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CICERO'S *DE INVENTIONE*: WHERE IS THE *RES PUBLICA*?*

1. *Introduction*

Cicero opens *De inventione* (*c.* 86-83 BCE) with the age-old problem of eloquence used for the wrong ends[1], and he evokes the *res publica* as part of that context. However, in a work focusing on setting out how the orator can use *inventio* to prepare his speech, including *status* theory and the associated arguments for especially forensic speech, Cicero fails to provide his readers with guidelines for how public speech can help the *res publica* or explain how he conceptualises the *res publica*[2]. Although he mentions examples of oratorical misuse in passing, the reader is left wondering exactly how Cicero envisaged good and evil usages of eloquence and how these related to the *res publica*. This is not only a problem for anyone wishing to understand the outlook of the proemium of book 1 in relation to the overall work or *De inventione* within the contexts of rhetorical teaching and oratorical practice at Rome, but also for the understanding of Cicero's thinking on the *res publica*, in *De inventione* and over time.

Most scholarship focusing on Cicero's conceptualisation of the *res publica* understandably engage with his treatises *De re publica*, *De legibus* and *De officiis*, or with those of his speeches which either dis-

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[1] *E.g.* Aristophanes, *Clouds*; Plato, *Gorgias* (*e.g.* 461b-c) with Yunis 1996, 117-171 and McCoy 2008; Aristotle, *Rhetoric* 1355b8 (on the sophists). See discussion in Lévy 1995, 159 in relation to Cic. *inv.* 1, 1; Schwameis 2014, 17-22. For the dating of the work, I accept Hirsch's dating as set out in Hirsch (forthcoming). I discuss the opening of *De inventione* in section 3 below.

[2] The term *status* to indicate a theory of "Issues" is later than *inv.* and the near-contemporary *rhet. Her.*, both of which use *constitutio*. Below I use both at each instance to avoid confusion.

cuss matters of government in more general terms, such as *Pro Sestio* or *Pro Marcello*, or which employ the term *res publica* extensively, such as the *Catilinarians*, the *Post reditum* speeches and the *Philippics*[3]. Yet, these treatises and speeches were all written and delivered after Cicero had reached the pinnacle of his consulship in 63 BCE. Indeed, the vast majority of Cicero's extant oeuvre was written and delivered when he had already embarked on his career as first an advocate in the courts of law (first extant speech from 81 BCE) and then a magistrate (starting with his quaestorship in 75 BCE)[4]. However, as Cicero's first extant work, written before he had begun his forensic career yet probably already developed some thoughts about eloquence and society given he was about 20 years old, *De inventione* offers a unique glimpse into Cicero's earliest views on rhetorical training, oratorical practice and the function of speech in Roman public life. Given Cicero's opening statement on the role of good and evil eloquence within the *res publica* and his repeated mentions of the *res publica* within the work, an analysis of his engagement with and employment of the *res publica*, its meanings and conceptualisation and its relationship with eloquence, promises new insights into Cicero's earliest and pre-career views on the *res publica*.

In this article, I discuss the meanings and conceptualisation of *res publica* as used by Cicero in *De inventione* and modern theoretisations of *res publica* in the Roman republican period; the functions of mentions of *res publica* in the work within their rhetorical, forensic, historical and historiographical contexts; and I compare some of the significant meanings and employments of *res publica* in Cicero's later works with the usage in *De inventione* in order to assess the continuities and changes in Cicero's conceptualisation of *res publica* over time. Overall, I aim to read Cicero's work as not only a handbook on the first task of the orator but also as a work composed by an author later formulating complex ideas of the *res publica*: indeed, where is the *res publica* in the *De inventione*?

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[3] Zarecki 2014; Hodgson 2017; Moatti 2019; Schofield 2021; Mebane 2022. See also Lundgreen 2014 for the concept of "statehood" (*Staatlichkeit*) and whether it can be applied to late republican Rome.

[4] In the first extant speech, *Pro Quinctio* (81 BCE, § 4), Cicero mentions that he had appeared in other cases before Quinctius' trial but provides no details.

2. *What does* res publica *mean in* De inventione*?*

One way to approach the categorisation of meanings of *res publica* in *De inventione* is to consult the entry on "*res publica*" in the *Thesaurus Linguae Latinae* (*ThlL*) and look for references to the *De inventione* under the various meanings listed. This approach allows us to see what the scholars of *ThlL* thought Cicero meant by *res publica* in the mentions listed, but also to get a sense of which other works, Ciceronian or not, employed similar meanings of *res publica*. This latter opportunity is relevant for my comparative discussion in section 4 of Ciceronian usage over time, while the former gives us an entry point to the polysemic field of *res publica* in *De inventione*.

The *ThlL* categorises several mentions of *res publica* in *De inventione* under different headings, thereby underlining the fluidity of the term[5]. Cicero's several usages of "*res publica*" in his significant opening discussion of the role of eloquence in public life are categorised under the heading of a *civitas* associated with the laws, the customs and the institutions, and the *ThlL* notes that some usages are employed for juxtaposition[6]. The *ThlL* also uses *De inventione* to illustrate the metaphorical use of *res publica* as a ship to be guided through storms to avoid shipwreck[7], the application of *res publica* to any *civitas* (not just Rome)[8], the concept of *res publica* for administration or government[9], the association of *res publica* with *salus* (health), *utilitas* (usefulness) and *commodum* (advantage)[10], and the separation between *res publica* and *res privata*[11]. From the *ThlL*, it is clear that Cicero employs multiple meanings of *res publica* in *De inventione*, and that these relate to the public life of a *civitas* (Roman or not), its laws, customs and institutions, and the administration or government of this *civitas*, and that it can be described metaphorically.

Such multiple meanings of *res publica* is a well-known phenomenon in late Roman republican political culture, as Hodgson and

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[5] *ThlL* s.v. *res*: vol. 11, 2, 1358, 60-1416, 59; *res publica*: 1397, 47-1413, 68.

[6] *ThlL* s.v. *res*, *res publica*: vol. 11, 2, 1399, 59-62, 1400, 31-47 referencing Cic. *inv.* 1, 1.

[7] *ThlL* s.v. *res*, *res publica*: vol. 11, 2, 1402, 55-56 referencing Cic. *inv.* 1, 4.

[8] *ThlL* s.v. *res*, *res publica*: vol. 11, 2, 1404, 72-75 referencing Cic. *inv.* 2, 168.

[9] *ThlL* s.v. *res*, *res publica*: vol. 11, 2, 1405, 52-73 referencing Cic. *inv.* 1, 4.

[10] *ThlL* s.v. *res*, *res publica*: vol. 11, 2, 1411, 10-25, 1411, 47 referencing Cic. *inv.* 1, 68. For the link between *salus* and *res publica*, see Walters 2020, 38-44.

[11] *ThlL* s.v. *res*, *res publica*: vol. 11, 2, 1413, 46 referencing Cic. *inv.* 1, 5.

Moatti have set out in their differing analyses of *res publica* and the Roman republic[12]. I have chosen to focus on Hodgson and Moatti's analyses because they aim to encompass all of Roman republican thinking, because they are both extensive book-length treatments, and because they do not focus specifically on Cicero's perspectives in *De re publica* or other post-consulate treatises, even if they do engage deeply with Cicero's works.[13] For Hodgson, *res publica* is not "the public thing", not "community" or "state" or "the Roman government"[14], which are otherwise common translations. Instead, Hodgson argues that «*Res publica*, then, can mean both the civic property/affairs of a given *civitas* and the communal spaces within which those who administer the property and affairs of the *civitas* move»[15]. *Res publica* is «something that should be managed *for* the public good»[16]. Importantly, she highlights the significance of perspective as crucial for understanding the fluidity of meanings present in the sources: «*Res publica* may be better expressed as a field of positions that changes in meaning dependent on where the person stands in socio-political space»[17]. Indeed, she argues that when Cicero himself, in his later treatise *De re publica* (*c.* 52 BCE), makes Scipio Aemilianus use *res publica* and *civitas* interchangeably, it should be understood partly as owing to the insider's perspective as represented by the elite interlocutors of the *De re publica* rather than an equivalence of these terms and concepts[18].

Moatti agrees that *res publica* has no precise meaning but also that «*res publica* is the world of affairs about which the citizens have conflicts or debates, and about which they act in common. The word *res* unifies the variety of these affairs, and this highlights the fact that to have something in common does not mean there is a consensus on it. Such a definition also presupposes spaces for negotiation. [...] If this demonstra-

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[12] Hodgson 2017; Moatti 2017 and 2018.

[13] For excellent discussions of Cicero's notion of *res publica*, as projected in his works *De re publica* and *De legibus*, see Schofield 1995, 63-83 (= 1999, 155-68; longer version in Schofield 2021, 61-93); Nicgorski 2021; Atkins 2013, 128-54. Asmis 2005 offers further discussion of Cicero's preferred "constitution". For Cicero's employment of the notion in his speeches, see Gildenhard 2011, *passim* but see introduction pp. 126-140.

[14] Hodgson 2017, 5-6.

[15] Hodgson 2017, 11.

[16] Hodgson 2017, 4.

[17] Hodgson 2017, 5-6.

