, 474.

⁶¹ As big traditional examples: WLASSAK, M.: *Römische Prozessgesetze. Ein Beitrag zur Geschichte des Formularverfahrens*. Bd. 1. Leipzig, 1888; EISELE, F.: Ueber die *lex Aebutia*. In *Abhandlungen zum römischen Civilprocess*. Freiburg 1889, 65ff.; KASER, M.: Die “*lex Aebutia*”. In ALBERTARIO, E. – SOLAZZI, S. ET AL. (a c. di): *Studi in memoria di Emilio Albertario*. Milan 1953, 25–59, here 28ff; it is possible to find a very complete bibliography regarding the matter in the article from TALAMANCA, M.: Il riordinamento augusteo del processo privato. In MILAZZO, FR. (a c. di): *Gli ordinamenti giudiziari di Roma imperiale. Princeps e procedure dalle leggi Giulie ad Adriano. Atti del convegno internazionale di diritto romano e del III premio romanistico “G. Boulvert”*. Copanello 5-8 giugno 1996. Naples 1999, 63ff.

⁶² TALAMANCA (n. 61) 65: “La *Lex Iulia* è ispirata ad una filosofia volta più che altro al futuro [...] che vede più lontano dei protagonisti, vede ormai presagio de la *cognitio extra ordinem*.” In the same sense, PUGLIESE, G.: *Processo civile romano II. Il processo formulare*. Vol. I. Milano 1963, 58; BERTOLDI, F.: La “*lex Iulia iudiciorum privatorum*”. Torino 2003, 33ff.

struct it.⁶³ As some of the sources that quote it, and describe the changes on the procedure, we can find Digest 5. 1. 2: *Lex Iulia iudiciorum ait "quo minus inter privatos conveniat": sufficit ergo privatorum consensus* ("The words of the *lex Iulia* on trials-at-law are 'so as to prevent private persons agreeing'; so that an agreement between private persons is enough.")

If then the private persons in two other fragments of Justinian's Digest (D. 43. 16. 1. 2; D. 48. 19. 32),⁶⁴ on which the jurist Ulpian mentions the "two Iulias", meaning the *Lex Iulia*, to which I am referring here, concerning the civil procedure, and to the *Lex Iulia iudiciorum publicorum*, that regulated public proceedings.

Two pieces of the *Fragmenta Vaticana* (a collection of legal texts preserved in a Vatican manuscript; it was compiled presumably in the second half of the fourth century) also mention the law. The texts say:

197. *item privatorum kapite vicesimo VII de iudicando cavetur.* ("likewise, in the 27th chapter (*lex Iulia privatorum*) concerning the judgement it is provided for / taken care of

198. *Item. Subsistendum, quoniam lex quidem privatorum kapite XXVII* "it must remain since indeed the *Lex Iulia privatorum* chapter 27..."

As the last source that quotes the *Lex Iulia* (but also referring, as Ulpian did, to the "two Iulias"), I have found a fragment of Gaius' *Institutiones* (4. 30), that says:

itaque per legem Aebutiam et duas Iulias sublatae sunt istae legis actiones, effectumque est, ut per concepta uerba, id est per formulas, litigaremus.

and accordingly they were abolished by the *lex Aebutia* and the two *leges Iuliae*, which introduced in their stead the system of formulas or written instructions of the praetor to the iudex.

These fragments demonstrate that the *Lex Iulia* supposed a change with respect to the previously employed procedure, not just because of the introduction of the *formula*. Another important consequence of this change of procedure was the fact that the formulary procedure allowed non-Roman citizens access to justice, because while the *legis actiones* were only accessible for Roman citizens, the formulary procedure was open to everyone. This last fact was crucial in an age in which Rome had extended its domination throughout the Mediterranean and the mass of subjects arriving in Rome was increasing day by day. This new procedure had two stages:

