POLITICAL PROGRAM AND AUTOBIOGRAPHY
IN CICERO'S PRO MILONE

DISSERTATION

Presented in Partial Fulfillment of the Requirements for
the Degree Doctor of Philosophy in the Graduate
School of The Ohio State University

By

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The Ohio State University
1995

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ACKNOWLEDGMENTS

I wish to express sincere appreciation to Professor William W. Batstone for his
guidance and insight throughout the research and writing process. Thanks go also to
the other members of my advisory committee, Professors Charles L. Babcock and Kirk
Freudenburg, for their helpful suggestions and comments. I would also like to thank
Professor Christopher P. Craig who, as a real member of the dissertation committee,
provided careful and insightful readings of each chapter, but as an outside reader was
disqualified by graduate school regulations from signing the completed dissertation.
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CHAPTER I
Publication and Literature

Before beginning an analysis of the Pro Milone, it will be useful to examine the issue with which much of the scholarly discussion about the speech has been preoccupied, namely the relationship between the extant text (the version of the speech which Cicero himself published) and the oration delivered by the orator at the trial of Milo. It is my intention in this first chapter to sort through the questions raised by this issue and to consider its influence on the present state of scholarship on the Pro Milone. This chapter will not represent an attempt to resolve this insoluble issue, however, so much as it will serve as a background against which to introduce my reader-targeted approach to the speech as a work of literature aimed at a variety of audiences.

The question of the extent of the revisions which were made between the delivery and publication of the speeches of the ancient orators is a subject which has been addressed by scholars since the time of Quintilian (Inst. Orat.12.10.49-56). The Pro Milone is especially susceptible to scrutiny in this area since it arose out of extraordinary and unprecedented circumstances, which will be discussed later in this chapter and has been dogged by rumors and reports of an alternate "original" version since ancient times. Before considering the Pro Milone specifically, however, a brief overview of the
publication practices of the ancient orators will help to place Cicero's practice of speech publication in the context of the tradition within which he was operating.

The Greek Practice

In the publication of his speeches, Cicero followed the practice begun among the Attic orators as early as the late fifth century B.C. The *logographoi*, or speech writers, composed orations for their clients to deliver on their own behalf in the Athenian law courts, and often published them, perhaps to advertise their talents to prospective clients.¹ Self-advertisement has been generally regarded as one of the motives for the sophist Gorgias' writing and circulation of his speeches. One passage in particular which has been read this way occurs in the *Encomium to Helen*, in which the power of *logos* is compared to that of a drug in its influence over people.²


²This view has received a strong challenge from Thomas Cole, *The Origins of Rhetoric in Ancient Greece* (Baltimore, 1991), who offers this revision to the conventional reading: "His [Gorgias'] position is that of an experimenter in the use of mind-altering drugs testifying on behalf of someone (Helen) who has committed a crime under their influence. A fairly lengthy expatiation on the power of such drugs to make a person do things he or she would not do otherwise is perfectly appropriate in such a situation, but one would not expect a general eulogy of them, much less an attempt on the part of the speaker to impress on the audience the exceptional power of his own pharmacological expertise confers." pp. 146-7. In other words, Gorgias can attest to the powers of persuasive speech, but should not be interpreted as offering an advertisement of his own expert ability to mislead through these powers.
The practice of publishing political speeches likely originated also in the late fifth century among residents of Athens who were not Athenian citizens, such as Lysias and Thrasy-machus, and were thus prevented by custom from addressing the Assembly, but published political speeches in order to disseminate their political views for the purpose of influencing Athenian policy.¹

This practice was continued by Isocrates who, for personal reasons, was accustomed to publish political speeches rather than deliver them.⁴ The speeches of Isocrates were, as Kennedy points out, "literary products worked out in detail at leisure."⁵ Unlike those orators whose speeches were delivered and/or published for political reasons, Isocrates' reason for the publication of his political speeches is taken by Kennedy to be more like the purpose of epideixis.

"He is neither a political theorist like Aristotle nor a practical politician like Demosthenes. What he is concerned with are the means of expression of political thought...how to demonstrate what ought to be done, how to marshall arguments, how to say something new on the same theme."⁶

However, one of the goals of political rhetoric, as interpreted by Isocrates, is to provide a model of statesmanship to be followed by coming generations (Antidosis, 277). The importance which he placed on rhetoric and its role in society indicates that for Isocrates, who himself was not an active politician, the publication of speeches was more than

³Kennedy, Art of Persuasion in Greece, p. 204.
⁴Phil. 81; Panath. 10; Epist. 1.9, 8.7; Antid. 151.
⁵Kennedy, Art of Persuasion in Greece, p. 175.
⁶Ibid. p. 198.
simply a means of demonstrating the rhetorical tools by means of which political ideas might be expressed, but actually was "a means to a political presence."7

It was not until the mid-fourth century that Demosthenes initiated the custom of publishing political speeches which had already been delivered in front of the Assembly, and other orators followed suit, although their speeches do not survive.8 In the case of Demosthenes, we not only possess a number of extant speeches, but we also have some evidence of the type and extent of revisions which were made between the delivery and publication of his speeches, provided by the texts of the Fourth Philippic and On the Chersonese. One scholarly examination of the texts of these two speeches has demonstrated that the extant text of On the Chersonese is the published version of an oration which was actually delivered by Demosthenes and that the revisions made to the speech before its publication include the incorporation of certain parts of the Fourth Philippic.9 If we accept this theory, we have a concrete textual example of the type and extent of revisions which might be made before an oration was published by Demosthenes - even a speech which had already been delivered publicly in the Assembly.

We know from the example of Andocides that speeches were published by the Attic orators as well for the purpose of representing the orator's personal agenda "for the record". Since Andocides was not among the logographoi who wrote speeches for others


8Kennedy, p. 205.

to deliver and he was not one of the leading Athenian statesmen aiming for the dissemination of his political agenda,\textsuperscript{10} his surviving speeches were examples of apologia, or self-defense. It appears, then, that they were published by him in order to record and spread his personal agenda, and, Kennedy suggests, in the case of On the Peace with Sparta, at least, Andocides "committed this speech to writing as a more permanent justification of his embassy."\textsuperscript{11}

There is also evidence of the publication of epideictic orations which had been delivered by the Attic orators. A fragment of a funeral speech written by Gorgias is quoted by Dionysius of Halicarnassus, although Kennedy suggests that this speech was not actually delivered by Gorgias, a non-Athenian whose participation in a custom which was so "purely Athenian" would have been unusual, but that he wrote it for someone else to deliver or that he wrote it with no intention of it ever being delivered at all.\textsuperscript{12} A more typical example of this genre is represented by the epitaphios which we have among the published speeches of Lysias, as well as by Hyperides' speech delivered in 322 as a tribute to those who had died in the Lamian War.\textsuperscript{13} There is also a funeral oration included in the corpus of Demosthenes, although it was thought even in antiquity to be spurious.\textsuperscript{14}

\textsuperscript{10}Kennedy, \textit{Art of Persuasion in Greece}, 146.

\textsuperscript{11}Ibid., 205.

\textsuperscript{12}Ibid., p. 156.

\textsuperscript{13}Ibid., p. 157, 165.

\textsuperscript{14}Ibid., p. 164.
It is clear from this short survey that Cicero was operating within a long and well-established tradition of speech publication and in his own study of models of oratory was presented with speeches which served a series of purposes. The Greek tradition of publishing set up the expectation that a speech would reach more than one audience -- not only the audience of listeners of the original occasion of delivery, but countless readers as well. For the orator, the published speech served not only as evidence of his rhetorical skill as a speaker, but as a means of disseminating his political and personal agenda to a wider audience and of setting an example of political policy and statesmanship set in a known and very specific context for those readers. Cicero responded to the influences of this tradition in a particularly Roman way, with his own set of intentions for his published speeches. Like his Greek predecessors, as well as his more immediate predecessors in Rome, Cicero sought to convey his political and personal agenda through the publication of his speeches as models of statesmanship and public policy.

Cicero and the Roman Practice

The Romans followed the example of the Attic orators by publishing deliberative and forensic orations which had already been delivered. The elder Cato was the earliest Roman orator known to have published his speeches. Cicero reveals in the Brutus (17) that he had read over 150 of Cato’s orations as well as the works of a great number of other Roman orators of the early Republic upon whose rhetorical style he comments throughout the dialogue, although in most cases he does not indicate the exact source of the published versions of the speeches - whether they were written and circulated by the orator himself or recorded elsewhere. Whatever the source of the speeches that came
down to Cicero, it is clear from his introduction to the Brutus, when he speaks of the orators that preceded him in the Republic, that he read them as exempla of policy and statesmanship as well as models of style:

Itaque ei mihi videntur fortunate beateque vixisse cum in ceteris civitatibus tum maxime in nostra, quibus cum auctoritate rerumque gestarum gloria tum etiam sapientiae laude perfrui licuit. Quorum memoria et recordatio in maximis nostris gravissimisque curis lucunda sane fuit... (3.9).

This introduction to a treatise primarily devoted to recounting the names of preeminent Roman orators and commenting upon their rhetorical style and talents suggests that Cicero was working within a tradition in which the words and deeds of a man were inextricably linked. It is reasonable, then, to suppose that in following this tradition he expected his own published speeches to convey to his readers through his words the vital importance of his deeds.

Because Cicero was Rome's most celebrated orator, whose published work included a large number of political and forensic speeches as well as much personal correspondence,¹⁵ more is known about the publication of his orations than about those of any other Roman orator. Quintilian tells us that Cicero's custom was to write out in full both the exordium and any other section of the speech which he considered to be of

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¹⁵Cicero's letters ad Familiares were published by his secretary Tiro. We have a reference to the publication of letters by Tiro a letter to Atticus from Cicero in 44: Mearum epistularum nulla est σωφρόνιστη, sed habet Tiro instar septuaginta; et quidem sunt a te quaedam sumendae. Eas ego oportet perspiciam, corrigitam. Tum denique edentur (ad Att. 16.5.5). The publication of the letters ad Atticum has been the subject of considerable debate. Jerome Carcopino (Cicero: The Secrets of his Correspondence, trans. by E.O. Lorimer [New Haven, 1951, pp. 14-37]) summarizes the history of the argument and contends that these letters were published by Octavian sometime between 34 and 33.
special importance, and then, although he had carefully thought through and outlined his arguments ahead of time, to speak extemporaneously as the occasion demanded.\textsuperscript{16} The single known exception to this custom seems to have been the \textit{Post Reditum in Senatu}, which, because Cicero considered it imperative that he use exactly the right words to give thanks in the senate to those who had worked for his recall from exile, was written out entirely ahead of time and delivered verbatim from a prepared text.\textsuperscript{17}

Since Cicero did not make a practice of preparing a complete written text of his speeches before their delivery, and even those parts which were written and memorized must have been modified by the orator as the circumstances or the inspiration suggested, there was ample opportunity for revision and editing before they were written down to be circulated and read. Kennedy and J.N. Settle both assert that any revision made to the speeches or any divergence from the oration which had actually been spoken was purely intentional on Cicero’s part, since his extraordinary memory would have enabled him to reproduce the speech as it had been delivered if that had been his intention.\textsuperscript{18} However, their assertions must be called into question if we consider Cicero’s remarks regarding the extraordinary memory of Hortensius in the \textit{Brutus} (88.301):

\begin{quote}
Primum memoria tanta, quantam in nullo cognovisse me arbitror, 
ut quae secum commentatus esset, ea sine scripto verbis eisdem redderet, quibus cogitavisset. Hoc adiumento ille tanto sic utebatur, ut sua et commentata et scripta et nullo referente
\end{quote}

\textsuperscript{16} \textit{Inst. Orat.} 10.7.30.

\textsuperscript{17} \textit{Pro Plancio}, 30.74.

omnia adversariorum dicta meminisset.

If it was the case that Cicero himself had had the kind of memory which allowed him to recall his every word verbatim, would he have found Hortensius' talents so remarkable (...quantam in nullo cognovisse me arbitror...)? It is important to remember that, although Cicero would certainly have been able to recall the outline and the main points of his speeches, the spoken oration was not actually the product of rote memorization, and in fact, a memorized speech would not have served the orator so well in an actual trial situation where the need for extemporization was often required to respond to the mood of the jury.19 It seems significant, though, that Cicero perceived the need to employ rote memorization for those parts which he considered most important and therefore wanted to remember word for word. Furthermore, when precision counted most, he did not trust his own memory but used a written "script" of the speech. For this reason, it does not follow that the published speech would have been a verbatim account of the spoken oration with the exception of a few later modifications intentionally made by Cicero. Settle, perhaps extrapolating from a Ciceronian viewpoint such as that expressed in the Pro Cluentio in the orator's comment on Antonius' unwillingness to publish his speeches (proinde quasi, si quid a nobis dictum aut actum sit, id nisi litteris mandarimus, hominum memoria non comprehendatur, 50.140), points out the fact that every speech, once it had been spoken in public, had, in a sense, been published.20 However, quid a nobis dictum

19Quintilian 10.7.3: Nam saepe ea quae opinati sumus et contra quae scripsimus, fallunt ac tota subito causa mutatur, atque ut gubernatori ad incursus tempestatum, sic agenti ad varietatem causarum ratio mutanda est.

is not precisely the same thing as *verba ipsissima*, and there must have been a certain
degree of latitude when it came to revising a speech for publication. If Cicero himself
had not memorized the speeches, it must be doubted whether his readers, even those who
had heard the speech delivered, would have retained enough of the actual performance in
memory to demand verbatim accuracy in the written version. A further indication of this
exists in Cicero's build-up to the really extraordinary accomplishment -- Hortensius'
ability to remember *omnia adversariorum dicta*, which suggests that the reading audience
in general would not have been expected to have the same ability.

Since it was unlikely that an audience would have remembered the orator's
performance verbatim and given the broad scope and self-interested motive of publication
as a means of advertising the orator's own words and deeds, the question arises as to how
much revision was typical in the case of Cicero's published speeches and how much
revision was actually made in the particular case of the *Pro Milone*. The question of how
much purposeful revision was actually done and what purposes were served by revision
to the speeches has generated a great deal of debate among scholars.

The most extreme position is held by Humbert,\(^{21}\) who asserts that the published
speeches do not represent a single performance by the orator at a trial, but, due to the way
the Roman criminal procedure was organized, there is nothing in an actual Roman
criminal trial to which one of the speeches of Cicero we have could precisely correspond -
Roman orators did not have "plaidoyers" but "tours de parole." Therefore, the published

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\(^{21}\)The purposes of publication will be discussed later in this chapter, but the views
of Humbert are so extreme, they require discussion at the outset.
speech represents rather a conglomeration of the proceedings of a trial - i.e. the actual "speeches" given by the orator, the evidence presented, answers to the inevitable interruptions - all part of the "tours de parole" that made up the Roman orator's courtroom experience.\textsuperscript{22}

Humbert's thesis met with a peculiar fate. It was virtually ignored for half a century after its publication until Stroh devoted an entire chapter of his book to tidy summation of the three major tenets of Humbert's thesis and then to a systematic refutation of each of these tenets.\textsuperscript{23} In response to Humbert's contention that the numerous extra causam digressions in Cicero's speeches were the result of the defense being uncertain of the way that the prosecution was actually going to deal with the facts of the case,\textsuperscript{24} Stroh observes that if the uninformed status of the defense had been the cause of these digressions, it would stand to reason that this type of digression would have had no place in the speeches of the prosecution.\textsuperscript{25} This, however, was not the case among Roman or Attic orators, in whose speeches both for the prosecution and the defense digressions extra causam (primarily ethical) played an important role.\textsuperscript{26}

\textsuperscript{22}Jules Humbert, Les plaidoyers écrits et les plaidoiries réelles de Cicéron (Paris, 1925), esp. pp. 97f, 253f.

\textsuperscript{23}Wilfried Stroh, Taxis und Taktik: Die advokatische Dispositions kunst in Ciceros Gerichtsreden (Stuttgart, 1975), pp. 31-54.

\textsuperscript{24}Humbert, pp. 69-73.

\textsuperscript{25}Stroh, pp. 33-35.

\textsuperscript{26}Ibid., p. 35.
Humbert’s second major argument is based solely upon his misinterpretation of De Oratore 2.77.313-14, in which Cicero makes an analogy between the arrangement of the points of argument within a speech and the arrangement of the speaking order of different speakers pleading a certain case:

Atque etiam in illo reprehendo eos, qui, quae minime firma sunt, ea prima concocant; in quo illos quoque errare arbitror, qui, si quando -- id quod mihi numquam placuit -- pluris adhibent patronos, ut in quoque eorum minimum putant esse, ita eum primum volunt dicere: res enim hoc postulat, ut eorum expectationi, qui audiant, quam celerrime succurratur; cui si initio satis factum non sit; multo plus sit in reliqua causa laborandum; male enim se res habet, quae non statim, ut dici coepsa est, melior fieri videtur. Ergo ut in oratore optimus quisque, sic in oratione firmissimum quoque sit primum; dum illud tamen in utroque teneatur, ut ea, quae excellent, serventur etiam ad perorandum; si quae erunt mediocria, nam vitiosis nusquam esse oportet locum, in medium turbam atque in gregem conicitantur.

Humbert’s reading of this part of the De Oratore is that the whole section on the arrangement of parts goes also for the arrangement of speakers in a case, so that, for example, the principium and peroratio signify not only those parts of the speech, but the opening and closing speeches of the defense, and furthermore that it was the chief speaker who had to give the opening and closing speeches in each case.27 This, as Stroh points out, is an egregious error in interpretation, and has nothing whatever to do with the text of the treatise.28

27Humbert, 69-73.

28Stroh, pp. 35-6. Cf. Clark’s review of Humbert on this point: “He has no evidence for this beyond his misinterpretation of de Orat. (l.c.), but after constant repetition of his view becomes more and more dogmatic. It is incredible that, if this was the practice in Cicero’s days, no hint of the fact should survive in his writings or in those of later authors.” (“Cicero and Asconius”, CR 41 [1927] 74-76, ref. 75.
Humbert’s third point of argument, and his major one, is his theory that the speeches of Cicero as they have come down to us actually represent merely summaries of the speeches, which were delivered in stages (tours de parole), and so it is up to us as readers to discern the elements of the original speech within the published version which we have.\textsuperscript{29} This theory, Stroh points out, is based largely upon what Humbert interprets as hints in the speeches themselves and more misunderstanding of the other ancient sources.\textsuperscript{30} Stroh points to Humbert’s reading of Asconius (Stangl, 50) on Pliny Ep. 1.20.6-8 regarding the Pro Cornelio, as an example of the misinterpretation of evidence upon which Humbert bases his tours de parole theory.\textsuperscript{31} Asconius (Stangl, p. 50) mentions two actiones and two speeches in the case of Cornelius: Cicero, ut ipse significat, quattuor duo Cornelium defendit: duas actiones contulisse cum in duas orationes appareat. Pliny, however, speaks of only one "book":

\begin{quote}
Testes sunt multae multorum orationes et Ciceronis pro Murena pro Varenos, in quibus brevis et nuda quasi subscriptio quorundam criminae solis titulis indicatur. Ex his appareat illum permulta dixisse, cum ederet omisisse. Idem pro Cluentio ait se totam causam veteri instituto solum perorasse et pro Cornelio quadruduo egisse, ne dubitare possimis, quae per plures dies, ut nessesse erat, latius dixerit, postea recisa ac purgata in unum librum grandem quidem, unum tamen coartasse.
\end{quote}

\begin{footnotes}
\item[29] Humbert, pp. 5-12, 97f, 253 f.
\item[30] Stroh, p. 36.
\item[31] Stroh continues in his chapter to summarize and refute Humbert’s arguments speech by speech as they appear in Humbert’s book. One example seems sufficient here to illustrate the type of flawed reasoning upon which Humbert has based his theory. Cf. Clark’s review (“Cicero and Asconius”) which treats specifically Humbert’s theories regarding the Pro Murena and the Pro Caelio.
\end{footnotes}
Humbert reconciles the ancient testimony with the solution that there must have been only one actual speech pro Cornelio, a conglomeration of four days of speaking and interruptions, which Pliny recognized as a speech, and the second "speech" must have been a conglomeration of the witness interrogations.\textsuperscript{32} What he does not consider, as Stroh points out, is that unus liber does not necessarily signify una oratio, but that several speeches can be combined into one book (cf. the actio secunda in Verrem).\textsuperscript{33} He also fails to account for the comment of Cornelius Nepos on this speech (refert enim Cornelius Nepos se praesente iisdem paene verbis, quibus edita est, eam pro Cornelio, seditioso tribuno, defensionem peroratum, ad Jerome 23.365M = Vita Ciceronis fr. 2 Peter), which in his introduction to the book he has already acknowledged, although he is quick to point to it as evidence applicable only to the individual case of the pro Cornelio, but which quite obviously proves Pliny (illum permulta dixisse, cum ederet omisisse) wrong.\textsuperscript{34} It is on this type of mishandling and misinterpretation of the sources (like the misinterpretation of De Oratore above) that Humbert bases his arguments which are, as demonstrated by Stroh and recognized by Clark in his review, fundamentally flawed in their reasoning and easily disproved by looking at the original sources themselves.

Humbert’s theory was in direct opposition to the views of Laurand, who had addressed the question of the type and extent of revisions to Cicero’s published speeches in the introduction to his book. Laurand took the position that the published speeches

\textsuperscript{32}Humbert, pp. 43-46.

\textsuperscript{33}Stroh, p. 38.

should in fact be considered representative, although not wholly verbatim transcripts, of the orations which Cicero actually delivered.\textsuperscript{35} The Poet Reditum in Senatu, which was delivered and subsequently published exactly as it had been written out for its momentous occasion, and the Pro Milone, which was subjected to extensive revision, are cited by Laurand as two extreme exceptions.\textsuperscript{36}

The controversy surrounding this issue points both to the inevitable possibility of revision to the speeches before publication, as well as to the restricted nature of these revisions. If it had been common practice to publish speeches as verbatim transcripts of the actual performance, questions of revision would not have arisen. By the same token, if the speeches were not at all representative of the original performance, there would be no need to question how closely the published version adhered to what had actually been said. The position taken by Pliny and Quintilian seems to suggest generally that an orator of Cicero’s stature in all probability did not practice radical revision, and in general it is the consensus of scholars that some stylistic revision must have been done before publication, but it is not clear to what extent the actual content of the speech was changed. Whatever the type or extent of the revisions that occurred before publication, the speeches conform closely to the fiction of their original occasion of delivery, and the very fact that we are unable to determine with certainty what parts of a published speech were added or revised later is testimony to the cleverness of the revisions.


\textsuperscript{36}Ibid.
The Pro Milone: The General Debate

The Pro Milone, due to the extraordinary circumstances from which it arose, presents a particular challenge when it comes to determining the extent of the revisions which may have been made to the speech before Cicero published it. Cicero's defense of Milo is extraordinary in many ways, the first and foremost being the unprecedented legal, social, and political circumstances which surrounded the trial. The city of Rome was in political turmoil in 53 B.C. as the rivalry of the consular elections escalated into a campaign of factional violence and rioting among the supporters of the three candidates for that year (Milo, P. Plautius Hypsaeus and Metellus Scipio). Clodius had thrown the support of his gang of thugs behind both of Milo's opponents in an all-out effort to keep his inimicus from the consulship. Milo, too, had a gang of henchmen, and these gangs had existed long before the actual election confrontation. Clodius had his gang in use by 59 or 58, and Milo (as well as Sestius) certainly had theirs during their tribunate of 57. Pompey, as the triumvir left at Rome, was having considerable difficulty in controlling the unrest. The fatal confrontation between the gangs of Milo and Clodius occurred on January 18, 52 B.C. and the subsequent rioting in the city which included the burning of the senate house by the Clodians effectively put an end to the election process as a state of emergency was declared, resulting in the unprecedented sole consulship of Pompey. Pompey's reaction to the situation was the promulgation of a new law de vi, aimed expressly at bringing Milo to trial for his part in the recent unrest. This new law included modifications of the trial procedure, including limitations on the length of the speeches of both prosecution and defense, which resulted in Cicero acting as the sole speaker for
the defense. The trial itself was overseen by Pompey from a distance, surrounded by armed soldiers, in place ostensibly for the protection of the participants, but effective no doubt as an intimidation factor, demonstrating to all the sole consul's scope of power.\textsuperscript{37} It was in the midst Pompey's display of force and the menacing presence of the mob of Clodian supporters that Cicero delivered his original speech \textit{Pro Milone}.\textsuperscript{34}

That speech, as we know from Asconius, was a failure. It is remarkable, therefore, that a speech which was so unsuccessful in court is generally considered to be one of Cicero's finest extant orations in its published version, and this raises questions regarding the extent of the revisions which were necessary to bring the delivered speech up to the standard set by the written one.\textsuperscript{39} Finally, there is the existence of an alternate version of the speech, which purportedly represented the actual performance of Cicero in court, and was published after the trial. This version, well-known to the ancient commentators,

\textsuperscript{37}This was, perhaps, the most extreme and disturbing manifestation of Pompey's extra-constitutional usurpation of power during this period. For a more extensive treatment of the issue of Pompey's troops in the city, see Andrew Rigsby, "Criminal Defense and the Conceptualization of Crime in Cicero's Orations", Diss. Berkeley, 1993, 200-206, who views the presence of troops as symptomatic of the "centralization of violence" in the Republic, which is "paralleled by a more general centralization of authority in the state." (p. 201).