[18] Hodgson 2017, 9.

tion is right, then *res publica* is by no means a predefined entity, or a political regime: it is the result of citizens' interaction»[19]. Moatti goes on to argue that the introduction of the theory of the mixed constitution in the second century BCE changed this because it allowed an interpretation in which the *res publica* was fixed into an unchangeable tripartite form of the People, the Senate and the magistrates, which disallowed flexibility, political conflict or negotiation; it lost what Moatti calls *altéronomie*, «a capacity to imagine alternatives and changes». Moreover, she argues, that this conceptualisation was also an «essentialization of the *res publica*», which was expressed as personifications of the *res publica* and as measures taken "in the name of the *res publica*", sometimes violently[20].

Although both Hodgson and Moatti generally rely on Cicero's later works, alongside non-Ciceronian works, and generally mention *De inventione* in passing or as further evidence only[21], their definitions of *res publica* help to make sense of the meanings extracted by the *ThlL* with regards to usage in *De inventione* and therefore potentially to contextualise what Cicero might have meant by the term in the *De inventione*. Indeed, the link between *res publica* and *civitas* and the link to the administration of public affairs, which the *ThlL* highlighted, fit with Hodgson's definition of *res publica* as the civic affairs of a *civitas* as

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[19] Moatti 2017, 34 and 36 (quotation). Moatti 2017 is the shorter, English, version of Moatti 2018. This definition reads, in the longer French version, thus (Moatti 2018, 25-41 for the analysis and p. 33 for the quotation): «L'expression au singulier désigne littéralement l'ensemble des "affaires" dont parlent les citoyens et qu'ils ont en commun; le mot *res* en subsume le contenu indéterminé, ce qui porte une quadruple signification: *res publica* est une catégorie générale (mais non abstraite) qui exprime l'idée d'une totalité constituée d'éléments pluriels; le contenu de cette "chose" peut varier, mais il n'est pas nécessaire de l'énumérer pour dire la "chose", car celle-ci est en quelque sorte toujours inachevée, ouverte, définissable seulement en situation; ces choses ne sont incluses qu'en tant qu'elles sont l'objet de partages, mais aussi de litiges ou de controverses entre les membres du peuple: la totalité inclut la pluralité; le peuple est l'ensemble de ceux qui sont concernés par les "affaires", sans que soit précisé qui compose ce peuple – d'où la possibilité d'une variation du nombres de citoyens actifs, ou d'une extension du corps de citoyens».

[20] Moatti 2017, 37-40; cf. Moatti 2018, 53-64.

[21] Hodgson 2017, 55 with n. 120 and 122: *De inventione* used to discuss the meanings of *maiestas* in relation to *res publica*. Moatti 2018, 82 n. 4 (*inv.* 2, 53 as evidence that the people grant the magistrates *potestas*), 99 (*inv.* 2, 52 on the competing *potestates* of the father and the *res publica*), 114 n. 3 (*inv.* 2, 168 on the *detrimentum rei publicae*), 144 n. 3 (*inv.* 2, 52-56 on tribune Flaminius and his father's *patria potestas*), 194 nn. 2-3 (*inv.* 1, 68-69; 2, 160 as evidence supporting the reading of *off.* 1, 85), 244 n. 2 (*inv.* 1, 40 supporting interpretation of *civitas universa* in *leg.* 2, 5, but importantly put into the post-Social War context of *inv.*), 306 n. 4 (*inv.* 1, 4 [not 4, 4 as written] illustrating the ship as state metaphor as one type of description of the *res publica*), 312 n. 1 (*inv.* 1, 40 on the registers of the human experience, including the public sphere).

well as the shared spaces within which the administrators of the civic affairs operate[22]. Moreover, even if it might prove a helpful shorthand to translate many instances of *res publica* in *De inventione* as "state", "commonwealth", "public business" and "public duties", and even if *res publica* is sometimes presented as an entity and agent able to form treaties or as an object of loyalty and *pietas* (as is sometimes *patria*)[23], the meanings found in *De inventione* can be enveloped into Hodgson's civic property/affairs of a given *civitas* and its communal spaces for its administration, if we allow for the personification of this space in descriptions. And allowing for these personifications means that Moatti might see these usages of *res publica* in *De inventione* as expressing the version arising from the concept of the mixed constitution, developed from the second century BCE. While Hodgson focuses on the contested meanings of *res publica* in the first century BCE and find them to become more malleable, and Moatti argues that these contested meanings had a long history and became less not more malleable in the first century, they agree that the contested meanings were there in Cicero's time and that the differing usages reveal the users' understanding of "the public thing"[24]. Given the likely dating of the *De inventione* to the middle of the 80s BCE, and even if Moatti and Hodgson do not discuss *De inventione* very much, it makes sense to think with their definitions when looking at *res publica* in Cicero's first extant work. Understanding the various yet overlapping meanings of *res publica* in *De inventione*, it is now possible to move to the analysis of Cicero's employment of the term and concept.

3. *What are the functions of mentioning* res publica *in* De inventione*?*

Cicero uses the term "*res publica*" a total of 32 times, but unevenly distributed across the work: there are 26 mentions in book 1 and only 6 in book 2, and these mentions are clustered in Cicero's *proemium* to book 1

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[22] Hodgson 2017, 11.

[23] Using Hubbell's Loeb translation as example, *res publica* is often translated as "state" and as generally applied to any society: *inv.* 1, 23, 32, 101; 2, 35, 78-79 (loyalty to state), 2, 91 (treaty partner), 2, 104-105, 132 (alongside meaning of "public duties"), 2, 161 (*pietas* towards state), 2, 168-69; often translated as "commonwealth": *inv.* 1, 56 (here the Greek *polis* of Thebes); translated as "public business": *inv.* 2, 55; translated as "public duties": *inv.* 2, 132 (and as "state").

[24] For a comparison between Hodgson and Moatti's analyses, see Mebane 2024, 3-13.

and chapters 68-73 of the same book[25]. I shall therefore start by discussing these two sections.

As mentioned already, Cicero opens his work with a *proemium*, which aims to justify both the study of and the writing about *eloquentia*, by setting out the reasons for engaging in these pursuits[26]. Through four hypotheses and corresponding proofs – as set out by Hirsch in a forthcoming commentary on *De inventione* book 1 – Cicero inextricably links *eloquentia* with society and *res publica*:

1. Eloquence without wisdom provides too little benefit to societies (*sapientia sine eloquentia parum prodest civitatibus*)[27] because through wise eloquence men are persuaded to respect justice rather than violence (*ac mihi … vetustatem*)[28].

2. Eloquence without wisdom excessively and commonly hurts and never benefits (*eloquentia sine sapientia nimium obest plerumque, prodest numquam*)[29], because eloquence without a sense of duty have corrupted cities and destabilised the lives of men, leading to the wrecks of ships of state (*postquam vero […] assuevit […] naufragia fiebant*)[30].

3. A man acquiring eloquence not to attack but to defend the welfare of the fatherland (*commoda patriae*) will be a citizen most helpful and devoted to his own and to public interests (*vir et suis et publicis rationibus utilissimus atque amicissimus civis*)[31], because men were first transformed from savages to kind and civilised people (*propter rationem atque orationem studiosius audientes ex feris et immanibus mites reddidit et mansuetos)* through the eloquence of a great and wise man (*magnus […] vir et sapiens*)[32].

4. Eloquence (with wisdom) ought to be studied (*eloquentiae studendum est*)[33], to mitigate the impact of evil men on good citizens and everything that is common, and because eloquence provides benefits to the *res publica* (*ad rem publicam plurima commoda*), *laus*, *honos* and *dignitas* to those eloquent, protection for friends, and because it makes men excel beasts (*sed eo […] antecellat*)[34].

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[25] Cic. *inv.* 1, 1, 4 (2x), 5 (5x), 11, 32, 56, 68 (7x), 69 (6x), 73 (2x); 2, 35, 55, 104, 131 (2x), 168.

[26] Cic. *inv.* 1, 1-5. For discussion of the *proemium*, cf. Giuffrida 1963, Lévy 1995, Schwameis 2014.

[27] Cic. *inv.* 1, 1.

[28] Cic. *inv.* 1, 3.

[29] Cic. *inv.* 1, 1.

[30] Cic. *inv.* 1, 3-4.

[31] Cic. *inv.* 1, 1.

[32] Cic. *inv.* 1, 2; cf. Lévy 1995 on the *mythe de la naissance* in the *proemium* and its roots in Greek philosophy, arguing that this myth was pervasive in Cicero's works up until *De re publica*; Schwameis 2014, 66-91 on the *Kulturentstehung* argument; Hirsch (forthcoming) *ad* 1, 2 on "*mansuetos*" as "civilised".

[33] Cic. *inv.* 1, 5.

[34] Cic. *inv.* 1, 5.

In these argumentative steps, Cicero refers to *civitates*, *urbes*, the metaphor of the ship of state, *patria*, *publica ratio*, *cives*, and to *res publica* to signify variations of the shared public space in which groups of people can live well together. Without eloquence-cum-wisdom, this shared public space does not exist or is not a place where one can live well.

The significance of *res publica* to Cicero's argument is clear from the outset of the *proemium*. His starting point for considering whether eloquence has brought more good or more evil to men and *civitates* is the *nostra rei publicae detrimentae* (1, 1, «the harms done to our *res publica*») alongside the old calamities of great *civitates*, partly by men of eloquence (*per disertissimos homines*)[35]. The *res publica* is *nostra*, whereas other societies are described as *civitates*, eloquent men can influence the passive *res publica*, and the past has shown what happens to societies in the power of men who are *diserti* but not *sapientes*. In 1, 5, Cicero returns to the *detrimentum rei publicae* alongside *detrimentum bonorum* («the detriment of good citizens») to hammer home his point about the beneficial effects of eloquence-cum-wisdom on the *res publica*, on individuals themselves and their friends, and on humankind (the evidence for the fourth hypothesis above), mentioning *res publica* five times. *Res publica* is thus central to Cicero's justification for eloquence and his own work[36].