⁶³ CRAWFORD, M. H. ET AL.: *Roman Statutes*. Vol. II. London 1996, 787; ROTONDI, G.: *Leges publicae populi romani*. Milano 1912, 448–450; GIRARD, P.: *Les leges Iuliae iudiciorum publicorum et privatorum*. ZSS 34 (1913) 295–372, here 295; RICCOBONO, S.: *Acta Divi Augusti*. Roma 1945, 142; ROTONDI 448–450; BERGER (n. 60) 554; KASER, M.: *Das römische Zivilprozessrecht*. München 1966, 115–116; TALAMANCA (n. 61) 63–70; LAFFI, U.: *Colonie e municipi nello Stato romano*. Roma 2007, 86; GAMBETTI, S.: *The Alexandrian Riots of 38 C.E. and the Persecution of the Jews: A Historical Reconstruction*. Leiden 2009, 111.

⁶⁴ D. 43. 16. 1. 2: *Ne quid autem per vim admittatur, etiam legibus Iuliis prospicitur publicorum et privatorum nec non et constitutionibus principum*. D. 48. 19. 32: *Quid si non distinxerit praeses, utrum Iulia publicorum an Iulia privatorum?*

a) *In iure* (the phase before appearing before the court). Here both parties (claimant and defendant) stand before the judicial magistrate (the *praetor*). The *praetor* will listen to the declarations of the parties, will entitle them (or not) to pursue a remedy in a trial, and will help the parties during all this part of the procedure, that ends with the writing of the *formula* which is going to be given to the private judge or *iudex*. Here the participants asked legal experts (jurists) to determine the legal matters of the subject. In this first stage, rhetorical abilities were not really important, but the knowledge of law was necessary in this stage.

b) *Apud iudicem* (before the judge). This was the final stage, and normally ended with a judgement which took place before the private judge (*iudex*). Here, the judge takes a decision based on the *formula* presented by the parties. In this phase the lawyer (who defends the claimer or the defendant) had to use his rhetorical skills to convince the judge of the veracity of his defence.

This arrangement also affected the relationship between knowledge of oratory and litigation. The changes from one procedure to the other were substantial: as we have mentioned earlier, in the previous procedure the lack of the use of some words (*certa verba*) could cause the loss of the trial. By contrast, in the formulary process the civil effects of the procedure were not based on the set of words pronounced by the claimant (*actio*) but on the *imperium* of the magistrate (*iudex*).⁶⁵ The performance did not necessarily consist in repeating formalist words, but in drawing up a legal scheme for acting (in the first phase or *in iure*), and also in convincing the *iudex* with persuasion and argumentation (in the second stage or *apud iudicem*).

Now the orator can present the case using different arguments and adapting to the particularities of each case, as opposed to the *legis actiones*, in which the necessity of formalism caused this equality to be difficult to achieve. The persuasive abilities of the advocate could be crucial in this phase, because perhaps the judge would be more attentive to the way the advocate presented the case than to the technical background of his argumentation. A perfect example to illustrate this is the fact that criminal trials were a big opportunity for a lawyer to achieve fame, more than in civil cases,⁶⁶ where the audience was smaller and the cases more technical and less attractive.⁶⁷ Here, the public attending the trials expected a florid speech by the lawyer who was trying to save his client from condemnation. The rhetorical techniques employed in this case had to be able to persuade the judge and to bewitch the audience. In the end, we can imagine those trials were a mixture of oratorical abilities and juridical background.⁶⁸

⁶⁵ BERGER (n. 60) 494. In a technical sense, *imperium* is the official power of the higher magistrates (*magistratus maiores*).

⁶⁶ Tac. *Dial.* 20.

⁶⁷ STEEL (n. 19) 15.