\textsuperscript{39}For a more complete account of the events leading up to and immediately surrounding the trial of Milo, see Asconius, \textit{In Milonianum}, ed. Albert C. Clark (Amsterdam, 1967). All further references to Asconius will be from Clark's edition and will be parenthetically cited within the text. See also, Greenidge, \textit{The Legal Procedure of Cicero's Time} (Oxford, 1901), pp. 389-97; Erich Gruen, \textit{The Last Generation of the Roman Republic} (Berkeley, 1974), especially pp. 150-53 and 338-46; James S. Ruebel, "The Trial of Milo in 52 B.C.: A Chronological Study", \textit{TAPA} 109 (1979) 231-49.

\textsuperscript{39}It should be noted here that a poor performance in court could be a large part of the reason for the subsequent publication of a better speech for the written record.
places the Pro Milone in an even more extraordinary position in that the ancient writers were able to compare the two versions side-by-side in their accounts of the trial and of Cicero’s performance.

It is widely recognized that the ancient accounts of Cassius Dio and Plutarch, who both report that at Milo’s trial Cicero was unable to deliver a complete and coherent oration, are substantially exaggerated. Dio gives this account of Cicero’s performance (40.54.2):

ο γὰρ φήσεω ἔκεινος τὸν τε Πομπηίον καὶ τοὺς στρατιώτας ἐν τῷ δικαστηρίῳ παρὰ τὸ καθεστηκός ἑδὼν ἐξεπλήγη καὶ κατέδειχεν, διὸ τὰς τέν μὲν παρεκκεκυσμένας μιᾶς ἔπειτα, δρικόδε τί καὶ τεθνηκὸς χαλκεὰς φθεγμένος, ἀγαπητάς μεταστή ναι.

Plutarch’s version of the story is similar, portraying Cicero as being paralyzed with fear at the sight of the armed guards which surrounded the proceedings (Cicero 35.4):

tότε δ’ οὖν ἐπὶ τὴν τοῦ Μιλανοῦ δίκην ἕκ τοῦφορείου προελθὼν καὶ θεασμένος τὸν Πομπήιον ἀνα καθεστηκόν ἃπερ ἐν στρατοπέδῳ, καὶ κύκλῳ τὰ ὅπλα περιλάμποντα τὴν ἁγοράν, συνεχὺθε καὶ μόλις ἐνῆξατο τοῦ λόγου, κραδαινόμενος τὸ σώμα καὶ τὴν φονὴν ενυχόμενος.

Also included in Plutarch’s version of the story is the suggestion that this type of reaction was normal for Cicero (35.3):

ο δ’ οὖ μάλον ἄν, ὡς θυικεῖν, ἐν ὑπολος ἀθαρσίας, ἀλλὰ καὶ τῷ λέγειν μετὰ φόβου προσήκει, καὶ μόλις ἄν ἐπάνωσατο παλλύμενος καὶ τρέμον ἐπὶ πολλῶν ἀγώνων ἁκιμήν τοῦ λόγου καὶ κατάστασιν λαβόντας.

The Scholia Bobiensia lends further support to the reports of Cicero being utterly unnerved by his surroundings during the proceedings against Milo (Schol. Bob. 112 Stangl):

Sed quoniam et turbulenta res erat et confessa caedes et ad seditionem populus inflammatus et circumspiti judicio milites et non longe praesidens consul ipse Pompeius obnixe studens
in damnationem Milonis, perferri defensio ista non potuit:
nam metu consternatus et ipse Tullius pedem retulit.

Asconius, however, provides a more realistic description of Cicero’s performance and it is his account which is generally accepted by scholars as reliable (In Mil. 41-42):

Cicero cum inciparet dicere, exceptus est acclamatione Clodianorum, qui se continere ne metu quidem circumstantium militum potuerunt.
Itaque non ea qua solitus erat constantia dixit.

It is likely that Asconius’ scenario is more accurate than the others for several reasons, as many different scholars have been quick to point out. First, it is unlikely that Cicero would have been so completely unnerved by the presence of the soldiers and the gaze of Pompey that he was utterly unable to defend his client since, as B.A. Marshall observes, the orator had been in court for several days under the same circumstances and thus should not have been surprised or alarmed by their presence.40 Also, Asconius specifically tells us that the armed guards surrounding the trial were requested by the defense as a response to the presence of the Clodian mob. (In Mil. 41). There is even evidence in one of Cicero’s letters that the orator himself approved of the presence of Pompey’s troops.41 Furthermore, Asconius testifies to Cicero’s bravery during the turbulent period leading up to the trial. Although, admittedly, this is evidentiary of the


41ad Att. 9.7B.2, Balbus to Cicero: Hac re mihi placet, si tibi videtur, te ad eum [Caesar] scribere et ab eo praeсидium petere, ut petisti a Pompeio me quidem adprobante temporibus Milonianis. Cf. Fam. 3.10.10: qua denique ille facilitate, qua humanitate tulit contentionem meam pro Milone adversantem interdum actionibus suis! quo studio providit ne quae me illius temporis invidia attingeret, cum me consilio, cum auctoritate, cum armis denique texit suis!
orator’s personal resolve rather than testimony to steadfast oratory during the trial, the fact that he was in possession of such resolve in the face of the chaotic events preceding the trial goes against the theory of his sudden cowardice at the time when it mattered most to Milo:

Tanta tamen constantia ac fides fuit Ciceronis, ut non populi a se alienatione, non Cn. Pompei suspicionibus, non periculo futurum ut sibi dies ad populum diceretur, non armis, qua palam in Milonem sumpta erant, deterreri potuerit a defensione eius...(In Mil. 39).

Finally, as Settle notes, nowhere do we have contemporary evidence (in Cicero’s correspondence, for example), that the orator suffered any such humiliation as described by Dio, Plutarch, and the Scholia. To these arguments against a paralyzing fear may be added the observation that the stories of Dio and Plutarch read suspiciously like an interpretation based upon Cicero’s own words in the Pro Milone (e.g. the exordium with its emphasis on the orator’s fear: vereor...timere...terret...timere...timore, 1-2). Such autobiographical construal of details by ancient critics is as common as it is untrustworthy.

Therefore, Asconius’ explanation that Cicero, after being greeted by the uproar of the Clodian sympathizers, merely spoke less eloquently than usual is much more plausible than the accounts of other ancient sources which depict him as nearly frozen with terror at the sight of weaponry in the Forum. Further support of Asconius’ version can be found in his description of the Clodian mob as subdued by the presence of the guards during the interrogation of witnesses (...territi Clodiiani silentio verba testium per biduum audiri passi

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sunt, 41). This might explain why Cicero was taken aback to such a degree at their sudden commotion when it was his turn to deliver his speech in Milo's defense.

Following Asconius' description of Cicero's performance at the trial is an assessment of the published Pro Milone in comparison to the "excepta oratio", the alternate version of the speech which was apparently still extant in the first century A.D.:

Manet illa autem quoque excepta oratio: scispsit vero hanc quam legimus ita perfecte ut iure prima haberi possit. (In Mil. 42).

Asconius' term excepta oratio has been cited and accepted by more than one scholar as proof of the existence of a transcript recorded in shorthand of Cicero's actual performance at the trial, taken down by court stenographers and subsequently published as the alternate version of the Pro Milone to which the ancient commentators refer as the original oration.

Quintilian mentions both versions of the Pro Milone, and like Asconius draws attention to the dramatic difference in the quality of the two speeches. He gives the highest praise to Cicero's published oration (...M. Tullius in oratione pulcherrima quam pro Milone scriptam reliquit, 4.2.25), clearly distinguishing it from the speech which Cicero supposedly delivered at the trial (...non ea qua solitus erat constantia dixit, In Mil. 42).

The Scholia also explicitly testifies to the existence of the two different versions known to its author, the one which reflects Cicero's actual performance as described earlier in the Scholia and by Dio and Plutarch, the other which was obviously the product of careful editing and revision (Scholia Bobiensia 112, Stangl):

Et exstat alius praeterea liber actorum pro Milone: in quo omnia interrupta et impolita et rudia, plena denique
maximi terroris agnoscas. Hanc orationem postea legitimo
opere et maiore cura, utpote iam confirmato animo et in
securitate, conscrripsit.

In light of the ancient testimony, the existence of the "other" Pro Milone and its
wide acceptance as a legitimate version of Cicero's actual trial speech, scholars have been
unable to ignore the questions it raises. Was it a transcript taken down at the trial? Was
it obtained from the records in the Acta Diurna? Was it a forgery circulated under
Cicero's name?

Settle observes that the existence of two different published versions of the same
speech is "without parallel" in antiquity, but he is unwilling to accept the "other Pro
Milone" as any sort of transcript of Cicero's words which may have been taken down
during the trial. His rejection of the excepta oratio, however, is based upon terms which
he has loaded with qualifications - the fact that a formal system of court stenography and
a perfected method of taking shorthand notes were not in practice at the time of Milo's
trial. But, can the possibility be ruled out that there existed an "informal" system of
court stenography or a rudimentary method of taking shorthand? There must have been
some method, for example, of recording proceedings for the Acta, and Cicero's secretary
Tiro is known to have used a form of shorthand, although it has been asserted by Arthur
Mentz that in Cicero's time (i.e. with Tiro's method) shorthand had not yet been

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4Settle, "The Trial of Milo and the Other Pro Milone", TAPA 94 (1963) 268-280,
ref. 275.

4Ibid., 276. See also Arthur Mentz, "Die Entstehungsgeschichte der römischen
Stenographie," Hermes 66 (1931) 369-86.
sufficiently developed for the transcription of an entire speech. However, even if the method of note-taking used by Tiro represented only one step in the early development of a formalized system of shorthand, the fact that he (and, presumably, others whose responsibility it was to take down the proceedings recorded in the Acta Diurna) had in use a form of shorthand transcription is enough to suggest the plausibility of the existence of some kind of transcript of Cicero’s actual speech at the trial of Milo. Therefore, the evidence which Settle cites is not sufficient to exclude the possibility of the existence of a written record of the proceedings against Milo.

Part of the controversy entails the interpretation of excepta. Marshall notes that "excipere can ...mean 'to take down in shorthand,'" but he observes that "the examples in the OLD s.v. excipere section 6 all date from the early empire," and so concludes the "the phrase [excepta oratio] cannot be used one way or the other to suggest that shorthand existed, and it says nothing about how full a version of the delivered speech was in circulation." Although Settle, too, acknowledges that the term excepta does commonly mean "written in shorthand", his explanation of the term excepta oratio is that excepta is meant to refer directly to the adjective exceptus with which Asconius describes Cicero in his account of the orator's performance (Cicero...exceptus est acclamatione

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46Marshall, 735.
Thus, he argues, it should not be taken as proof that the origin of the alternate version was a shorthand transcript of Cicero's words at the trial, and ultimately he concludes that the other version must be considered a forgery, perhaps in the usual sense of the word (i.e. published by someone else under the name of Cicero) or in his qualified sense of the word, "...a forgery in the sense that it was not the work of Cicero." In support of this position, Settle cites a passage from the Brutus (56.205) in which Cicero refers to some speeches which had been published under the name of P. Sulpicius Rufus, but not believed to have been written by him. He is not able, however, to cite any evidence of Ciceronian forgeries, nor does he attempt to explain how such a forgery could have survived for over a century so as to be available to later commentators such as Asconius, Quintilian and the scholiast, each of whom accepts the excepta oratio as an authentic version of the trial speech, especially when confronted with a published and "authorized" version of the speech.

Settle's theories have been widely criticized by other scholars who generally agree that the "other" Pro Milone must have been produced from a transcript of the proceedings.

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47 James N. Settle, "The Trial of Milo and the Other Pro Milone", 275.

48 Ibid., 279.

49 Ibid., 278.

50 Literary forgeries were not unheard of in Rome, however. Jane Crawford, M. Tullius Cicero: The Lost and Unpublished Orations (Gottingen, 1984), points to Cicero's urging Atticus (ad Att. 3.15.3) to pass off a potentially politically dangerous speech as a forgery as an indication that "...forgery must have been fairly common - common enough, at any rate, to be believed in the case at hand - and that politicians feared the subsequent distortion of their positions that a clever forgery could promote." (p. 10). See also, Alfred Gudeman, "Literary Frauds among the Romans", TAPA 25 (1894) 140-164.
Crawford calls Settle's arguments "unacceptable", and cites the term *excepta oratio* as sufficient evidence of the existence of a published transcript of Cicero's original speech, as does Laurand.\(^5\) Marshall agrees that the theory of a shorthand transcript of the original speech is plausible, although he does not base his opinion solely on the adjective *excepta*. Rather, he relies on the fact that at the time of the *Pro Milone* there were known to exist summaries of speeches (often including passages copied down verbatim) as well as written records of the proceedings which took place in the Senate.\(^5\) A.W. Lintott also disagrees with Settle, pointing to the fact that in addition to reports of the senatorial proceedings, speeches from criminal trials are known to have been recorded in the *Acta*.\(^5\)

Thus, the existing primary evidence and scholarly opinion prevail against Settle's refusal to accept the alternate version of the *Pro Milone* as a transcript, either an official one recorded in the *Acta* or some less official version taken down by stenographers present at the trial. While the single word *excepta* is not in itself sufficient evidence, the fact remains that the ancient sources had access to two different published versions of the speech and the alternate version was most likely based upon some contemporary record.

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\(^5\)A.W. Lintott, "Cicero and Milo", *JRS* 64 (1974) 62-78 (69 cited). Lintott cites as primary evidence the fact that the *Acta* are used as a source throughout Asconius as well as the reference from Tacitus' *Dialogus* (37) to ancient records of proceedings which were extant in his time, although here there is no specific mention of the actual recording of speeches.
of the trial, although exactly what sort of record and from what source cannot be proven beyond conjecture.

Whether or not we choose to accept the alternate version as an exact transcript of Cicero's performance at Milo's trial, the ancient writers accepted it as such and used it as a basis for comparison with the version which the orator eventually published. As we have already seen, Asconius (In Mil. 42), Quintilian (4.2.25, 4.3.17) and the Scholia Bobiensia (112 Stangl) attest to the fact that Cicero's published Pro Milone shows signs of having been significantly edited and improved before its publication. Further evidence of this can be found in the account of Dio, who records the famous anecdote of Milo's reaction to the published speech (Dio 40.54.3):

ο Μιλων τῷ λόγῳ περιθέντι οἱ ἡπ' αὐτοῦ ἐνυχαν (ἐπεφυγέδευτο γάρ) ἀντεπέστειλε λέγον ὅτι ἐν τῇ χείρᾳ αὐτῆς ἐγένετο τῷ μη ταυτός ὁδότα καὶ ἐν τῷ διαστήματι λεξήνας οὐδὲ ἐν ταὐτώς ἐν τῇ Μακεδόνα (ἐν ὧ κατὰ τὴν ψυχήν ἂν) τρίγλας ἔστειλεν, εἰπερ τι τοιοῦτον ἀπελεύθησαν.

Pro Milone: Particular Sections

One thing that is agreed upon by a majority of scholars both ancient and modern is that the extant Pro Milone is an example of Ciceronian oratory at its finest, both technically and stylistically. Even a critic such as W.R. Johnson, who describes the speech as "a lifeless, utterly unreal perfection," acknowledges its "brilliance of manner and formal excellence." It stands to reason, therefore, that during the process of writing out the complete speech for publication, Cicero made substantial revisions and

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improvements. Because it is necessary to acknowledge and deal with this, the evidence which we possess in the ancient sources regarding the differences between the two speeches has resulted in a wide range of scholarly opinion as to the extent and nature of these revisions. Most point to the extra-causam section (72-91) and the lengthy peroration (92-105) of the speech, with their dependence on the state benefit line of defense (which Asconius maintains was not an argument which Cicero used at the trial), as parts of the speech which do not fit with the context and content of the original speech. In fact, this is the central issue of the scholarly debate which surrounds the Pro Milone.

Humbert's position on this issue conforms to his position on the revision and editing of the speeches in general, that the speech as it now exists could not have been delivered on the occasion of Milo's trial. For example, he suggests that the extra-causam section, which hails Milo as the savior of Rome and extols the service done to the state by the murder of Clodius, would not have been tolerated by the Clodians, who were already being barely held at bay by the presence of Pompey's soldiers.55 Furthermore, he points out that the "tirade addressed to Pompey" (67-72) for which Cicero makes a point of raising his voice to be heard by the sole consul, would not have been able to be heard by him, since he was seated off in the distance in front of the temple of Saturn, and, Humbert adds, Pompey could hardly have been expected to listen to this part of the speech with tolerance and indulgence.56 The peroration, moreover, is viewed by

55Humbert, p. 92.
56Ibid., pp. 192-3.
Humbert as excessive in its length and its superfluous eulogizing of Milo and thus, he asserts, it too must be considered a later addition to the speech.\textsuperscript{57}

Laurand’s position on the \textit{Pro Milone} is that it, like the \textit{Post Reditum in Senatu}, represents an exception to the normal publication practices of Cicero, based on the fact that all of the ancient commentators explicitly testify to significant revisions in the published oration, which they do for no other Ciceronian speech.\textsuperscript{58} However, this position is a necessity for him only because the ancient testimony makes it impossible not to acknowledge revisions, although his position overall on the speeches makes it necessary for him to maintain that this, like the \textit{Post Reditum in Senatu}, is an extreme exception. Then, continuing to adhere to some extent to his general thesis, Laurand insists that although extensive revisions must have been made to this speech, the fundamental arguments and lines of defense have not been altered from those used by Cicero at the trial.

Like Laurand, Settle must deal with the ancient evidence which is contrary to his general view that the published speeches did not undergo any drastic changes, but only some final polishing, before publication. Settle, however, criticizes Laurand’s unquestioning acceptance of the "other" \textit{Pro Milone} as a legitimate version of the original speech.\textsuperscript{59} He confronts the evidence to the contrary with an absolute insistence that the alternate version was an unreliable forgery.

\textsuperscript{57}Ibid., p. 194.

\textsuperscript{58}Laurand, p. 14.

\textsuperscript{59}Ibid.
Other scholars have, like Humbert, attempted to distinguish aspects of the extant Pro Milone which were likely not part of the original speech. A.M. Stone, seeking an explanation of what he considers the different character of the extra-causam section, posits that this section was added to the published speech based on Cicero's less conciliatory treatment of Pompey in this part as compared to the rest of the speech. He attempts to demonstrate that the orator is much more critical of Pompey and his regime in the extra-causam section than in the parts of the speech which, in his view, can be distinguished by their different tone and therefore which are more likely to represent the contents of the defense of Milo delivered under the watchful eye of Pompey during the trial. Stone also observes that in the extra-causam section as well as in the peroration there can be detected "...a clear assumption that Milo is already condemned," and he sees the purpose of these later additions to the speech as intentional criticism of Pompey.

Lintott uses the testimony of Asconius to support his thesis that the original speech relied on the plea of self-defense and that the whole aspect of the defense which argues that the death of Clodius was a benefit to the Republic was not part of the original, but a later addition.

Respondit his unus M. Cicero: et cum quibusdam placuisset ita

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61 Ibid., 101.

62 Ibid.

63 Lintott, 74.
defendi crimen, interfici Clodium pro re publica fuisse (quam formam M. Brutus secutus est in ea oratione, quam pro Milone composuit et edidet, quasi egisset), Ciceroni id non placuit, quasi qui bono publico damnari, idem etiam occidi indemnatus posset. (In Mil. 41)

Lintott suggests that Cicero’s reluctance to employ this line of defense is understandable in light of the fact that he himself had paid a great penalty for the unlawful execution of Roman citizens for the good of the Republic. He does not elaborate on this suggestion, however, but merely mentions it in passing and stops short of speculating on Cicero’s reasons for adding this line of argument to the published version of the speech.

Clark and Ruebel have attempted to explain the presence of the justifiable homicide of Clodius for the good of the Republic in the published version and its reported absence in the original version by supposed development in Cicero’s philosophical attitude toward tyrannicide. Their views have been soundly criticized by scholars primarily on the grounds that the finest orator at the Roman bar would not refrain from using any argument which would benefit his client, regardless of his personal subscription to the principles behind that argument. Riggsby cites the examples of the *de Lege Agraria* (2.10) in which “the Gracchi, normally used as *exempla* of legitimate political killings, are treated as solid statesmen”, as well as the “exaggerated respect he shows for the will of the people in the Pro Plancio.”

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64 Ibid.


66 Riggsby, p. 196.
All of the above approaches have in common the fact that they each attempt to subtract from the speech we have in order to construct an idea of the contents of the original performance and the speech which we will never have. None of them treats the extant Pro Milone as an organic work of literature, nor do any of them attempt to consider Cicero’s literary motives and intentions for writing and publishing the version which now exists.

We know from Quintilian that in preparation for the trial Cicero would have memorized the exordium and peroratio and would have had outlined in his mind the topics and line of defense for the rest of the speech. We believe that when it was time for him to speak, he southered as he was shouted down by the Clodian mob, the audience was against him and he simply was not able to summon his customary energy and force of speaking in order to elaborate on those topics with his usual extemporaneous eloquence. The published oration, then, most likely represents the elaboration that was absent from the original—absent not because it was not included in the orator’s original plan for the delivered speech, but because the performance may have devastated his intentions for the speech. The speech as we have it was also composed as a literary document with a new set of intentions and directed at a new set of audiences. But once the possibilities of different audiences and wider political (or philosophical) implications arise, there is no reason to believe that even the original exordium must have remained untouched. For the purposes of this study it is less important to attempt to answer definitively a question to which the answer disappeared along with the excepta oratio—which is, to endeavor to distinguish the parts of the Pro Milone which were part of the trial
speech from those which were added later -- than it is to look at the speech as we have it in terms of Cicero's intentions for the speech as a whole when writing it up for publication from a later point of view to serve his purposes in the aftermath of the trial.

I would like to leave behind the question of how closely the published Pro Milone resembles the one originally delivered by Cicero at Milo's trial and turn the discussion back toward the speech as we have it as a work of literature which the orator wished to leave behind for generations to come. As a literary document the Pro Milone represents not so much a record of Cicero's forensic performance at the trial, but rather a record of this event which would stand within the corpus of published speeches, letters and treatises which together make up a literary monument to the orator's career, not only as a speaker, but as a man of action. The forensic speech delivered at a trial aims primarily to persuade a sufficient number of jurors to vote Cicero's way. The published speech, however, has been freed from its forensic occasion. The opportunity for persuading a jury has passed. The forensic fiction is maintained, but the audience of the spoken oration, addressed throughout as judices or vos, has become a fictive audience for the published speech, one that exists only in the mind of the reader. The reading audience is now the real audience, and since this audience is hardly in the same position as the judices of a trial, the aims of the published speech must have shifted away from the primary goal of persuasion demanded by the original occasion. The function now approximates epideixis. That is, the speech exists now as a "showpiece", as a work of literature. Its purpose is neither to secure a verdict in court nor to persuade a course of action, but to

67Stroh, p. 53.
put the situation as presented by Cicero in front of a jury of readers. The aim, then, is
a verdict of praise for Cicero’s side (and his composition) and blame for the
opposition.\textsuperscript{48} In Cicero’s own words (\textit{De Inv.} 2.51.156), the aim (\textit{finis}) of \textit{epideixis} is
\textit{honestas},\textsuperscript{49} and in the \textit{Brutus} he specifically refers to the function of epideictic oratory,
specifically of the funeral oration, as a way of recording the distinctions and glory of a
man’s career.\textsuperscript{70} As a kind of \textit{epideixis}, Cicero’s published speeches not only record the
distinction of his career but present his words anew -- polished, improved, and immutable.

With the occasion of the delivery of the speech having passed, the published
speech is able to perform the function of adding \textit{honestas} to Cicero’s own reputation as
it records his actions during the event, the circumstances which surrounded and motivated
him, and his version of the event and its participants for the written record. According
to Aristotle (\textit{Rhet.} 1358b), the audience of \textit{epideixis} is cast into a different role than that
of the audience of a deliberative or forensic oration. As spectators (\textit{theoroi}), they are
judges (\textit{kritai}) not of past events (as the audience of a judicial speech) or of future ones
(as the audience of a deliberative speech), but of the power of the speaker. Thus, in their
function as \textit{epideixis}, the published speeches cast the members of the reading audience

\textsuperscript{48}The readers, then, correspond to Aristotle’s \textit{theoroi} (spectators) of epideictic
oratory, who, in contrast with the \textit{kritai} who judge either things past (in forensic
oratory) or things to come (in deliberative oratory), judge only the ability of the
speaker.

\textsuperscript{49}Nam placet in iudiciai genere finem esse aequitatem, hoc est, partem quandam
honestatis. In deliberativo autem Aristotelis placet utilitatem, nobis et honestatem et

\textsuperscript{70}...ipsae enim familiae sua quasi ornamenta ac monumenta servabant et ad usum,
si quis eisdem generis occidisset, et ad memoriam laudum domesticarum et ad
illustrandam nobilitatem suam. \textit{Brutus} 16.62.
into the role of judging Cicero's power and ability as a speaker, but at the same time they provide them with an autobiographical and political sketch of Cicero as he represents himself in the speech. This is fully within the range of function for published speeches in both the Greek and Roman tradition we reviewed at the beginning of this chapter.

