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THE DREGS OF ROMULUS
STOIC PHILOSOPHY IN CICERO'S
PRO MURENA AND *DE ORATORE*

Cicero's earliest and most pointed critique of Stoic ethics comes from late in the year 63, when as consul he defended Lucius Licinius Murena, a candidate for the next year's consulship, on a charge of electoral malpractice. Speaking to a large jury of businessmen and senators, he urged acquittal on grounds of expediency, arguing that Murena's military experience was vital to the state at that troubled moment. The key to his defense, however, was a charge of excessive severity directed at Marcus Porcius Cato, the principal prosecutor in the case. In his speech Cicero represented Cato as a strict adherent of the ethical system taught by Zeno of Citium, founder of the Stoic school. He then characterized Zeno's philosophy as a string of counterintuitive theses: that anyone who is wise is not only infallible but good-looking, rich, and a king, even if appearances are to the contrary; that anyone who is not wise is a slave, an exile, even insane; that any misdeed, even the needless killing of a chicken, is a crime as monstrous as strangling one's own father. Cato's aim, he said, was to put these outlandish principles into action in public life. Even if Murena *had* overstepped the bounds of legality, his offense would have been of such a kind as only a Stoic would wish to prosecute.

If we can believe later accounts it was this description of Stoic thought that won, the day for Cicero. The jury hooted with laughter; Murena was acquitted and went on to become consul for 62¹. But Cicero's skillful handling of the defense won another victory as well, for by attacking Cato's Stoicism, rather than Cato himself, he preserved a political alliance with an influential patrician whose sympathies were on the whole very similar to his own. That alliance proved invaluable to him just a few days later. The trial of Murena was near the end of November, right in the midst of the disturbing events of the Catilinarian conspiracy,

¹ Plut. *Cat. Min.* 21, 5. That the intent was humorous is also Cicero's claim in referring to this speech in *de finibus* 4, 75.

which was at the very least a challenge to the authority of the Senate and a test of Cicero's political will. On December 5, with the lives of five suspected conspirators at stake, it was Cato, still a junior senator, who stood up to Julius Caesar and turned the opinion of the Senate in Cicero's direction. The execution of the five followed immediately at Cicero's behest, and the consul was hailed as savior of Rome and «father of his fatherland», the proudest moment of his career².

Unquestionably a rhetorical triumph, the speech for Murena is also of interest for certain philosophical issues that it raises. While many philosophical systems encourage every qualified person to serve the needs of the larger community, it is questionable whether political leaders who are committed to a rigorous system of ethics can be effective in any ordinary political arena. It is not only that some of their views will sound ridiculous to non-philosophers if presented without explanation. Much more significantly, it is that their codes of behavior will not allow them to say and do the things that real-world politics might require. Though meaning to serve the state, they may fail to achieve the best outcomes for the state³. Then further, the representation of Cato's Stoicism within the speech raises a question about the very nature of ethical knowledge. On what basis does Cato validate the ethical dicta of the foreigner Zeno, and how could he possibly expect a Roman jury to accept that authority? Can *any* philosophical system supply rules of conduct that are general enough to apply to a range of political circumstances and at the same time flexible and fine-grained enough to allow for a change of view as situations change and develop?

In his handling of Cato in the *pro Murena*, Cicero explores these issues from the standpoint of one who is also a philosopher, but not an adherent of Stoicism. Mindful of his own position, he presents Cato's Stoicism as exactly the wrong way to bring philosophy into public life. And while the statements made within his speech in 63 are clearly controlled by the rhetorical objectives of the moment, we find similar statements in other writings from outside the courtroom. Personal letters da-

² Sources for his speech include *Att.* 12, 21; *Sall. Cat.* 52; *Plut. Cat. Min.* 22-23; see the reconstruction in Ayers 1954. Plutarch's report that it was Cato who suggested bestowing the title *pater patriae* (*Cic.* 23) is contradicted by Cicero's own statement in *Pis.* 3, 6 that the honor was bestowed by Catulus.

³ Griffin (1988 and 1989) supplies essential background for thinking about this issue in a Roman context. Baraz 2012 is particularly helpful on Cicero's self-presentation as a philosopher, especially in the later treatises but also within the letters.

ting to 61-60 again speak of Cato's adherence to philosophical principle as potentially detrimental to the state, and here Cicero must be more serious, since his own political program is also at issue. Yet another critique of Stoic oratory can be found in *de oratore*, circulated just a few years later in 55. In that more extensive work, the first of all his major treatises, Cicero gives serious attention to Stoic views, sometimes echoing his earlier remarks. And here again, although his statements are carefully nuanced, he ultimately expresses strong objections to Stoic views, not only in oratory but also in moral reasoning itself.

Significantly, Cicero in these years does not express any opposition to the fundamental postulate of Stoic ethics, namely that the human good consists in honorable conduct alone. But he does mean to bring out some of the problems that a strict adherence to Stoic precepts can create for orators and for the political process. Precisely because he himself seeks to craft a role for philosophy within the public discourse, he asks the difficult questions about how philosophy should and should not be used.

1. *Philosophy in the rhetoric of Pro Murena*

In order to assess Cicero's handling of philosophical material in his defense of Murena, one needs to understand the circumstances in which the trial was held⁴. Cicero's own election to the consulship of 63 had come about largely because the patrician nobles had supported him as a useful alternative to the notorious Catiline, whose platform of debt cancellation and redistribution of wealth they regarded as a serious threat. Defeated once, Catiline ran again in the summer of 63, a particularly heated campaign season in which charges of bribery and corruption flew in all directions. Three of the four candidates were implicated; the fourth, Servius Sulpicius, withdrew from the campaign, planning to bring charges against whoever should win. Murena was one of the two victors; the other was a relatively little-known senator named Decimus Iunius Silanus. At this point the frustrated Catiline embarked upon plans of armed insurrection, with the result that any action on the bribery

⁴ The political circumstances of the speech are reviewed in Leeman 1982; Craig 1986; Steel 2002, 135-39; Stem 2006; Van der Wal 2007; Fantham 2013, 3-22. More generally on the tensions of late 63 see Stockton 1971, Mitchell 1979, Habicht 1990.

scandal would have to take place against the backdrop of the military threat and Cicero's efforts to combat it.

Not everyone agreed with Cicero as to the seriousness of the danger, but more than a few were willing to be persuaded that in the circumstances it was desirable for Murena, who had extensive military experience, to take office regardless of any allegations against him. One might think, then, that Sulpicius would choose to prosecute Silanus. But there was another factor. The junior senator Cato, who had run successfully for the tribuneship in the same election, had made a public declaration of his intent to prosecute one of the consular candidates, and Cato could not participate in any prosecution of Silanus because of close ties with his family. Sulpicius and Cato therefore joined forces against Murena, one as an honest and well-qualified candidate defeated by shady practices, the other as a defender of principle in the tradition of the Cato the Elder.

It was in Cicero's interests to take up the defense, even though he himself had authored the new and strict law under which the charges were brought. That Murena had in fact overstepped the bounds of legality and custom seems to have been apparent: we could read this much from the tenor of Cicero's defense, even if we did not have the assertions of later authors⁵. But Roman practice did not require an advocate to believe in his client's innocence. More important to Cicero would have been the opportunity to collaborate once again with Quintus Hortensius Hortalus, the distinguished patrician orator with whom he had worked to defend Rabirius earlier in the year. Moreover, he would be performing a service for the general Lucius Licinius Lucullus, a long-time personal friend, who had an interest in protecting Murena as his kinsman and staff officer⁶. On the other hand, it was hardly in Cicero's interests to offend the prosecutors, especially not Cato, a rising star whose influence was already extensive⁷.