⁶⁸ ANDERSEN, Ø.: How good an orator should be? In *The Orator in Action and Theory in Greece and Rome*. Leiden–Boston–Köln 2001, 9, the subject must be able to manage his oratorical abilities to achieve success with his audience, “what the audience, or at least part of the audience, is invited to appreciate

Despite the fact that Roman scholarship sometimes clearly distinguishes between both professions of *iusprudentia*⁶⁹ and advocacy,⁷⁰ it is important to underline that it was not as easy to distinguish one from the other in the context of the legal procedure. As scholarship has traditionally shown, purely legal questions were determined by legal experts in the first stage (*in iure*), and the evidence was subject to rhetorical treatment by advocates⁷¹ or *causidici*⁷² in the second (*apud iudicem*). The problem could not be solved simply by describing the procedure as a strict separation between the use of law (in the first stage) and the employment of rhetorical abilities (in the second stage). But despite this attempt to separate and clarify both categories, recent scholarship tends not to draw such a distinction between advocates and jurists. An example of this blend is found in the case of the jurist Servius Sulpicius Rufus (106–46 BC), from whom we know he had not just oratorical knowledge, but also a background as advocate.⁷³ Recent scholarship⁷⁴ has shown us that to find out whether this separation between lawyers and their education was true, it is necessary to study them case by case and not underrate their oratorical background.

The Augustan reforms of procedure settled a new pattern of behaviour, a procedure divided in two stages, one of which was characterized by the use of oratory. Also, as we have seen in the discussion related to Augustan Classicism, the role of the orator was getting more and more importance during the principate, as is demonstrated in the idealized fragment of Neptune's speech in Vergil's *Aeneid*. After having described the juridical practices taking place before Augustus, the importance of the rhetoric in the procedure, the role of Attic oratory in Augustan Classicism, I think that it is possible to find many connections here.

is not only the plain and unselfconscious speaking, which is apparent, but also the masterful control of the techniques of oratory that the speaker demonstrates”.

⁶⁹ BERGER (n. 60) 524, *Defined as “the knowledge of divine and human matters, the knowledge of what is just and what unjust”* (D. 1. 1. 10. 2). *Iurisprudentia* is syn. with *iuris scientia*: it is knowledge of the law in the broadest sense of the word, the science of the law. The Roman jurists were the most important element in the development of the Roman law, and with good reasons they are named *iuris auctores*, *iuris conditores*.

⁷⁰ BERGER (n. 60) the *advocatus* assisted his clients (*clientes*) with juristic advice before and during the trial, in both civil and criminal matters, and pleaded for them in court. The latter activity was originally reserved to persons specially trained in rhetoric (*oratores*). This fact means that the *advocatus* can have knowledge in Law or not, but the most important thing is that he know how to employ his rhetorical abilities. Cf. MÉHÉSZ, Z.: *Advocatus romanus*. Buenos Aires 1971, 59ff.

⁷¹ Also lately called *patronus*, Plut. *Mar.* 5.

⁷² MÉHÉSZ (n. 70) 66, qualifies them as lawyers-orators.

⁷³ SANCHEZ-MORENO ELLART (n. 1) 4924; also as FRIER, B.: *The Rise of the Roman Jurists*. Princeton 1985, 20ff, has shown, it was precisely Mucius Scaevola the Pontifex and Servius Sulpicius (patricians and nobles both) who transformed Roman jurisprudence into a legal science and a distinct profession. GARCIA GARRIDO, M.: *Derecho privado romano. Casos, acciones, instituciones*. Madrid 2010, 107, Servius Sulpicius Rufus used to assist to the circle of P. Cornelio Escipión Emiliano and Panecius where the assistants discussed the operas of the Greek philosophers and especially the ones of Plato and Aristotle. Cf. SCHIAVONE, A.: *Nascita della giurisprudenza: cultura aristocratica e pensiero giuridico nella Roma tardo-repubblicana*. Bari 1976, 96ff; SCHULZ, F.: *History of Roman Legal Science*. Oxford 1946, 120.

⁷⁴ HARRIES, J.: *Cicero and the Jurists*. London 2006, 92–111; STEEL, C.: *Cicero, Rhetoric and Empire*. New York 2001, 228–229.

4. CONCLUSIONS

All the problems discussed in this text trace some features of the Augustan age, and also underline notorious peculiarities of the emperor Augustus and his way of governing. All the reforms carried out by Augustus had an influence in many directions. Augustus founded an Empire, settling as the basis for it the idea of an ancient Rome based in solid principles, as the clear and concise style of oratory of the age of splendour of Greece (performed by orators as Lysias and Demosthenes). These values were well reflected in his preference for Attic oratory, which imitated the style of the orators of the fifth to fourth centuries BC. It seems that with his reforms, Augustus wanted to glorify the power and strength of ancient Rome by relating it to the solid and wise Greece, but always with an ideal of a glorious Rome, based on the authority of its *mores maiorum*.