The other cluster of mentions occurs in Cicero's discussion of the *confirmatio* as part of a speech and the kinds of arguments (inductive and deductive) the orator can construct, in particular the deductive syllogistic argument consisting of five parts: major premise, proof of the major premise, minor premise, proof of the minor premise, conclusion[37]. He illustrates this with an example of how the orator can argue that all laws should be interpreted not in relation to the letter of the law but to the welfare of the *res publica*, and he picks up the same example when setting out the four-part argument afterwards. I provide Hubbell's translation (including the translation of *res publica* into the rather misleading

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[35] Cic. *inv.* 1, 1: the first two sentences of the work. Cf. Cic. *de orat.* 1, 38 where Scaevola is made to express a similar view in similar wording. Schwameis 2014, 10-22 discusses the origins of this topic, also in relation to proemia of ancient rhetorical works.

[36] For parallels between the *proemium* and Crassus' first speech in *De oratore* (1, 30-34), cf. Zetzel 2022, 106, but Zetzel also notes the absence of the moral element in oratory in *De oratore* except in 3, 56-61, discussed pp. 145-149. See also Schwameis 2014, 29-45 on Cicero's "Kulturgeschichte" and his use of Greek thought tailored to Roman ideas, thereby laying the foundation for his discussions in *De oratore* and *De re publica*.

[37] On Cicero's presentation of syllogistic argumentation in this section of *De inventione*, see Fortenbaugh 1998.

"state" to illustrate the variety of meanings as understood by modern translators) in full to demonstrate the range of usage of *res publica* and I comment on it below[38].

> The following is an example of a fivefold argument: [**major premise:**] "It is right, gentlemen of the jury, to relate all laws to the advantage of the state (commodum rei publicae) and to interpret them with an eye to the public good and not according to their literal expression. [**proof:**] For such was the uprightness and wisdom of our ancestors that in framing laws they had no object in view except the safety and welfare of the state (salutem atque utilitatem rei publicae). They did not themselves intend to write a law which would prove harmful, and they knew that if they did pass such a law, it would be repealed when the defect was recognized. For no one wishes laws to be upheld merely for their own sake, but for the sake of the state (causa … res publica), because everyone believes that the state (rem publicam) is best governed when administered according to law. [**conclusion to proof of major premise:**] All written laws ought, then, to be interpreted in relation to the object for which laws ought to be observed: that is, since we are servants of the community (rei publicae servimus), let us interpret the laws with

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38 *Quinquepertita argumentatio est huiusmodi: "Omnes leges, iudices, ad commodum rei publicae referre oportet et eas ex utilitate communi, non ex scriptione quae in litteris est interpretari. Ea enim virtute et sapientia maiores nostri fuerunt ut in legibus scribendis nihil sibi aliud nisi salutem atque utilitatem rei publicae proponerent. Neque enim ipsi quod obesset scribere volebant, et, si scripsissent, cum esset intellectum, repudiatum iri legem intellegebant. Nemo enim leges legum causa salvas esse vult, sed rei publicae, quod ex legibus omnes rem publicam optime putant administrari. Quam ob rem igitur leges servari oportet, ad eam causam scripta omnia interpretari convenit: hoc est, quoniam rei publicae servimus, ex rei publicae commodo atque utilitate interpretemur. Nam ut ex medicina nihil oportet putare proficisci, nisi quod ad corporis utilitatem spectet, quoniam eius causa est instituta, sic a legibus nihil convenit arbitrari, nisi quod rei publicae conducat, proficisci, quoniam eius causa sunt comparatae. (69) Ergo in hoc quoque iudicio desinite litteras legis perscrutari et legem, ut aequum est, ex utilitate rei publicae considerate. Quid magis utile fuit Thebanis quam Lacedaemonios opprimi? Cui magis Epaminondam, Thebanorum imperatorem, quam victoriae Thebanorum consulere decuit? Quid hunc tanta Thebanorum gloria, tam claro atque exornato tropaeo carius aut antiquius habere convenit? Scripto videlicet legis omisso scriptoris sententiam considerare debebat. At hoc quidem satis consideratum est, nullam esse legem nisi rei publicae causa scriptam. Summam igitur amentiam esse existimabat, quod scriptum esset rei publicae salutis causa, id non ex rei publicae salute interpretari. Quodsi leges omnes ad utilitatem rei publicae referri convenit, hic autem saluti rei publicae profuit, profecto non potest eodem facto et communibus fortunis consuluisse et legibus non obtemperasse." […] Nobis autem videtur et omnis ratiocinatio concludenda esse et illud vitium quod illis displicet magno opere vitandum, ne quod perspicuum sit, id in complexionem inferamus. (73) Hoc autem fieri poterit si complexionum genera intellegentur. Nam aut ita complectemur, ut in unum conducamus propositionem et assumptionem, hoc modo: "Quodsi leges omnes ad utilitatem rei publicae referri convenit, hic autem saluti rei publicae profuit, profecto non potest eodem facto et saluti communi consuluisse et legibus non obtemperasse."*

an eye to <u>the advantage and profit of the community</u> (rei publicae commodo atque utilitate). For as it is right to think that the art of medicine produces nothing except what looks to the health of the body, since it is for this purpose that medicine was founded, so we should believe that nothing comes from the laws except <u>what conduces to the welfare of the state</u> (quod rei publicae conducat), since the laws were made for this purpose. (69) Therefore in this trial also, cease to search the letter of the law and rather, as is just, examine the law in relation to <u>the public welfare</u> (utilitate rei publicae). [**minor premise:**] What was more useful to Thebes than the defeat of Sparta? What should Epaminondas, the Theban commander, have had in mind more than the victory of Thebes? What should he have regarded as dearer or more precious than such a glorious exploit of the Thebans, than a trophy so honourable, so magnificent? [**proof:**] It is obvious that he was bound to forget the letter of the law and to consider the intent of the law-maker. But certainly this point has been examined and established beyond a doubt, that no law has been passed except <u>for the good of the state</u> (rei publicae causa). [**conclusion to proof of minor premise:**] He thought it, therefore, stark madness not to interpret a law <u>with an eye to the safety of the state</u> (rei publicae salutis causa) when that law had been passed for <u>the safety of the state</u> (rei publicae salute). [**overall conclusion:**] In view of this, if all laws ought to be related to <u>the advantage of the state</u> (utilitatem rei publicae), and Epaminondas contributed to <u>the safety of the state</u> (saluti rei publicae), surely he cannot by the same act have promoted the common interest and have failed to obey the laws." [Then follows the four-part argument, which omits the minor premise] (…) We, on the other hand, think that every reasoning should have a formal conclusion, and also that the fault which they dislike should be avoided by all means, lest we put into the conclusion a statement that is perfectly plain. (73) This result may be secured if the different varieties of conclusion are understood. That is to say, we shall state a conclusion in one way by **combining major and minor in one sentence**, as, "If, then, all laws should be related to <u>the advantage of the state</u> (utilitatem rei publicae), and he contributed to <u>the safety of the state</u> (saluti rei publicae), he certainly cannot by one and the same act have had regard for the common safety and have disobeyed the laws"[39].

Here, Hubbell has translated *res publica* as "state" or "community" and *utilitas rei publicae* as "public welfare". Whether or not we agree with these specific translations, and Hodgson and Moatti lead us to not agree, it is clear that Cicero's usage here covers a range of meanings, including the advantage and profit of the affairs of a civic community and the gov-

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[39] Cic. *inv.* 1, 68-73 (Text and transl. Hubbell 1949).

ernment of these affairs (thus aligning with Hodgson and Moatti's definitions of *res publica*). Cicero's illustration of the five- and four-part argument sees the advocate argue the necessity of understanding all laws in relation to the advantage of the *res publica* (the major premise) and thus to interpret them likewise when considering a forensic case: in this argumentation, the *res publica* and its advantage functions as the highest priority when assessing a particular case. Cicero's illustration includes the historical *exemplum* of Epaminondas (the minor premise) to provide further proof of the idea that the advantage of the *res publica* should be the overriding concern in any interpretation of a situation. *Res publica* and its benefit thus functions as the foundation for both a generalised and a specific argument about interpreting the law according to the intention behind it. In both the generalised argument and in the specific argument of how to interpret Epaminondas' continued command for a few days longer than the law permitted, the advocate can use the *res publica* as the central yardstick against which to assess the justice of the action. In his later discussions of this type of argument and in his usage of it in speeches, Cicero did not use the *res publica* as the yardstick but rather *aequitas* (roughly defined as equality, but open to interpretation)[40]. The relationship between *res publica*, justice and eloquence, as set out in the *proemium*, is here embedded in the illustration of a five- and four-part argument.