⁵ Quint. 6, 1, 35; Plut. *Cat. Min.* 21, 4. Steel (2002, 138) remarks that Cicero's peroration makes no mention of Murena's being innocent.

⁶ For Cicero's relations with Hortensius and Lucullus in this period see Mitchell 1979, 172-174. Lucullus was present at the trial and unquestionably wished to see his kinsman acquitted (*Mur.* 20). Relations with the other advocate for the defense, Marcus Licinius Crassus, were a different matter, for Crassus was not on good terms with the patrician nobles who had supported Cicero's consular bid and had been a supporter of Catiline (Mitchell 1979, 166-167).

⁷ Sulpicius was a personal friend – but see the comments of Leeman 1982 on the *souplesse* of such friendships.

His defense was thus in an interesting position. Not only did he need to retain his own credibility while arguing for the acquittal of a client who was generally regarded as guilty, but he had to do so by going head to head with a man of unimpeachable character whom he could not afford to alienate. His solution to this conundrum was to lean hard on the national security angle while doing as much as possible to arouse pity and sympathy for the defendant. About the actual charges he would say as little as possible, representing them as nuisance accusations brought by legalistic and (in the case of Sulpicius) self-interested prosecutors. Meanwhile he would do everything he could to defuse the moral authority of Cato by representing that authority as derived essentially from Cato's known adherence to Stoic ethics. Cato would appear not only as having an interest in Stoic ideas, but actually as the Stoic sage, infallible and morally perfect but deficient in emotional response and in the flexibility needed for good decision-making in an imperfect world. The description would compliment Cato in an extravagant way while still maintaining an objection to Cato's moral stance, responsibility for which would be shifted onto the conveniently foreign Zeno of Citium.

The introduction of philosophy in sections 60-65 of the speech appears to have been a flight of Cicero's own rhetorical creativity. The angle can hardly have been derived from the approach taken by the prosecution. That Cato had studied Stoic philosophy is not in doubt – he had a Greek tutor in the subject within his household, as did Cicero himself – and it is possible that his speech had made some mention of personal Stoic commitments⁸. But it is most unlikely that he would have presented Stoic arguments to a jury as the basis on which they were to convict. Everything we can infer about Cato's speech suggests that his arguments, moralistic as they may have been, derived their authority solely from the laws applicable to the case and from familiar Roman standards of behavior⁹. It is Cicero, not Cato, who brings Stoic ethics into

⁸ According to Plutarch Cato had traveled to Tarsus in Asia Minor specifically to recruit Athenodorus Cordylion as a tutor (*Cat. Min.* 10). This would have been while he was serving as military tribune in 70 (Rawson 1985, 82; Griffin 1989, 3-4). For Cicero's own tutor see below, note 24.

⁹ Cato had raised an eyebrow at Cicero's appearing for the defense (*Mur.* 3), sneered at Murena as a «dancer» (*Mur.* 13), scorned Murena's campaigning in Asia as «a war against women» (*Mur.* 31), and cast Murena's alleged distribution of free meals and gladiator shows as «pandering to the senses of voters» and «softening their character with pleasures» (*Mur.* 74). Cato's political program is studied in Russo 1974; see also Fehrle 1983.

the matter for adjudication, and it is he who supplies information to the jury about the specific doctrines that should be viewed as relevant to the case.

In order to make the philosophical angle work to the advantage of his client, Cicero needs to cast doubt upon the moral certainty that drives the prosecution. He does this from the beginning of his confrontation with Cato by making a distinction between his opponent's own moral character and the cognitive attitudes that inform his decision making. Cato himself is a sterling individual, a man of «exceptional and godlike excellences»¹⁰ whom every Roman should admire, and yet his beliefs and judgments may well be off base. His decision to prosecute Murena should not be taken as evidence of Murena's guilt; it is only an «opinion» (*iudicium*) and remains open to question. Not that that opinion is necessarily mistaken. In a surprise cat-and-mouse maneuver, Cicero actually puts forward that his opponent is *not* mistaken and only needs some minor adjustment to his view:

Because I esteem your character so highly, Cato, I cannot impugn your decision, but perhaps I might reshape it somewhat, making some minor adjustments. «You are not behaving very wrongly», said the warrior's old advisor, «but you are behaving wrongly, and I can guide you». That is not what I say to you. The truest statement I could make is that you do not ever behave wrongly, you are not the sort of person who needs correction on any subject; what you seem to need is rather a slight change of course.

What minor adjustment would bring Cato's stance into harmony with Cicero's as counsel for the defense? The question is answered just below. While nature has formed Cato for honorableness (*honestatem*), seriousness, self-control and every other virtue, he has subsequently acquired «learning» (*doctrina*); that is, philosophical instruction, of a kind that is «neither moderate nor mild but a bit sterner and more inflexible than either truth or nature can endure»¹¹. In a word, the problem is dogmatism. Either Cato should abandon philosophy altogether, or he

¹⁰ *Mur.* 61.

¹¹ *Mur.* 60. The passage is noteworthy as a clear instance of the internal or moral sense of *honestas*; compare *honestamur* in *Mur.* 70, which equally clearly refers to external marks of homage. For an analysis of Republican concepts of honor and the honorable see Jacotot 2013, 174; for Cicero's usage in the later *philosophica*, Graver 2015.

should adopt a less rigid philosophy, one that makes no absolute claim to possess the truth.

Cicero now proceeds to describe Cato's unfortunate philosophical commitments to the jury. He mentions first Zeno of Citium, «a very clever man», and notes that those who subscribe to his discoveries «are named Stoics» – as if to imply that even these well-educated jurors may not have heard of them¹². To characterize Zeno's thought, Cicero supplies some examples of Stoic sayings and precepts:

The wise person is never influenced by favor, never forgives anyone's wrongdoing. Only the foolish and lightweight person experiences pity. It is not manly to yield to entreaty or to be appeased. The wise alone are good-looking, even if they are severely deformed; wealthy, even if they are the merest beggars; kings, even if they are enslaved. We who are not wise, they say, are runaway slaves, exiles, enemies, even insane. All misdeeds are equal; every transgression is an atrocious crime. He who kills a chicken without need is doing no less wrong than one who strangles his father. The wise person does not opine, does not regret anything, is not deceived in any situation, never changes his mind¹³.

Naturally Cicero makes no effort to explain or justify any of these claims; if anything, he insinuates that the Stoics themselves have no satisfactory justification for them. Neither does he supply any reason why the supposedly intelligent Cato would accept such strange views. Instead, he presents them as maxims which Cato inexplicably treats as authoritative in determining his conduct.