On the other side, he uses his authority to organize and reform the procedure, allowing the access to justice for more individuals, and, in an indirect way, a way of solving controversies in a more organized and controlled manner. Augustus appears as the final organizer and reformer of the judicial procedure, qualifying this enactment with his authority and establishing definitively the formulary procedure as the legitimate one which has to be employed in the trials. Sometimes big changes come by acts of authority that lay down the common practices. By his action, Augustus settled diverse changes:

- He allowed access to the procedure also to non-citizens.
- The procedure was more flexible and was adapted to different cases.
- The division of the trial in these two stages allowed that in the second phase the lawyer defended the client with the employment of his rhetorical abilities.

Concerning this last point, Augustus thrust the importance of the language (and so of the oratorical skills knowledge and the rhetorical practice)⁷⁵ into the Roman procedure, settling the change from a rigid and excessively formal practice into something much more colourful and flexible, adapted to real-life situations. This new procedure helpfully reminds us that the world is not so carefully ordered that everything needs to fit into a single, and necessarily imperfect, intellectual scheme. Augustus was one of the first to notice this, and acted by adapting the old institutions to his time, and to the new political and structural conceptions by which he was creating the Roman Empire. One of the main purposes of Augustus with the changes in procedures was to settle, organize, and make the procedure accessible to both citizens and foreign people that needed to have access to the justice.

On the other hand, Augustan propaganda concerning oratory was an Imperial *manoeuvre* that sought to connect the origins of Rome with Greece, but also showing the superiority of Rome over Greece, because of the Roman conquest of Greece and the transformation of Greece into a kind of “Hellenistic museum”. Augustan Classicism was a cultural movement which idealized the conception of classical Greece,

⁷⁵ For the differences between one discipline and the other, cf. n. 13.

which the emperor tries to connect with Rome so that, as we have mentioned before, a classicizing movement of Rome with Greece is the main factor, but a Rome rooted in Greece but “superior” in the end. Despite that, it is true that the role of the orator was idealized, as it is shown by the different texts quoted above, and the Attic style in oratory was beloved.

On one side, one finds the formulary procedure with two phases, one in which the employment of oratory as theoretical background and rhetoric as practical skills was essential to persuade the judge. On the other side, the context surrounding that change in the procedure was in part characterized by a movement in favour of the Attic style in oratory. As I have mentioned before, trials were an occasion of achieving fame for lawyers, so what would be more logical than to adapt their speeches to the fashion of the Principate? Furthermore, as explained above, the study of oratory and the employment of rhetoric were not disciplines totally alien for either jurists or advocates.

This use of the Attic style in the procedure was in accordance with the guidelines settled by Augustus, which as we have discussed earlier, preferably in a short and clear oratorical style. This fact that was apparent in both propagandistic Augustan sources as the *res gestae* and the *Aeneid*, texts in which the emperor praised the concise style, and in the *Aeneid*, where the orator appears as a hero, where his words are able to gain the attention all around. It is a shame that, even though Augustus encouraged the orators, we have just a few speeches from this period, and no record of the civil procedure except by indirect sources. But the diverse texts that talk about the emperor, and, especially, the propagandistic source that is the *res gestae* gives one an idea of Augustus' way of thinking as a governor.

Everything is connected. The establishment of the procedure by Augustus and his authority over the style of oratory that had to be employed in the Empire had an influence on the way that the subjects expressed themselves in the procedure. Definitively, this Augustan reform settled a new pattern for the legal practices. His preference for a concrete style of oratory was also a pattern to follow to be in accordance with his imperial propaganda. With his authority and guidelines, we can imagine the legal panorama from a new point of view: with colourful trials, but always following the *exempla maiorum*, to always recall the glorious empire that he, Augustus, had created.

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