Kirby, while he acknowledges that the same "rhetorical exigence" is no longer a factor in our reading of a Ciceronian speech, suggests that we, the readers, "assume the persona of iudices ourselves" - that is, we become kritai in addition to our role as theoroi (onlookers) and therefore are called upon to judge the guilt or innocence of Cicero's client based upon the extant text of the speech. Our position as readers, however, cannot begin to approximate that of the original audience since we "hear" only Cicero's version of events and are subject exclusively to his ethical and emotional appeals. Thus, out of context, we are of course likely to "vote" Cicero's way and Cicero must have known that. Furthermore, in the aftermath of the trial, by the time a speech is published and reaches readers both contemporary and in future generations, the question of guilt or innocence of Cicero's client is no longer of much consequence, since the verdict has been handed down and the case has been closed. One must imagine Cicero reading Lysias and envisioning the same effects for his speeches as those of Lysias had on him.

What, then, are the aims of the published speech if not specifically to persuade a verdict or course of action? It is my view that the aims of the published speech have shifted, along with the audience, to the sphere of literature. The opportunity for

persuading the jury may have passed, but in its place comes the opportunity for Cicero to leave behind his version of the event "for the record". It looks beyond the fictive audience of *judices* to the real audience made up of the orator's own contemporaries, the *adulescentes* of Rome who would study the speeches as school texts (and who happened to be the rising generation of Roman statesmen) and all future generations into posterity. To a reading audience made up of these groups Cicero provides an account of his words, actions and feelings in a given situation by representing that situation in the speech the way he wants it remembered. Thus, the speeches in their own way take their place among Cicero's published works which taken together present to us an ongoing chronicle of the orator's public career.

That speeches were considered part of the record of a man's *res gestae*, in the 2nd century A.D., at least, is apparent from a letter of Lucius Verus to Fronto in 165 A.D. regarding Fronto's forthcoming account in his history of Verus' actions:

Ea vero quae post meam profectionem gesta sunt ex litteris a<↓> me scriptis a negotio cuique praepositis ducibus cognosces...
Ego vero, ut et consiliorum meorum rationes commemorare possis, meas quoque litteras, quibus quidquid gerendum esset demonstratur, mittam tibi. ...Quidvis enim subire paratus sum, dum a te res nostrae illustrentur. *Plane non contempseris et orationes ad senatum et allocutiones nostras ad exercitum.*

(Amb. 436, following 421)

Gotoff cautions against relying on the speeches for autobiographical evidence, noting certain inconsistencies which can be found in Cicero's stated position from speech to speech. It is his view that every aspect of the speeches exists wholly for purpose of persuasion and has no value outside of that context, and suggests that Cicero the advocate
is only that -- not Cicero the statesman.\textsuperscript{72} This, however, denies the force of the orator's personal \textit{ethos} which as an advocate he brings with him to every case. The facts of every case vary, but the advocate, represented in the speech through ethical argumentation, does not change who he is, but by the very definition of the Roman system of advocacy brings his personal \textit{auctoritas} and reputation to the forefront.\textsuperscript{73} Cicero himself touches upon the issue of possible inconsistencies from case to case in the \textit{Pro Cluentio} as he answers an accusation from the opposition that in the present case he had contradicted statements that he had made in a previous case:

\begin{quote}
Omnes enim illae causarum ac temporum sunt, non hominum ipsorum aut patronorum. Nam si causae ipsae pro se loqui possent, nemo adhiberet oratorem. Nunc adhibemur, ut ea dicamus, non quae nostra auctoritate constituantur sed quae ex re ipsa causaque ducantur. (50.139)
\end{quote}

Here, Cicero obviously refers to the facts of a case as represented in a forensic oration, a distinction which the orator makes clear as he proceeds through the next few sections of the speech, recounting an anecdote about L. Crassus' reaction at being confronted in court with written copies of his own speeches which contained contradictory statements:

\begin{quote}
...moleste enim fortasse tulerat se in eis orationibus reprehensum quas de re publica habuisset, in quibus forsitan magis requiratur constantia. Ego autem illa recitata esse non moleste fero. Neque enim ab illo tempore quod tum erat, neque ab ea causa quae tum agebatur aliena fuerunt; neque mihi quicquam oneris suscepi, cum ita dixi, quo minus honeste hanc causam et
\end{quote}


\textsuperscript{73}See Kennedy, "The Rhetoric of Advocacy in Greece and Rome", \textit{AJP} 78 (1968) 419-36, esp. 429-36.
libere possem defendere. (51.141-2)

In forensic speech the facts of an individual case will differ in each situation, and will be used in whatever way the speaker finds expedient to the occasion. If we recognize, then, as Cicero obviously did, that it was the facts and circumstances of each case which changed and not the orator himself or the ethos which he brought with him to the case, the "tricks of the trade" of the lawyer can be reconciled with a broadly coherent literary self-portrait of Cicero the clever advocate and Cicero the diplomatic statesman which is represented in the speeches.

So, contradictions from speech to speech might exist, in the form of "creative" handling of facts, condescension to his opponents, or derision of personal (or political) friends, but they are not sufficient to prove that the orator himself has changed his overall political program, nor that the autobiographical allusions of the orator are utterly unreliable.\(^\text{24}\) The picture of himself which Cicero presents in the early speeches, for example, (e.g. Pro Roscio Amerino, In Verrem) is consistently that of the brave young novus homo struggling for "right against might" against his older and more powerful opponents.\(^\text{25}\) The portrayal of himself as pater patriae and conservator rei publicae in the speeches of the consular and post-consular periods is both consistent in itself and a coherent development of the persona of the Pro Roscio. Every word of a lawyer plying

\(^{24}\text{As Gotoff would have it, p. 297-8. Such a view depends upon the assumption of a self-consistent and self-present identity for which there is little support in the ancient literary tradition or among men of action in general. My view here is taken from W. Batstone whose work on this is still in progress.}\)

\(^{25}\text{See Kennedy, "Rhetoric of Advocacy", 429-33, on Pro Roscio Amerino.}\)
his trade cannot be taken at face value, but Cicero's mastery of his profession and his cleverness in manipulating facts and situations to his own and his clients' advantage does not nullify the validity of the consciously constructed portrait of the man behind the profession. Moreover, as Petersson has pointed out, this type of "slipperiness" was an accepted part of the legal process:

The fact that Cicero published so large a number of orations would seem to prove that he was at least not desirous of making a secret of his professional methods. Not all orators had the frankness to publish, as Cicero himself observed. Neither does he seem ever to have shocked the moral sensibilities of his contemporaries...when he made frank admission of employing a trick, the Romans might have thought him boastful, but scarcely iniquitous.76

To Cicero and his fellow Romans, both contemporaries and those in future generations (e.g. Quintilian), the act of "throwing dust in the eyes of the jury" was not evidence of duplicity of which the speaker ought to be ashamed, but of his skill and cleverness as an orator, which was part of the image he wished to leave behind. Just as petty contradiction and clever manipulation of fact are part of the reputation as an orator which Cicero wanted to advertise, so also they do not stand in the way of conceiving of a larger purpose for the publication of the speeches.

It is clear from remarks in Cicero's letters, rhetorical treatises and the speeches themselves that he had in mind the succeeding generations of Roman statesmen as one potential audience for his published orations. In a letter to Atticus regarding the

publication of his consular orations, Cicero mentions that he is sending along some speeches written (i.e. published) expressly for the purpose of influencing the *adulescentes* of Rome: *Orafiunculas autem, et quas postulas, et plures etiam mittam, quoniam quidem ea, quae nos scribimus adulescentorum studiis excitati, te etiam delectant* (ad Att. 2.1). Elsewhere, he speaks of publishing a particularly good speech for the benefit of young emulators: *Itaque oratio iuventuti nostrae deberi non potest...* (ad Att. 4.2). In the *Brutus*, Cicero acknowledges that his published orations have had some influence on the rising generation of Roman orators: *...certe enim et boni aliquid adulimus iuventuti, magnificentius quam fuerat genus dicendi et ornatus...* (32.123).

Thus, in his own words, Cicero claims that one intention of the published speeches is to influence the younger generation of orators, just as he himself was influenced by preceding generations of leading Roman orators and statesmen, as he reveals in the *Brutus* and *De Oratore*. Cicero emphasizes in the *Brutus* the importance of putting speeches into written form after the occasion of their delivery has actually passed. Writing out a text of a speech, he asserts, not only is the best exercise for improving one’s oratorical skills but also provides the orator with a means of leaving behind a memorial of his talents for posterity (*...memoriam autem in posterum ingeni sui non desiderant...,* 24.92). Elsewhere in the *Brutus* he expresses regret that this type of monument does not exist for Antonius and Crassus, and here he makes it clear that he means that their writings would be memorials to the men themselves as well as to their oratorical skills: *cum enim omnibus memoriam sui tum etiam disciplinam dicendi nobis reliquissem*, (44.163). In the *De
Oratore one of Cicero's stated goals is to memorialize by his writing the names and renown of certain great orators who failed to do this for themselves:

...ab oblivione hominum atque a silentio vindicarem.
Nam si ex scriptis cognosci ipsi suis potuissent, minus
hoc fortasse mihi esse putassem laborandum ... debere hoc
a me tantis hominum ingeniiis putavi, ut, cum etiam nunc
vivam illorum memoriam teneremus, hanc immortalem redderem,
si possem. (De Orat. 2.2.7-8)

From a careful review of the evidence contained in the Brutus, Stroh contends that the "Hauptmotiv" for the publication of the speeches was to provide models for students of rhetoric to follow in their school compositions -- "für die Zwecke der rhetorischen Bildung" -- and suggests that the published speeches represent primarily exemplars of persuasion. But the rhetorical treatises, as Cicero himself notes in the Brutus, are primarily didactic, and their aim is to expound specifically on the eloquence and the oratorical skill of the predecessors that Cicero so greatly admired. The contents of these didactic treatises, then, do support the theory that the purpose of the preservation (via publication) of speeches was to leave them behind as a monument to the speaker's skill

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77Stroh, p. 52. Stroh does acknowledge that there must have been some political motive for pamphlets such as the second Philippic (p. 51): Ciceros Reden müssen auch in ihrer schriftlichen Fassung politische Wirkung gehabt haben. Aber das eine ist mit Entschiedenheit zu bestreiten: Der Einfluss auf die (politische) Meinungsbildung ist nicht das Hauptmotiv der Redenpublication.

Like Stroh, most scholars acknowledge both pedagogic and political motives behind Cicero's publication of the speeches. See, for example, C.J. Classen, Recht, Rhetorik, Politik (Darmstadt, 1985), esp. pp. 5-13; Crawford, The Lost and Unpublished Orations, pp. 3-7; Settle, "The Publication of Cicero's Speeches", pp. 47ff.; Robert Cape, "On Reading Cicero's Catilinarian Orations", Diss. UCLA, 1991, 8-9, 26-32.

38Brutus 17.65.
and cleverness to be studied, emulated and remembered by future generations of orators as models of rhetorical excellence, and this motivation for publication cannot be wholly discounted, but it was surely not the only motivation for Cicero. The rhetorical works give rhetorical reasons for publishing speeches, but simply because Cicero does not spell out for us his personal "ulterior motives" for publication are we to believe that it was only the oratorical style of the Roman youth on which he hoped to leave an impression, or was there some other impression which he wished to leave -- an impression of Cicero the statesman, the politician, the patriotic hero -- in addition to Cicero the leading orator at the Roman bar?

Stroh uses evidence of patent political contradictions (e.g. the treatment of the Gracchi as heroes (when addressing the people) and villains (when addressing the Senate) or the adoption of different postures on the Egyptian question in the consular orations) to support his argument for the paedagogical motive of producing exemplars of persuasion taking precedence over the motive of making political pamphlets. I will argue, however, not that the primary motive of the published speeches was to produce political pamphlets, but that in their role as exemplars of persuasion they present the reader with not merely models of rhetorical excellence, but with Cicero himself, ever present in the speeches, as a paradigm of the Roman orator and the Roman statesman, and that the discrepancies pointed to by Stroh do not preclude us from reading the speeches as records of the orator's career.


First, it should be noted that there is never a discrepancy in the way Cicero portrays himself in the speeches. As the rising young star in the Roman courts, he plays the courageous young advocate determined to take on dangerous political powers to save Sextus Roscius, and he assumes the role of savior of the Roman allies, the Roman system of justice and the Roman Senate in the process of his prosecution of Verres. As a man of consular rank at the height of his career, Cicero becomes the self-styled and then the publicly proclaimed savior of the Republic, and it is this ethos as Rome’s greatest hero which he brings to every speech thereafter. Second, if we examine the actual passages containing the supposed discrepancies in Cicero’s views on the Egyptian annexation in the speeches De Lege Agraria 1 & 2 and his praise of the Gracchi, we are able to see that these passages do not represent drastic changes in position from one speech to another. In the first speech De Lege Agraria delivered in front of the Senate, Cicero strongly speaks out against the proposal of Rullus (Haec, per deos immortales! utrum vobis consilia siccorum an vinulentorum somnia et utrum cogitata sapientium an optata furiosorum videntur (Agr. 1.1.1). In the second speech on this issue, delivered in front of the people, his opposition to the measures proposed by Rullus has not changed, although, as Laurand observes, he is much less vehement in his opposition, and not wanting to appear to go against popular opinion, he uses a less forceful, more conciliatory type of persuasion.81

Hic ego consul populi Romani non modo nihil iudico sed ne quid sentiam quidem profero. Magna enim mihi

81 Laurand I, pp. 14-15: "Devant le peuple, il est bien plus réservé ... C’est qu’il ne veut pas contrarier le désir bien connu du parti populaire."
res non modo ad statuendum sed etiam ad dicendum videtur esse. ... Hac tanta de re P. Rullus cum ceteris viris conlegis suis iudicabit, et utrum iudicabit? Nam utrumque ita magnum est ut nullo modo neque concedendum neque ferendum sit. 
Agr. 2.16.42-43.

The praise of the Gracchi at De Lege Agraria 2.5.10, according to Laurand, contradicts the position taken by Cicero in speeches given in the Senate, such as the Catilinarian orations, in which the orator proclaims that they were justly killed in the interests of the Republic.  
However, Cicero’s words in the De Lege Agraria do not contradict his position that the actions of the Gracchi were dangerous and provided a precedent for judicial murder.  
He says that they were clarissimos, ingeniosissimos, amantissimos plebei Romanae viros (Agr. 2.5.10) and asserts that it is no crime to praise their legitimate accomplishments:

Non sum autem ego est consul qui, ut plerique, nefas esse arbitrer Grachos laudare, quorum consiliis, sapientia, legibus multas esse video rei publicae partis constitutas. Agr. 2.5.10

This praise of the Gracchi in a speech to the Roman people of course represents a persuasive exigence, but it does not compromise Cicero’s overall position on the subject of their murders as beneficial to the state as a whole,  
and therefore does not undermine

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Laurand l., p. 16.

In Cat. 1.1.3, 1.2.4. Cf. De Officiis 2.43.

De Officiis 2.72 helps to clarify Cicero’s opinion of men like the Gracchi. In his discussion of beneficia which are done to individuals as compared to those done for the Republic, Cicero uses the grain laws of Gaius Gracchus as an example of beneficia to certain individuals (i.e. the Roman plebs) at the expense of what was good for the state as a whole: Danda opera est omnino, si possit, utrisque, nec minus, ut etiam singulis consulatur, sed ita, ut ea res aut prosit aut certe ne obsit rei publicae.
the view of the speeches as both a monumentum to the orator’s public career and a broadly coherent, self-styled literary portrait of the orator himself.

Cape rightly argues that in addition to models of style, Cicero’s speeches may have served as models of political life for the young followers of Cicero and he draws a profile of the adulescentes of the time to whom the speeches may have appealed as examples of political policy to be emulated. Cicero explicitly addresses the Roman adulescentes in the Pro Sestio, exhorting them to follow in the footsteps of their ancestors and of certain "hominis novi" (likely having one novus homo particularly in mind):

...vosque, adulescentes, et qui nobiles estis, ad maiorum vestrorum imitationem excitabo, et qui ingenio ac virtute nobilitatem potestis consequi, ad eam rationem in qua multi homines novi et honore et gloria floruerunt cohortabor. (65.136)

Indeed, Cicero himself, when remarking upon the preeminent orators of previous generations, praises their qualities as statesmen as well as their oratorical style, which suggests that he was influenced by them as political role models as well as stylistic ones as a young man. That the orator was influenced in this way by Demosthenes, whom

C. Gracchi frumentaria magna largitio; exhauriebat igitur aerarium... The key to Cicero’s remarks in front of the people, then, is plebei Romanae. It is true that the Gracchi accomplished many things, but their efforts were on behalf of the plebs and at the expense of the Republic as a whole. Cicero’s words to the people, therefore, acknowledging the accomplishments of the Gracchi merely leaves unexpressed for the purpose of rhetorical exigence Cicero’s abiding sentiment that because they had put the interests of a particular group in front of the welfare of the state, their deaths were justified.

Cape, pp. 28-32. Cape, however, limits this to the political speeches, excluding the forensic orations, which very often contained political overtones and undertones.

For example, at Brutus 17.65, Cicero’s allusion to the statesmanship of Cato: At quem virum, di boni! mitto civem aut senatorem aut imperatorem - oratorem enim hoc loco quaerimus. Cape pp. 28-29 suggests that this may have also been the case
he praises as the most accomplished of all the Attic orators, and whom his publication of the consular orations explicitly imitates (ad Att. 2.1), is shown by the example of Cicero's Philippics. In addition to his remarks to Atticus indicating that by his publishing speeches as a way of recording res gestae he is following the example set by Demosthenes, as C. Wooten notes, he likely saw in Demosthenes' political program a position similar to his own at the time of the Philippics, and therefore not only is the style of these speeches consciously imitative of the style of Demosthenes' speeches of the same name, but they indicate an emulation of Demosthenes' statesmanship as it is manifested in his speeches. 

It stands to reason that Cicero expected and intended for his published speeches, both political and forensic, to have a similar effect on succeeding generations. After all, what better way to keep his reputation as an orator and a man of action alive than to leave them behind in literary form for the study of future generations? Therefore, the two purposes for the publication of the speeches, didacticism and self-promotion, are actually extensions of each other. This is perhaps nowhere more clear than in the speeches that brought his career to a close and his life to an end -- certainly, Antony's revenge upon Cicero is a mute but eloquent image of the real political action which speech publication is and remains.

with the speech of Crassus mentioned at Brutus 44.164: [the speech] "which Cicero called quasi magistra, may have served Cicero not only as an exemplum dicendi, but as an example of policy."

We know from the letters that Cicero and his contemporaries made a practice of circulating copies of their speeches among their peers. Publication of the speeches, whether their original occasion had been political or forensic (or whether there had been an occasion of delivery at all), afforded Cicero the opportunity to present his views on a given situation, along with his words and actions, "for the record". As Crawford notes, "merely giving speeches...was not enough...By publishing his speeches, the orator could ensure the dissemination of his views and, if possible, his success in court or government to a much larger audience than the one originally addressed." Kennedy, in his study of the Roman orator's use of the rhetoric of advocacy, points out that Cicero, in one early speech, as he employs his personal ethos on behalf of his client, places himself "on the public stage as a candidate for many future roles." Ethical argument is, of course, central to the forensic persuasive process, but it is also a way for Cicero to construct his autobiography and put forward his own political agenda within the pleading of a case.

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\[\textit{e.g. ad Att. 1.13; 13.44; 15.1a.}\]

\[\text{It is not unheard of even in modern times to publish a speech "for the record". For example, Richard Murphy ("The Speech as a Literary Genre", }\textit{OJS 44 (1958) 117-127})\text{ notes that "Senator Joseph R. McCarthy, when under consideration for censure by the Senate, released a speech which was front-paged across the country. He was so busy he did not actually speak it, but had it 'inserted in the RECORD'."}\]

\[\text{Crawford, }\textit{The Lost and Unpublished Orations},\text{ p. 4. Settle, "The Publication of Cicero's Orations", gives one example of just how far this dissemination of the view expressed in a published speech could go, citing on instance in which Cicero sent a volume of speeches to his brother Quintus who was with Caesar's army in Gaul: "When Cicero's orations arrived in Gaul they were read not only by Quintus, but undoubtedly by a large number of Quintus', or even Caesar's staff." (p. 47-8).}\]

\[\text{Kennedy, "Rhetoric of Advocacy", 432.}\]
Just as this element in the delivered speech puts these things before the listening audience, the published speech puts Cicero and his agenda "on stage" for a reading audience. In the published speech, the rhetoric of advocacy becomes the "record of advocacy".

Therefore, when Cicero details his personal and political struggles and triumphs, when he constantly reminds the audience of his role as conservator rei publicae,92 and when he takes every opportunity even within a judicial oration to illuminate and advocate his political agenda, are we to assume that he hoped future generations of orators would admire and remember only his cleverness in speaking, his effective use of rhetorical tricks, and his eloquent style?93 Cicero’s words to Atticus (ad Att. 2.1) regarding the publication of his consular orations are indicative of the orator’s awareness of the series of functions that the published speeches could serve.

In this letter Cicero specifically refers to the published speech as a means of securing glory and renown for himself in ages to come, saying that his aims are to achieve by the publication of his consular orations the same fame which Demosthenes gained by the publication of his Philippics:

Fuit enim mihi commodum, quod in eis orationibus quae
Philippicae nominantur eniterat eis ille tuus Demosthenes,
et quod se ab hoc refractariolo iudiciali dicendi genere
abiunxerat ut σεμνότερος τις καὶ πολιτικότερος videretur,

92This is the image of himself which Cicero consistently constructs in the consular speeches (In Catilinam I-IV, Pro Murena), as well as the speeches of the post-reditum period (Post Reditum in Senatu, De Haruspicium Responsis, De Domo Sua, Pro Sestio, etc.).

93We know that Cicero preferred to speak last where he could dwell upon the larger political and ethical issues. So again, speaking and acting are not different -- but inextricable and interpenetrating roles. (cp. ago).
curare ut meae quoque essent orationes quae consulares nominarentur.\textsuperscript{94}

Furthermore, Cicero explicitly states that it is not merely his oratorical skill which he wants to endure, but a record of his achievements as consul:

Hoc totum \textit{seam curabo ut habeas; et quoniam te cum}
scripta tum res meae delectant, isdem ex libris
perspicies et quae gesserim et quae dixerim... (\textit{ad Att.} 2.1.3)

This same letter provides a further glimpse into Cicero’s desire to be memorialized in the written record as he reveals that both he and Atticus have written accounts of his consulship and that he had given his memoirs to the historian Posidonius with a request for a more elaborate (\textit{ornatus}) version. Cicero makes a similar request to Lucceius in a letter (\textit{Fam.} 5.12) asking him to write a history of the Catilinarian conspiracy.\textsuperscript{95}

Cicero’s sentiments expressed to Atticus that the published speeches could serve as a memorial of \textit{res gestae} in addition to \textit{memoria orationis}, his openly expressed desire to be immortalized in the written record, and his own experience that speeches could serve as examples of statesmanship to be followed, and not just as stylistic models, as manifested in his emulation of both from the example of Demosthenes, all combine to suggest that this must have been at least one motivation for the publication of his own speeches. Whether the motive was self-promotion (portrait of the up-and-coming young orator and politician in early speeches such as the \textit{Verrines} and the \textit{Pro Cluentio}),

\textsuperscript{94}\textit{ad Att.} 2.1.3. Note emphasis on \textit{civis}. It is Demosthenes the Athenian \textit{citizen} (i.e. statesman), the \textit{συμφόρος τις δει πολιτικότερος} that Cicero is striving to emulate.

\textsuperscript{95}Cf. Caelius’ request to Cicero (\textit{Fam.} 8.3) to be included in Cicero’s written "monuments".
commentary on political situations (portrait of the savior of Rome in the Catilinariums, Pro Sestio, Pro Milone), or plainly political invective (Philippics), one thing is constant -- Cicero consciously constructs a portrait of himself and his political career throughout the corpus of speeches, with the result that we are in possession of a chronicle of his life which was developed through this self-portrayal throughout his oratorical career.

Finally, it should not be overlooked that Cicero chose carefully the speeches which he would (and would not) publish, and which, consequently, would represent his career as part of the written record. Crawford objects against Stroh that if the publication of speeches was primarily motivated by didacticism, all of the speeches should have been published, or if not all, perhaps only the successful ones (in which case the Pro Milone should not have been published). She cites the motivation of political expediency in the orator’s decision to publish, and raises the question “should we really expect that an intelligent and decorous man would have somewhere informed his readership that he had ulterior motives in presenting them with copies of his speeches?” This also goes along with his literary intentions. As he reveals in his letter to Lucceius, a historical account of his career written by himself was not a sufficient or altogether appropriate medium for the transmission of his fame:

...scribam ipse de me, multorum tamen exemplo et clarorum virorum. Sed, quod te non fugit, haec sunt in hoc genere vitia: et verecundius ipsi de sese scribant necesse est, si quid est laudandum, et praetereant, si quid reprehendendum est. Accedit etiam ut minor sit fides, minor auctoritas.

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6 Crawford, p. 7.

7 Ibid.
multi denique reprehendunt et dicant veruciundores esse praecores ludorum gymnicoerum, qui cum ceteris coronas imposuerint victoribus eorumque nomina magna voce pronuntiarint, cum ipsi ante ludorum missionem corona donetur, alium praecernem adhibeaut, ne sua voce se ipsi victores esse praedicent. (Fam. 5.12.8)

There is no doubt that Cicero wanted his career memorialized. But this was not the only intention for the published speeches. Certainly, it must have been one of the intentions, in addition to, although not to the exclusion of didactic or political considerations. In view of his claims to modesty which went along with the desire to be remembered in the right way, however, it is not surprising that nowhere in the rhetorical treatises and only once in a private missive to Atticus does Cicero admit to this intention for publication of his speeches.