Next, he sketches a series of real-life situations to which Cato is imagined applying his Stoic principles. These lead up gradually to the current situation:

The tax-gatherers ask for something. «Take care not to make any allowance for favor». Some poor disaster-stricken people come begging for

¹² *Mur.* 61. It seems likely that at least some members of the jury would have had a basic familiarity with the Stoic paradoxes even at this date. The points Cicero mentions in section 61 were enough a part of popular culture to have been mentioned in a fragment of Varro's *Menippean Satires*, dating probably from the seventies: «He alone is a king, he alone an orator, he alone handsome, strong, just to the most exacting standard, clean and neat» (fr. 245; see Rawson 1985, 283). Similar material in Horace, *Sat.* 1, 3, 120-128, *Epist.* 1, 1, 106-108, is more likely to derive from the satirical tradition than from Cicero's *Paradoxa Stoicorum*.

¹³ *Mur.* 61.

aid. «You will be scandalously wicked if you do anything for them out of pity». Someone admits he has done wrong and asks to be excused for his offence. «It is wicked to forgive a crime». But it is a minor offence. «All misdeeds are equal». You have said something. «It is fixed and immutable». But you were expressing an opinion, not stating a fact. «The wise person never opines». You make some mistake; he thinks harm was intended. On the basis of this teaching come the words, «I said in the Senate that I would prosecute one of the candidates for consul». But you spoke in anger. «The wise person is never angry». But you spoke provisionally. «Only a dishonest person misleads others by falsehood. It is shameful to change one's mind, a crime to yield to entreaty, wicked to pity anyone»¹⁴.

Many of these principles are quite obviously repeated from the preceding paragraph. A careful observer will note, however, that the order of presentation has been altered slightly, and that three new items have been added. There is mention now not only of minds that cannot be changed but also of statements that cannot be changed, of anger, and of misleading others by falsehood. The additions refer to Cato's position as prosecutor. Without saying so directly, Cicero implies that Cato's decision to persist in the prosecution after his initial declaration of intent was founded solely on his ambition to meet the behavioral expectations for the Stoic sage.

From here Cicero goes on to set up a contrast between the Stoics and his own philosophical teachers, the teachers he relied upon when, like Cato, he was a young man who did not yet trust his own intelligence. This second group of philosophers are not named, but are said to be «moderate and well-tempered people» and «followers of Plato and Aristotle». On two points, these philosophers hold views directly opposed to those of the Stoics, for they assert that pity does belong to the good man and that misdeeds do vary in magnitude. For the most part, however, the difference is not so much in the substance of their views as in the kind of philosophers they are. Insofar as they hold any positions in ethics, they also provide for exceptions to every rule. Where the Stoics hold that a person should never be influenced by favor, these Platonist and Aristotelian philosophers say that one usually should not, but sometimes may; where the Stoics want to eliminate all emotions from the wise person, these philosophers allow that the wise person may sometimes feel pity or anger; where the Stoics' wise person never opines, theirs «often holds

¹⁴ *Mur.* 62.

an opinion on a point where he lacks knowledge» and thus will sometimes change his mind. Even the virtues in their view are «moderated by a certain intermediate state»¹⁵. Choosing this approach, Cicero now admonishes Cato to adopt modified versions of his favorite precepts, the list of which has now been reduced to four:

«Never forgive!» No, forgive some things but not all. «Do nothing on the basis of favor». No, resist favor just when responsibility and integrity require you to do so. «Don't be moved by pity». Not so as to remit a penalty; nonetheless, it is praiseworthy to show some compassion. «Stick with the view you have stated». By all means, unless that view is displaced by a better one¹⁶.

Indeed, Cicero alleges, this more modest approach to moral decisions is what the Stoic teachers actually had in mind. Their precepts were deliberately overstated, meant to inspire but not to be followed to the letter. If one has only moderately success in following them, one will hit upon just the right level of morality.

Now, whatever we think of the passage in terms of doxographical accuracy, there is no question that Cicero's presentation is rhetorically effective. His ironical and somewhat condescending tone, his repetitive list of maxims, his rapid-fire presentation, his humor, all serve to establish his authority over his younger opponent while fixing in his hearers' minds the points that are advantageous to his own case. Even the most casual listener will have had no difficulty learning and remembering the main charges he seeks to establish against Cato's philosophy. There are, in essence, three claims:

1) Stoicism is out of touch with the realities of human nature and social interaction. Ordinary procedures in law and politics assume that human beings will sometimes act wrongly, but allow that some wrongdoings are trivial and may be excused by competing considerations, including what Cicero calls «favor». But Stoic ethics makes all distinctions in terms of absolutes and has no way to accommodate imperfections. It asks us to be superhuman, rather than human.

¹⁵ *Mur.* 63: *mediocritate quadam esse moderatas*. Cicero's language recalls the Aristotelian mean (*to meson*), but of course neither Aristotle nor his followers suggested that one should practice moderation *in virtue*. In *Luc.* 2, 135 and *Tusc.* 3, 22; 3, 74; 4, 46, *mediocritates* refers to moderate amounts of *emotion* as a Peripatetic byword.

¹⁶ *Mur.* 65.

2) Stoicism cannot give a role to the emotions in decision-making. It forbids us to let ourselves be influenced by emotional factors when deciding a course of action, and it does not allow us to excuse a past mistake on grounds of having acted emotionally. Those who follow it will thus be excluded from a dimension of human experience that most people consider essential.

3) Stoicism goes too far in its claims to moral knowledge. It insists on certainty, having no tolerance for shades of gray. Those who adhere to it will not be able to alter their judgments when new information comes to light or when relations between people change.

Each of these complaints is transparently related to the case Cicero is building for the acquittal of Murena.

The assertion in (1) adds force to Cicero's claim that Cato's prosecution is not in keeping with ordinary practice and tradition. Both ordinary moral intuitions and well-established principles of Roman law would treat an act of parricide differently from the needless killing of a chicken. Later in the speech, Cicero will insist that no crime has been proven against Murena; here, he insinuates that even if his client did go beyond what is permissible under the law, it is still a minor offense, one that does no real harm¹⁷. In addition, «favor» (*gratia*) was a familiar element in Roman social interactions. One who had performed exceptional services for an individual or for the community could draw on a stock of gratitude that might be expressed in reciprocal services or in indulgence for minor offenses. In speaking of favor, Cicero implies that would normally build up a stock of gratitude that justifies bending the rules in one's favor. As a successful military leader and a protégé of the powerful Lucullus, Murena is entitled to some consideration even beyond the merits of his case. The ideology to which he appeals is incompatible with Cato's philosophical principles that insist on the punishment stipulated under the law for every action that is illegal and wrong and forbid the jury to make any allowance for favor. But Cato's principles also hold that every wise person is rich and handsome, every imperfect person insane and a slave. Such perverse principles need not be countenanced – and so there is justification for ignoring even what Murena might perhaps have done.

¹⁷ Note *innocentia* in section 67.

Equally germane to the case is the objection lodged in (2) against eliminating the emotions from juridical decision-making. Already in sections 55-57 Cicero had begun pleading for the mercy of the court, expanding upon Murena's unfortunate situation and asking the jury to imagine his feelings in that moment. Such appeals to the emotions were common in defense speeches, and when the case was particularly weak, as here, an impassioned plea of this kind was only to be expected. But the positioning of this initial appeal to pity so early in the speech is quite unusual. Cicero brings it in just after he promises to begin his response to the charges, as a digression or rather an interruption occasioned by his own strong feelings. Just after reintroducing the name of Cato, who has delivered the principal charges, Cicero claims that his mind has been stirred, suddenly, by the thought of Murena's misfortunes:

But let me first express just briefly the feelings that have arisen suddenly in my mind at Lucius Murena's misfortune. For it has often happened, jurors, that the miseries of others and my own worries and day-to-day labors have made me jealous of those who have chosen lives of leisure and tranquility over struggle and ambition; but these dangers that have fallen so heavily and unexpectedly on Murena move me so deeply that I have no words strong enough to express my sorrow at his misfortune and at our common lot¹⁸.