Interestingly, Cicero's choice of the example of Epaminondas shows that he did not use *res publica* exclusively for Rome[41]. In fact, his choice of example seems strongly influenced by his Greek sources: the passage forms part of a longer discussion about argumentation based on induction (1, 51-56) and deduction (1, 57-77), which goes back to Greek philosophy, and in which most *exempla* are Greek (18 Greek; 5 Roman), as indeed are most of Cicero's *exempla* in the *De inventione* as opposed to the widespread use of Roman *exempla* in the contemporary rhetorical treatise *Rhetorica ad Herennium*[42]. The comparison with medicine is a rhetorical and

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[40] On *aequitas* in rhetorical argument, see *e.g.* Frier 1985, 120-123; Mantovani 2017; Guérin 2023. On *aequitas* in political thought, see *e.g.* Schofield 2021, 37-38 (also the overlap with usage in forensic speech), 147-50; Atkins 2018.

[41] Cicero uses Roman technical vocabulary in Greek examples elsewhere in *inv.*, for example describing Rhodian treasurers as "quaestores" (*inv.* 2, 87).

[42] Caplan 1954, XXIV. *Rhet. Her.* 4, 1-10 sets out the author's approach to using *exempla*, with Grillo 2022 on the construction and agendas of this passage. See also Hilder 2015 and Hirsch (forthcoming), Introduction, section "Examples in *Inv.*"

philosophical theme going back to at least Plato[43]. Moreover, the *exemplum* of Epaminondas is the second of two using the Theban general in the larger section concerning *confirmatio* (1, 34-77), where the first (1, 55-56) is used to illustrate an argument interpreting a case on the basis of the letter of the law where the second, our example here in 1, 68-69, is used to illustrate the opposite argument, namely interpreting a case on the basis of the intention of (the author of) the law[44]. This pedagogical use of the same *exemplum* to illustrate both sides of an argument might hint at a possible inspiration from declamation. All of this suggests that Cicero, in composing *De inventione*, was building on Greek sources but using Latin terminology, including *res publica*, but not clearly in a Roman context.

However, the choice of this particular issue (as opposed to the specific *exemplum*) to illustrate the five-fold (and four-fold) argument may not derive exclusively from Cicero's Greek sources. In fact, Cicero's own experience of observing Roman law courts in his early youth may have played a part, too. The inheritance case called the *causa Curiana* in modern scholarship turned exactly on the question of interpreting the letter of the law against the intent of the law, and it is the most discussed trial in all of Cicero's works apart from those in which he was personally involved[45]. Cicero says that this trial took place shortly before he was called to the bar (*paulo ante quam nos in forum venimus*), so sometime in the late 90s BCE and clearly when Cicero was in Rome and pursuing forensic rhetorical studies[46]. The trial plays a central part in Cicero's *De oratore*, illustrating not only legal and rhetorical possibilities, but also setting up several of Cicero's major claims in the work. Moreover, it features already in the *De inventione*, albeit without explicit mention of the litigant, defence advocate or prosecutor[47], which shows that Cicero was not only aware of this trial when writing *De inventione* but also interested in the arguments put forward in the trial. In other words, when Cicero in book 1 demonstrates how prosecution and defence can argue for interpreting the letter of the law versus the intent of the law, he knew of

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[43] Discussion in Lidz 1995; Roth 2017.

[44] There is another such example used to illustrate both sides (the woman bearing a child, 1, 44 and 1, 72), emphasising this structural element of the section.

[45] Roller (forthcoming), section 3. The mentions are explicitly and at length, cf. Cic. *de orat.* 1, 180, 238, 242-44; 2, 24, 140-41, 220-22; *Brut.* 144-46, 194-98, 256; explicitly, cf. Cic. *Caec.* 53, 67, 69; *top.* 44; implicitly, cf. Cic. *inv.* 2, 62, 122.

[46] Cic. *Caec.* 53. The date of the trial is not entirely clear, but it happened in the period between 94 and 91 BCE: Roller (forthcoming), section 3.

[47] *Inv.* 2, 62, 122.

a recent Roman *exemplum* of exactly this type of argumentation. That he chose to include Epaminondas was therefore a conscious choice rather than lack of knowledge of a Roman *exemplum*, but his choice of issue to illustrate the five-fold argument may have been influenced by the experience of this Roman court case.

A second potential source of inspiration was Cicero's experience of the trials conducted under the *lex Varia* in 90 BCE. This was the only functioning court at the time and Cicero explicitly says that he attended it often[48]. This court dealt with cases of inciting and collaborating with the Italian allies before and during the Social War, and the trials were highly politicised[49]. Cicero discusses most of the known trials in this court in his later works, although not in *De inventione*[50]. However, the central aspect of the law, treason, was associated with the ongoing definitional (and politicised) issue of *maiestas* in Roman politics, going back to Saturninus' law *de maiestate* (103 or 100 BCE) and interpretational questions relating to the events surrounding the Gracchi. And *maiestas* features in *De inventione* in several places, sometimes in explicit conjunction with *res publica*[51]. Given this link, it is necessary to discuss Cicero's usage of *maiestas* in *De inventione*.

Cicero illustrates what he terms the *constitutio definitiva* (also known as *status definitivus*: the "Issue" of definition) and the *constitutio* (*status*) *generalis* (the "Issue" of quality) with examples revolving around *maiestas*: the definition of *maiestas* is illustrated by the case of Gaius Flaminius being removed from the *rostra* by his father when he proposed an agrarian bill as tribune of the *plebs* in 232 BCE; the question is whether his father was guilty of *maiestas* in violating the sacrosanctity of a tribune of the plebs[52]. Having dissected the question, and presented the

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[48] Cic. *Brut.* 304: *exercebatur una lege iudicium Varia, ceteris propter bellum intermissis; quoi frequens aderam* ("all the courts were suspended because of the war, save the one established by Varius' law. I attended it often"; transl. Kaster 2020).

[49] On the remit of the *lex Varia*, see Gruen 1965 and Badian 1969. Mouritsen 2019 has discussed the implications of Cicero's near-silence on the Social War across his oeuvre; it is not mentioned in the *De inventione* in spite of the facts that this war was the most calamitous event in the first century BCE (Gruen 2017), that it took place immediately before the composition of *De inventione*, and that Cicero experienced it first hand.

[50] Cic. *Sest.* 101; *Scaur.* fr. e; *de orat.* 3, 11; *Brut.* 169, 205-207, 303-306; *Tusc.* 2, 57; *nat. deor.* 3, 81.

[51] Cic. *inv.* 2, 52-55, 72-74.

[52] Cic. *inv.* 2, 52-55. Moatti 2018, 99 argues that Cicero's version of the story includes several anachronisms, *e.g.* the reference to a judicial process regarding *maiestas*. These anachronisms are irrelevant to my argument.

prosecutor's possible arguments (to which I return shortly), Cicero presents the possible defence:

> Deinde defensoris primus locus est item nominis brevis et aperta et ex opinione hominum descriptio, hoc modo: Maiestatem minuere est <u>aliquid de re publica</u>, cum potestatem non habeas, <u>administrare</u>. Deinde huius confirmatio similibus et exemplis et rationibus, postea sui facti ab illa definitione separatio.

> *The first topic for the defence is likewise a brief, clear and conventional definition of the word, as follows: "Lese-Majesty consists in <u>doing some public business</u> without authority." Then follows the confirmation of this definition by examples and arguments similar to those used by the prosecution. After this it can be shown that the act does not square with the definition*[53].

Here, the *res publica* figures in the defence's definition of *maiestas*, but in the prosecutor's definition, the *res publica* is not included:

> Maiestatem minuere est de dignitate aut amplitudine aut potestate populi aut eorum quibus populus potestatem dedit aliquid derogare.

> *Lese-Majesty is a lessening of the dignity or high estate or authority of the people or of those to whom the people have given authority*[54].

Thus Cicero's illustration of the *constitutio definitiva* (*status definitivus*) on the sides of prosecutor and defence not only show different definitions of *maiestas* designed to support either side, but also presents different perspectives on the civic affairs and political space of the civic community: whereas the prosecutor argues that *maiestas* is something that belongs to the Roman people or their authorised representatives, the defence advocate explicit relates *maiestas* to the *res publica*. Effectively, the defence attempts to modify the fundamental definition of *maiestas* as belonging to the people in order to make his case. Nevertheless, the emphasis on the Roman people versus *res publica* could be exactly the question of perspective Hodgson argues in relation to the interpretation of the benefits of the *res publica*: the issue in the case of Flaminius' father was that he confused the *potestas populi* with his *patria potestas*, and those defending him – fellow elite Romans – could argue that he acted in

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[53] Cic. *inv.* 2, 55 (Text and transl. Hubbell 1949).
[54] Cic. *inv.* 2, 53 (Text and transl. Hubbell 1949).

the interests of the *res publica* in upholding the *patria potestas* – according to their elite definition of the interests of the *res publica*.

Cicero returns to *maiestas* in 2, 72-74 when discussing the *constitutio/status generalis*, where he refers to the more recent *exemplum* of Gaius Popilius' defeat to the Gauls in 107 BC and his subsequent trial for *maiestas*, although without mentioning Popilius' name. This avoidance of Popilius' name is in contrast to the explicit mention in the *Rhetorica ad Herennium*, where this example is used to illustrate the same point[55]. Indeed, the engagements with *maiestas* in *De inventione* and *Rhetorica ad Herennium* show close parallels but Cicero is less explicit about the connection to recent Roman history[56]. The function of these examples revolving around *maiestas* in *De inventione*, as in the *Rhetorica ad Herennium* and in later Ciceronian works, is to illustrate the Issue of definition[57]. Cicero's treatment in *De inventione* is therefore not unique in terms of function, but nevertheless noteworthy within the contemporary debate of the definition of *maiestas* and its exploitation in judicial and political contexts, and within the context of Cicero's own experience of the trials under the *lex Varia* in 90 BCE. The illustrations of rhetorical precepts with examples involving *maiestas* and *res publica*, in both *De inventione* and *Rhetorica ad Herennium*, should be read (partly) in this context.