Although, as I have mentioned above, in the published speeches we only get Cicero’s version of events, and not an objective historical record, this only supports the theory that Cicero must have considered the dissemination of his version, his personal views, and his role in these events in his decision to publish the speeches. Petersson remarks on the published speeches:

"...[they] took the place of modern newspaper reports and interviews. They were intended not merely to spread the author’s professional reputation and to give to the public his view of an important case or public question, but also to set before the Romans the kind of picture that he wanted them to have."98

98Petersson, p. 3. Cf. Cicero’s assertion (Brutus 16.62) that the funeral orations which serve to record the illustrious deeds and glory of a man and therefore his family are often misleading in terms of history: Quamquam his laudationibus historia rerum nostrarum est facta mendosior. His objection is that these speeches often contained false information such as an exaggerated number of triumphs, political honors, adoptions. The personal depiction of himself in the published speeches is not
it would necessarily follow, then, that Cicero would perforce include in his published speeches explanations, topical comments, and descriptions of the events that would not have been necessary or appropriate in the actual speech in the courtroom situation to give the audience the view of the events that an audience present on the actual occasion would already have had.

As a forensic speech which is known to have undergone significant revision as Cicero manipulated it into its extant form, the Pro Milone provides an apt example of a speech which has been reworked with literary intentions. It is my view that Cicero, by employing the rhetoric of advocacy, consciously places Milo’s case into the context of his own career, thus affording him the opportunity for self-representation in the speech. In the chapters which follow I will approach the Pro Milone as a work of rhetorical literature in which Cicero incorporates forensic, literary and epistolary intentions. Chapter two will examine the unity of logos and the coherence of the forensic argument of the speech. Chapter three will look at the ways in which ethos performs the forensic function of the rhetoric of advocacy as well as the literary function of representing the ethical matrix of Milo, Pompey and Cicero himself both in the context of the immediate rhetorical situation and in terms of the larger political context of that turbulent period in the Republic. Chapter four will examine the pathos of the speech in its forensic function of influencing the jurors through emotional appeal, its literary function of recording Cicero’s

misleading in obvious ways such as those which are criticized by the orator in the Brutus, but, just as we get only one side of a case in Cicero’s speeches (see p. 3 above), we only get one side of Cicero - and that is the Cicero that he wanted the public and his future readers to see. He sets before us in the published orations not an objective portrait, but the public image, the ethos which he wanted frozen in time as part of the written record.
commentary on the injustices endured by the saviors of the Republic, and its epistolary
function of consoling Milo in the manner of a personal consolatory epistle. Thus, in the
chapters which follow, I will examine the way in which Cicero manipulates the forensic
constructs of ethos, pathos, and logos into a literary context which moves beyond the
primary goal of persuading a jury to the aim of presenting the reading audience - made
up of his peers, Roman adulescentes, and posterity - with a version of the events and the
participants the way he would have them remembered. When considered in this context,
certain elements of the speech which have bedeviled scholars because they fit the forensic
argument only awkwardly (the extra-causam section, the state benefit line of defense, the
lengthy peroration) can be explained more satisfactorily.
CHAPTER II

Logos and the Prosecution of Clodius

In this chapter I will examine the logical unity of the persuasive process of the Pro Milone, and the way in which the two lines of argument -- self-defense and state benefit -- work together throughout the speech. Based on a statement in Asconius, it has often been assumed that the entire line of defense using the argument that Clodius' death was a benefit to the state was not part of Cicero's original defense of Milo, but was a later addition for the published version. Coincidently, it is within this line of defense that the elements of Cicero's personal agenda appear most prominently. This does not, however, mean that Cicero's personal agenda was absent from the delivered speech or from the sections which do not deal with state benefit. Granted that time constraints and other intimidating factors must have limited the opportunity for Cicero's ethical arguments and self-presentation, I will show that the foundations of the ethical argument are present throughout just as the legal argument for self-defense is never abandoned. In this way

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1Asconius, In Mil. 41.


3These elements will be considered in detail in chapters two and three where we will examine, for example, the ethos of patron-client identificaton with Milo and the pathos of consolation and apology in the peroration.
I will argue for the coherence of the published speech and against any facile attempts to excerpts passages as clearly added after delivery. If this means that we must feel less certain about the relationship between Cicero’s published and delivered versions, it also means that we can appreciate more fully the coherence of the speech we have and its function as a monumentum both of Cicero’s rhetoric and of his statesmanship.

In his analysis of the syllogistic argumentation of the speech, Craig concludes rightly that “the two lines of argument are, in effect, pleaded concurrently.” In his view, the speech can be divided neatly into two distinct arguments -- a constitutio definitiva proving self-defense, which is found in the first half (30-66) of the speech, and a constitutio generalis proving state benefit, which is found in the extra-causam section (72-91) -- and that the enumeration of Clodius’ crimes does “double-duty” in support of both premises. The argumentation of the speech does not, however, break down as clearly as he would have it into two distinct lines of defense represented by the two major sections of the speech. Although it is true that the state benefit line of defense “will finally come to the forefront as the second part of the argumentatio (72-91),” it is not because, as Craig suggests, Cicero decides to “make the concession of Milo’s intent to kill Clodius, and show that he should still not be punished.” Nowhere in this speech does


5Ibid. p. 184.

6Ibid. p. 184.

7Ibid. p. 189. Ralph Johnson (“Varieties of Narrative in Cicero’s Speeches”, Diss. Berkeley, 1967, p. 54) also sees this as an apparent concession on Cicero’s part of Milo’s guilt and claims that it ruins his whole case.
Cicero concede that Milo killed Clodius with intent. What Craig’s analysis of the speech does not take into account is the contrafactual and hypothetical nature of Cicero’s supposed concession of Milo’s deed. The extra-causam section of the speech does not represent the abandonment of the original line of defense in favor of the state benefit defense. What it does represent is an opportunity for the orator to elaborate on the point which has been the underlying premise of the speech all along -- that Clodius’ death held a wider significance for the Republic. It was not a case of random violence between inimici, but the final defeat of a hostis by the conservator rei publicae. The unity of the argumentation of the published Pro Milone, therefore, does not come merely from the double use of example to support two lines of argument, but from the consistency of Cicero’s maintainence of the self-defense argument throughout the speech as a "legal" reality underneath which the further ideal claim of state benefit is developed. Both lines of defense combine to make up the constitutio iuridicalis on which the defense rests.¹

The fact that Clodius was killed as a result of the confrontation between his gang and Milo’s cannot be denied by Cicero, but his case will turn on the juridical issue of whether the act was justifiable. This juridical issue in turn is divided between the two primary arguments of the speech: 1) the pars absoluta, which relies upon the actual events of that night (Cicero’s version of those events, at least), and argues that it is right to act in self-

¹At section 78 Clodius is explicitly termed hostis by Cicero.

²Craig, p. 198.

³Ad Her. 1.14.24. Iuridicalis constitutio est cum factum convenit, sed iure an iniuria factum sit quaeritur. Eius constitutionis partes duae sunt, quorum una absoluta, altera adsumptiva nominatur.
defense against a violent aggressor and 2) the *pars adsumptiva*, which works toward inducing the audience of jurors to consider the broader significance and circumstances surrounding Clodius’ death and argues that the murder of Clodius can be justified as a benefit to the Republic. Thus, while it may be the case that Cicero felt that his *defensio* was *infrima*, and while this consideration no doubt led to the *adsumptiva pars* which others have seen as added to the published version, Cicero nowhere grants as much in the published version. The death of Clodius was a benefit to the Republic and the murder of Clodius was justified. In the terms of the handbook, Clodius’ death was *recte factum et honeste*.

The facts of the case, had Cicero adhered to the truth as it actually transpired, would render the defense of Milo a case of the dishonorable kind (*genus turpe*). Clodius was murdered in cold blood on Milo’s order after he had taken shelter at a nearby inn following the initial confrontation on the Appian Way. The state benefit defense, however, which, I will argue, is always present but never adopted as the orator’s formal position in the argumentation of the speech, represents an attempt to present the case as

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12 Cf. *Ad Her.* 1.14.24. *Adsumptiva pars est cum per se defensio infrima est, adsumpta extraria re conprobatur.*

13 *Ad Her.* 1.3.5. *Genera causarum sunt quattuor: honestum, turpe, dubium, humile. ... Turpe genus intellegitur cum aut honesta res oppugnatur aut defenditur turpis.*

14 Asconius, *In Mil.* 32
if it were one of the honorable kind (genus honestum). Presented this way, the case extends beyond the question of self-defense against pre-meditated vis, which is the "formal" plea, but becomes a matter of a fortis vir committing justifiable and heroic tyrannicide (cf. section 35 in which Clodius is explicitly termed tyrannus). This is the impression of Milo that we glean from the speech, although the orator deliberately creates it by arguing it indirectly. In fact, throughout the speech, the state benefit defense is presented hypothetically and takes the form either of praeteritio or contrafactual conditional statement. Even in those later sections of the speech in which this line of defense comes to the forefront, the self-defense argument is effectively never abandoned, nor at any point does Cicero come right out and say "Milo did this and it was the right thing to do", but he is very careful to make these points hypothetical or conditional, so as not to undermine the purported main premise of the speech that the killing occurred during a purely defensive stance taken by Milo and his men and, more importantly, that the actual killing of Clodius happened without Milo's knowledge or consent. May suggests that the use of the apparently fabricated self-defense story, followed by the extra-

15 Ad Her. 1.3.5. Honestum causae genus putatur cum aut id defendimus quod ab omnibus defendendum videtur, aut oppugnabimus quod ab omnibus videtur oppugnari debere, ut pro viro forti, contra parricidam.

16 So, Riggsby, p. 193, who takes this as evidence of "anxiety surrounding the use of the state benefit defense" because this line of defense is "broached so timidly" (p. 198). Against this, however, I would argue that the state benefit defense is only timid in the Pro Milone if you ignore the rhetorical effect of the device of praeteritio and the use of unreal conditions. Cf. the seriousness of the orator's denials in praeteritio/contrary-to-fact in the Pro Caelio, for example. Is Cicero to be thought timid or is he being wickedly clever when he insists that it is a woman "most unlike you, Clodia" who would act this way... (Pro Caelio 38, 48-50).
causam section arguing state benefit "...seems to reflect a deliberate strategy of first 
providing the jury with a legal out, and then inducing in them a patriotic desire to take 
it".17 His summation of the two lines of argumentation in the speech is accurate, since 
the self-defense argument (although it is a lie and many in the audience must have known 
it was a lie) has a firm legal (i.e. statutory) basis, and thus would provide the "legal out" 
for a jury should they choose to believe (or pretend to believe) Cicero’s story. The two 
lines of argumentation cannot be divided so neatly, however, into first arguing self-
defense and then arguing state benefit to make the jury want to accept self-defense. 
Rather, inducing this desire in the audience, which is accomplished by depicting Clodius 
as a ruthless and dangerous aggressor, is present throughout the speech even as the orator 
is "formally" arguing self-defense, and it is for this reason, moreover, that it is vital to his 
pose to prove premeditated vis on the part of Clodius instead of the much easier solution 
of accidental meeting.18

17May, "The Ethica Digressio and Cicero’s Pro Milone: A Progression of Intensity 
from Logos to Ethos to Pathos", CJ 74 (1979) 245.

18Riggsby posits that Cicero’s decision to argue premeditation on Clodius’ part reflects 
a "general tendency in these cases of fact to produce an alternative defendant, a 
scapegoat." (p. 189). It is not only a question of needing a scapegoat, however, but of 
needing to present Clodius as a menacing presence in the Republic, as well as an 
immediate threat to Milo. See also Wellesley, who suggests that "...prosecuting counsel 
played into Cicero’s hands by attempting to show that Milo had premeditated an 
ambush...For it was as easy -- or as difficult -- to prove the converse...Above all, he was 
only too glad to accept this heaven-sent invitation to sweep under the carpet a third and 
more damaging explanation -- that Milo had...ordered the death of an enemy whom he 
had encountered by chance..." (Wellesley, 27).
The state benefit defense is integrated into the speech by means of insinuation, which is one of the two ways of opening a speech prescribed by the rhetorical handbooks.\textsuperscript{19} This chapter will demonstrate how the state benefit defense works as a subtext to the self-defense argument in the first two-thirds of the speech, which consist of a \textit{constitutio iuridicalis absoluta} (7-30) and a \textit{constitutio conjecturalis} (31-71), both of which are argued in textbook rhetorical fashion and contribute to Milo's defense in their own right, while at the same time leading up to and anticipating the \textit{pars adsumptiva} which complements (with the \textit{pars absoluta}) the \textit{constitutio iuridicalis}, and brings the speech to a level of \textit{pathos} suitable for the following peroration.\textsuperscript{20} In this way the state benefit defense comes to the forefront, evolving out of the self-defense argument, and proves to have been present as an underlying premise all along. It is significant, however, that it is never explicitly stated as such, since the claim of self-defense is never abandoned.

From the very beginning of the speech, Cicero contends that his client is concerned only with the best interests of the Republic (1,3,5) and in the proposition and division section (6) with which the \textit{exordium} concludes, he sets up the defense exactly as it will play out in the rest of the speech -- that is, "officially" his pleading on Milo's behalf will revolve around his proof that Milo acted in self-defense when ambushed by Clodius and his gang on the Appian Way. This \textit{exordium} follows the precepts of the rhetorical

\textsuperscript{19}De Inv. 1.15.20. Insinuatio est oratio quadam dissimulatione et circumuitione obscure subiens auditoris animum. Cf. Ad Her. 1.6.9.

\textsuperscript{20}Cf. May, "Ethica Digressio", 246.
handbooks. Endeavouring to secure good will (benevolentia) for his case, the orator begins with a declaration of aporia\textsuperscript{21} (1-2), classifies the case as one of "us" (the boni) against "them" (the improbi) (3,5)\textsuperscript{22} and reminds the jurors of his own as well as of his client's loyalty and service to the Republic, even in the face of misfortune (4-5).\textsuperscript{23} He attempts to make the audience attentive (attentos) by pointing out the universal importance of this case (de liberis suis, de patria, de fortunis, 3), and to make them receptive (dociles) by setting forth his defense in summary form in section 6.\textsuperscript{24} However, as all along the orator insists that he will only argue self-defense, he is in fact setting out his state benefit defense subtly by means of praeteritio and verbal echoes of his Catilinarian rhetoric, which will be considered in some detail in the next chapter. In other words, he formally establishes the legal claim of self-defense and at the same time he begins the insinuation of his "ethical" claim that Clodius was a hostis (a real threat to the well-being of the Republic) and that Milo, although without the authority of the SCU, acted as the defender of the state.

\textsuperscript{21}Cf. exordia of Pro Archia, Pro Clectio.

\textsuperscript{22}Cf. Craig, p. 167.

\textsuperscript{23}De Inv. 1.16.22. Benevolentia quattuor ex locis comparatur: ab nostra, ab adversariorum, ab iudicium persona, a causa. Ab nostra, si de nostris factis et officiis sine arrogantia dicemus.

\textsuperscript{24}De Inv. 1.16.23. 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 ad summam rem publicam pertinere; et si pollicebimur nos brevi nostram demonstraturas atque exponemus iudicationem aut iudicationes, si plures erunt. Dociles auditores faciemus, si aperte et breviter summam causae exponemus, hoc est, in quo consistat controversia.
Throughout section 6, Cicero vigorously asserts that his case will rest on the legal claim of self-defense alone. However, the whole passage takes the form of one long praeteritio — a denial of the line of defense that the orator declares he will not need and will not employ. It is significant that the state benefit argument is set up in an “unreal” construction from the beginning, since this is the way in which it will be used throughout the rest of the speech, as an entirely unreal hypothesis:

Quamquam in hac causa iudices, T. Annii tribunatu rebusque omnibus pro salute rei publicae gestis ad huius criminis defensionem non abutemur. Nisi oculis videritis insidias Miloni a Clodio esse factas, nec deprecaturi sumus, ut crimen hoc nobis propter multa praecelara in rem publicam merita condonetis, nec postulari ut, quia mors P. Clodii salus vestra fuerit, idcirco earn virtutis Milonis potius quam populi Romani felicitati adsignetis. Sin illius insidiae clariores hac luce fuerint, tum denique obsecrabo obtestaborque vos, iudices, si cetera amissimus, hoc nobis saltem ut relinquatur, vitam ab inimicorum audacia telisque ut impune liceat defendere. (6)

This section claiming Cicero’s intention not to take the tactical position that Milo acted as the savior of the Republic follows immediately the patron-client identification of section 5, in which the orator equates/comparres Milo to himself (nobis duobus) and the trouble caused by his patriotism and courage on behalf of the state (...semper pro bonis contra improbos, 5), echoing the way in which Cicero consistently refers to his own career.25 On the heels of this identification of Milo with himself in his role as public

25Cf., eg., Pro Sestio 46.99-100: Qui cum tutores sunt et duces suorum studiorum vitiorumque nacti, in re publica fluctus excitatnur, ut vigilandum sit iis qui sibi gubernacula patriae depoposcerunt, entendumque omni scientia ac diligentia ut, conservatii iis quae ego paulo ante fundamenta ac membra esse dixi, tenere currum possint et capere oti illum portum et dignitatis. Hanc ego viam, iudices, si aut asperam atque arduam aut plenam esse periculum aut insidiarum negem, mentiar, praeceptim cum
benefactor, Cicero builds the praeferitio of the proposition and division section upon the scenario of the salvation of the state by one brave citizen, including at least one obvious verbal echo of his first speech In Catilinam.24 In this context, it becomes clear that it would be preposterous to believe that the orator really meant not to rely upon this line of defense. Milo, who (like Cicero) had always acted in the best interests of the Republic, became the victim of an insidiator, the defeat of whom meant the salvation of the state. Thus, Cicero reveals his actual strategy for the case: he will take a case of Milo vs. Clodius as inimicus and turn it into Milo vs. hostis of the Republic with his claims that the death of Clodius resulted in the safety of all the citizens of Rome, thereby eclipsing in importance the actual crime by the universality of its benefit -- all in an "unreal" construction, without ever needing to concede his original legal point.

The next fifteen sections (7-22) of the speech are devoted to the refutation (praemudicia)27 of the charges brought up by the prosecution against Milo.28 The placement of the refutation in the Pro Milone does not follow the customary order. Instead of following the argumentatio, it is placed immediately after the exordium and in

id non modo intelleixerim semper, sed etiam praeter ceteros senserim.

24:insidia clariores hac luce fuerint (6). This is not a stock phrase in Cicero, but occurs only three times in the entire corpus. Significantly, it is the very phrase he uses of Catiline's plans (In Cat. 1.3.6).


28:De Inv. 1.42.78. Reprehensio est per quam argumentando adversariorum confirmitio diluitur aut infirmatur aut elevatur. Cf. Ad Her. 1.3.4.
front of the narratio.29 By this unusual placement of the refutation, the orator accomplishes two things: first, he tears down the case of the prosecution before presenting his own version of events;30 second, he makes his narrative more plausible by establishing Clodius as a villain beforehand, thus imbuing his character with the "proper qualities" for his role in the scenario of the confrontation which Cicero will offer in his narration.31

Cicero answers the prosecution's three main assertions against Milo with arguments which are seemingly geared toward the self-defense strategy to which he has promised to adhere in section 6, but the argument serves a more general purpose as well. The picture of Milo as a good citizen is preliminary to the claim that he deserves to be recognized as a hero, just as the picture of Clodius as a pernicious citizen looks beyond the threat he was to Milo to his role as an enemy to the state as a whole.

The first point of the prosecution's case which Cicero is compelled to address consists of the generalized statement that all killing is wrong and that all murderers must be punished accordingly (necant intueri lucem esse fas ei qui a se hominem occisum esse

29Quintilian (Inst. Orat. 4.2.25) found the placement of the refutation in the Pro Milone noteworthy, and concludes that its placement served a useful purpose for Cicero's case: Sed hoc quoque interim mutat condicio causarum, nisi forte M. Tullius in oratione pulcherrima, quam pro Milone scriptam reliquit male distulisse narrationem videtur tribus praepositis quaestionibus; aut profuisset exponere quo modo insidias Miloni fecisset Clodius si reum qui a se hominem occisum fateretur defendi omnino fas non fuisset, aut si iam praedictio senatus damnatus esset Milo, aut si Cn. Pompeius, qui praeter aliam gratiam iudicium etiam millibus armatis cluserat, tamquam adversus ei timere tur. Ergo hae quoque quaestiones vim prohoemii optinebant, cum omnes iudicem praepararent.

30This performs the function of antidiegesis, which Johnson (p. 54) suggests should have been the type of narratio employed in this speech.

31De Inv. 1.20.29: Probabilis erit narratio...si personarum dignitates servabuntur.
The orator responds to this generalization as he begins his textbook handling of the absolute juridical issue (constitutio iuridicalis absoluta) with a list of precedents of justifiable homicide from Roman history. What is most significant about these precedents, however, is the fact that the examples with which he begins his argument are not instances of murder committed in self-defense, but are instances of killings which were necessary to save the state from the designs of dangerous citizens. Therefore, his list of examples contains the names of many of the most infamous revolutionaries in Roman history -- Tiberius and Gaius Gracchus, Spurius Maelius, Saturninus, and, finally, the Catilinarian conspirators who had been executed without trial, but for the good of the Republic (8).

After recalling the many killings which had been committed for the good of the state, Cicero comes up with a single historical precedent of murder in self-defense (...cum vi vis inlata defenditur, 9). The story he relates, however, is of the young soldier in Marius' army who is compelled to defend himself against the "indecent assault" of a military tribune by the use of deadly force and is subsequently pardoned by the general (9). But why does Cicero not tell a story of someone repelling a murderous thief? This would go along with the laws which he invokes from the Twelve Tables (9) and natural

32 See De Inv. 1.43.80: Quod pro credibili sumptum erit, id infirmabitur, si aut perspicue falsum erit...aut ex contrario quoque credibile aliquid habebit...

33 Ad Her. 2.13.19: Absoluta iuridicali constitutione utemur cum ipsam rem quam nos fecisse confitemur iure factam dicemur, sine uta adsumptione extrariae defensionis...constat igitur ex his partibus: natura, lege, consuetudine, iudicato, aequo et bono, pacto. Cf. De Inv. 1.42.79.

34 Loeb translation of vis.
law (10) governing self-defense against such an attack. The reason lies in the particular connotation of *vis* and its suitability to Clodius. It recalls Clodius' infamous impiety in the Bona Dea scandal\(^{33}\) as well as the other accusations of sexual deviancy which are customarily part of Cicero's Clodian invective.\(^{34}\) The recollection of Clodius' moral turpitude is a significant factor in the depiction of his death as a benefit to the state, since moral (especially sexual) excess was traditionally considered by the Romans to be harmful to the interests of the Republic. Catharine Edwards explores this phenomenon in her recent book:

Uncontrolled sexuality, as manifested in both adultery and homosexual activity, was felt to pose a threat to the moral order of the state. Those whose lack of self-control led them to these forms of sensual indulgence were the protagonists in Roman narratives of the tragedy of the republic — and vice versa. ... Men whose unbridled lust for power led them to be forces of political disruption were also accused of sexual behavior which was socially disruptive...Their actions were also culturally disruptive. Roman moralists perceived a connection between cultural changes (with which they associated homosexual relationships among the upper classes) and prosperity.

\(^{33}\)In 61 Clodius had been brought to trial for profaning the rites of the Bona Dea festival by appearing there in women’s clothing, but was acquitted by a bribed jury. For more detailed account of the charges and the trial, see Gruen, 273-6. Cf. Mil. 86 where this scandal is recalled and linked explicitly with the death of Clodius in the unrestrained invective of the *extra-causam* section: ...*nisi forte hoc etiam casu factum esse dicemus ut ante ipsum sacrarium Bonae deae...ante ipsam, inquam, Bonam deam, cum proelium commisisset, primum illud volnus acciperet quo taeterrimam mortem obiret, ut non absolutus iudicio illo nefario videretur, sed ad hanc insignem poenam reservatus.

\(^{34}\)For example, the implications of incest with his sister Clodia in the *Pro Caelio* (13.32, 14.34), and the references to the Bona Dea scandal in, e.g., *In P. Clodium et Curionem* (fr. 20-21). Cf. *Pro Sectio* 7.16-17, 17.39; *De Domo Susp* 34.92; *De Har. Resp.* 5.9, 18.38; K. Geffcken, *Comedy in the Pro Caelio* (Leiden, 1973), pp. 82-86.
on the one hand, and political breakdown on the other. Real Romans only had sex with their wives and even then not too often." 37

The second point of the prosecution to be answered by Cicero — the fact that the confrontation on the Appian way which had resulted in the death of Clodius had been declared contra rem publicam — would seem to provide the orator with a perfect opportunity for using the argument that the killing of Clodius was, on the contrary, in the best interests of the Republic. 38 Cicero does not, however, come right out with this line of defense by proclaiming that Clodius' death has meant the salvation of the state, as he will argue in later parts of the speech (72-91). 39 Instead, he attempts to confront the unavoidable obstacle presented by the Senate's pronouncement and to minimize its effect by illustrating how the senators had overwhelmingly shown their support for Milo in the days leading up to the trial (12) and by pointing out the fact that it was not the Senate that had mandated the special process under which Milo was being tried - indeed they had not even thought it necessary (13). Thus, he claims, so far from judging that the murder

37 Catharine Edwards, The Politics of Immorality in Ancient Rome (Cambridge, 1993), 91-2. Cf. this type of invective used by Cicero against Catiline (e.g. In Cat. 1.13) and Antony (e.g. Phil. 2.3.6, 2.6.14-15, 2.18.44-46, 2.24.58, 2.25.61). See also R.G.M. Nisbet, ed. Cicero: In Pisonem (Oxford, 1961), pp. xiv-xvi, who reminds us that even Cicero himself is known to have been the target of this type of invective by his political enemies.