In the version of the speech we have, as Cicero wrote it up for circulation, this rather stagey gambit is brought into close contiguity with the attack on Cato's philosophy by the omission of the intervening segment responding to the minor prosecutors. But the connection is made clear in any case, at the point where Cicero predicts failure for the overly aggressive prosecutor via a comparison with his ancestor Cato the Elder, who was defeated in 149 B.C.E. by an elaborate appeal to pity on the part of Servius Sulpicius Galba¹⁹. The theoretical question of whether the wise person would ever experience pity thus carries a clear message to the jury: if they do not agree with the Stoics that all the emotions should be eliminated from human life, they should signal their disagreement by voting to acquit.

¹⁸ *Mur.* 55.

¹⁹ *Mur.* 59. For the trial, which is mentioned again by Cicero in *de orat.* 1, 227-228 (on which see below) and *Brut.* 89-90, see Fantham 2004, 121-122.

But the most fundamental charge against Cato's philosophy, and the one Cicero chooses to foreground in this segment of the speech, is the charge of epistemological rigidity in (3). In essence, the orator creates doubt about the trustworthiness of his opponent and faith in his own by directing attention to how action-guiding decisions are made²⁰. Cato's entire prosecution depends upon his prior judgment of Murena's guilt, but that judgment has been influenced by Stoic dogmatism. If the Stoic approach to ethical problems promises a kind of certainty the jury finds problematic, then Cato's legal judgment also comes into question. For a prosecutor to believe the defendant is guilty is one thing; for him to claim certain knowledge on that point is quite another. Since Cato is prohibited by his philosophy from listening to opposing arguments, then, says Cicero, he is not the sort of person who can give appropriate guidance to a jury.

By contrast, the epistemological stance Cicero adopts as an Academic puts him in an attractive position in a court of law. A philosopher who gives up on any claim to knowledge is one who can adjust his position as new information and new arguments come to light. His views are held only provisionally and are not likely to interfere with established Roman judicial procedures. Indeed, his position may be that of the thoroughgoing skeptic, so long as he speaks for the defense. As Jürgen Leonhardt has observed, there is a natural affinity between philosophical skepticism, which declines ever to make positive assertions and seeks only to dismantle the arguments of an opponent, and courtroom defense, which bears no burden except to refute the claims made by the prosecution²¹. Accordingly, Cicero never asserts that Cato's judgment concerning Murena was incorrect. He does not have to prove that his client is innocent: it is enough for him, speaking for the defense, if he can persuade the jury that the claims of the prosecutor are unproven. In following his advice, the jury will only be rejecting an extreme position, not committing itself to any definite stand on the guilt or innocence of Murena.

Later in the speech, Cicero introduces one further point against Cato's Stoicism. After dealing with the more substantive vote-buying

²⁰ We can recognize this gambit as an epistemological version of the appeal to the character of the speaker (*ethos*) that is the second of the three modes of persuasion laid out in Book 1 of Aristotle's *Rhetoric* and also in Book 2 of Cicero's own *de oratore*. May 1988 discusses the *pro Murena* in terms of Cicero's appeal to *ethos*.

²¹ Leonhardt 1986, 28-29.

charges against Murena, he takes up his opponent's complaint that Murena has won votes by currying goodwill with dinners and other pleasurable enticements. He labels this an «austere and Stoic» way of conducting the case, setting it in contrast with ancestral Roman custom²². His aim now is to set Cato's appeal to moral principle in contrast with what he calls «reality and ancestral custom» (*res ipsa ... diuturnitas*); the latter is itself a reality that public figures have to deal with. High standards lose much of their meaning if they are in conflict with facts, including political facts. Cicero's case in point is a Stoic of an earlier generation, Quintus Aelius Tubero, the nephew of Scipio Aemilianus. On the occasion of Scipio's funeral, Tubero, «a deeply learned man and a Stoic», provided goatskin coverlets and earthenware for the funeral, rather than the usual rich textiles and silver table service, thus treating the death of the great Africanus «as if it were that of Diogenes the Cynic»²³. This display of philosophical seriousness offended the Roman people, with the result that Tubero was defeated in his subsequent bid for the praetorship. And Cato's own career provides a further illustration, for Cato has employed a *nomenclator* (a prompter to remind him of the names of voters) during the recent election – a practice that runs counter to his principle of strict honesty, but that is sanctioned by long-standing electoral custom. Cicero does not charge his opponent with hypocrisy for this; on the contrary, he asserts that all such practices, when regulated by the reasoning (*rationem*) of the state, are entirely right (*recta*). It is the reasoning of the philosopher that is misguided.

2. Cicero's attitude toward Stoicism in the late 60's

Readers of the *pro Murena* should keep firmly in mind that the attitudes the orator expresses are not necessarily his personal views but are those he believes will be most likely to persuade a jury. But the speech may still be indicative of Cicero's more general attitude toward Stoic thought in this period of his life, if the points he selects for inclusion are considered in relation to the larger body of knowledge he must have possessed. It is of interest also when we find some elements of the *pro Murena* critique repeated in other contexts, both in Cicero's personal

²² *Mur.* 74.

²³ *Mur.* 75. For Roman attitudes toward Cynicism see Griffin 1996.

correspondence and in his rhetorical and political treatises. To understand his attitude toward Cato as an adherent of Stoicism, we need to take in this larger intellectual picture.

Of particular interest is what the *pro Murena* does not say about Stoic ethics. Cicero had studied philosophy since his youth, and he retained in his household a Greek Stoic, Diodotus, as his tutor in dialectical method²⁴. There can be little doubt that at the time he wrote *pro Murena* he was already fully conversant with the central tenets of Stoic ethics as known to us from other sources and from his own later works²⁵. If he had wanted to include such points as the supremacy of reason or the intrinsic value of justice and the other virtues, he was capable of doing so. But these core tenets of Stoicism did not afford him any opening for attack; indeed, they were as important to the followers of Plato and Aristotle as they were to the Stoics. Still less does he wish to mention the Stoic arguments favoring a life of public service over the life of study and contemplation. This was a point that must surely have caught his attention, but one that would leave him at a disadvantage relative to Cato, since the philosophers of his own camp held the opposite view²⁶.

By far the most striking omission, however, is of the trademark claim of Stoic ethics, the point that sets the Stoics apart from other ancient schools: that «honorable conduct alone is good» and that the so-called goods of the body and of estate are entirely extrinsic to happiness. This claim could be regarded as paradoxical in just the same sense as «only the wise is free» or «all fools are insane»; that is, it was a thesis contrary to common opinion, one that only careful explanation could render plausible. Cicero evidently regarded it as the most characteristic of the Stoic doctrines, for when he writes the *Paradoxa Stoicorum* (circulated in 46), he presents it first among all the paradoxes. In the *de finibus*, Cicero's major treatise on Greek ethics written in 45, it is vastly more im-

²⁴ As Diodotus died in 59 (*Att.* 2, 20, 6) he would presumably have been present in Cicero's house at the time of the speech; his tutelage must have begun considerably earlier (see *Brutus* 309).