Apart from the two clusters of *res publica*-usage in the *proemium* and book 1, Cicero uses *res publica* to illustrate another Issue from status theory, namely the conjectural Issue (*constitutio/status coniecturalis*, the Issue of fact), where the plea is supported by conjectures. Here he uses what we would categorise as a mythological *exemplum* (Did Ulysses kill Ajax?), then a Roman historical *exemplum* (Are the Fregellans friendly to the Roman people?)[58], and finally another Roman *exemplum*: If we leave Carthage untouched, will any harm come to the Roman *res publica*?[59] Both Roman *exempla* relate to

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[55] Indeed, we have the name from the parallel treatment in *rhet. Her.* 1, 25; 4, 34. Cicero also mentions *maiestas* in *inv.* 1, 166 but without further discussion.

[56] Hilder 2016, 175-178 discusses the engagements with *maiestas* in *inv.*, *rhet. Her.* and Cic. *de orat.*, showing the close parallels between the three works' engagements. Haimson Lushkov 2015, 33-38 discusses Cic. *inv.* 2, 52-55 in comparison with Valerius Maximus' version of the story.

[57] *Rhet. Her.* 1, 21; 2, 17; Cic. *de orat.* 2, 109, 164, *part.* 104, 7; Quint. 7, 3, 35-37.

[58] Fregellae is also an *exemplum* in *rhet. Her.* 4, 13, 22, 37, with a different value judgement than Cicero's.

[59] Cic. *inv.* 1, 11. Carthage is also mentioned in *inv.* 1, 17, 27, 72.

the community of Roman citizens and their government, namely the Fregellans revolting against the Romans in 125 BC, and Carthage as a threat to the Roman *res publica*. While the conjectural question is not about the status of the *res publica* itself, the *res publica* plays into the question about Carthage, again illustrating the role of *res publica* in Cicero's illustrative repertoire to elucidate rhetorical precepts. We can perhaps imagine that this Roman *exemplum* was used in early Roman declamation practices, with *res publica* meaning the political space of the Roman civic community.

This meaning is also employed in passages where Cicero tries to illustrate *partitio* (the classification of things; 1, 32)[60], *constitutio/status coniecturalis* (the Issue of fact; 2, 35)[61], and *constitutio/status generalis* (the Issue of quality; 2, 104)[62]. Interestingly, in the last two passages, Cicero uses *res publica* in arguments in defence where the advocate could claim that the defendant had performed services to the *res publica* as illustration of his client's good character or in order to plead for his client's pardon. In both cases, the client's behaviour within the political space of the Roman civic community serves as arguments in his favour, which illustrates the duties towards the *res publica* as a fundamental aspect of Cicero's perspective on Roman civic life.

Finally, Cicero uses *res publica* in his discussion of the purpose of the *exordium*, including making the audience attentive and how to do so:

> Attentos autem faciemus si demonstrabimus ea quae dicturi erimus magna, nova, incredibilia esse, aut ad omnes aut ad eos qui audient, aut ad aliquos illustres homines aut ad deos immortales aut <u>ad summam rem publicam pertinere</u>; et si pollicebimur nos brevi nostrum causam demonstraturos atque exponemus iudicationem aut iudicationes si plures erunt.

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[60] Cic. *inv.* 1, 32: «I shall show that through covetousness, audacity and avarice of my opponents all disasters have come upon the state (*ad res publicam pervenisse*)».

[61] Cic. *inv.* 2, 35: «The counsel for the defence, on the other hand, will have to show first, if he can, that the life of the accused has been upright in the highest degree. He will do this if he can point to some services well known to everyone: for example, [...] if he can say that the defendant has performed some service to the state (*in rem publicam* [...] *factum esse dicit*). This argument will be strengthened if it can be shown that when he had an opportunity of doing a dishonest deed with impunity he had no desire to do so».

[62] Cic. *inv.* 2, 104: «*Deprecatio* (plea for pardon) is the designation of the plea which contains no defence of the deed but only a request for pardon. [...] if you are speaking on behalf of a brave or distinguished man who has performed many services for the state (*in rem publicam multa sunt beneficia*) you might plead for pardon without seeming to in this way».

> *We shall make our audience attentive if we show that the matters which we are about to discuss are important, novel, or incredible, or <u>that they concern</u> all humanity or those in the audience or some illustrious men or the immortal gods or <u>the general interest of the state</u>; also if we promise to prove our own case briefly and explain the point to be decided or the several points if there are to be more than one*[63].

The phrase *summa res publica* is not uncommon[64], and usually means the highest or greatest interest of the *res publica*. However, Hirsch argues that the order in which Cicero lists these stakeholders whose concerns should make the audience attentive is significant: all (*omnes*)[65], those listening (*eos qui audient*), illustrious men (*illustres homines*), the immortal gods (*deos immortales*) and the highest interest of the *res publica* (*summam rem publicam*). Hirsch's point is that if we read this order as signifying increasing importance, then the interests of the *res publica* would rank higher than the interests of the immortal gods in Cicero's perspective[66]. In the parallel passage in the *Rhetorica ad Herennium* (1, 7), the author puts the *res publica* before and thus under the immortal gods, further emphasising the unusual order in *De inventione*[67]. Certainly, the final place in any list is one of emphasis and this suggests that the *res publica* was already in Cicero's earliest extant work a concept of some significance.

Across the *De inventione*, *res publica* is thus used in a number of contexts and for a variety of purposes. Most significantly, *res publica* is part of Cicero's overall justification for his choice of topic – *inventio* and the teaching of eloquence – because eloquence-cum-wisdom has major benefits for the *res publica* and everybody within it. *Res publica* is a fundamental aspect embedded in the rationale of the entire work and therefore in Cicero's view of rhetoric and public speech. The other usages of *res publica* could be seen partly within an attempt to latinise rhetorical

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[63] Cic. *inv.* 1, 23 (Text and transl. Hubbell 1949).

[64] Plaut. *Merc.* 986; Acc. *praetext.* 38; Cic. *Verr.* 2, 2, 28; *Cat.* 1, 14; 3, 13; 4, 13; *Flacc.* 94; *Att.* 1, 16, 9; *Sest.* 25; *fam.* 13, 68, 2; 10, 8, 5 (Plancus writing), 21, 1 (Plancus writing), 35, 2 (Lepidus writing); Livy 42, 49; Tac. *ann.* 12, 5, 3; *Année Epigraphique* 1992 n. 1766; Cod. Iust. 6, 1, 5.

[65] Hubbell's translation of *omnes* as "all humanity" is an interpretation. By *omnes*, Cicero could arguably have meant "all humans", "all men", "all citizens" or something else. To retain this ambiguity, I suggest translating it simply as "all".

[66] Hirsch (forthcoming) *ad* 1, 23.

[67] *Rhet. Her.* 1, 7 refers only to the *res publica* and the immortal gods, prompting Hirsch to suggest that Cicero added the *illustres homines* and the <u>*summa*</u> *res publica* to the standard list of *res publica* and immortal gods replicated in the *Rhetorica ad Herennium*.

precepts from Greek rhetorical and philosophical teachings, such as the argument for interpretating a case against the letter of the law or the intention of the law (the case of Epaminondas), or illustrations of various aspects of status theory. Cicero's usage of a small number of Roman *exempla* also referencing *res publica* may relate to early Roman declamatory exercises[68]. Nevertheless, his decision to discuss arguments based on the question of the letter versus the intent of the law and to use *maiestas* as illustration of various aspects of *status* theory suggests some influence from Cicero's experience of watching the trials of the late 90s BCE (or engaging with declamatory exercises inspired by the trials in relation to Saturninus' *maiestas* law). These trials did not operate in a vacuum but within a context of competing interpretations of what the *res publica* was, who could partake in it – whether as member of society or as member of the ruling elite – and what the *res publica* served.

4. *Comparing Cicero's conceptualisations of* res publica *over time*

In addition to reading the *De inventione* within its own historical context, reading the conceptualisation of *res publica* in *De inventione* within the context of Cicero's overall oeuvre allows us to begin to assess the significance of this work on Cicero's perspectives on *res publica*. As mentioned above, the *ThlL* provides instant access to (some of) the conceptualisations within the *De inventione* alongside similar usages in other works, including other Ciceronian works. I have already mentioned that Cicero's use of *summa res publica* is fairly common, and this is also true for Cicero's later works, especially speeches in which he involves the *res publica* in his overall argument[69]. Moreover, the idea that the *res publica* is not just Rome but a concept that can be applied to other communities is also repeated in later Ciceronian works, most notably in the *De re publica*, and can be seen already in Aristotle's *Politics*.[70] *Res publica* as a concept of administration and government is, unsurprisingly, also possible to identify in later Ciceronian works[71].

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[68] Hirsch (forthcoming), Introduction, section "Examples in *inv.*"

[69] Cic. *Verr.* 2, 2, 28; *Cat.* 1, 14; 3, 13; 4, 13; *Flacc.* 94; *Att.* 1, 16, 9; *Sest.* 25. Cf. *ThlL* s.v. "res", "res publica": vol. 11, 2, 1399, 59-62, referencing Cic. *inv.* 1, 1.