38 So, Craig, p. 155: "Vis implies action contra rem publicam, thus sanctioning justification of an act pro re publica...". But Stone (91), attempting to prove that the state benefit defense is only to be found in later additions to the speech, argues that just the opposite is true: "If the violence which culminated in Clodius' death was declared by law to be contra rem publicam, Cicero was not at liberty to found a defense on its being pro re publica as Brutus (without responsibilities) was."

39 Cf. Cicero's unwillingness in the early part of the speech (8) to claim direct responsibility for the execution of the Catilinarian conspirators.
of Clodius per se was an action contra rem publicam, the Senate had decreed that the
violence of the whole tumultuous period was contrary to the interests of the state --
vioence for which the followers of Clodius were for the most part directly responsible
(i.e. the burning of the senate house, the besieging of the house of the interrex as well as
the deadly confrontation between Milo and Clodius). So, how could the death of the
leader of this faction be anything except beneficial to the Republic? But, Cicero
concedes, any violence among Roman citizens is contra rem publicam (13) -- even that
which proves ultimately to have been in the best interests of the state:

...nisi vero aut ille dies, quo Ti. Gracchus est caesus, aut
ille, quo Gaius, aut quo arma Saturnini oppressa sunt, etiam
si e re publica oppressa sunt, rem publicam tamen non volnerarunt.
(14)

Thus, the orator again achieves the desired effect of the state benefit defense, just as in
the first part of the refutation, by equating Clodius’ murder with the slayings of the same
demagogues whose "rabble rousing" was cut short by justifiable assassination for the sake
of defending the state. Still without abandoning the self-defense line of argument (...ulla
defensio contra vim, ...non eum qui se defendisset contra rem publicam fecisse..., 14),
Cicero justifies a way around the Senate’s pronouncement and supports his "informal" line
of defense with the introduction of the idea that the death of certain dangerous individuals
such as the infamous Gracchi and Saturninus and now, by implication, Clodius as well,
has meant the salvation of Rome. In a sense the credential that ensures this is the subtle
use of ethos by the orator. He presents himself as one who understands that even the
goal of the Republic is something accomplished with attendant danger (tamen non
volneranunt). This simultaneously magnifies the danger presented by Clodius and magnifies the perspective of Cicero the statesman.

The final argument of the prosecution's case which must be refuted by Cicero's speech is without a doubt the most damaging to Milo's case and the most difficult to answer - the fact that Pompey had revealed his enmity toward Milo and his case by the promulgation of the new laws and the enactment of a special procedure to deal with the case. Cicero responds to this by ridiculing the reasons given by the prosecution for Pompey's actions and by fabricating his own version portraying the sole consul as a supporter of Milo's cause (21-22). As he relates his version of the circumstances and Pompey's motivation, Cicero simultaneously constructs a portrait of Clodius as the worst kind of enemy of the state. First, he ironically compares the death of Clodius, worthy of course of public outcry and special procedure, with that of Marcus Drusus and Publius Africanus, which did not merit such attention (16). Nor, he continues, did Clodius' cold-blooded murder of a lowly Roman knight on the very same road where he himself was slain during his fateful confrontation with Milo (17-18) receive any special notice whatsoever. With this, after downplaying Clodius' status among murder victims with his irony, the orator has managed cleverly to take Clodius out of the role of victim altogether and to cast him in the role which he needs for him to play in this speech and in the minds of the audience — that of the evil and ruthless aggressor.

After the initial characterization of Clodius as the cold-blooded killer of an innocent, albeit inconsequential, man, Cicero makes use of Clodius' new "role" in the minds of the audience as he describes Clodius' threats of violence against Pompey and
even the orator himself (18-19). He charges that Clodius had laid an ambush for Pompey, which was the equivalent of plotting the destruction of the Republic:

Ei viro autem mors parabatur, cuius in vita nitebatur salus
civitatis...si unus ille occidisset, non haec solum civitas, sed gentes omnes concidisset. (19)

Furthermore, he contends, Clodius had similar plans for Cicero himself, who of course was also a vitally important member of the Republic: ex P. Clodi telis et ex cruentis eius manibus effugit ex quibus si me non vel mea vel rei publicae fortuna servasset... (20). However, no special process or inquiry was enacted in regard to these matters any more than they had been in the case of the murdered Roman patres or the lowly Roman knight. This brings Clodius' status as victim among those who had been unjustly murdered back to the forefront, and creates the question of whether we are to understand the death of Clodius the cold-blooded aggressor and potential destroyer of the Republic to be of more consequence than that of leaders of the state such as Pompey and Cicero and more shocking and worthy of public grief than that of a distinguished Roman ancestor such as Marcus Drusus or Publius Africanus. Naturally, these comparisons serve to put the death of Clodius into the perspective which Cicero wants the jury to have. At the same time, though, the portrayal of Clodius in the process of creating this perspective has been one of a malicious and treacherous thug out to destroy the Republic. Thus his death must be considered not an injustice worthy of public outrage and specially enacted measures, but the removal of a scourge upon the Republic and, ultimately, the salvation of the state.

In the section (23) which serves as the transition to the narratio of the speech, Cicero again emphasizes that the only question he intends to address is whether Milo was
acting on the defensive or the offensive during the confrontation with Clodius that night (uter utri insidias fecerit, 23), and he promises to present a brief, simple account of the event in the narrative which follows (rem gestam vobis dum breviter expono, 23).\textsuperscript{40} The narration is, though, not as simple and straightforward as the orator pretends. First, and most obviously, it is a lie.\textsuperscript{41} Second, as he paints the picture of Clodius’ calculated ambush of Milo and his travelling party in seemingly factual terms, Cicero is at the same time conveying to his audience of fictive jurors and readers the image of Clodius as a corrupt citizen and potential demagogue who was bent on using public office for the purpose of overthrowing the Republic (vexare rem publicam...ad dilacerandam rem publicam...ad evertendam rem publicam, 24).\textsuperscript{42} The opening sections (24-26) of the narration present Clodius in this way even before the description of the plotting against Milo begins. The result is that even a seemingly straightforward narration of the facts\textsuperscript{43} of that night manages to portray the event as the murder of a pernicious citizen by a good, patriotic citizen,\textsuperscript{44} and, as such, a definite benefit to the state. At this point in the

\textsuperscript{40}Cf. De Inv. 1.20.28: ...ut brevis, ut aperta, ut probabilis sit. Johnson’s simplex narratio (Johnson, “Varieties of Narrative”).

\textsuperscript{41}See the complete version of events in Asconius, In Mil. 31.

\textsuperscript{42}This portrayal of Clodius as violent aggressor is made plausible by the image of him which has emerged in the preceding sections of the refutation. Cf. De Inv. 1.20.29.

\textsuperscript{43}Johnson (“Varieties of Narrative”, p. 54) regards this as a poor choice of narrative for the speech, suggesting instead the technique of antidegesis, but he does not consider in his evaluation of the narrative the function of the sections which precede and prepare for the narratio. Cf. Quintilian, n.23 above.

\textsuperscript{44}For a detailed discussion of the subtleties of language in the narration which help to support the impression of Clodius as the aggressor, see R. McClintock, “Cicero’s Narrative Technique in the Judicial Speeches,” Diss. UNC Chapel Hill, 1975, pp. 142-184.
speech, however, Cicero is still being too cautious to suggest openly that Milo was a hero, the benefactor of Rome. Instead, Milo scarcely enters into the description of the action of the events as they are described in the narratio at all. Rather, he is portrayed as the unsuspecting victim of a well-planned attack, an honorable man traveling with his wife, and is not even described as having taken an active role in the killing of Clodius himself, but on the contrary all of the "credit" is given to Milo’s slaves (...fecerunt id servi Milonis...nec imperante nec sciente nec prae sente domino..., 29). Just as Cicero in section 8 is not yet ready to proclaim his own personal heroism by claiming direct responsibility for the execution of the Catilinarian conspirators, so in the narration he does not yet put before us the image of Milo holding aloft the bloody sword with which he has warded off disaster from the Republic (cf. 77).

In the sections of recapitulation which follow the narration, Cicero again brings in the benefit to the state line of argumentation in the form of praeteritio, maintaining his insistence (emphasized by the repetition of nihil at the beginning of each successive clause) that he will not ask for the jurors to consider the benefits which resulted from Clodius' death and that he will stick to his declared strategy of self-defense:

Nihil dico quid res publica consecuta sit, nihil quid vos, nihil quid omnes boni: nihil sane id prosit Miloni, qui hoc fato natus est ut ne se quidem servare potuerit quin una rem publicam vosque servaret. (30)

He next slips into an appeal to the natural law of self-defense with the transitional statement "si id iure fieri non potuit, nihil habeo quod defendam" (30) and proceeds then to his "real" defense, answering the question "who did the plotting?". The key here, however, is the word iure, which supports the self-defense argument in that a defensive
stand against an attacker is allowed by law (cf. sections 7-11), but which supports as well the underlying state benefit argument. Not only was the killing of Clodius done in defense against the immediate plot which he had contrived against Milo, but in defense of the Republic from the larger insidias which (according to Cicero, at least) Clodius had planned to carry out during his praetorship. Thus, while it is on the premise of self-defense against ambush that the argumentatio will be built, superficially, at least, with the connotations of state benefit ever present under the surface, Cicero continues to portray Clodius as the destroyer of the Republic, and simultaneously to "prosecute" him as he defends Milo.\(^4\) The question uter utri insidias fecerit, which in the recapitulation Cicero promises to consider in his argument, is treated as a constitutio coniecturalis\(^4\) as Cicero goes on the offensive within his defense of Milo, implicating Clodius in the plotting of the attack against Milo, and employing the standard arguments of this type of proof,\(^4\) with Clodius cast in the role of defendant.

In the probabile ex causa (motive) section (32-34),\(^4\) as he purports to address the question "cui bono", Cicero gives his version of Clodius' revolutionary plans for his praetorship in terms which leave no doubt that his death has meant the salvation of the state. First, he asserts that without Milo's intervention, Clodius would have enjoyed free

\(^{45}\) Cf. Craig, p. 166.

\(^{46}\) Ad Her. 1.11.18. Coniecturalis est cum de facto controversia est. ... Hic coniectura rerum quaeritur.

\(^{47}\) Ad Her. 2.2.3: Huius constitutionis ratio in sex partes est distributa: probabile, conlationem, signum, argumentum, consecutionem, approbationem.

\(^{48}\) Ad Her 2.2.3: Causa est ea quae induxit ad maleficium commodorum spe aut incommodorum vitatione...
rein for his evil plans, since with Milo out of the picture, the consuls for that year would
have been under Clodius’ influence:

...ut eis consulibus praetor esset quibus si non adiuvantibus,
at coniuentibus certe speraret se posse eludere in illis suis
cogitatis furoribus...(32)

Next, he elaborates on Clodius’ plans by referring to a collection of laws (librarium
legum) salvaged by Sextus Cloelius⁴⁹ from the fire in the Curia, describing them as
Clodius’ instruments of destruction (si leges nominandae sunt ac non faces urbis, pestes
rei publicae, 33).

The state benefit defense is developed even further in the next section (34), in
which Cicero moves on to the "cui bono" question in terms of Milo’s benefits from
Clodius’ death. His main point in this argument is that Milo stood to win the consulship
on account of Clodius due to the fact that the Roman citizens knew that by voting for
Milo they were voting for the only man who could stand in the way of Clodius and his
devastation of their Republic:

...sed plus multo valebat periculorum impendentium timor. Quis
enim erat civium qui sibi solutam P. Clodi praeturam sine maximo
rerum novarum metu proponeret? Solutam autem fore videbatis,
nisi esset consul, qui eam auderet possetque constringere.
Eum Milonem unum esse cum sentirit universus populus Romanus,
quis dubitaret suffragio suo se metu, periculo rem publicam
liberare? (34)

The *probabile ex vita* section (36-41) provides the orator with even greater opportunity for disclosing the crimes of Clodius and the many occasions on which public opinion had been in favor of Milo getting rid of him as a service to the state, all within the argument which is supposedly employed to prove that Clodius had been the aggressor and Milo had acted purely in self-defense. In this part of the speech the orator must counter the prosecution's assertion that Clodius had not been the violent type, but that Milo was (*nihil per vim umquam Clodius, omnìa per vim Milo*, 36). In answer to this, Cicero first brings up the subject of his own exile (*Quid? ego, iudices, cum maerentibus vobis urbe cessi, iudiciumque timui, non servos, non arma, non vim?*) and the fact that he had once again acted as savior of the Republic when he accepted the undeserved fate of exile rather than put into danger those *boni* who might have stood with him against Clodius, who is characterized, as Catiline had been by the orator on every occasion as well, as a danger to every citizen of Rome with his band of thugs made up of slaves and desperate citizens.\(^{51}\)

*Servorum et egentium civium et facinororum armis meos civis, meis consiliis periculosique servatos, pro me obici nolui.* (36)\(^{52}\)

Finally, at the climax of his condemnation of Clodius' life and his character as the potential destroyer of Rome, Cicero makes the explicit equation of Clodius with Catiline (*Itaque quando illius postea sìsa illa quam a Catilina acceperat conquievit?*, 37) and declares that it was this man who had been a threat to Rome, just as Catiline had been

\(^{50}\)Ad Her. 2.3.5.

\(^{51}\)cf. In Cat. 3.1.1.

\(^{52}\)Cf. Pro Sestio 20.45-6.
before him (haec intentata nobis est, 37). This leads into a short summary of Clodius' crimes (already detailed elsewhere in the speech):

...huic ego vos obici pro me non sum passus, haec insidiata
Pompeio est, haec istam Appiam, monumentum sui nominis,
nece Papiri cruentavit, haec eadem longo intervallo conversa
rursus est in me...(37).

Thus, he has proven, all within the argument that Clodius was the type of man who would have plotted an ambush for his inimicus Milo (and, at the same time, that Milo was not), simultaneously that Clodius' death not only had been warranted by self-defense, but also, coincidentally, that it had resulted in the defeat of a dangerous enemy of the Republic.

Now that the jury has been reminded of what kind of man Clodius was and the dangers he had presented to their city and their very lives, Cicero details on the other hand Milo's fortitude and restraint in not killing him on many earlier occasions when public opinion would have overwhelmingly approved the deed, again giving the audience of fictive jurors reason to applaud Clodius' murder and to be properly grateful to Milo. When, for instance, Clodius had beseiged Milo's home (38) as well as the home of the praetor Lucius Caecilius; when Clodius had forced Quintus Fabricius from the forum as he was proposing a law for Cicero's recall from exile and the result was a deadly riot (38); on the day when Cicero's recall was at last achieved, an instance which gives the orator opportunity to insert an autobiographical digression on the list of distinguished citizens, including Pompey himself, who had worked on his behalf (39). There were other occasions, too, according to Cicero, on which Clodius' misdeeds might have provided Milo with justification for killing him with impunity and with the approbation of the citizens of Rome. How, then, could anyone not agree that the occasion on which
Clodius' death was finally achieved was for the good of everyone and the overall benefit to the Republic?

The speech progresses next through the textbook proofs based on time (45-48), hope of success/escaping detection (50-51), place (53), occasion (54), and means (55)\(^3\) which necessarily focus on the facts immediately surrounding the event, and on establishing Clodius as the aggressor. Clodius knew that Milo would be on the road that evening (45) and he had even, according to a reliable source, predicted that Milo would die on that day (44). Milo, on the other hand, could not possibly have known that Clodius would be on the road (46). Furthermore, Clodius’ excuse for traveling that night - the news of the death of Cyrus - was just a pretense (47-48). Had Milo been the aggressor, he easily could have killed Clodius in some spot along the way known to be dangerous and thus escaped detection completely (50-51). As for place, Clodius’ estate, which was located near the spot of the ambush, provided the perfect setting for a successful attack by him and his men (53). The occasion was perfect as well - Milo was dressed up, accompanied by his wife, riding in a coach, headed for an important ceremonial event at Lanuvium (54). Finally, Clodius was prepared with all the means of attack, Milo with just the opposite (55).

Even in these sections however, which are properly confined to the immediate circumstances of the crime itself, Clodius is consistently characterized not only as the aggressor but also as a dangerous and evil citizen. For example, in section 45 he is

\(^3\)Ad Her. 2.4.6-7. signa: locus, tempus, spatium, occasio, spes perficiendi, spes celandi.
depicted as a rabble-rouser when Cicero expounds upon how strong his motivation for leaving Rome must have been to tear him away from an inflammatory situation in the city:

...fuit insanissima contio ab ipsius mercennario tribuno plebis concitata: quem diem ille, quam contionem, quos clamores, nisi ad cogitatum facinus approperaret, numquam reliquisset. (45)

Similarly, at section 50 Cicero slips in another reminder to the audience of Clodius’ crimes and their extent:

...deinde multi ab illo violati, spoliati, bonis expulsi, multi haec etiam timentes in suspicionem caderent, tota denique res citaretur Etruria. (50)

The depiction of Clodius as enemy of the Republic is, of course, the key to the state benefit argument which is the focus of the pars adsumptiva (72-91), in which the assumptive juridical issue of state benefit is the focus of the argument. The orator supports the constitutio juridicialis with a complementary pars adsumptiva,54 which is the second subdivision of the juridical issue.55 Thus, the pars absoluta (7-30) and the pars adsumptiva (72-91) together make up two complementary parts of the one type of issue upon which Cicero builds his case. He cannot deny the act and if the audience will not accept his self-defense fabrication (which, it seems, at the trial they did not) this second part of the justifiable homicide defense (to which the invective against Clodius throughout the speech has led effectively) should make them more willing, if not to believe his

54 Ad Her. 1.15.25: Adsumptiva pars est cum per se defensio infirma est, adsumpta extraria re conprobatur.

version of events, at least to show their gratitude to Milo for saving them from the evil plans of Clodius by voting as if they did believe it.\textsuperscript{54}

Furthermore, not only can the \textit{pars adsumptiva} be seen as complementary to the earlier part of the \textit{constitutio iuridicalis}, but the way the two parts (7-30 and 72-91) of the speech work together, it can be demonstrated that something else is at work here. If, as I have argued, we are to take the main premise of the speech as an argument of \textit{fortis vir} vs. the \textit{pestis rei publicae}, the speech in its entirety up to this point (72) can be shown to perform a function analogous to that of an insinuated introduction. The fact that this analogy suggests itself underscores again the organic unity of the oration.

Both Cicero and the author of the \textit{Ad Herennium} recommend this type of introduction to a difficult case (\textit{turpis, Ad Her.} 1.9; \textit{admirabile, De Inv.} 1.23), and the elements of insinuation are set forth in the \textit{Ad Herennium} as follows:

\begin{quote}
Si causa turpitudinem habebit, exordiri poterimus his rationibus: hominem, non rem, spectari oportere [cf. \textit{Mil.} 31]; non placere nobis ipsis quae facta dicantur ab adversariis et esse indigna aut nefaria [cf. \textit{Mil.} 12-14]. Deinde cum diu rem auxerimus, nihil simile a nobis factum ostendemus [cf. \textit{Mil.} 32-71]; aut aliquorum iudicium de simili causa aut de eadem aut de minore aut de maiore proferemus, et similitudinem conferemus [cf. \textit{Mil.} 7-11, 16-21]. Item si negabimus nos de adversariis aut de aliqua re dicturos, et tamen occulte dicemus interiectione verborum [\textit{praeteritio, cf. Mil.} 6]. (\textit{Ad Her.} 1.6.9)
\end{quote}

In this part of the speech, Cicero argues directly and explicitly that the killing of Clodius was a benefit to the state and that Milo is a national hero, and finally he comes

\textsuperscript{54}So, May, "Ethica Digressio", 245.
out with the declarations he was reluctant to make in the earlier parts of the speech — for example, his own responsibility for the execution of the Catilinarians. However, the state benefit defense is still at every point subordinated (albeit superficially) to the "real" line of defense and even throughout the *pars adsumptiva* it is stated only as a hypothetical and conditional argument. Thus, even if we see that the first two-thirds of the speech arguably serve as an introduction to the main premise of the state benefit defense, it is significant that the persuasive process of the speech as a whole is not interrupted, but complemented, by the *pars adsumptiva*.

Cicero does not at any point abandon the claim of self-defense, but maintains that claim by means of the conditional aspect of the alternate line of defense, just as he has done from the beginning of the speech, and as when he sets it up as a *praeteritio* in section 6. In that early part of the speech, Cicero claims that he will not ask the jury to consider Milo’s services to the state, up to and including the salvation of the Republic itself which was the ultimate result of Clodius’ death. At the beginning of the extra causam section, the state benefit argument is still represented as secondary to the primary line of defense, is introduced into the speech by Cicero as a *pars adsumptiva*, and it is even introduced in contrafactual conditional terms (...*si iam nollem ita diluere crimen, ut dilui...*, 72). This is the way it is represented throughout this part of the speech.

The apodosis to the conditional introduction of the *pars adsumptiva* leads into "Milo’s" heroic speech in which he proudly declares his responsibility for the elimination of the danger to the state presented by Clodius (72-75). However, not only is this open avowal of the deed part of a contrary-to-fact condition (i.e. "if I had not disposed of the
charges against Milo, which, in fact, I have done", (note how this part of the condition, usually understood in a condition contrary-to-fact, is deliberately spelled out) "Milo might still be able to proclaim openly...", 72), its hypothetical nature is also stressed by the fact that Cicero terms it a lie (mentiri gloriose). He does not waver at all from his original version of events, as he has represented them throughout the speech in his self-defense argument, which was of course itself a lie.

Following the list of Clodius' past crimes which is contained in the prosopopeia of Milo (72-75), and a suggestion of the destruction which Clodius was plotting for the Republic (...quae vero aderant iam et impendehant..., 76), Cicero goes a step further in his depiction of Milo as benefactor of the Republic as he presents the image of Milo brandishing the murder weapon still dripping with gore and proclaiming his salvation of the state from the impending evils described immediately before (77). Even this image, though, has a hypothetical character in that it is again part of a contrary-to-fact condition (...si cruentum gladium tenens clamaret T. Annius..., 77), the apodosis of which ironically gives the explanation for its being presented as a conditional statement rather than a statement of fact (...esset vero timendum quonam modo id ferret civitas!, 77). This, however, is more than simply the reason not only for the presentation of Milo's glorious lie, but of the whole state benefit defense in hypothetical terms. Similarly, in section 79, after Cicero's facetious suggestion that they might absolve Milo by bringing Clodius back to life, and the depiction of the audience's terror at the very thought, Cicero hypothetically credits Milo with sparing the citizens this terror by the use of yet another
contrary-to fact condition: *Huius ergo interfector si esset, in confitendo ab eisne poenam timeret quos liberavisset?* (79).

At section 80 Cicero emphasizes the danger to his client which would result from an open admission by Milo that he had, in fact, killed Clodius and was openly proclaiming himself a hero (as Cicero had done in the aftermath of the Catilinarian crisis, cf. *In Cat.*, *Pro Murena*, etc.):

...vos tanti conservatore popul, tanti sceleris ulterior
non modo honoribus nullis adficietis sed etiam ad supplicium
rapi patiernini? Confiteretur, confiteretur, inquam, si
fecisset, et magno animo et libenter, se fecisse libertatis
omnium causa quod esset non confitendum modo, sed etiam
vere praedicandum.

Even as he endeavors again and again to inspire gratitude in the audience for the tyrannicide committed by Milo, the orator is able, by means of these contrafactual constructions, to maintain the denial that it was done intentionally, so that self-defense remains as the superficial claim, while the state benefit defense develops more and more fully underneath this facade. At section 83, where Milo is equated with other great national heroes of Rome -- Ahala, Nasica, Opimius, Marius, and even Cicero himself -- the "confession" is still placed within the context of an unreal condition, and it is surely no accident that this list of precedents is identical to the precedents cited at section 8 for the justification of murder in the best interests of the Republic. Thus, the orator deliberately refers to that part of the speech, unifying it with the state benefit digression, and emphasizing even more by this deliberate echo of the sections of the speech in which he purports to argue nothing but self-defense the unreal nature of this "confession": 
Quam ob rem uteretur eadem confessione T. Annius qua Ahala, qua Nasica, qua Opimius, qua Marius, qua nosmet ipsi, et, si grata res publica esset, laetaretur; si ingrata, tamen in gravi fortuna conscientia sua niteretur.

Cicero brings the digression of the extra causam section to a conclusion with the very height of pathos - the appeal to divine responsibility, which is another denial of benefit to Milo. Thus, while Milo acted in self-defense, he also acted as agent of the gods -- both of which absolve him of guilt and portray Clodius as pestis rei publicae. Yet even at this point, when the speech has reached such an emotional pitch as to inspire in the audience the desire to accept the state benefit defense wholeheartedly, Cicero renews his contention that the slaying of Clodius was purely a defensive act. He does not suggest, as one might expect, that the divinities instilled within Milo the strength and motivation finally to eliminate Clodius, but that they had put into Clodius' mind the idea of laying a trap for Milo (Hie di immortales...mentem illi perdito ac furioso dederunt ut huic faceret insidias 88). Although this is immediately reinforced by the reminder of the benefit to the state which was its result (Aliter perire pestis illa non potuit; numquam illum res publica suo iure esset ulta., 88), this line of defense is completely subordinated to the formally declared line of argument of self-defense.