²⁵ The *pro Murena* itself attests to the depth of his knowledge in that it mentions not only the paradoxes (which were known already to Varro, see note 12) and the equality of all misdeeds (which may have figured in early satire; cf. *Hor. Sat.* 1, 3, 115-119) but also the lack of regret among the wise, a relatively obscure point that is attested only in *Stob.* 2, 7, 102 and 112 and in *Sen. Ben.* 4, 34.

²⁶ The arguments for and against political participation by philosophers were familiar terrain in Hellenistic philosophy and were probably known to Cicero even before 60-59, when he read the works by Dicaearchus and Theophrastus on the subject (*Att.* 2, 2, 2; 2, 12, 4; 2, 16, 3). For discussion see Boyancé 1967; Lévy 2012; McConnell 2012.

portant than any other paradox. Its absence in the *pro Murena* is thus very noticeable. To be sure, this high-minded assertion has less satiric bite than the one that makes Roman senators into runaway slaves or the one that makes chicken-strangling equivalent to parricide. Still, Stoic ethics is scarcely recognizable without it, and that, at least, should have been known not only to such men as Crassus and Lucullus but indeed to anyone who had even a smattering of education in philosophy. In Cato's eyes, and in the eyes of anyone else who found the Stoic position compelling, Cicero's avoidance of it would amount to a concession.

On some other points, however, the criticisms of Stoic ethics in the *pro Murena* bear a close resemblance to points made in the later philosophical works. The complaint that Stoicism is out of touch with the realities of human nature, asking us to be superhuman rather than human, is closely related to an objection voiced in *de finibus* 4, 28. There, Cicero is responding in his own voice to the account of Stoic ethics given in Book 3 by the embedded speaker «Cato». As in *pro Murena* 60, the Stoic claims prove to be too radical to accord with human nature. «The only way that the highest good could be said to consist in virtue alone would be if there were some creature made up entirely of intellect». The same point is made more briefly in the first version of the *Academics*, titled *Lucullus*, where Zeno is referred to ironically as «a god»²⁷. More broadly, the complaint of *pro Murena* 61, that the Stoic sage is credited with a more definite and irrefutable form of knowledge than is attainable for human beings, is developed at great length in the *Lucullus*. That skeptical strain was to become a central feature of Cicero's philosophical stance even as late as *de officiis*²⁸.

Meanwhile, there is one element of the *pro Murena* critique that matches closely with a pressing concern of Cicero's own political life. Again it is a problem with the fit between Stoic ethics and the realities of human nature, between all-or-nothing principles and the complexities and ambiguities of real situations. During the years immediately following his consulship, Cicero often found himself dealing with just that problem in his legislative work, as he attempted to preserve a fragile coalition of senators and equestrians in the face of disruptive legislation by certain powerful tribunes. His influence within the Senate was significant, but not unquestioned; Cato was, in general, an ally, but his strict

²⁷ *Luc.* 134, adding *ille vereor ne virtuti plus tribuat quam natura patiatur*.

²⁸ See *Off.* 2, 7-8.

ethical stance sometimes proved awkward²⁹. In his letters to Atticus, Cicero expresses his frustration with Cato's political choices, linking those choices to Cato's known interests in philosophy.

One major issue had to do with penalties for jurors who had accepted bribes. Because of an anomaly in Roman law, members of the equestrian order who served on juries were immune from prosecution for accepting bribes. Cato and some others were interested in revoking this immunity; the equestrians, not surprisingly, were up in arms³⁰. A second issue, arising around the same time, concerned a request from an association of *publicani* or tax-gatherers, businessmen who had contracted with the Senate for the privilege of collecting taxes in the province of Asia. The contract was in accordance with standard Roman procedure, but a subsequent request was not. Having bid high to win the contract, the *publicani* were now requesting that the price they had agreed upon should be altered retroactively in their favor³¹. Again, the measure was favored by the equestrian order, and again Cato had made his opposition clear. Cicero, for his part, had chosen to support the equestrians on both issues. He had no sympathy at all for their position; quite the contrary. But he was concerned above all for the Senate's ability to preserve the rule of law in the fraying Republic. To that end, he felt it was essential to retain the cooperation of a large and powerful constituency.

Cato's opposition he found understandable, yet also ill-judged. Cato «has more consistency and integrity than he has of sound political judgment or intelligence», he writes to Atticus in January of 60³². In the same connection he calls Cato «that hero of ours»³³. The latter remark sounds like admiration, but in fact it is laced with irony: heroes in classical mythology were counted as semi-divine, and political ideals so lofty as to rank one among the gods are something of a liability in a legislative body composed of human beings. Then in June of 60, referring to a speech made by Cato in the Senate, Cicero writes,

²⁹ On Cicero's relations with Cato during these years see Mitchell 1991, 88-90; Gruen 1972, 53-55; Gelzer 1963.

³⁰ *Att.* 1, 17, 8; 1, 18, 3; 2, 1, 8.

³¹ The economic and political implications were very significant; see Badian 1972, 99-105. Even in 43 Cicero remembers the controversy as vital to the public interest (*Off.* 3, 88).

³² *Att.* 1, 17, 9.

³³ *Att.* 1, 18, 7.

My love for Cato is as great as yours; all the same, despite having the best of intentions and a deep sense of loyalty, he sometimes does harm to the Republic, for he states his views as if he were in the Republic of Plato and not amidst the dregs of Romulus. What could be more proper than that a person who has taken money to deliver a verdict should be subject to prosecution? Cato proposed as much, and the Senate agreed to it – and the equestrians have declared war upon the Senate-House, though not on me, for I voted against the measure. What could be more shameless than for the tax-gatherers to renege on their contract? But it was a loss we ought to have borne, to preserve our alliance with the equestrians. Cato objected and carried the day, and now with a consul in jail and one riot following another we have nothing at all from those on whose support I and subsequent consuls used to rely when defending the state. «What then? Shall we buy their support for money?» What if we have no other way of getting it?³⁴

Cicero's rather shocking suggestion that the cooperation of the equestrians should be retained by bribery, if need be, is merely a re-description of what the equestrians had in fact demanded. That he would entertain such a notion is an indication of the seriousness with which he viewed the threat of civil strife. If Cato had lived among the philosophically-trained guardians of Plato's *Republic*, there would have been no need for any such concessions. In a real state, the «dregs» – Cicero's colorful metaphor for those whom he considered the lower element in politics – might need to be accommodated³⁵.

As before, we are not required to believe that Cato's speech before the Senate had made any explicit mention of either Plato or the Stoics. The remark about Plato's *Republic* is more likely to be Cicero's own reflection on Cato's self-representation as a staunch defender of Roman values. Still, it is not a remark Cicero would have made about just any speaker who took a moralistic line. His framing of Cato in philosophical terms is suggested to him by his perception of Cato's Stoic commitment: it reacts to a consistent pattern of behavior in one whom he knows to have had an interest in Greek philosophy. From our perspective, the remark may seem to have been misapplied: why is a known Stoic linked to Plato rather than to Zeno or Chrysippus? It should be remembered,

³⁴ *Att.* 2, 1, 8.