[70] Cic. *rep.* 1, 41, 44, 45, 48; 3, 43; *off.* 1, 92. Cf. *ThlL* s.v. "res", "res publica": vol. 11, 2, 1404, 72-75, referencing Cic. *inv.* 2, 168. Arist. *Pol.* 2, 1272b.

[71] Cic. *rep.* 2, 1 (Cato the Elder's experience in statecraft), 2, 70 (the association between justice and *res publica* in governing the state). Cf. *ThlL* s.v. *res, res publica*: vol. 11, 2, 1405, 52-73 referencing Cic. *inv.* 1, 4.

Furthermore, the association of *res publica* with *salus*, *utilitas* and *commodum* can also be seen in later Ciceronian speeches[72].

Finally, the idea of the *res publica* as a ship, the statesman as its pilot, tumultuous circumstances of the *res publica* as a storm, and the disintegration of the *res publica* as a shipwreck stands out for its vividness and pervasiveness in Ciceronian (and indeed other) works. This idea forms part of Cicero's exposition and justification of his topic and work in the *proemium* of *De inventione*:

> Itaque cum in dicendo saepe par, nonnunquam etiam superior, visus esset is qui omisso studio sapientiae nihil sibi praeter eloquentiam comparasset, fiebat ut et multitudinis et suo iudicio dignus qui rem publicam gereret videretur. Hinc nimirum non iniuria, cum ad gubernacula rei publicae temerarii atque audaces homines accesserant, maxima ac miserrima naufragia fiebant. Quibus rebus tantum odi atque invidiae suscepit eloquentia ut homines ingeniosissimi, quasi ex aliqua turbida tempestate in portum, sic ex seditiosa ac tumultuosa vita se in studium aliquod traderent quietum.

> *And so, because one who had acquired eloquence alone to the neglect of the study of philosophy often appeared equal in power of speech and sometimes even superior, such a one seemed in his own opinion and that of the multitude to be fit to govern the state. Therefore it was not undeserved, I am sure, that whenever rash and audacious men had taken the helm of the ship of state great and disastrous wrecks occurred. These events brought eloquence into such odium and unpopularity that men of the greatest talent left a life of strife and tumult for some quiet pursuit, as sailors seek refuge in port from a raging storm*[73].

This passage – together with a parallel passage in *Rhetorica ad Herennium*[74] – is the first usage of this metaphor (and simile) in Latin after a

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[72] *E.g.* Cic. *Rab. perd.* 27 (*salus*); *Cat.* 1, 9, 33; 4, 4 (all *salus*), 9 (*utilitas*); *Mur.* 79 (*salus*); *Sull.* 34, 40 (*salus*), 65 (*commodum*); *Sest.* 36, 49 (*salus*), 103 (*utilitas*); *prov. cons.* 22, 27, 29, 30 (*utilitas*), 45 (*salus*); *Mil.* 1, 6, 87 (*salus*); *Marc.* 25 (*salus*); *Phil.* 1, 21, 25, 33; 2, 52; 3, 3, 27: 5, 49; 6, 17; 7, 4, 5; 9, 15; 12, 7, 29 (*salus*), 30 (*utilitas*); 13, 47; 14, 13 (*salus*), 17 (*utilitas*).

[73] Cic. *inv.* 1, 4 (Text and transl. Hubbell 1949; adapted).

[74] *Rhet. Her.* 4, 57, where the metaphor is used to illustrate a figure of thought being refined in seven parts, where this part is illustrating "contrary": *Ita uti contemnendus est qui in navigio non navem quam se mavult incolumem, item vituperandus qui in rei publicae discrimine suae plus quam communi saluti consulit. Navi enim fracta multi incolumes evaserunt; ex naufragio patriae salvus nemo potest enatare* («He who in a voyage prefers his own to his vessel's security, deserves contempt. No less blameworthy is he who in a crisis of the republic consults his own in preference to the common safety. For from the wreck of a ship many of those on board escape unharmed, but from the wreck of the fatherland no one can swim to safety»; text and transl. Caplan 1954).

wealth of earlier usages in Greek poetry and prose, not least in Plato's *Republic*[75]. The passage is also a forerunner to Cicero's later and extensive employment in speeches, letters and treatises, especially vividly in the *De domo sua* (57 BCE), *Pro Sestio* (56 BCE), *In Pisonem* (55 BCE), and *De re publica* (*c.* 52 BCE)[76]. In the three speeches, Cicero presents the *res publica* as a ship carrying the *populus* and the senate, being shipwrecked by the pirate Clodius and his associates Gabinius and Piso, and the senate as the pilots of the ship on behalf of the *populus*[77]. The metaphor is thus used to argue constitutional matters around legitimacy of power, allowing for more than one pilot of the ship. In the *De re publica*, Cicero focuses on ethical matters when employing the metaphor, namely the necessary qualities of the *gubernator*: *virtus*, *sapientia* and *prudentia*, and here allowing for one pilot only – the statesman in possession of these qualities[78]. Compare with the passage in *De inventione*, where the focus is on men possessing eloquence without wisdom grabbing the pilotage of the *res publica* with the consent of themselves and the *multitudo*, thereby bringing eloquence into disrepute and driving men with eloquence-cum-wisdom out of the tumult of public life and into private study, as if seeking refuge in port from a tempestuous storm. This has disastrous consequences for the *res publica*, thereby illustrating Cicero's point about the necessity of wisdom for eloquence in the pursuit of the best interests of the *res publica*. Here, the focus is not on constitutional matters, although there is a hint of the illegitimacy of the power-grabbing men supported by the multitude, but much more on the personal qualities of the leaders of the state and their possession of *sapientia*. Thus, while we can perhaps see a link between the *temerarii atque audaces homines* here and later Ciceronian depictions of Clodius' madness and audacity in manipulating the unsuspecting *plebs*, the more dominant trace in *De inventione* for future use is in the emphasis on *sa-*

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[75] Greek poetry: Alc. fr. 46A Diehl; Thgn. 667-80, 855-6; A. *Eu.* 16, 762-6, *Th.* 1-3, 62-4, 758-65, 795-6, S. *Aj.* 1081-3, *Ant.* 187-90, 994, *OT* 22-4, 922-3, Ar. *Ra.* 361, 534-41, 703-5, *V.* 28-9. Greek prose: Pl. *Euthd.* 291d, *Plt.* 302a-b, *R.* 341c-d, 342d-e, 346a-b, 389c, 488, 489b; Arist. *Pol.* 1276b20-7, 1279a3-8, 1284b10-11, 326a40-b2, D. 9, 69; 18, 194; Plb. 6, 44, 3-8. For discussion, see *e.g.* Cucchiarelli 2004, 2005.

[76] Cic. *dom.* 24, 137, *Sest.* 46, *Pis.* 20, *Att.* 2, 7, 4; 8, 11, 1 (referencing *rep.*), *rep.* 1, 62; 2, 51; 5, 5, *leg.* 3, 28 with Schwameis 2014, 96-97 and Mebane 2022 (who only mentions but does not discuss the passage in *inv.*). Earlier brief discussions of the ship of state in Latin literature include Nisbet 1978, *ad loc.* 1, 14, 4; Innes 1988, 322; Fantham 1972, 126-127.

[77] Largely following the analysis of Mebane 2022.

[78] Mebane 2022.

pientia (the wisdom essential for correct use of eloquence) as a necessary quality of the statesman.

However, the inclusion of the *multitudo* as supporter of the bad politicians is important: in the *proemium*, Cicero's justification for eloquence-cum-wisdom builds on his aetiology of societies as places created by individuals in possession of eloquence and wisdom.[79] Without the multitude, no society. This point is repeated in Cicero's *De re publica*, significantly without any negative association:

> « Est igitur, inquit Africanus, res publica res populi; populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus ».

> *Scipio: Well then: the commonwealth is the concern of a people, but a people is not any group of men assembled in any way, but an assemblage of some size associated with one another through agreement on law and community of interest*[80].

Here, the *multitudo* must include all members of that community, not just the non-elites implied by the *multitudo* in *inv.* 1, 4[81]. Although Cicero does not hold back using *multitudo* in its pejorative sense (the unruly mob) elsewhere, including in contexts where he discusses the conditions and status of the *res publica*[82], *De re publica* allows for a more nuanced understanding of this term. The crucial difference lies in the *iuris consensus*, a shared agreement on law (and a community of interest) binding together the community consisting of the *coetus multitudinis*[83]. The role (and rule) of law is also present in the *proemium* of the *De inventione*[84]: the early humans not yet assembled by men of eloquence into *civitates*

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[79] Hirsch (forthcoming) *ad inv.* 1, 1-5 suggests that Cicero's focus on *eloquentia* and its role in human societies, and the damage the split between *eloquentia* and *sapientia* has on state and community, is stronger in *inv.* than in *de orat.*

[80] Cic. *rep.* 1, 39 (Text Powell 2006 and transl. Zetzel 1999). Lévy 1995, 167 identifies *De re publica* as the turning point in Cicero's oeuvre from which he did not make use of the 'mythe de la naissance' (the myth about the birth of rhetoric); in this sense, Cicero's thinking about the *res publica* may have changed.