It is not until the peroration that Cicero at last seems ready to embrace the state benefit defense completely without the pretense (although, notably, still without the renunciation) of self-defense. During the course of the speech, he has consistently maintained that Milo merely acted in his own defense on the night when Clodius was

\[57\]Ibid.
killed, all the while simultaneously constructing underneath this scenario the image of Milo as savior of the Republic from the evil designs of Clodius. This subtext to the argumentation becomes the basis for the orator’s emotional appeal in the peroration where he does not once mention the concept of self-defense, but portrays Milo throughout as the greatest benefactor the Republic has ever seen. Thus, the peroration sums up the defense as if it had been all along about benefit to the state and leaves us with the impression of Milo as savior of the Republic and not of Milo the victim of an ambush. The question which Cicero claimed at one time was the only question to be addressed regarding the confrontation (uter utri insidias fecerit) has been gradually eclipsed during the course of the speech by the fortuitous result of that fatal meeting - the removal of a scourge upon the Republic. Furthermore, Milo’s role as victim has been eclipsed purposely by his role as benefactor of the state. Cicero has hypothetically conjured up the image of Milo as heroic tyrannicide with such effect in the preceding sections that it is with this impression that we enter upon the final sections of the speech.

Therefore, by means of relentless insinuation throughout the speech, Cicero has brought us to a point where we expect a peroration of the type that we get. It is not rhetorically wrong, but extraordinarily right. He never explicitly abandons his "official" claim of self-defense, but simply moves beyond it:

Sed iam satis multa de causa, extra causam etiam nimis fortasse multa. Quid restat nisi ut orem obtesterque vos, iudices, ut eam misericordiam tribuatis fortissimo viro quam ipse non implorat, ego etiam repugnante hoc et imploro et exposco? (92)
The orator himself tells us, then, that the first part of the speech was devoted to the case itself - i.e. answering charges, proving self-defense; the second part of the speech was a digression (extra causam); and now all that remains is to ask for mercy toward this brave man. The peroration belongs exclusively to emotional argumentation (pathos) and it is not on the premise of self-defense that the pathos of this speech rests, but on the idea of virtus vs. audacia (...vi victa vis vel potius oppressa virtute audacia est, 30), the fortis vir, savior of Rome winning against the enemy and scourge of the Republic. Thus, sustaining the height of pathos to which the extra causam section has built, Cicero does not deny or abandon his initial line of defense, but merely at last gives us the appeal on Milo's behalf that has been pending throughout the speech and the progression of the state benefit defense gradually to the surface of the argument, showing gradually more and more prominently through the facade of the plea of self-defense. From his initial introduction of Milo as more concerned with the state than with his own fate (1), the praeteritio of the proposition and division (6) in which Cicero insists that he will not use the state benefit defense, the consistent portrayal of Clodius as the pernicious destroyer of the Republic and Milo as the only one who could thwart his designs, and finally through the extra causam section and the proud declarations of Milo's heroism veiled in contrafactual terms, the speech has been building toward this culmination in a manner similar to the way in which an insinuated introduction works.

It is not, therefore, a turning away from one line of defense in favor of another, nor is it a reliable way of separating the "original" parts of the speech from the later additions, because the two lines of defense do not conflict, but complement each other
throughout, and even consist of subdivisions of the same proof (constitutio iuridicalis). State benefit is not an afterthought thrown into the speech as a digression, but is a theme which is present from the very beginning of the speech. The argumentation of the speech progresses throughout in textbook fashion through the constitutio iuridicalis in two complementary parts. However, the speech is not suitable for dissection into two distinct lines of defense so much as to analysis of the progression of the state benefit defense as it evolves further and further toward the surface, without ever breaking that surface, of the facade of self-defense. Likewise, the published Pro Milone is not amenable to dissection into original parts vs. added parts, or even into separately functioning literary purposes. It is, rather, a work of rhetorical literature which consists of two complementary lines of argumentation which work together within the speech to present a unified defense of Milo "for the record".
CHAPTER III

Ethos and Autobiography

At De Oratore 2.43.182, in describing the importance of ethos in oratory, Cicero
summarizes the elements which combine to make up the orator's ethos:

Valet igitur multum ad vincendum probari mores et instituta
et facta et vitam eorum, qui agent causas...

This can be the substance of autobiography and as such points beyond immediate forensic
issues to the larger meaning of the speaker's public life both as a forensic tool which adds
to Cicero's fictive case and as a literary construct through which the orator represents
himself, his political program and his personal agenda to the audience of the original
occasion as well as to future readers.

Ethos as a forensic tool

For the ancients, the orator's use of his personal ethos was an integral part of the
persuasive process of rhetoric. Aristotle included it among his three entechnic, or
artificial, pisteis along with pathos and logos (Rhetoric 1355b-1356a) and deemed it the
most effective of these means of proof: ...ἀλλὰ σχέδον ως εἰπεῖν κυριωτάτην ἔχει
προτιν τὸ ἡθὸς (Rhetoric 1356a 13).¹ As an artistic element of Greek rhetoric,

according to Aristotle, the speaker's ethos should come only from the speech itself, without regard for the individual's political clout or other influence.² δει δε καὶ τοῦτο συμβαίνει διὰ τοῦ λόγου, ἀλλὰ μὴ διὰ τοῦ προδεοξασθαι ποιόν τινα εἶναι τὸν λέγοντα (1356a 8-10).

Kennedy attributes this emphasis on character only as built up in the speech to the fact that "...Greek law required defendants to speak on their own behalf, and they were often lacking in external authority."³ Of course, certain individuals in any society carry with them political power and personal influence and, while theoretically in Aristotle the artistic use of ethos came from the speech alone, for this to have exhausted all possible uses of ethos was unlikely. May observes that "...the reputation of the speaker played a part in actual Greek rhetorical practice...One need only to open the speeches of Lysias, Aeschines, or Demosthenes to see ethos utilized in such a manner."⁴ Kennedy rightly

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²Kennedy (1963: 128) addresses the issue of the ethos of the logographoi themselves: "Did the general public know who had written a speech at the time of delivery? Sometimes, but there are very few references by litigants to the speechwriter of the opponent (e.g. Isaeus 1.7 and Aeschines 1.94). Usually the skill of the opponent himself is attacked and the whole convention of ghostwriting carefully masked."


suggests that, to Aristotle, the orator’s actual position or reputation and its influence upon a case fell under the category of atechnic proof.\(^3\)

**Ethos under the Roman system**

**Ethos** was an important persuasive tool for the Roman orator as well, although the Roman conception of ethos included not just the character and authority of the speaker as it came across in the speech itself, but also the background, reputation, and influence which the speaker brought with him to the speech, or his "prevenient" ethos.\(^4\) Under the Roman system of justice, defendants were not accustomed to speak for themselves, but to engage the services of one or more professional orators as patroni, who brought with them and used to great advantage this prevenient ethos to lend the support of their own gratia and auctoritas to their clients’ cases. As May notes, the Greek conception of ethos "would have been incomprehensible to a Roman steeped in the tradition of the mos maiorum."\(^5\) Under the Roman system of advocacy, the ethos of the patronus was at least as important if not more so than that of the actual antagonists of a case, a fact which Cicero acknowledges at De Orat. 2.43.182 where he describes the use of ethos in the Roman court and the elements which make up the Roman conception of rhetorical ethos, equating ethical argument with the officium oratoris of delectare (or conciliare).\(^6\)

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\(^3\)Kennedy, *Art of Persuasion in Greece*, p. 38.

\(^4\)Kirby, *The Rhetoric of Cicero’s Pro Cluentio*, p. 16.


\(^6\)The other two officia oratoris correspond to Aristotle’s other two pisteis: docere corresponds to Aristotle’s logos and permovere to pathos. Cf. De Orat. 2.77.310: tribus rebus homines ad nostram sententiam perducimus, aut docendo aut conciliando aut permovendo... and De Optimo Genere Oratorum 1.3: Optimus est enim orator qui
Valet igitur multum ad vincendum probari mores et instituta et facta et vitam et eorum, qui agent causas, eorum pro quibus, et item improbari adversariorum, animosque eorum apud quos agetur, conciliari quam maxime ad benevolentiam cum erga oratorem tum erga illum, pro quo dicet orator. Conciliantur autem animi dignitate hominum, rebus gestis, existimatione vitae;...

Like Aristotle, Cicero claims that this type of proof can be a most effective means of persuasion (De Oratore 2.43.184):¹⁰

...et hoc in principiis vel in re narranda vel in peroranda tantam habet vim, si est suaviter et cum sensu tractatur, ut saepe plus quam causa valeat.

Quintilian testifies to the effectiveness of Cicero’s use of his personal ethos to win the favor of his hearers (Iam in omnibus quae dicit tanta auctoritas inest, ut dissentire pudeat, nec advocati studium sed testis aut iudicis adferat fidem, Inst. Orat. 10.1.111).

Cicero’s use of ethos

Rhetoric was a practical art. The primary function of ethical argument for a Roman orator was to strengthen the case which he was pleading, and the ancient rhetorical textbooks were concerned primarily with teaching the most effective means of persuading an audience. Modern scholars also have tended to focus their studies of Cicero’s use of ethical argument on the immediate goal of persuasive the audience, adhering to the


¹⁰Cf. Orator 37.128: ...quod Graeci ἡμῶν vocant, ad naturas et ad mores et ad omnem vitae consuetudinem accommodatum...

¹⁰For a detailed study of Cicero’s adherence to Aristotle’s principles of ethos in the De Oratore, see Wisse, esp. pp. 105-161.
traditional approach to the speeches as representations of the forensic performance and, as such, as having the same goals and intended audience.\textsuperscript{11} This approach, however, does not take into account the other effects of the orator's bringing his own \textit{gratia} and \textit{auctoritas} into the case on behalf of his client and making himself a prominent figure in the case, that is, the personal, political and, in the case of the published versions of the speeches, literary purposes of ethical argument.\textsuperscript{12} This "literary" function of \textit{ethos} is and indeed must be thoroughly integrated into, and therefore is not separable from, the persuasive process of the forensic fiction. If the speech fails as a forensic argument, it will presumably have little influence, or will merely represent the orator as inept. However, the forensic fiction, a \textit{sine qua non} of the speech and its formal structure, is not its only or even its ultimate purpose — especially not in the unique case of the \textit{pro Milone}. At no other time did Cicero rewrite and publish a failed argument. It is the argument of this thesis that in doing this Cicero did more than show the world how he should have argued the case. He presented the case and the crisis it represented in terms of the leading figures of Rome and their importance in Roman history.

\textsuperscript{11}For a comprehensive treatment of Ciceronian \textit{ethos} see May, \textit{Trials of Character} or Kennedy, "Rhetoric of Advocacy".

\textsuperscript{12}Compare Batstone, whose approach to the \textit{First Catilinarian} reexamines the presentation of Cicero’s \textit{ethos} in its role as a means of self-representation for the orator. ("...how a consular \textit{ethos} is constructed in a speech...not in how an acquired consular status may be employed," 216). The \textit{First Catilinarian}, however, is a special case in that (according to Batstone) the purpose of the speech was not persuasion to any immediate or practical goal; its purpose was more simply the construction of a consular \textit{ethos} for strategic and deliberative reasons.
In the examination of Cicero’s use of ethos in the Pro Milone, this chapter will pursue two avenues simultaneously. In keeping with the coherence of the logical argumentation of the speech, which was demonstrated in the previous chapter, I will elaborate on the ways in which ethos arguments support Cicero’s forensic case. At the same time, in keeping with the first chapter, which explored the literary purposes of speech publication, I will examine the ways in which forensic ethos performs the function of self-representation for the orator. It is only by following these two strands of interpretation simultaneously that we can begin to grasp the full effect of Cicero’s use of ethos in this speech.

The construction of Ciceronian ethos

Kennedy, who identified the Roman orator’s use of his personal ethos as the "rhetoric of advocacy" also identified two different functions of the rhetoric of advocacy in a delivered speech, taking the Pro Roscio Amerino as an example. After analyzing in some detail the persuasive use of ethos in Cicero’s defense of Roscius, Kennedy describes an additional personal and political advantage for the orator in bringing himself into the case on his client’s behalf and speaking out against the powerful and potentially dangerous Chrysogonus -- an advantage which extended beyond the immediate forensic scope of the case:

"...admiration is awakened for Cicero’s courage and for his self-sacrifice in taking on himself what is really the danger of society. Cicero clearly saw in the occasion an opportunity to bring himself into the full light of the public stage as candidate for many future
roles.\textsuperscript{13}

This type of display of political promise is evident also in the Actio Prima of the Verrines, a case in which the young Cicero must pit his ethos against the auctoritas of the venerable Hortensius, the leading orator at the Roman bar:

Erit tum consul Hortensius cum summo imperio et potestate, ego autem aedilis, hoc est paulo amplius quam privatus; tamen haec huius modi res est quam me acturum esse polliceor, ian populo Romano grata atque iucunda, ut ipse consul in hac causa praec me minus etiam, si fieri possit, quam privatus esse videatur. (In Verrem 1.13.37)

Another early example of autobiography and the promise of ability is found in the Divinatio in Caecilium, in which Cicero presents an autobiographical sketch of himself as the up-and-coming young orator:

Ego qui, sicut omnes sciunt, in foro iudiciisque ita verser ut eisdem aetatis aut nemo aut pauci pluris causas defenderint, et qui omne tempus quod mihi ab amicorum negotiis datur in his studiis laboribusque consumam, quo paratior ad usum forensem promptiorque esse possim... (12.40).\textsuperscript{14}

In spite of his youth, however, the orator asserts his confidence in his own abilities against even the foremost orator at the Roman bar:

Cuius ego ingenium ita laudo ut non pertimescam, ita probo ut me ab eo delectari facilius quam decipi putem posse. Numquam ille me opprimet consilio, numquam ullo artificio pervertet, numquam ingenio me suo labefactare atque infirmare conabitur... (14.44)

\textsuperscript{13}Kennedy, "Rhetoric of Advocacy", 432.

\textsuperscript{14}Cf. Div.in Caec. 1.1
It is not just Cicero the rising young orator who is advertised in these early speeches, though, but Cicero the public servant and benefactor of the Republic, the Senate, and the allies. In the *Divinatio in Caecilium* (3.7-9) Cicero introduces himself as the defender of Rome’s provinces and allies and defines his role as prosecutor in the case of Verres as that of a rescuer of the Roman system of justice:

Quid est, pro deum hominumque fidem, in quo ego rei publicae plus hoc tempore prodesse possim? Quid est quod aut populo Romano gratius esset debat, aut sociis exterisque nationibus optatius esse possit, aut saluti fortunisque omnium magis accommodatum sit? Populatae, vexatae, funditus eversae provinciae, socii stipendiariique populi Romani adflicti, miseris, iam non salutis spem sed solutum exitii quaerunt. Qui iudicia manere apud ordinem senatum voluit, queruntur accusatores se idoneos non habere: qui accusare possunt iudiciorum severitatem desiderant. (7-8 init.)

In hac libidine hominum nocentissimorum, in populi Romani cotidiana querimonia, iudiciorum infamia, totius ordinis offensione, cum hoc unum his tot incommodis remedium esse arbitraver, ut homines idonei atque integri causam rei publicae legumque suscipierent, faterem me salutis omnium causa ad eam partem accessisse rei publicae sublevandae quae maxime laboraret. (9)

Similarly, in the first speech against Verres, Cicero represents himself as the champion and savior of the Senate:

Huic ego causae, iudices, cum summa voluntate et expectatione populi Romani actor accessi, non ut augerem invidiam ordinis, sed ut infamiae communi succurrerem. (1.1.2)

Thus, in one case, the young orator is the savior of allies from plundering governors, the savior of the Republic from the loss of its system of justice, and of the Senate from losing its position of respect and its control of the juries. This is both an effective forensic argument and a political program which takes the forensic ethos of Cicero significantly
beyond the immediate scope of the case he is arguing and represents to the audience an image of the orator, his words and actions which pertain to his position in the Republic in general. In fact, one need only to review Cicero’s *concordia ordinum* and his future actions to discover in the *Divinatio in Caecilium* the beginning of a political program. When published, forensic *ethos* plays a further role as literary self-representation which does not interfere with or need to be separated from the persuasive process, but which serves to bring Cicero, in the role which he has fashioned for himself in the speech, in front of a reading audience and into the written record as savior of the allies, the justice system and the Senate.

Deliberate autobiography in a forensic speech is perhaps nowhere more demonstrable than in the *Pro Sestio*, which was delivered shortly after Cicero’s return from exile in 57. In this speech the orator acknowledges that there will be some intrusion of autobiography into the case (*Ac si in exponendis vulneribus illis de me ipso plura dicere videbor, ignoscitote*, 13.31). Of what follows, sections 14.32-32.70 consist of a digression about Cicero and efforts on his behalf during his exile, and sections 33.71-44.95 address Sestius’ case specifically. The remainder of the speech (44.96-68.143) is made up of the lengthy digression on the *boni*, and of this, sections 55.119-63.131 are devoted to the orator’s exile and recall. Thus, only 38 sections of this speech (1.1-6.14, 33.71-44.95) deal directly with the defense of Cicero’s client. The remainder of the speech is used by the orator as an outlet for his personal agenda, much of which (the digression on the *boni*) comes in the form of a political treatise addressed specifically to the younger generation of rising statesmen. All of this, however, occurs within the
persuasive process of the speech and like all published forensic speeches is presented to readers as a representation of the case as it was presented to the jurors. It is Cicero the advocate, the persuasive speaker and the wielder of rhetorical ethos who sets himself up as the paradigm of Roman statesmanship during the uninterrupted process of persuading the jury to vote for Sestius' acquittal. The forensic and literary uses of ethos cohere and complement each other completely.

It is apparent from the example of the Pro Sestio that Cicero saw the defense of Sestius at his trial as an opportunity for disseminating his own views and flaunting his reputation for those present in the Forum. Also, it seems clear that he recognized the speech as a means of spreading his agenda to the up-and-coming generation of Roman leaders\(^{15}\) and as a means of preserving his reputation as savior of the Republic (unus bis rem publicam servavi, 22.49) via their memories, perhaps even to be included among the examples of leadership to which those young men would someday point, as Cicero himself pointed to the past generations of Roman heroes for them to follow:

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\text{Qua re imitemur nostros Brutos, Camillos, Ahalas, Decios, Curios, Fabricios, Maximos, Scipiones, Lentulos, Aemilios, innumerabilis alios qui hanc rem publicam stabiliverunt; quos equidem in deorum immortalium coetu ac numero repono. (68.143)}
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May contends that "the story of Cicero's public and rhetorical career is...a chronicle of his struggle to establish, maintain, reestablish and wield...ethos..."\(^{16}\) It is

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\(^{15}\)See Cape's ("On Reading Cicero's Catilinarian Orations") description of the younger generation of Romans most influenced by Cicero's words and deeds (p. 20).

\(^{16}\)May, p. 11-12.
my view that **ethos** in the speeches serves two distinct (if overlapping) functions. On the one hand, it is central to the persuasive process of a speech, and in this capacity is foremost in importance on the original forensic occasion. Freed from its forensic occasion, however, **ethos** exists in the published speech as a literary construct which enables the corpus of published speeches to represent a chronicle of Cicero’s public career. In the published speech, the basic principles of the rhetoric of advocacy are extended into the literary world of published works, allowing Cicero to represent himself along with his opinions, political program and autobiography while maintaining the forensic fiction of the original occasion. In other words, the self-representation noted by Kennedy in the *Pro Roscio Amerino* whereby the young Cicero presented himself to the audience in the forum as a rising young political figure becomes in the literary environment of the published speech an opportunity for self-representation to the reading audience both contemporary and in posterity. The rhetoric of advocacy therefore becomes the "record of advocacy".

### Ethos in the *Pro Milone*

The *Pro Milone* provides an especially suitable example of a forensic speech as a literary effort due to the fact that we have evidence that the published version reflects

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17 That is, presented not to a jury, but to a member of the reading audience whose purpose in reading the speech is not to be persuaded of the defendant’s guilt or innocence, and who may not even be interested in the question of the defendant’s guilt or innocence. This puts the reader of a speech in a position which is very different from that of a member of the original audience (i.e. the jury) of the speech, whose sole purpose in hearing the speech was to be persuaded to cast a vote one way or another. Cf. R.L. Enos, *The Literate Mode of Cicero’s Legal Rhetoric* (Carbondale, 1988), p. 92.

18 See note 9 above.
substantial revisions made to the original before publication. Thus, the speech that we have is not an exact representation of the speech which Cicero actually delivered on behalf of Milo at his trial, but rather it represents the speech which Cicero wanted us to have "for the record". Regardless of the consensus (or lack thereof) on the argument of how closely the speech we have conforms to what was actually said at the trial, we must recognize that the Pro Milone is unique in its very existence as a published work. Cicero was not in the habit of going back to a case which he had pleaded unsuccessfully and writing up the speech which would have won. This is significant because it seems to indicate that the purpose of the published speech was not merely a showcase of forensic argument (if this were the case, Cicero would likely have written up and published the speeches that would have won all of his unsuccessful cases). At the very least, the Pro Milone provides for those who knew that these were things which Cicero did not say at the trial an invitation for them to ask why he did not say these things and why he feels compelled to say them after the trial. The published speech thus provides Cicero with the opportunity to comment directly and indirectly on the trial situation, to criticize Pompey's role in the state and to reflect on the condition of a state that had come to require a role such as Pompey's. The speech seems to offer its own answer to the question of Cicero's forensic failure: silent enim leges inter arma (11). The ancient biographers took the cue when they wrote of Cicero's inability to speak.

In the speech as a literary document, ethos becomes for the orator a means not of persuading an audience of judices to vote his way, but of representing himself and his personal agenda to an audience of readers. In the post-reditum speeches such as the Pro
Sestio (and especially such epideictic orations as Post Reditum in Senatu, Post Reditum ad Quirites and De Domó Sua), Cicero openly states that he intends to address his personal agenda and inserts into these speeches copious autobiographical commentary.¹⁹ In the Pro Milone, however, we will see that it is primarily by means of patron-client identification²⁰ that Cicero takes advantage of the rhetoric of advocacy to establish his client as a figure parallel to himself and thus is able to comment upon his own situation as he argues Milo’s case. This is done in large part through Cicero’s allusions to his consulship in 63 and his subsequent downfall, a procedure which places this case too in the context of that climactic event.

The ethical complex of the Pro Milone consists of Pompey, Cicero and Milo, in descending order. Pompey’s auctoritas reigns supreme in the rhetorical situation, and as a result looms large in the first part of the speech. This would support an argument that this part of the speech represents the original defense spoken by Cicero under the unusual circumstances surrounding Milo’s trial, at which Pompey held sway quite convincingly and to an alarming degree from his lofty position observing the proceedings with a corona of armed guards. Cicero’s post-consular ethos as savior of the Republic is present to bolster Milo’s case, but, in deference to Pompey’s position of political supremacy, is represented in this speech for the most part indirectly and uncharacteristically in the form

¹⁹e.g. Pro Sestio 13.31: Ac si in exponendis vulneribus illis de me ipso plura dicere videbor, ignoscitote...necessē est meam causam praeteritī temporis cum huius praesenti defensione esse coniunctam.

of patron-client identification with Milo.\textsuperscript{21} It is Milo's service to the state, his courage in vanquishing the \textit{pestis rei publicae} which is touted overtly by the orator. However, Cicero defends Milo in the very same terms in which he had steadfastly defended his own actions against the Catilinarian conspirators, just as he praises his courage and the salvation of the Republic in the very terms with which he boasts of his own salvation of Rome in 63. Thus, his lofty defense of Milo's actions and his encomium of Milo's bravery in a time of grave national crisis, cast in terms which set up Milo's situation as parallel to the orator's own during the Catilinarian conspiracy,\textsuperscript{22} cannot help but recall Cicero's own ordeal as consul and, later, as exile. The result of this extensive patron-client identification will be that, by the end of the speech, Pompey's \textit{ethos} and greater \textit{auctoritas} are made to serve Milo in part by being in their best or most optimistically

\textsuperscript{21}It is not uncharacteristic for Cicero to use patron-client identification. What is uncharacteristic is that instead of developing and representing his own \textit{ethos} as \textit{pater patriae} and \textit{conservator rei publicae} (his customary posture after his consulship) and associating his client with himself by shared ideals, bonds of \textit{amicitia}, etc. to bolster that client's case (cf. \textit{Pro Sestio} 7.15, 13.31; \textit{Pro Sulla} 1.2; \textit{Pro Murena} 1.1-4.10, 8.18, 41.90), in the \textit{Pro Milone} Cicero develops and represents Milo's \textit{ethos} and allows his own to emerge for the most part only in connection with that of his client.

viewed manifestation a reduced version of the great pater patriae himself. Milo's ethos is increasingly reduced to a persona which Cicero assumes by means of prospopoeia, and which he uses as a "mouthpiece" through which he facilitates the communication of his own agenda. Looked at in this way the speech enacts and presents not just a forensic competition for the vote of the judices but an ethical struggle for the hearts and minds of those who counted in Rome — the terror, then, that affects Cicero and silences the leges and the lawyer in the exordium is a metonymy for the wider political devastation which is potential in Pompey's extraordinary honors and power.