³⁵ *Faex* or 'dregs' is the bitter sediment left at the bottom of a wine-jar, or any similarly disagreeable residue, a frequent metaphor of Cicero's for the lower element in politics (e.g. *Flacc.* 8; *Pis.* 9; *Att.* 1, 16, 11; *Fam.* 7, 32, 2). Bailey 1965-1970 renders «the cess-pool of Romulus», not literally but with sensitivity to Cicero's thought.

however, that Plato's *Republic* was the central text of the Greek tradition for the intrinsic value of moral behavior. Not wishing at this point to differentiate one school from another, Cicero invokes the work simply for its ethical content and for its utopian character³⁶.

It must have been at around the time of this speech of Cato to the Senate that Cicero chose finally to produce a written version of the *pro Murena* for circulation. The date of circulation is not attested by any direct evidence, but can be inferred from what appears to be an alteration in the content of the speech³⁷. We have seen that at one point in the *pro Murena*, Cicero represents Cato's internal dialogue upon receiving an improper request from the tax-gatherers:

The tax-gatherers ask for something. «Take care not to make any allowance for favor»³⁸.

For the political situation in 63, this is anachronistic, for it was only the request made by the *publicani* in 61 that brought Cato into conflict with them: before that time, they had been strong supporters of his career³⁹. Boulanger must therefore be right to conclude that the mention of the *publicani* was added to the speech when it was written up for circulation, at a moment when the tax-gatherers' request was a significant political issue. This suggests that the circulation of the speech was a comment on Cato's obstructionism. Dismayed at Cato's opposition to legislation he considered essential, Cicero made use of this portion of his consular record as propaganda. The representation of Cato as the inflexible Stoic had been effective in securing Murena's acquittal; it could be effective again in rescuing the measure Cato opposed.

³⁶ In *Q.Fr.* 1, 1, 29, dating to about a year later, Cicero compares his brother's governorship of the province of Asia to the rule of the philosopher-king in Plato's *Republic*, and hints that his own consulship was likewise an instance of philosophical rule. The remark is a compliment, in a pamphlet meant for circulation; it has no specific implications for policy.

³⁷ The suggestion was first made in Boulanger 1940 and has generally been accepted. Leeman (1982, 194) argues convincingly against earlier suggestions of large-scale amendments in the speech, but his reasons for rejecting Boulanger's argument underestimate the political significance of relations with the *publicani*. See further Stem 2006, 226.

³⁸ *Mur.* 62.

³⁹ *Att.* 1, 18, 7 (Feb. 60): *miseros publicanos quos habuit amantissimos sui tertium iam mensum vexat.*

3. *The Stoics of De Oratore*

A further point of comparison for the critique of Stoicism in *pro Murena* is to be found in the treatise *de oratore*, the earliest of Cicero's major theoretical works. Despite the lapse of time (for the treatise was not finished until 55), several close thematic connections indicate that his earlier thoughts on the subject had not left his mind⁴⁰. These are not merely repeated, however, but are tied into a much broader array of thoughts about the importance of public speaking in political life and about Cicero's own contribution as a talented speaker with an unusually extensive education. Within this work, the objection to Stoicism in public life is framed entirely in terms of effective communication. Whether or not the Stoics are correct in the substance of their ethical position, the nature of their philosophical discourse typically makes it impossible for them to achieve any worthwhile political objectives.

The structure of the dialogue is unusual in that there are two principal speakers, both of whom represent the voice of the author to some extent. One, Cicero's teacher Lucius Licinius Crassus, consistently espouses the view Cicero himself takes in the proem, that the ideal public speaker is one who is knowledgeable in all fields of study, not only in the standard techniques of persuasion, but also in history, law, and philosophy. The other, Marcus Antonius, is more changeable. In Book 1, he takes up a position opposing Licinius Crassus, but this, we are told, is not his real view: he is merely exercising his faculty for refutation, imitating the philosophers of the skeptical Academy⁴¹. His true position is in agreement with that of Licinius Crassus.

The use of philosophy by orators becomes an issue early on in the first major speech of Antonius⁴². Reacting to Licinius Crassus's view that the orator must have knowledge of all subjects, Antonius relates how he himself visited Athens a decade before the dialogue takes place and spent time with representatives of the various philosophical schools, learning about their views on oratory and orators. In particular, he draws a contrast between the Stoic Mnesarchus and the Academic philosopher Charmadas. Mnesarchus had stated that those who

⁴⁰ The project was completed in early winter of 55 (*Att.* 4, 13, 2).

⁴¹ *De orat.* 1, 263; cf. *de orat.* 2, 39-40. For the structure of *de oratore* and for the role of philosophy within the work see Wisse 2002; for the structure of Book 1 in particular, Leeman 1975; on the role of the New, or Skeptical, Academy Lévy 1992, 84-87.

⁴² *De orat.* 1, 82-95.

are commonly called orators are mere mechanics; that real eloquence is a virtue in itself; and that the true orator is necessarily a wise person who possesses all the virtues – in other words, a Stoic sage. Antonius does not comment on these views; instead, he remarks on Mnesarchus's style of speaking, that it was «a thorny and bare speech, quite alien to our sensibilities»⁴³. He much preferred the discourse of Charmadas, which likewise made the ideal orator a man learned in philosophy. Charmadas himself was not committed to the view, for like other Academics of the period he did not take any positions of his own; nonetheless, he defended the pro-philosophy position at length against a challenge by the Athenian politician Menedemus. It was after hearing Charmadas refute Menedemus that Antonius wrote his own short treatise on oratory, in which he sketched a portrait of the ideal orator as a man learned in philosophy⁴⁴.

Later in Book 1, however, Antonius takes the opposite position, arguing against Crassus that philosophical study is quite unnecessary to the orator. In sections 219-224, he says that such study may be counterproductive, for it siphons off energies that the orator may need for the skills specific to his discipline. Worse, the ethical commitments of some philosophical systems might induce one to choose strategies that are doomed to failure. Because an orator often needs to intensify the passions of his audience, he will certainly not agree with those philosophers who say that «there should be no emotions at all, and those who stir emotions in the minds of the jurors do a wicked deed»; and he will have no time either for those who say that the emotions «should be very moderate or rather slight»⁴⁵. A good orator does not want to appear as a wise person or to make his audience seem to be fools – and he does not want to give the impression of being «inept and a bit of a Greek»⁴⁶. His speeches would never inquire into such central points of ethics as whether the highest good is in the mind or in the body, and equally he would refrain from epistemological inquiries such as whether knowledge is possible and whether there is any graspable impression. And where Licinius Crassus had claimed that the orator often needs to treat the same kinds

⁴³ *De orat.* 1, 83. Mnesarchus was mentioned already in Crassus's speech at 1, 45; he was a pupil of Panaetius and a contemporary of Critolaus.

⁴⁴ Lévy points out (1992, 85) that Cicero seems to have had a low opinion of Antonius's book, since in *Brut.* 163 he calls it «pretty thin» (*sane exilem*).

⁴⁵ *De orat.* 1, 220.

⁴⁶ *De orat.* 1, 221.

of general principles of justice as are treated by philosophers⁴⁷, Antonius objects that it is actually a liability for a speaker to borrow from Plato when he speaks of justice and loyalty.