[81] Cf. Moatti 2018, 188-189 on this passage from *rep.*: «le *populus*, est-il expliqué, n'est pas une "réunion de particuliers (*hominum coetus*)", ni d'ailleurs une foule informelle, une *multitudo*; c'est, comme pour Aristote, le rassemblement d'une multitude (*coetus multitudinis*), une "association de droit (*societas iuris*)", dira-t-il ailleurs».

[82] *E.g. Pro Sestio.*

[83] For interpretations of the definition of *res publica* in *rep.* 1, 39 and its various elements, see Hodgson 2017, 6-12; Moatti 2018, 187-198; Schofield 2021, 46-52; Zetzel 2022, 206-212.

[84] On the *iuris consensus* in *rep.* 1, 39, see Zetzel 2022, 206-210, including references to further scholarly discussions.

did not know the equitable code of law (*ius aequabile*; *inv.* 1, 2), and even when communities and cities had been established, only men of eloquence would have been able to teach their fellow city-dwellers to observe justice (*iustitiam retinere*; *inv.* 1, 3) in their *res publica*. Certainly, the *res publica* relied on *ius* but, according to the *De inventione*, also on men able to communicate the necessity of *ius* to the multitude. Indeed, throughout the *proemium*, including in the ship-as-state metaphor, the multitude is the passive recipient of eloquence, whether good or evil.

It did not have to be this way: Varro aligns the steering of the ship with the Roman *populus*:

> Populus enim in sua <u>potestate</u>, singuli in illius. Itaque ut suam quisque consuetudinem, si mala est, corrigere debet, sic populus suam. Ego populi consuetudinis non sum ut dominus, at ille meae est. <u>Vt rationi optemperare debet gubernator, gubernatori unus quisque in naui, sic populus rationi, nos singuli populo</u>.

> *For the people is in its own <u>power</u>, and individuals are in the power of the people. Thus as everybody must correct his own usage if it is bad, so the people must correct its usage. I am not, as it were, the master of the people's usage, but the people is the master of mine. <u>As the helmsman must obey reason, and each and everyone on the ship must obey the helmsman, so the people must obey reason, and we, the individuals, must obey the people</u>*[85].

Here, Varro uses the ship-as-state simile to draw a distinction between the existence of analogy and its use, and interestingly argues that the pilot of the ship is the people, not the senate or the statesman, and that the people – just as the pilot – must obey *ratio*. Indeed, the people has *potestas* (the first example of analogy) and all individuals are in this power of the people. This is a new development in the Roman political thinking about the *populus*, and indeed about sovereignty, as argued by Arena[86]. Indeed, and although Varro is not always as positive regarding the Roman people[87], his usage here is strikingly different from Cicero's employment. Certainly, both use the image, either as metaphor (Cicero) or simile (Varro), for their

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[85] Varr. *Ling.* 9, 6 (Text and transl. De Melo 2021).
[86] Arena (forthcoming).
[87] As pointed out by de Melo 2021 comm. *ad loc.*, in *Ling.* 5, 7, «the people only understand the lowest forms of etymology; in 9, 17, poets need to train the people to learn analogical, correct forms; and in 10, 16, it is pointed out that the people are not a homogeneous entity and that they lack skill and experience».

specific argument, including in *De inventione* where Cicero seems influenced by his Greek philosophical and rhetorical sources. Nevertheless, Cicero's perspective in *De inventione* points forward to his later, more elaborate and nuanced usages and thereby offers a significant step in the development of his thinking.

Where Cicero's perspective in the *De inventione* differs from his later perspectives on the *res publica* is in his treatment of the Gracchi: following on from his use of the ship-as-state metaphor (1, 4), Cicero argues in 1, 5 that men possessing eloquence-cum-wisdom ought not to have hidden away in safe ports until the storm of audacious men had passed, but instead have put up resistance for the sake of the *res publica*. His examples of men who knew the necessity of resistance are Cato the Elder, Laelius and Scipio Aemilianus (called Africanus here) and their *discipuli* the Gracchi:

> Nam quo indignius rem honestissimam et rectissimam violabat stultorum et improborum temeritas et audacia summo cum rei publicae detrimento, eo studiosius et illis resistendum fuit et rei publicae consulendum. Quod nostrum illum non fugit Catonem neque Laelium neque Africanum neque eorum, ut vere dicam, discipulos Gracchos Africani nepotes: quibus in hominibus erat summa virtus et summa virtute amplificata auctoritas et, quae et his rebus ornamento et rei publicae praesidio esset, eloquentia. Quare meo quidem animo nihilo minus eloquentiae studendum est, etsi ea quidam et privatim et publice abutuntur.

> *For the more shamefully an honourable and worthy profession was abused by the folly and audacity of dull-witted and unprincipled men with the direst consequences to the state, the more earnestly should the better citizens have put up a resistance to them and taken thought for the welfare of the republic. This was well known to our Cato, to Laelius, and Africanus and to their pupils—as I may rightfully call them—the Gracchi, the grandsons of Africanus. These men possessed the highest virtue and an authority strengthened by their virtue, and also eloquence to adorn these qualities and protect the state. Therefore, in my opinion at least, men ought none the less to devote themselves to the study of eloquence although some misuse it both in private and in public affairs*[88].

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[88] Cic. *inv.* 1, 5 (Text and transl. Hubbell 1949). A similar grouping of *exempla* in *rhet. Her.* 4, 7. A later tradition developed: Vell. Pat. 1, 17, 3; Quint. 12, 10, 11, possibly influenced by Cicero (cf. also Cic. *Tusc.* 1, 5). NB: the Gracchi were not the grandsons (*nepotes*) of Scipio Aemilianus (*cos.* 147, 134 BCE), but rather of Scipio Africanus (*cos.* 205, 194 BCE).

Cicero thus groups Tiberius and Gaius Sempronius Gracchus among men with not only eloquence but also wisdom, ready to stand up for the *res publica*. This is rather extraordinary, as already Grillius found[89], and many scholars have discussed[90]. It is extraordinary because Cicero's later descriptions range from the Gracchi as revolutionaries trying to undermine the *res publica* by misusing their oratorical talents (mainly in speeches and treatises directed at the Roman elite) to praise of their technical skill in oratory and behaviour as true friends of the Roman people (mainly in speeches addressed to the people), but not praise of their statesmanship.[91] In fact, Cicero allows a glimpse into this negative reception later in *De inventione* (1, 91). Nevertheless, in his *proemium*, he is not wedded to this negative reception. It thus seems that at this early stage of his career, Cicero was not quite sure which tradition to follow regarding the Gracchi; was he hedging his bets?[92]

5. *Conclusion: where is the* res publica*?*

De inventione features a number of meanings of *res publica*, as do many of Cicero's later works, although the term is not explicitly defined or discussed in terms of meaning. This lack of a definition is unsurprising in a work on rhetorical theory, which instead uses the term for two main purposes: 1) to justify the study of eloquence *causa rei publicae* and thereby justify Cicero's decision to write a book to support this study; 2) to illustrate a number of specific aspects of rhetorical theory from the *constitutio/status definitiva/-us, coniecturalis* and *generalis*, to *confirmatio*, *partitio*, and how to make the audience attentive.

His use of *res publica* rather than *aequitas* as the yardstick against which to assess the justice of an action does not, in my view, signal a completely

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[89] Grillius, *In Cic. Rhet.* 1, 5 ll. 17-18: *Sed quaeritur, cur hie optimos rhetores Gracchos enumeret, cum eos constet conturbasse publicam.*

[90] For summary of discussion, see Schwameis 2014, 102-108. Hirsch (forthcoming) *ad* 1.5 argues for the deletion of *neque Gracchos Africani nepotes*, and while I agree that we could delete *Africani nepotes* as a scribal error, I do not agree that *neque Gracchos* should be excluded mainly because it jars with *inv.* 1, 91. In this early work, it is entirely possible that Cicero wanted to hedge his bets, as I go on to suggest.

[91] Van der Blom 2010, 103-107.

[92] Schwameis 2014, 106-108 brings forward two possible reasons, in combination: Cicero included the Gracchi here because 1) they were philosophically trained orators which fitted the argument about eloquence-cum-wisdom, and 2) Cicero wanted to give an impression of impartiality at the time of writing (the civil war of the 80s BCE).

different perspective on *res publica* when compared with Cicero's later works. As mentioned, the *res publica* of these later works was defined as a community bound together by an agreement on justice and common interest (which relates to his usage of *res publica* as *aequitas* in 1, 68-73) and a community in which the people have entrusted their authority in representatives (which relates to his discussion of *maiestas* in 2, 53). The difference from his later discussions of *res publica* is that in *De inventione*, Cicero does not bring these two characteristics together but references either when they support his point about the rhetorical aspect discussed. We could interpret this as either a selective usage of political thought or as an earlier stage in Cicero's developing political thought regarding the *res publica*.

As part of the two functions of *res publica* in *De inventione*, Cicero selects illustrative examples which are influenced by his own rhetorical education and study which relied on Greek works and thinking (even if he wanted to attend the Latin school of oratory)[93]. But his selection of examples seems also influenced by his own contemporary experience of attending the courts in the Forum, with its trials illustrating arguments revolving around the letter vs intent of the law, definitions of *maiestas*, and indeed the meaning and function of *res publica*, thereby suggesting that any development in his thinking on *res publica* could have been influenced by these events. Certainly, they stayed in his mind because he discussed some of these aspects at greater length in his later works.