**Pompey's ethos**

As May points out, Cicero's ethos was "eclipsed" by Pompey's under the unusual circumstances of the proceedings against Milo and the unprecedented political position held by Pompey at the time of the trial. This places Cicero in the position of no longer being supreme in the auctoritas of his consular ethos, and having to deal with the ethos of Pompey who is observing the proceedings from another vantage point in the forum surrounded by his troops, who had shown special interest in the case from the beginning, as manifested in his promulgation of the new law de vi (calling for the unusual procedure under which Milo was being tried), and whose ethos had apparently

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23 Although not forensically ineffective, this is forensically unnecessary. It is, however, absolutely necessary to Cicero's political biography and he makes it work for his fiction of the case even though it is not needed to make his argument. I would like to make it the object of future study to look at how in the later speeches Cicero handles situations where his ethos is subordinate to the power and influence of others when he certainly never believed that he was less important in the broader perspective of history.

24 May, Trials of Character, p. 139.

25 Greenidge, pp. 391-397; Asconius, In Mil. 37. See also ch. 1 pp. 13-14.
been used by the prosecution to help secure Milo’s conviction by reminding the jury of Pompey’s hostility toward him. It is, therefore, imperative for Cicero to deal with the ethos of Pompey in the speech, and I turn now to an analysis of the orator’s handling of Pompey. We will see that Cicero first attempts to employ Pompey’s ethos as a forensic tool by portraying him as a second patron for Milo by means of patron-client identification. Second, Cicero enhances his own ethos by identifying himself with the sole consul. This is the apparent forensic use of Pompey’s ethos to work persuasively to lend support to Milo’s ethos in two different ways, directly by his association with Pompey and indirectly by adding the weight of Pompey’s ethos to Cicero’s own which is in turn used on Milo’s behalf.26 But Cicero does not actually believe that Pompey’s ethos and auctoritas are or should be greater than his own27 and this conflict will develop in the speech as a "battle" of ethos. The orator must deal with Pompey’s ethos and its place within the ethical matrix of the speech while at the same time endeavoring to assure the supremacy of his own time-tested ethos as pater patriae within the limits of the exigencies of the case and against the extraordinary auctoritas which Pompey enjoys as sole consul and as present at or near the trial.

26May, Trials of Character, p. 139: “He can...thus invest his own ethos and Milo’s ethos with persuasion garnered from the support of Pompey’s dignitas.”

27Cf. In Cat. 4.10.21 where Cicero concedes Pompey’s greatness, but is confident that his own is superior: ...anteponatur omnibus [Scipio, Paulus, Marius] Pompeius cuius res gestae atque virtutes isdem quibus solis cursus regionibus ac terminis continentur: erit profecto inter horum laudes aliquid loci nostrae gloriae, nisi forte maius est patefacere nobis provincias quo exire possimus quam curare ut etiam illi qui absunt habeant quo victores revertantur.
Cicero begins his defense of Milo with a confession of his trepidation at the unprecedented circumstances of the trial:

...tamen haec novi iudici nova forma terret oculos qui quocumque inciderunt, veterem consuetudinem fori et pristinum morem iudiciarum requirunt. Non enim corona consessus vester cinctus est, ut solebat; non usitata frequentia stipati sumus; non illa praesidia quae pro templis omnibus cernitis, etsi contra vim conlocata sunt, non adferunt tamen oratori terroris aliquid, ut in foro et in iudicio, quamquam praesidiis salutaribus et necessariis saepi sumus, tamen ne non timere quidem sine aliquo timore possimus. (1-2)

This passage, while employing the standard topos of aporia in the exordium, also serves as preparation for the descending order of the ethical matrix by acknowledging the unusual situation which Pompey has created by means of his extra-constitutional powers. The repetition of non emphasizes the extent to which the orator perceived himself to be affected by the deprivation of customary procedure which he was accustomed to use to his own advantage. Cicero figures Pompey’s intervention as one which is dangerous, nova, and frightening. This comes dangerously close to being an assault on Pompey’s ethos -- even as it attributes honorable motives to the sole consul. In fact, one could argue that Cicero presents the strange circumstances in such a way that Pompey’s actions require explanation and defense. So, when he speaks of the general terror and novitas rerum he adopts momentarily the role of patronus for Pompey as well as for Milo. This type of reversal will occur again and again throughout the speech; Cicero deals with his own apparently reduced auctoritas in deference to Pompey’s position
of quasi-dictatorial *auctoritas* by assuming the voice of the statesman who understands the wider political context. This would, of course, help Milo's case by soliciting the authority of both sole consul and ex-consul for Milo, but it also creates a "chain of beneficia" in which Cicero appears as the defender of both Pompey and Milo.

This formula will play out several times within the speech and is symptomatic of the competition of *ethos* between Cicero and Pompey. Pompey's *auctoritas* as sole consul is significant and can be used forensically to the orator's advantage if he can persuade the jury that Pompey is on Milo's side. However, it is a peculiar formula which actually results from the combination of *ethea* in the speech. Cicero has two *amici*, Milo and Pompey. Pompey worked for Cicero's return as a patron would, and Milo worked for his return as a client would. The same act positions the two actors differently within the chain of *beneficia*, but we will see that without fail these services to Cicero will be portrayed in the speech as services to the Republic. The competition, then, turns out to be less about creating a hierarchy of patron-client relationships than about the focus of the chain of *beneficia*, and that focus comes to be Cicero and Cicero's role in the Republic.

It is necessary forensically to emphasize Pompey's role as benefactor and *patronus* to Milo's side, and Cicero insists that the consul made the special provisions on behalf of the defense:

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24 Cf. Robin Seager, *Pompey: A Political Biography* (Oxford, 1979) p. 144: "The choice of the paradoxical sole consulship rather than the dictatorship was not without point. It avoided the evil memory of Sulla and served to remind Pompeius, if that were necessary, that he was not Sulla and was not meant to be, while in practical terms his powers even without a colleague were less than they would have been as dictator in two important respects: he would be liable to tribunicius veto and he could be called to account for his actions." See also, Greenidge, p. 391, 573-4; Asconius, *In Mil.* 35-36.
Quam ob rem illa arma, centuriones, cohortes non periculum nobis, sed praesidium denuntiant, neque solum ut quieto, sed etiam ut magno animo simus hortantur, neque auxilium modo defensioni meae verum etiam silentium pollicentur. (3)

This last line, though, is noticeably ironic, in view of what really happened at the trial, which later readers, whether in attendance that day or merely having heard the gossip, would have known, and which was happening in the presence of (and being caused by) the fictional audience of the speech (i.e. those present at the trial). The irony here, apparent to the later reader, serves to undercut the point of the passage regarding Pompey’s fairness and his concern for the protection of the participants in the trial, although the persuasive process remains uninterrupted. In the context of the original situation, this praise of Pompey is forensically right. Only later in the literary situation is Pompey’s status of patron and guardian of the trial undercut and with the irony comes an explicit defense of Cicero’s forensic failure.

Similarly, the description of Cicero’s terror and the scene which he was forced to confront at Milo’s trial performs two functions. It is effective forensically in the *exordium* to secure the good will of the audience with the *aporia* of the orator (De Inv. 1.16.22). It also fulfills the literary purpose of describing and recording the scene for a later reading audience. The forensic and literary purposes are, however, inextricable. Excessive description of the scene would have been unnecessary for an audience which was present at the trial, but is necessary to set the scene for later readers of the speech. For forensic purposes, though, it would have been an integral part of the *exordium* for the

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*29* This is consistent with the references in Cicero’s letters to the presence of the guards and their purpose. See *ad Att.* 9.7B.2, *Fam.* 3.10.10.
orator to stress his fear in the midst of unprecedented circumstances in order to effect the sense of *aperia* which he desired to convey to the jury, and he accomplishes this by emphasizing the missing elements of the normal scene as opposed to the irregularities of the present use of that scene. Thus, it is impossible to distinguish how much of the description belongs to the forensic argument of the speech and how much was added later for the benefit of the reading audience. We will continue to see this inextricability of the forensic and literary purposes as the speech progresses.

Cicero begins his argumentation with the systematic refutation of the allegations made by the prosecution. There are three: 1) *Negant intueri lucern esse fas ei qui a se hominem occisum esse fateatur* (7); 2) *...caedem in qua P. Clodius occisus esset, senatum judicasse contra rem publicam esse factam* (12); 3) *...Cn Pompeius rogatione sua et de re et de causa iudicavit: tulit enim de caede quae in Appia via facta esset, in qua P. Clodius occisus esset* (15). Pompey’s *ethos* comes into play as Cicero attempts to refute the third one of these allegations — that the sole consul’s enactment of the new law and procedure has indicated his prejudgment of the case. Cicero refutes this claim by representing Pompey’s actions not as prejudicial against Milo, but on the contrary, as an effort to assure that he receives fair treatment (i.e. the right to stand trial and publicly and officially defend his actions):

At enim Cn. Pompeius rogatione sua et de re et de causa iudicavit: tulit enim de caede, quae in Appia via facta esset, in qua P. Clodius occisus esset. ... Mihi vero Cn. Pompeius non modo nihil gravius contra Milonem iudicasse sed etiam statuisse videtur quid vos in iudicando spectare oporteret. Nam qui non poenam confessioni, sed defensionem dedit, is causam interitus quaerendam, non interitum putavit.

(15)
In this section, where it is imperative that Cicero deal with Pompey’s increased auctoritas and his damaging pronouncements against Milo, he presents him as the wise patron of the trial, one who sees and understands broadly the legal issues involved. Accordingly, Cicero assigns to Pompey the important legal distinction (non interitus sed causa) that he himself needs to make as a foundation for his forensic case.

Pompey’s intentions are represented in the same way in section 21, but only after he explicitly (emphasized by chiasmus) proclaims Pompey’s amicitia with Milo (and his inimicitia with Clodius): ...fuisse illum sibi inimicum, familiarem Milonem... Then he again stresses that Pompey enacted the new measures not out of hostility to Milo, but in the expectation that he would be judged fairly (and thus acquitted): Multa etiam alia vidit, sed illud maxime, quamvis atrociter ipse tulisset, vos tamen fortiter iudicaturos (21). As with the ironic repetition of non in the exordium, the speech pulls in two directions here. Forensically, it builds Pompey’s ethos as a wise and deep thinker (sapiens atque alta et divina quadam mente praeditus, 21) whose godlike wisdom supports Milo. But was this really wise, or does the wisdom really lie in the interpretation after the facts, in Cicero? As Cicero struggles to put Pompey’s actions in the best possible light, the reading audience knows that the jury voted guilty, and we are left with atrociter ipse.

The bond of amicitia between Milo and Pompey is used again at section 40 when, in the midst of the enumeration of all of Milo’s opportunities for killing Clodius, Cicero mentions that one such occasion would have been during a speech made by Pompey on Milo’s behalf when Milo was on trial at the instigation of Clodius:
Privato Milone et reo ad populum accusante P. Clodio, cum in Cn. Pompeium pro Milone dicentem impetus factus est, quae tum non modo occasio sed etiam causa illius opprimendi fuit?

Here, in a clever forensic move, Cicero adopts Pompey as a second patronus for Milo, in order to add the weight of his auctoritas to Milo’s case (and, just as importantly, away from the case of the prosecution).

Elsewhere in the speech, Pompey’s ethos is used to bolster Cicero’s own, apparently inferior ethos. He does this directly, by means of the same type of identification which he uses to associate Milo with Pompey. The orator invokes Pompey’s ethos as patronus to add auctoritas to his own when he describes Pompey’s efforts during the campaign for his recall from exile (39):

Clarissimus et fortissimus vir consul, inimicus Clodio, P. Lentulus, ultor sceleris illius, propugnator senatus, defensor vestrae voluntatis, patronus publici consensus, restitutor salutis meae; septem praetores, octo tribuni plebei illius adversarii, defensores mei; Cn. Pompeius, auctor et dux mei reditus, illius hostis, cuius sententiam senatus omnis de salute mea gravissimam et ornatissimam secutus est...

It should be noted, however, that Pompey is not granted the first position on the list, and he does not rate the superlatives clarissimus et fortissimus consul, which in the rhetorical situation of the trial is a title which Pompey surely would have expected. Rather, instead of denoting him as, e.g., "our present consul, a very brave and very distinguished, etc...", Cicero applies no superlatives to Pompey at all (although he does merit three relative clauses), but only to his sententiam regarding the recall of Cicero.
In this situation, when Cicero was an exile and Pompey was in Rome working on his behalf, it appears that Pompey as his patronus and Milo, as his cliens, are both operating within a chain of beneficia of which Cicero is the focus. The ultimate recipient of the benefits of Cicero's recall is without fail represented as the Roman people. The chain of beneficia extends from Pompey through Cicero to the cives and the Republic, and it is only because Cicero is the supreme benefactor of the Republic that Pompey's service to Cicero reaches all the way to the point of being a service to the Roman people. So, even when Pompey is represented as patronus to Cicero, the orator's own ethos (manifested here in his importance to the Republic, and indeed all of Italy) emerges as supreme. It becomes clear, then, that in the competition of ethos which runs throughout this speech, Cicero's time-tested ethos, his auctoritas as the savior of Rome will always reign supreme despite the forensic necessity of deferring to the present auctoritas of the sole consul. The competition, however, is not one which has winners and losers, but rather a relative relationship among important people, and it is so contrived that Pompey's present influence on the forensic case is made to serve Milo while the history of Pompey's beneficia and auctoritas is made to serve the state by serving Cicero.

Often Cicero's identification of himself with Pompey is effected through the use of parallels suggested between Pompey's situation as consul at a time of crisis in the Republic and the orator's own situation during the major crisis of his own consulship eleven years earlier, the situation which has come to identify the orator in the post-consular years, and the image of himself which he constructs throughout the Pro Milone.
In one instance, Cicero justifies the extreme, almost paranoid, caution exercised by a man
who is solely responsible for the welfare of the Republic:

Insidiator erat in foro conlocatus atque in vestibulo ipso senatus;
ei viro autem mors parabatur cuius in vita nitebatur salus civitatis;
eo porro rei publicae tempore quo, si unus ille occidisset, non haec
solum civitas, sed gentes omnes concidissent. (19)

This collocation of *unus ille* and *omnes* has been identified by Hardie as an epic type --
a hero possessed of singular greatness and thus distinguished from the many, and the one
man on whom the fate of the people depends.\(^\text{30}\) Batstone observes the presence of this
formula behind Cicero’s attempt to represent himself in the first Catilinarian as "*unus ille
vir*, that single man whom history has selected to be the sole salvation of the state."\(^\text{31}\)
In the above passage, Cicero represents Pompey as *unus ille vir*, although again the
apparent deference to Pompey’s position of authority is only advanced to be reversed.

There are two purposes served by this passage. Forensically, it supports Cicero’s
portrayal of the seriousness of the threat which Clodius posed to the Republic. The
prosecution had supported its case by bringing up the fact that Pompey, out of fear of
Milo, had locked himself away in his house (a fact which the audience both of listeners
and contemporary readers must have known was true). So, in support of his claims of
Clodius’s dangerous intentions, Cicero praises as prudent the same show of vigilance by
Pompey which he reduces to a melodramatic show of paranoia when it was done to avoid
Milo (65-66). At the same time, this cannot help but recall Cicero’s own precautions

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\(^\text{30}\)Philip Hardie, *The Epic Successors of Virgil: A Study in the Dynamics of a

\(^\text{31}\)Batstone, 237.
against the two insidiatores sent by Catiline to murder him in his own home in order to
rid the conspirator of the consul, the only hindrance to his plans for the destruction of the
Republic (In Cat. 1.4.10). The results are twofold. First, there is the equation of Clodius
with Catiline implicit in the parallel situation of a dangerous citizen plotting to bring
about the destruction of the Republic and sending insidiatores to effect this destruction by
means of the murder of the one man (unus ille vir) who could protect the state. Second,
we are reminded of Cicero’s salvation of the state during his consulship as unus ille vir.
and its result (the execution of the conspirators) to which the justification of Pompey’s
vigilance in the next sentence could equally apply:

Nisi vero, quia perfecta res non est, non fuit punienda,
proinde quasi exitus rerum, non hominum consilia legibus
vindicentur. Minus dolendum fuit re non perfecta, sed
puniendum certe nihil minus. (19)

Furthermore, Cicero’s heroic actions are recalled just before he “caps” the list of Clodius’
crimes and their potential victims in progressive order of importance with himself. He
begins with Clodius’ murder of an obscure Roman knight (18), progresses to Clodius’
alleged attempts on Pompey’s life (19), and finally comes to the ultimate crime of Clodius
-- his attempts on Cicero himself (ego ipse, iudices). Thus, the progression in importance
moves from the insignificant victim on the Appian Way, to Pompey, upon whom Cicero
bestows the importance of unus ille vir, just to undercut this importance as he himself
provides the culmination of the progressive list of victims, saved not only by his own
good fortune, but also by the state’s (...si me non vel mea vel rei publicae fortuna
servasset... 20). Thus the orator’s own ethos emerges superior and linked with the
fortunes of the Republic, indicating that the orator is still unus ille vir.
The situations of Cicero and Pompey are also implicitly parallel because they both had been empowered with an SCU to control potentially dangerous situations in the Republic. At two different points in the speech Cicero refers to the SCU granted to Pompey—first in non-specific terms (...eius potestati cui senatus totam rem publicam, omnem Italiam pubem, cuncta populi Romani arma commiserat..., 61), but later revealing explicitly that it was, in fact, a formally decreed SCU\textsuperscript{32} (...cum senatus ei commiserit ut videret ne quid res publica detrimenti caperet, 70). Not only does Pompey hold the same power of the SCU, but the use which he makes of it is described in terms which reflect Cicero’s own use of the ultimate decree of the Senate in 63, although the orator reaches even beyond the ethos of Pompey to include the endorsement of the law, the mos maiorum and the res publica to justify acting on the decree without benefit of a trial:

Quamquam quis hoc credat, Cn. Pompeium, iuris publici, moris maiorum, rei denique publicae peritissimum, cum senatus ei commiserit ut videret ne quid res publica detrimenti caperet, quo uno versiculo satis armati semper consules fuerunt etiam nullis armis datis, hunc exercitu, hunc dilectu dato, iudicium exspectaturum fuisse in eius consiliis vindicandis, qui vi iudicia ipsa tolleret? (70)

Here, Pompey’s ethos is used to support and defend Cicero’s own actions under the very same decree of the senate. Pompey would have used his powers under the SCU in exactly the same way Cicero had—only Pompey was not, as Cicero was, dealing with a Catiline. In other words, surely Pompey would have done the same thing (had he

\textsuperscript{32}It is generally agreed that Pompey did have a formal SCU. See Greenidge, pp. 390, 399-400; Seager, p. 143. Asconius 34: itaque primo factum erat s.c. ut interrex et tribuni plebis et Cn. Pompeius, qui pro cos. ad urbem erat, viderent ne quid detrimenti res publica caperet, dilectus autem Pompeius tota Italia haberet.
believed in Milo’s guilt). This technique of persuasion, i.e. disproving Pompey’s supposed belief in the danger presented by Milo, works on two different levels. First and most obviously, it effectively refutes the prosecution’s claim of Pompey’s motivation for the promulgation of the new laws. But it also serves as justification of Cicero’s own earlier actions against the Catilinarian conspirators with the assumption that, had he believed in Milo’s guilt, Pompey would have taken the same immediate and effective action against Milo that Cicero had taken against the conspirators.

Cicero’s use of Pompey’s ethos occurs one last time, near the end of the logical argumentation of the speech (i.e. before the extra-causam section and peroration, 72-105). As he addresses Pompey in apostrophe, Cicero “rounds out” the ethical matrix by describing the bonds of amicitia which existed between himself, Pompey, and Milo:


...

The cleverness of this finale lies in part in the way Cicero uses the normal patron-client relationships. Milo serves the state by aiding Cicero the advocate, the ex-consul, the publicly proclaimed pater patriae. But Pompey too serves the state — by aiding Milo. The underlying principle seems to be that one serves the state by serving Cicero or those who serve Cicero. Pompey helped Milo who helped Cicero. If the patron-client relationship of Milo and Cicero is a disingenuous reversal of the real hierarchy, when

32 For this rhetorical use of Pompey’s ethos see May, p. 133. For the amicitia of Cicero, Milo, and Pompey, see Seager, pp. 118-21, 136-7, 142-47, and Gruen, pp. 108, 145, 150-1, 173.
Pompey is added to the equation as patron to both, it is not difficult to sense that Pompey serves the state by helping Milo bring aid to the *pater patriae*. Forensically, then, Pompey's actions are made to seem to support Milo and his case. At the same time, from the perspective of political biography, Cicero reconfigures the significance of Milo's and Pompey's actions on behalf of the Republic and Cicero's own safety.

The involvement of Pompey's *ethos* in the speech ends at the conclusion of the logical argumentation and is conspicuously absent from the *extra-causam* section in which Milo's and Cicero's own *ethos* take predominant roles. While this may support the theory that this part of the speech may be part of the published version, added later, when Pompey was no longer (in the immediate context of the trial situation, at least) a menacing presence and Cicero was free to rely once again proudly on his own *dignitas* and *auctoritas* not only as a man of consular rank, but as the consul who had been singlehandedly responsible for the salvation of the Republic, it is also a clear presentation of who really wins the contest for ethical authority which the speech as a literary document offers to the world.

The political realities of the immediate situation make it necessary for Cicero's *ethos* at least to appear outwardly to defer to Pompey's. Thus, if he is to remain faithful to the historical fiction, he is compelled to be uncharacteristically indirect in the display and advancement of his own *ethos* on Milo's behalf. May recognizes this as a *topos* of the speeches representing the last two decades of the orator's life: "Men like Pompey and Caesar, whose authority eclipses that of others, including Cicero himself, are invoked to

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^4Stone, 96-102.
lend weight to his cases. Their characters take on major parts, and Cicero's ethos and that of his client move into the background accordingly.” It is hardly surprising, then, that the construction of Cicero's ethical self-portrait in this speech takes the form almost exclusively of identification with Pompey, then, in turn, with Milo. As we will see, this strategy of patron-client identification is employed by Cicero to great effect. Always the smart lawyer, he will exploit Pompey's greater auctoritas as a forensic tool to help win his case. He does this, though, with a kind of disingenuousness which is clearly underscored by the subtle emergence of his own ethos of the savior of the state which is effected by the patron-client identification both with Pompey and with Milo. But even the outcome of this competition is not at odds with the forensic fiction. If Pompey really does serve the state by being both an ally of Milo's and an imitator of Cicero's great beneficence, if, that is, Pompey's auctoritas really is only incidentally or temporarily greater than Cicero's, then Cicero should get the advantage of both Pompey's auctoritas and his own greater auctoritas. If on the other hand, as the events seem to have shown, Pompey really was opposed to Cicero and Milo, then the political history underlying these passages of the Pro Milone acts as a critique of Pompey's failure of nerve and failure of policy. In good oratorical and literary fashion Cicero manages to have his cake and eat it too: if his fiction is right, Pompey supports him; if his fiction is wrong, so is Pompey and the speech justifies Cicero.

Cicero's ethos

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35 May, Trials of Character, p. 165.
Only once in the speech does Cicero indulge in explicit autobiography of the kind which is prominent in the *Pro Sestio*, for example, because the occasion of Milo’s trial was completely unsuitable for this type of self-indulgence on the orator’s part due to the time constraints under which he was working under the new courtroom procedure and the distinctly unfriendly and unindulgent atmosphere with which he was surrounded. He adheres faithfully to the fiction of the trial situation in the published speech, as well. because in order to recreate the speech he should have given, he must necessarily recreate the circumstances under which he was to have given it. In section 36, during his argument “*ex vita*”\(^34\) on the character of Clodius, Cicero refers explicitly to his exile and subsequent triumphant return:

> Ego, iudices, cum maerentibus vobis urbe cessi, iudiciumne timui, non servos, non arma, non vim? Quae fuisset igitur iusta causa restituendi mei, nisi fuisset iniusta ciciendi? Diem mihi, credo, dixerat, multam inrogarat, actionem perduellionis intenderat, et mihi velidicet in causa aut mala aut mea, non et praecolissima et vestra, iudicium timendum fuit. Servorum et egentium civium et facinorosorum armis meos civis, meis consiliis periculisque servatos, pro me obici nolui.

This section, however, is still not represented blatantly by the orator as autobiography, as is the comparable example in the *Pro Sestio*,\(^37\) but is only brought in as part of the indictment of Clodius. Subtly, however, although the passage is overtly concerned with enumerating yet another of Clodius’ crimes, through the constant repetition of the first-person pronoun, it is Cicero and his cause which emerge, with the inevitable recollection

\(^34\) *Ad Her.* 2.3.5; *De Inv.* 2.10.32.

\(^37\) see pp. 9-11 above.
of the orator's own past services to the state. Forensically, this reminds the audience of Cicero's auctoritas as conservator rei publicae and lends weight to Milo's case. It allows the ethos of Cicero as savior of the state to take the position of its customary supreme auctoritas from which it has been so conspicuously absent throughout the speech.