What we need is a smart person whose cleverness comes of nature and experience, one who observes keenly the beliefs, thoughts, opinions, and expectations of his fellow-citizens and those whom he is seeking to persuade. He should feel the pulse of every kind, age-group, and class of people before whom he is to plead his cases, tasting in advance their thoughts and feelings. But as for the books of the philosophers, he should save them for his times of rest and leisure at some place like this Tusculan villa. Otherwise, when he needs to speak about justice and loyalty, he might find himself borrowing from Plato, who when he tried to put these things into words invented a new sort of republic in his books, because his idea of what one ought to say about justice was so far removed from ordinary life and civic practice⁴⁸.

If there had been any broad-based support for Plato's understanding of justice, then Licinius Crassus himself would never have been able to speak as he did in defense of the Servilian Law, saying that the members of the Senate were «in miseries» and «enslaved» by their enemies. For those philosophers whose authority Crassus has invoked claim that a courageous person cannot ever be miserable, that a wise person cannot be injured, and that «virtue always and alone is free», even if the body is in chains. Nor would even a hedonist philosopher say what Crassus said on that occasion, that the members of the Senate ought to be enslaved to the people. Anyone who was a philosopher would remember that rulers guide and direct the people because given that role by the people themselves, who metaphorically hand over the reins of power⁴⁹.

Antonius is speaking about philosophical knowledge quite generally, for he mentions or alludes to several different schools, and he refers to Plato's *Republic* as the shared heritage of all subsequent schools of philosophy⁵⁰. It is clear, though, that his principal targets are the Stoics, or rather orators who speak from a Stoic standpoint. It is the Stoics who advocate the complete elimination of the emotions both from the orator's mind and from the minds of the audience, and Antonius relies on a

⁴⁷ *De orat.* 1, 56.

⁴⁸ *De orat.* 1, 223-224.

⁴⁹ *De orat.* 1, 226.

⁵⁰ Even for Stoics, who differed from Plato on several essential points, the *Republic* was a seminal work: see for instance Vander Waerdt 1994; Long 2013.

Stoic account of the causes of emotion when he speaks of exaggerating the importance of common objects of pursuit and avoidance⁵¹. There is an allusion to Stoic claims also in his comments about not making one's audience appear to be fools, for it is the Stoics who hold that everyone who falls short of wisdom is necessarily classed with the foolish. His account of the philosophical objections to Licinius Crassus' speech on the Servilian law again makes reference to Stoic thought, for it was the Stoics who held that the virtuous person cannot be miserable, that the wise are not susceptible to injury, and that only the wise person is free. The last of these is indeed one of the Stoic paradoxes mentioned in the *pro Murena*.

That Antonius's real target is the Stoic-minded orator becomes even clearer when he goes on to describe how Licinius Crassus's speech was received by Publius Rutilius Rufus, «a learned person who was devoted to philosophy», who found Crassus's case to be «not only unsuitable but also shameful and even scandalous»⁵². Rutilius is not labeled by Antonius as an adherent of Stoicism, but his adherence (which is made explicit later in *Brutus* 116) is assumed throughout the relevant passage. Rutilius speaks as a Stoic both in his reaction to Crassus's speech and in his criticism of another contemporary, Servius Sulpicius Galba, for evoking pity in the jury in order to secure an acquittal⁵³. Even exile or death, says Rutilius, is preferable to the «degradation» of playing on the emotions of the jury in this way. The same Stoic orientation proves to be disastrous in a later trial in which Rutilius himself was the defendant. Haled into court by the unprincipled *publicani* of his own generation, Rutilius followed through on his objections to the pity defense, refusing to stir up the emotions of the jury and instead presenting only the plain facts.

The case was conducted as if the trial were being held in the fictional republic of Plato. Not one of the advocates groaned; not one cried out; not one was aggrieved or uttered a complaint; not one called upon the Republic or bent the knee. Why say more? No one stamped his foot at that trial – I suppose lest he be reported to the Stoics⁵⁴.

⁵¹ *De orat.* 1, 221.

⁵² *De orat.* 1, 227. Rutilius was consul in 105; his conviction *de repetundis* took place in 92 (*CAH* 9), the year before the dramatic date of *de oratore*. The nature of the case may have been quite different from what Cicero believed; see Fantham 2004, 42-44; Kallet-Marx 1990; Badian 1972, 89-92.

⁵³ See note 19 above.

⁵⁴ *De orat.* 1, 230 (the parallel to *Att.* 2, 1, 8 is pointed out by Bailey 1965-1970 *ad loc.*).

The result was that Rutilius lost his case, as Socrates had done before him. His integrity was beyond question: Antonius clearly admires him for that, just as he admires Socrates, «the wisest of human beings and one who conducted himself with great integrity»⁵⁵. For the purposes proper to oratory, however, the philosopher is at a disadvantage. Socrates would have done better to make use of a speech ghostwritten for him by the accomplished rhetorician Lysias, and Rutilius would have been acquitted if Licinius Crassus had spoken on his behalf. That is to say, he would have been acquitted if Crassus had spoken in the emotional manner for which he was noted, not in the philosophical manner he seems to favor within the dialogue. Antonius thus concludes that even if philosophy is better and truer than oratory, it is a different discipline, and one can become a consummate orator without it.

Now, all this is expressed quite persuasively, and yet it has already been made clear that this speech by Antonius does not represent his true opinion of philosophical knowledge. In fact, the situation is doubly ironical, for not only has Antonius been arguing for a position other than his own, but his very practice of arguing both sides of a question reflects the influence of Athenian philosophy. After Antonius's long speech is over, Licinius Crassus is made to complain that his challenger is «making the orator into some kind of mechanic» – which is to say that he sees a resemblance to the Athenian orators criticized by Mnesarchus. He suspects, however, that Antonius is merely exercising his «marvelous habit of refutation», a custom that belongs properly to orators but that has recently become the practice of philosophers, especially those «whose custom it is to argue with great fullness on both sides of every suggested topic»⁵⁶. Antonius is thus aligned once again with Charmadas, the skeptical Academic: he has made the case against philosophy where Charmadas made the case in favor, but either of them could just as well have taken the opposite position.

Still, Antonius differs from Charmadas in one important respect. Charmadas, as an Academic in the tradition of Carneades, speaks on both sides of the question in order to raise questions about any claim to certain knowledge on one side or the other. Antonius, despite his skill in refutation, is no Academic. Where Charmadas had argued the positive position merely to make a point, he, Antonius, truly accepts that posi-

⁵⁵ *De orat.* 1, 231.

⁵⁶ *De orat.* 1, 263.

tion and puts his name on the line for it in a formal treatise. In terms of commitment he is again in agreement with the Stoic Mnesarchus, whose claims about the orator provide the basis for the positive view. His understanding may not be identical with that of Mnesarchus, for Charmadas's speech does not seem to have incorporated all of the points made earlier by the Stoic. But Antonius certainly takes after Mnesarchus in believing that true eloquence requires real knowledge of theology, human psychology, justice, and various ethical topics – knowledge which can only be acquired from the philosophers⁵⁷.