Opening his work with the age-old problem of eloquence used for the wrong ends was not only a nod to Classical Greek philosophical debates, but also a problem of great relevance to his own day. Although he does not mention Saturninus, Livius Drusus, Varius or the major legal and political problems of the 100s and 90s BCE, Cicero's inclusion of *maiestas* as a definitional problem and his implicit and explicit references to recent Roman *exempla*, such as the Gracchi, Fregellae, Popilius and the *causa Curiana*, shows that *De inventione* was not just a Greek rhetorical handbook translated into Latin, or a work devoid of contemporary references to the problems of the *res publica*. Moreover, by avoiding the recent, devastating and personally experienced Social War, and by using terminology which included all citizens into the *civitas*[94], thus presuma-

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[93] Cic. apud Suet. *rhet.* 26, 1. On the wider context of Greek influences on Cicero's work (in comparison with *De oratore*), see Zetzel 2022, 40-42, 66-67, 78-80.

[94] *Inv.* 1, 40, *publicum est quod civitas universa aliqua de causa frequentat, ut ludi, dies festus, bellum.* Cf. Moatti 2018, 244 on the wider contexts of the phrase «civitas universa».

bly also the new Roman citizens from the Italian communities, Cicero signals an inclusive and civilising approach to eloquence and state-building. And thus by situating the eloquence-cum-wisdom sought in the work within the Roman *res publica*, Cicero is making a real claim to his stake in the *res publica* and to his contribution to the survival of the *res publica* – as he saw it.

Bibliography

Arena (forthcoming): V. Arena, *Caesar and the* Municipia*: the making of the idea of the "Roman State"?*, in K. Matijević, R. Raja, J. Rüpke (eds.), *Caesar's Visions and Impact on the Roman Empire*, Turnhout (forthcoming).

Asmis 2005: E. Asmis, *A new kind of model: Cicero's Roman constitution in the* De republica, «ANJ» 126, 2005, 377-416.

Atkins 2013: J. W. Atkins, *Cicero on Politics and the Limits of Reason:* The Republic *and* Laws, Cambridge 2013.

Atkins 2018: J. W. Atkins, *Non-domination and the* libera res publica *in Cicero's Republicanism*, «History of European Ideas» 44, 2018, 756-773.

Badian 1969: E. Badian, *Quaestiones Variae*, «Historia» 18, 1969, 447-491.

van der Blom 2010: H. van der Blom, *Cicero's Role Models: The Political Strategy of a Newcomer*, Oxford 2010.

Caplan 1954: H. Caplan, *Cicero, ad Herennium*, Cambridge (MA) 1954.

Cucchiarelli 2004: A. Cucchiarelli, *La nave e lo spettatore: Forme dell'allegoria da Alceo ad Orazio* I, «SIFC» 97, 2, 2004, 189-206

Cucchiarelli 2005: A. Cucchiarelli, *La nave e lo spettatore: Forme dell'allegoria da Alceo ad Orazio* II, «SIFC» 98, 1, 2005, 30-72.

Fantham 1972: E. Fantham, *Comparative Studies in Republican Latin Imagery*, Toronto 1972.

Fortenbaugh 1998: W. W. Fortenbaugh, *Cicero, On invention 1, 51-77: Hypothetical syllogistic and the early Peripatetics*, «Rhetorica» 16, 1998, 25-42.

Frier 1985; B. Frier, *The Rise of the Roman Jurist: Studies in Cicero's* Pro Caecina, Princeton 1985.

Gildenhard 2011: I. Gildenhard, *Creative Eloquence: The Construction of Reality in Cicero's Speeches*, Oxford 2011.

Grillo 2022: L. Grillo, *An Exemplary Declamation in Defense of Rhetoric (*Rh. Her. 4, 1-10*)*, «Rhetorica» 40, 2022, 183-208.

Gruen 1965: E. S. Gruen, *The* Lex Varia, «JRS» 55, 1965, 59-73.

Gruen 2017: E. S. Gruen, *The Last Generation of the Roman Republic revisited*, in M. Haake, A.-C. Harders (eds.), *Politische und soziale Struktur der römischen Republik: Bilanzen und Perspektiven*, Stuttgart 2017, 553-67.

Guérin 2023: C. Guérin, *L'*aequitas *dans la rhétorique cicéronienne: émergence, stabilisation et expansion d'une catégorie argumentative*, in D. Mantovani (éd.), *L'Équité hors du droit*, Paris 2023, 67-94.

Hilder 2016: J. Hilder, *Jurors, Jurists and Advocates: Law in the* Rhetorica ad Herennium *and* De inventione, in P. du Plessis, (ed.), *Cicero's Law: Rethinking Roman Law of the Late Republic*, Edinburgh 2016, 166-186.

Hirsch (forthcoming): T. Hirsch, *Cicero's* De Inventione*: General Introduction and Commentary on Book 1*, Oxford (forthcoming).

Hodgson 2017: L. Hodgson, Res publica *and the Roman Republic: "Without Body or Form"*, Oxford 2017.

Hubbell 1949: H. M. Hubbell, *Cicero: On invention, Best kind of orator, Topics*, Cambridge (MA) 1949.

Innes 1988: D. Innes, *Cicero, On tropes*, «Rhetorica» 6, 1988, 307-325.

Jakobi 2002: R. Jakobi, *Grillius: Commentum in Ciceronis Rhetorica*, München 2002.

Kaster 2020: R. Kaster, *Cicero: Brutus and Orator: Translated, with Introduction and Notes*, Oxford 2020.

Lévy 1995: C. Lévy, *Le mythe de la naissance de la civilisation chez Cicéron*, in S. Cerasuolo (a cura di), Mathesis *e* philia*: studi in onore di M. Gigante*, Napoli 1995, 155-168.

Lidz 1995: J. W. Lidz, *Medicine as Metaphor in Plato*, «The Journal of Medicine and Philosophy» 20, 1995, 527-541.

Lundgreen 2014: C. Lundgreen, *Staatsdiskurse in Rom? Staatlichkeit als analytische Kategorie für die römische Republik*, in C. Lundgreen (Hrsg.), *Staatlichkeit in Rom? Diskurse und Praxis (in) der römischen Republik*, Stuttgart 2014, 15-61.

Lushkov 2015: A. Haimson Lushkov, *Magistracy and the Historiography of the Roman Republic: Politics in Prose*, Cambridge 2015.

McCoy 2008: M. McCoy, *Plato on the Rhetoric of Philosophers and Sophists*, Cambridge 2008.

Mantovani 2017: D. Mantovani, *L'*aequitas Romana*: una nozione in cerca di equilibrio*, «AntPhilos» 11, 2017, 27-55.

Mebane 2022: J. Mebane, *Cicero's ideal statesman and the helmsman of the ship of state*, «CPh» 117, 2022, 120-138.

Mebane 2024: J. Mebane, *The Body Politic in Roman Political Thought*, Cambridge 2024.

De Melo 2021: W. D. C. de Melo, *Varro: De Lingua Latina* I-II, Oxford 2021.

Moatti 2017: C. Moatti, Res publica*, forma rei publicae*, and SPQR, «BICS» 60, 2017, 34-48.

Moatti 2018: C. Moatti, Res publica: *Histoire romaine de la chose publique*, Paris 2018.

Mouritsen 2019: H. Mouritsen, *From* hostes acerrimi *to* homines nobilissimi*: Two studies in the ancient reception of the Social War*, «Historia» 68, 2019, 302-326.

Nicgorski 2021: W. Nicgorski, *Cicero's Republicanism*, in J. W. Atkins, T. Bénatouïl (eds.), *The Cambridge Companion to Cicero's Philosophy*, Cambridge 2021, 215-230.

Nisbet 1978: R. G. M. Nisbet, M. Hubbard (eds.), *A Commentary on Horace: Odes Book II*, Oxford 1978.

Powell 2006: J. G. F. Powell, *M. Tulli Ciceronis: De re publica, De legibus, Cato Maior de senectute, Laelius de amiticia*, Oxford 2006.

Roller (forthcoming): M. B. Roller, *Cicero, the* causa Curiana*, and the (mythic) origins of competitive forensic eloquence*, (forthcoming).

Roth 2017: A. D. Roth, *Embodied discourse: Revisiting Plato's stance on the connection(s) between rhetoric and medicine*, «Akropolis» 1, 2017, 55-71.

Schofield 1995: M. Schofield, *Cicero's definition of* Res Publica, in J. G. F. Powell (ed.), *Cicero the Philosopher*, Oxford 1995, 63-83.

Schofield 1999: M. Schofield, *Saving the City: Philosopher Kings and other Classical Paradigms*, London 1999.

Schofield 2021: M. Schofield, *Cicero: Political Philosophy*, Oxford 2021.

Schwameis 2014: C. Schwameis, *Die* Praefatio *von Ciceros* De Inventione*: Ein Kommentar*, München 2014.

Walters 2020: B. Walters, *The Deaths of the Republic*, Oxford 2020.

Yunis 1996: H. Yunis, *Taming Democracy: Models of Political Rhetoric in Classical Athens*, Ithaka 1996.

Zarecki 2014: J. Zarecki, *Cicero's Ideal Statesman in Theory and Practice*, London 2014.

Zetzel 1999: J. E. G. Zetzel, *Cicero: On the Commonwealth and On the Laws*, Cambridge 1999.

Zetzel 2022: J. E. G. Zetzel, *The Lost Republic: Cicero's* De oratore *and* De re publica, Oxford 2022.