At this point it seems as though Antonius's attack on Stoic philosophy must have no force at all. The view of Mnesarchus may not have won the day entirely, but important components of it have been endorsed by both the principal speakers, and it was only for the sake of argument that complaints were made against an orator whose notion of justice seems to have been borrowed from Plato's *Republic*. By the beginning of Book 2 it appears that the ideal orator who Cicero thinks should guide the state not only needs philosophical knowledge but might indeed be committed to Stoic ethics. But the remainder of *de oratore* does not follow through on this conception. Licinius Crassus does argue that the orator needs philosophical knowledge, but when he comes to specifics, he largely repeats what Antonius said in Book 1.

As for the Stoics, I have no objection to them at all, but still I set them aside, not fearing any anger from them, for they do not know how to get angry at all. I am in fact grateful to them, since they are the only ones of all the philosophers to say that eloquence is a virtue and is wisdom. But it is obvious that there is something about them that is greatly at odds with the orator we are equipping for his task.

In the first place, they say that all who are not wise are slaves, robbers, enemies, insane, but also that no one is wise. It would be quite absurd to entrust an assembly, a meeting of the Senate, or any gathering of people to one who thinks that none of those in attendance is of sound mind or a citizen or a free person.

In addition, although their manner of speaking is certainly intelligent and perhaps sophisticated, for an orator it is bare, peculiar, alien to the ears of the common people, obscure, empty, and barren. And in any case, it is of

⁵⁷ Charmadas spoke only «on these same matters», and his claim about arousing the emotions does not agree with the Stoic view, at least as Antonius represents it. It is worth noting, however, that Cicero in *Tusc.* 4, 55 claims that an orator working on Stoic principles might feign anger in order to rouse his hearers to action.

a sort one could never use before the common people, for what Stoics consider to be good and bad things are not the same as what their fellow citizens and indeed all people have in mind, and the meanings of honor, disgrace, reward, and punishment are different in their eyes. Whether they are right or wrong is not our present concern, but if we were to follow in their footsteps, we would never be able to explain anything in our speeches⁵⁸.

Crassus respects the Stoic claims in theory, but in practice finds that the specialized nature of their discourse makes it impossible for an orator who works from a Stoic standpoint to achieve his objectives among fellow-citizens who do not share his perspective. The problem is not merely that the style typically employed by Stoic speakers and writers is overly intellectual, but that their understanding of how central terms of ethics are to be applied is so far from ordinary usage as to leave no avenue of communication open. At the end of the day the Stoic might be right about what those terms have to mean, but his oratory will still be ineffective, and effectiveness in real situations is a precondition for excellence in oratory.

5. *Assessing the Stoic orator*

It is evident, then, how Cicero's treatment of philosophy in *de oratore* echoes the critique of Stoicism he had made eight years earlier in the *pro Murena*. Both in Antonius's speech in Book 1 and in Licinius Crassus's authoritative pronouncement in Book 3, the public speaker who works on Stoic principles is out of touch with ordinary moral intuitions and unable to use any form of emotional appeal. Antonius's speech also repeats the charge Cicero had made against Cato in his letter, that of speaking «as if he were in the Republic of Plato». In large part, the concerns of *de oratore* are those of a rhetorical treatise, having most to do with the efficacy of different ways of speaking. Antonius's complaint about Mnesarchus was that his speech was «thorny and bare», not that it was wrong-headed, and Crassus is likewise concerned that the Stoics' precise manner of speaking and penchant for paradoxical formulations is ill-suited for persuasion. But the issue is not solely one of rhetorical effectiveness. Publius Rutilius Rufus, the paradigm of the ineffectual Stoic

⁵⁸ *De orat.* 3, 65.

orator, is at fault not only because he failed to persuade his audience, but because in doing so he allowed injustice to prevail. Given the circumstances with which he was faced, Rutilius could very well be considered to have made the wrong decision. In much the same way, Cato more than once pursued a philosophically motivated course of action that Cicero regards as not just doomed to failure but actually detrimental to the state. There were some occasions when Cato carried the day, for Cato was also an effective speaker despite his Stoic allegiance⁵⁹. On those occasions, in Cicero's view, his adherence to philosophical principle made matters worse, not better.

I maintain that neither *pro Murena* nor *de oratore* gives evidence of an across-the-board rejection of Stoic ethical thought. Forensic oratory is unilateral by nature: it is expected that the orator will present only one side of the case and will leave any points that might support the opposite conclusion to his opponent. Likewise Antonius's speech in Book 1 of *de oratore* is to be understood as one-sided from the start. We are meant to see that Antonius is arguing back and forth in the Academic manner and will eventually reverse his position. What is telling in these attacks is not in what Cicero finds to say against Stoicism, but in what he declines to say. Neither work raises any objection at all to the most fundamental of the Stoic paradoxes: that no form of conduct is good if it is not honorable. That central contention of Stoic ethics is carefully left untouched, and Cicero indeed draws attention to his respectful handling, when he makes Antonius refuse to quarrel about whether oratory or philosophy is «better or truer», and again when he has Crassus remark that he has «no objection at all» to the Stoics⁶⁰.

Even so, this group of writings does present Cicero's readers with a serious question about how moral reasoning is to be done. Cicero is inclined in this phase of his career to think of Stoic ethics in terms of moral rules, action types that are either required or forbidden. The two cases at issue in the letters of 61-60 are especially revealing in this regard. Cato has made a straightforward application of basic precepts: corrupt jurors should be subject to prosecution; those who have made contracts with the state should be required to honor them. Cicero op-

⁵⁹ As Cicero remarks in *Paradoxa Stoicorum* pref. 1-3 and again in *Brutus* 118-119. For Cato's success in the Senate battles of early 60, see *Att.* 2, 1, 8. (The measure removing juridical immunity from the equestrian order was ultimately rejected by the popular assembly.)

⁶⁰ *De orat.* 1, 233; 3, 65.

poses both measures, yet his doing so is not a dismissal of all ethical principle from the political realm. His position is rather that ethical decision-making requires consideration of a wider range of particulars: in this case, the reality of civil strife, the need to preserve a delicate coalition among government leaders, and also the corrupt preferences of the *publicani*. In this more complicated moral landscape, a good decision will sometimes violate the simple moral intuition. A defendant whose guilt is obvious will sometimes go unpunished; greedy publicans will sometimes be allowed to violate their contracts. In a word, precepts and prohibitions that refer to specific action types are always defensible in specific situations.

This way of thinking about moral reasoning may not, in fact, have been very different from that of the earliest Stoics, for Zeno and Chrysippus themselves held that virtually any action can be justified on the basis of a thorough understanding of the situation⁶¹. As Cicero presents it, however, the effective Stoic position on these matters was that represented in Roman public life by such figures as Rutilius, Tubero, and Cato. His own more flexible stance was to benefit by the comparison⁶².

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⁶¹ In classic Stoic thought actions like incest and cannibalism may sometimes be justified by circumstances (*kata peristasin*): Diog. Laert. 7, 121; 7, 188; Origen *C. Celss* 4, 45 = SVF 3, 743.

⁶² This essay constitutes the first installment in a monograph in progress on Cicero's reception of Stoic ethics. An earlier version was presented at a conference on Cicero's letters at Columbia University in April of 2016. I wish to acknowledge helpful input from audience members there and written notes from the commentator, Brad Inwood, and from Katharina Volk. In addition, I am grateful for excellent suggestions and corrections made by the anonymous peer reviewers for *Ciceroniana*.

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