This emergence of the orator's own ethos is the exception in the first half of the speech, however. As a rule he adheres to the topos of modest self-assertion which dominates the ethical argument. At this particular point in the speech, the posture of modesty works forensically to disprove the assertions of the prosecution that Cicero enjoyed undue influence over the panel of jurors. But in general the topos of self-deprecatory modesty recalls Cicero's technique in speeches early in his career in which he creates a persona for himself that takes advantage of the greater auctoritas and potentia of his opponents.\(^{38}\) May posits that the ethos of the orator and of his client were forced into the background by the system of autocracy under which he was operating at the time.\(^{39}\) I argue that in the Pro Milone Cicero adapts the topos of modest self-assertion to his new position of diminished auctoritas by taking the formal position of modesty and deference to Pompey while (as we have seen) simultaneously using Pompey's ethos to his forensic advantage.

Cicero refers only fleetingly to his own potentia and gratia at two different points in the speech, in both instances assuming this posture of self-deprecatory modesty. In section 12 he attributes his influence over the Senate vaguely to past public services.

\(^{38}\)May, Trials of Character, p. 31.

\(^{39}\)Ibid., p. 165.
relying on the words at the end of the paragraph (pro salute bonorum contra amentiam perditorum) to allude to the Catilinarian conspiracy. Later, as he seeks to dispel the notion that Pompey had sought to exclude Cicero’s friends and allies from the jury, the orator remarks on his influence (gratia), pointing out that all of the best men in the Republic are his allies and therefore are on the jury:

Non enim mea gratia familiaritatibus continetur, quae late patere non possunt, propertia quod consuetudines victus non possunt esse cum multis; sed, si quid possumus, ex eo possumus quod res publica nos coniunxit cum bonis. (21).

Another point in the speech, the praesidicia, in which Cicero systematically answers the claims of the prosecution (7-22), presents the perfect opportunity for Cicero to boast of his actions as consul against the conspirators, but he backs off. In answer to the prosecution’s argument that all murder is wrong (Negant intueri lucem esse fas ei, qui a se hominem occisum esse fateatur, 7), he invokes a list of historical precedents which begin with M. Horatius,40 continue through Servilius Ahala41, the slayers of the Gracchi and Marius42 before culminating in the precedent of the execution of sceleratos civis (the conspirators) in his own consulship. Instead of adding his name to this list of heroic precedents, however, as might be expected of a man who most often portrays himself as pater patriae and conservator rei publicae,43 he passes off responsibility for his actions

40acquitted by popular vote after admitting to the murder of his own sister
41killed Sp. Maelius in 439
42Cf. this same list of historical precedents in In Cat. 1.4-5, and 4.4.
43Cf. e.g. In Cat. 3.1.1-2, 10.25-12.29; In Cat. 4.1.2, 4.10.21, 4.11.23; Pro Sulla 26-28; Pro Murena 2.3, 37.78-9; Post Red. in Sen. 14.36; De Domo Sua 10.26, 28.75, 35.93-36.96, 38.101; Pro Sesto 13.31-24.54.
onto the Senate, his only acknowledgment of his own involvement at this point being me

\textit{consul:}

\begin{quote}
Neque enim posset aut Ahala ille Servilius aut P.
Nasica aut L. Opimius aut C. Marius aut me \textit{consule}
\textit{senatus non nefarius haber}, si \textit{sce} \textit{leratos civis}
\textit{interfici nefas esset.} (8)
\end{quote}

This, however, would have been sufficient to bring to mind the image of his consulship which Cicero has consistently created in his public speeches, especially when we recall that this is the same list of historical precedents which he cites in the first \textit{Catilinarian} (4-5) to justify his motivation for attacking Catiline in the Senate. When Cicero says "when I was consul", at the end of this list of precedents, it must inevitably recall this image of the vanquisher of Catiline in the minds of listeners (and readers) to whom this was by now a very familiar Ciceronian theme.

After a brief excursus on the idea of a natural law which necessarily supercedes statutory law (\textit{non scripta, sed nata lex...omnis honesta ratio esset expediendae salutis,}
\textit{Silent enim leges inter arma...}, 10-11), Cicero finally offers, in his own words, "\textit{meam
defensionem}" (11), for Milo’s crime, ostensibly, of course: \ldots \textit{quod oblivisci non potestis}
\textit{insidiatorem iure interfici posse} (11). However, after we have just been reminded of Cicero’s own consulship three sections earlier, and the images of conspirators and their executions which it invokes, hearing these words from the orator’s mouth would naturally serve as a justification for his own actions as well.\footnote{Catiline is not ever called \textit{insidiator}, but in the orations against Catiline, he and his band of men are described as plotting \textit{insidias} (cf. \textit{In Cat.} 1.5.11, 1.10.26, 1.13.31, 1.13.32, 2.5.10, 2.5.11; \textit{Pro Sulla} 5.14). Therefore, there is arguably a verbal echo as well as a thematic one here.}
By the end of the speech, in the extra-causam section (72-91), Cicero is ready to claim responsibility for this service to the Republic in a passage which is strikingly similar to that in section 11:

Quam ob rem uteretur eadem confessione T. Annius qua Ahala, qua Nasica, qua Opimius, qua Marius, qua nosmet ipsi, et, si grata res publica esset, laetaretur... (83)

This is the same list of historical precedents which is cited in section 11, with the important modification of the event in Cicero’s consulship. Me consule has been exchanged for the emphatic nosmet ipsi. Not only does Cicero appear to have thrown caution to the wind,⁴⁵ but he appears ready to begin to assert his own ethos more forcefully, and thus the role of Milo’s ethos in the speech will be modified to a certain degree as it will begin to serve more and more as a sounding board for the orator and a mask through which he forwards his own agenda.

Milo’s ethos

The most consistently developed representation of Cicero’s ethos in the Pro Milone comes in conjunction with the presentation of Milo’s ethos under the guise of patron-client identification, which functions on two different levels in this speech. On one level, Cicero demonstrates how the causes of himself and his client are bound together because of Milo’s services to him and on his behalf against Clodius. On a more significant level, Milo’s ethos is built up by establishing him as a figure parallel to Cicero and his case is placed within the context of Cicero’s own career, specifically within the context of the

situation with Catiline and the resulting misfortune suffered by the orator. This is accomplished by means of verbal and thematic echoes of Cicero's speeches against Catiline, as well as by ambiguous statements which could apply to both Cicero's situation with Catiline and to Milo's with Clodius.

Cicero characterizes Milo in terms of his services to him, often in the same breath as he declares his service to the Republic (almost as if they are one and the same). This creates another chain of beneficia which extends from Milo to Cicero to the Republic. Examples of this new chain of beneficia can be found at section 34: Valebat apud vos, iudices, Milonis erga me remque publicam meritorum memoria... and section 65, in which Cicero calls Milo illius mei patriaeque custodis, as well as in 38, as he caps his enumeration of Milo's many opportunities for killing Clodius with the occasion of his own triumphant return from exile, engineered in part, of course, by Milo:

...potuitne illo die quo est lata lex de me, cum totius Italiae concursus, quem mea salus concitarat, facti illius gloriam libens agnovisset, ut, etiam si id Milo fecisset, cuncta civitas eam laudem pro sua vindicaret?
(38)

In section 35, Cicero suggests that one of the reasons for Clodius' enmity toward Milo is the fact that Milo had been a protector of his safety (defensorem salutis meae) and at 39 Milo is grouped with the list of all of those who had worked for his recall from exile (Milo is here just included as one of the octo tribuni plebei) -- a list which culminates with Pompey, accomplishing two things for the orator. As a persuasive

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46See Nicholson, pp. 35-37; May, Trials of Character, pp. 93-95; Batstone, 245.
device, it emphasizes the fact that Pompey and Milo have historically been on the same side, and at the same time it enhances the *ethos* of Cicero and Milo together in that Pompey is an ally of them both and of Cicero himself especially, since the great Pompey is portrayed as the leader of the movement to bring about his return. Rhetorically, then, this passage serves to build Milo’s *ethos* by placing him squarely on the right side of the issue of Cicero’s recall, in the company of the other *boni* who worked on the orator’s behalf.

By far the most extensive use of patron-client identification in the *Pro Milone* is Cicero’s construction of the relationship between himself and Milo based on Catilinarian/Clodian parallels. The comparison of Clodius with Catiline was a familiar theme in Cicero’s post-reditum speeches. He repeatedly characterizes Clodius in terms of Catiline, calling Catiline the "lord and master" of Clodius (*Post Reditum in Senatu, 5.12*) and his "bosom friend" (*De Haruspicum Responsis, 4.7*), and suggesting that Clodius had taken Catiline’s place as leader of the remainder of that "sinister band" (*Pro Sestio, 19.42*). In *De Domo Sua* (27.72), Cicero “reports” that these followers of Clodius have even taken to calling their leader "*felix Catilina"*. For the forensic and literary audience of the *Pro Milone* to pick up on these parallels between Milo and Cicero as vanquishers of the same type of destructive forces in the Republic within the speech would not be an unreasonable expectation.

Of all the Catilinarian allusions, however, there is only one instance in which Cicero declares this relationship explicitly. This occurs in the section of the *tractatio* (confirmation) of the speech in which Cicero compares the lives of Milo and Clodius in
his argument "ex vita." In this section, Cicero designates Clodius as Catiline's successor.

\textit{Itaque quando illius postea sica illa quam a Catilina acceperat conquievit? (37).} 47

Elsewhere throughout the speech parallels between the two situations continue to be drawn by means of verbal echoes of Cicero's Catilinarian speeches as well as by statements made about Milo's case which are equally applicable to Cicero's conflict with Catiline.

Verbal echoes of Cicero's Catilinarian orations begin almost immediately as the far-reaching significance of Milo's trial and its outcome are emphasized:

\begin{quote}
Nec eorum quisquam quos undisque intuentis...non cum virtut\, Milonis favet, tum \textit{de se, de liberis suis, de patria, de fortunis hodierno die decertari putat. (3)}
\end{quote}

This is the customary rhetoric which Cicero often uses to grab the attention of his audience (thus rendering them \textit{attentos}) 48 in the beginning of a speech with political overtones. However, it is an especially prominent theme in the third and fourth orations against Catiline, 49 as well as in other consular and post-consular orations to refer to the conspiracy (e.g. \textit{Pro Flacco} 1.1, 38.97, 41.104). Thus, especially to a reading audience which had the opportunity to re-read the speech, once the Catilinarian context has been more fully developed as the speech progresses, the opening of the speech clearly appears

\footnotesize{\begin{quote}
\textsuperscript{47}Cf. \textit{Pro Sestio}, 19.42; In Pisonem 7.15-16. It is interesting that the only other time Catiline is named in the speech is in section 63 when Cicero feels compelled to defend Milo against the same sort of allegation which has perhaps been brought up in the \textit{contiones}: Multi etiam Catilinam atque illa portenta loquebantur: 'Erumpet, occupabit aliquem locum, bellum patriae faciet.'
\end{quote}}

\footnotesize{\begin{quote}
\textsuperscript{48}Ad \textit{Her}, 1.4.7
\end{quote}}

\footnotesize{\begin{quote}
\textsuperscript{49}e.g. 3.1.1, 3.10.23, 4.1.2, 4.2.3, 4.6.12, 4.8.18-9.19, 4.11.24.
\end{quote}}
to be a deliberate allusion to Cicero’s salvation of the state from Catiline. For instance, he opens the third Catilinarian in this way:

Rem publicam, Quirites, vitamque omnium vestrum, bona, fortuna, coniuges liberisque vestros atque hoc domicilium clarissimi imperi... (In Cat. 3.1.1)\(^\text{50}\)

He opens and closes the fourth Catilinarian with this theme as well: ...de vobis ac de vestris liberis cogitate. (4.1.1)

Quapropter de summa salute vestra populique Romani, de vestris coniugibus ac liberis, de aris ac focis, de fanis atque templis, de totius urbis tectis ac sedibus, de imperio ac libertate, de salute Italiae, de universa re publica decernite diligenter, ut instituistis, ac fortiter. (4.11.24)\(^\text{51}\)

The prominence of these themes in the orations against Catiline makes it appear likely that any member of the audience who had heard or read the Catilinarians would recognize the allusion in the opening of the Pro Milone.

The section of the Pro Milone which concludes the opening portion and is devoted to the proposition and division of the case is especially concentrated with verbal echoes of the Catilinarians:

Quamquam in hac causa iudices, T. Annii tribunatu rebusque omnibus pro salute rei publicae gestis ad huius criminis defensionem non abutemur. Nisi oculis videritis insidias Miloni a Cl odio esse factas, nec deprecaturi sumus ut crimen hoc nobis propter multa praec lara in rem publicam merita condonetis, nec postulaturi ut, quia mors P. Clodii salus vestra fuerit, idcirco eam virtuti Milonis potius quam populi Romani felicitati adsignetis. Sin illius

\(^{50}\text{Cf. 3.10.23, 3.10.25.}\)

\(^{51}\text{Cf. 4.2.3, 4.8.18.}\)
In this pivotal section of the speech, in which Cicero briefly states his plan of defense, he foreshadows his strategy of state benefit by his claims that his client has always acted only for the safety of the Republic and its citizens (...rebusque omnibus pro salute rei publicae gestis; salus vestra), and he foreshadows by the echoes of the Catilinarians the role which his own ethos will play in the speech by establishing Milo as bonus vir vs. conspirator -- an exact parallel to the orator's position during his consulship. The opening words of this section recall Cicero's first words about Milo in the opening lines of the speech (...cum T. Annius ipse magis de rei publicae salute quam de sua perturbetur, 1) and are reminiscent of Cicero's characterization of himself in this way in the speeches against Catiline (e.g. 4.4.9, 4.11.23), as is the reference to Milo's record of public service in section 6 (multa praecitara in rem publicam merita). The insidia of Clodius are twice referred to in this section, anticipating his repeated characterization as insidiator (e.g. 10 [twice], 11, 19, 49) and recalling the insidia of Catiline (In Cat. 1.13.31, 2.5.11, 4.1.1). Abutemur and audacia in the first sentence of the proposition and division echo the famous opening lines of the first Catilinarian oration: Quo usque tandem abutere, Catilina, patientia nostra... quem ad finem sese effrenata iactabit audacia? (In Cat. 1.1.1). Audacia is a term which is used to characterize Clodius' madness throughout the Pro Milone along with furor², just as Catiline is characterized throughout.

²audacia 6,30,32 (twice),43; furor 3,27,32,34,77
the Catilinarians.\textsuperscript{53} Similarly, both Clodius and Catiline are repeatedly called brigands (\textit{latrones}) and their crimes referred to as \textit{latrocinium}.\textsuperscript{54} Milo, on the other hand, like Cicero in the Catilinarians (e.g. 2.7.14; 4.7.14, 4.8.18, 4.11.23), is consistently characterized as the \textit{conservator} of the Republic and its citizens (e.g. 73, 80) pitted against the \textit{pestis} (\textit{Mil.} 33, \textit{In Cat.} 1.1.2, 1.12.30 [twice], 1.13.33; 2.1.1; 4.2.3) bent on destroying the Republic (\textit{P. Clodius cum statuisset...vexare rem publicam...ad dilacerandam rem publicam quaseret...ad evertandum rem publicam} (24).\textsuperscript{55} Perhaps the most deliberate of these verbal parallels is a single phrase which appears only once in each speech (and is therefore one which is more likely to be aimed at and noted by a reading audience than an audience of listeners): \textit{...illius insidia \textit{e} clariores \textit{hac} luce...} (6). This unmistakably recalls Cicero's identical comment regarding Catiline's plots against the Republic in the first Catilinarian oration: \textit{...\textit{luce} sunt claria \textit{e} nobis \textit{tua} consilia omnia} (1.2.6). This expression is not a commonplace in Cicero's works, occurring only in one other instance in the entire extant corpus (\textit{Pro Caelio}, 9.22), a fact which is even more evidentiary of the calculated use of this exact phrase by the orator for the purpose of a Catilinarian allusion. These verbal echoes which deliberately recall Catiline would surely not have

\textsuperscript{53}audacia, e.g. 1.1.1, 1.13.31; 2.5.10, 2.6.14, 2.13.28; 3.7.17, 3.9.22
furor, e.g. 1.1.1, 1.6.14, 1.9.22, 1.13.31; 2.11.25, 3.2.4
For this as a common \textit{topos} of political invective, see Nisbet's introduction to \textit{In Pisonem}. However, these verbal echoes are only part of the parallel relationship, and so, while they alone are not sufficient to prove the relationship absolutely, they do strengthen the associations when taken in context of the whole situation as presented in the speech.

\textsuperscript{54}\textit{Mil.} 10 (twice), 17, 18, 30, 47, 55
\textit{In Cat.} 1.9.23, 1.11.27, 1.13.31, 1.13.33; 2.1.2, 2.4.7, 2.7.16, 2.10.21; 3.7.17.

\textsuperscript{55}Cf., e.g., \textit{In Cat.} 4.6.13: \textit{...quod initium delendae \textit{e} publicae consilium.}
been lost on an audience familiar with the Catilinarian speeches and could have been expected to be especially effective for a reading audience with access to copies of both texts for review and comparison. Thus, the opening sections and their concluding proposition and division section lay the foundation for the ethical argument of patron-client identification which the orator will construct from these parallels.

The patron-client identification begun in these opening sections of the speech provides the most compelling evidence for reading an intentionally constructed parallel relationship between Cicero and Milo and their respective “national crises”. This identification, foreshadowed by the verbal echoes in the opening, appears most frequently in the speech in the form of statements made by the orator which either explicitly or obliquely (by applying to either case) demonstrate that this is the orator’s intention. At section 5, Cicero identifies himself with Milo, as he will for the rest of the speech, as patriotic citizens with noble motives who have had to pay the price for their services to the Republic against dangerous citizens:

Quid enim nobis duobus, iudices, laboriosius, quid magis sollicitum, magis exercitum dici aut fingi potest, qui spe amplissimorum praemiorum ad rem publicam adducti metu cruellissimorum suppliciorum carere non possimus? Equidem ceteras tempestates et procellas in illis duxit fluctibus contionum semper putavi Miloni esse subeundas, quia semper pro bonis contra improbos senserat... (5).

After this initial identification near the beginning of the speech establishes the relationship in the minds of the audience, ambiguous statements applicable to both himself and Milo are sufficient to place the case within the desired context of Cicero’s career. For example, the statement which Cicero terms meam defensionem (...insidiatorem iure
interfici posse, 11) is able to be read in the context of either Milo’s case or Cicero’s. Forensically, this is straightforward enough, following immediately the justification offered by the laws. The audience would have been aware, however, of the significance which Cicero attaches to his own role in the death of conspirators. Since Milo has already been identified as a figure parallel to Cicero, and the death of Clodius has been connected to Milo’s salvation of the Republic (salus vestra, 6), it seems clear that meam defensionem has implications for Cicero which extend beyond this immediate case to become simultaneously a defense of his own actions on behalf of the Republic.

At section 30, immediately following the narratio, Cicero once more offers a defense of Milo’s actions which fits the context of his own actions eleven years earlier:

...insidiator superatus est, vi victa vis vel potius oppressa
virtute audacia est. Nihil dico quid res publica consecuta sit,
nihil quid vos, nihil quid omnes boni: nihil sane id prosit
Miloni, qui hoc fato natus est ut ne se quidem servare potuerit
quin una rem publicam vosque servaret. Si id iure fieri non potuit,
nihil habeo quod defendam.

Again, in view of the familiar rhetoric of Cicero’s self-glorification, as well as the familiar theme of Clodius as Catiline’s successor, it would be a natural association to make when these words came from Cicero’s mouth.

The consulship which Milo was seeking at the time of Clodius’ murder provides another link with Cicero’s situation in his own consulship, and he speaks of Milo’s power as consul to put down Clodius’ planned revolution:

Quis enim erat civium qui sibi solutam P. Clodi praeturam
sine maxi mo rerum novarum metu proponeret? Solutam autem
fore videbatis, nisi esset consul qui eam auderet possetque
constringere. (34)
Of course, Milo would have been that consul, that one man (unus ille vir) who was destined to save Rome from Clodius (Eum Milonem unum esse cum sentiret universus populus Romanus..., 34) just as Cicero had been the consul brave and dutiful enough to put a stop to Catiline (ego sum ille consul..., In Cat. 4.1.2) and who had been destined to save the Republic from the destruction plotted by Catiline (...cur ego non laeter meum consulatum ad salutem populi Romani prope fatalem exstitisse. In Cat. 4.1.2).

Cicero once again refers to Milo's pursuit of the consulship at section 42 and how quickly public opinion can change, which is what happened to Milo in the aftermath of the murder of Clodius (Nihil est enim tam molle, tam tenerum, tam aut fragile aut flexibile quam voluntas erga nos sensusque civium..., 42). This, of course, recalls the shift in public opinion against Cicero in the years that followed the execution of the conspirators, which led eventually to his exile in 58, but had been foreseen by him even at the time of the crisis:56

Etenim si summi viri et clarissimi cives Saturnini et Gracchorum et Flacci et superiorum complurium sanguine non modo se non contaminaret sed etiam honestaret, certe verendum mihi non erat ne quid hoc parricida civium interfecit invidiae mihi in posteritatem redundaret. (In Cat. 1.11.29)

Patron-client identification comes to a climax in the pars adsumpta57, or extra-causam (as Cicero calls it, 92), section of the speech. In this section, Cicero completes his ethical portrait of his client with profuse praise of Milo as savior of his country. This

56See also, for example, Cicero’s concern over the invidia resulting from his actions as consul in Pro Murena 2.3-4, Pro Sulla, 3.8-9; Cf. Batstone 255, 263-4.

again recalls Cicero's designation of himself as savior of the Republic at the time of the 
Catilinarian crisis, and will culminate with the grouping of Milo explicitly with Cicero 
and the select group of Roman national heroes (83) which the orator has used as 
precedents for judicial murder pro re publica (Mil. 8, In Cat. 1.2.4-5; 4.2.4).

The extra-causam section begins with a lengthy prosopopeia (72-75) in which 
Cicero puts a speech concerning the murder of Clodius and its benefit to the state into the 
mouth of Milo. He introduces this "speech" as an example of what Milo might say if 
there were no other defense to offer. That this is purely hypothetical is made clear by its 
contrary-to-fact conditional introduction: ...si iam nollem ita diluere crimen ut dilui, 
tamen impune Miloni palam clamare ac mentiri gloriose liceret... 72). 58 "Milo" begins 
his declaration of responsibility for Clodius' murder with the same list of historical 
precedents which the orator had used at section 8 of the speech as justification for the 
killing of dangerous citizens:

'Ocidi, occidi, non Sp. Maelium qui annona levanda iacturisque 
rei familiaris, qui nimiris amplecti plebem videbatur, in suspicione 
incidit regni appetendi, non Ti. Gracchum qui conlegae magistratum 
per seditionem abrogavit, quorum interfectores implerunt orbem 
terrarum nominis sui gloria... (72).

Cf....Nisi vero existimatis dementem P. Africanumuisse qui 
cum a C. Carbone tribuno plebis seditioso in contione interrogaretur 
quid de Ti. Gracchi morte sentiret, responderit iure caesium videri. 
Neque enim posset aut Ahala ille Servilius aut L. Opimius aut C. 
Marius aut me consule senatus non nefarius haberis, si sceleratos 
civis interfici nefas esset. (8)59

58Riggsby, pp. 193-4.

59Cf. this same list of precedents used to justify ridding the state of Catiline in the 
first Catilinarian oration (1.1.3-2.4).
At this point in Milo’s speech, Cicero interjects with an “editorial”, comment reemphasizing Milo’s bravery if he were (still in imperfect subjunctive of the contrary to fact) to say what he is about to say („auderet enim dicere, cum patriam periculo suo liberasset...“ 72) -- a reminder that Milo’s bravery is equal to (and to be identified with) the orator’s own courage at the time of the Catilinarian conspiracy (cf. e.g. In Cat. 3.1.1-2, Mil. 34). When “Milo” resumes, he launches into an enumeration of Clodius’ crimes, particularly notable for its emphatic repetition of quem, which will take up the rest of the prosopopeia. Prominent among these crimes and listed only after the Bona Dea scandal and Clodius’ infamous incest with his sister60 is the expulsion of Cicero from the city: ...eum qui civem quem senatus, quem populus Romanus, quem omnes gentes urbis ac vitae civium conservatorem iudicarant servorum armis exterminavit (73).

When Milo’s first prosopopeia ends at 75 after completing the list of Clodius’ crimes, Cicero confirms “Milo’s” allegations, and asserts that, had Milo not stopped him, Clodius’ madness would have reached disastrous (Catilinarian) proportions61:

...vota enim faceretis ut in eos se potius immitteret quam in vestras possessiones, vestra tecta, vestras pecunias: pecunias dico? a liberis, me dius fidius, et a coniugibus vestris numquam ille effrenatas suas libidine cohibuisset. Fingi haec putatis, quae patent, quae nota sunt omnibus,

60 A charge which is stated as fact and backed up by the consular ethos of Lucius Lucullus: ...eum, quem cum sorore germane nefarium stuprum fecisse L. Lucullus iuratus se quaestionibus habitis dixit compersisse... (73).

61 By using the rhetorical device of prosopopeia, Cicero is able both to make charges against Clodius in the “voice” of Milo, and then to turn around and confirm them in his own voice, thus giving the charges twofold support. First, the orator’s ethos lends support and auctoritas to Milo’s voice in the prosopopeia; second, he is then able to use his own consular ethos and auctoritas when he speaks about the charges in his own voice.
Indeed, this is the rhetoric of the Catilinarians. *Vestras possessiones, vestra tecta, vestras pecunias...* echoes exactly Cicero’s words to the Senate and to the citizens of Rome at seven different places in the third and fourth orations against Catiline. Effrenatas suas libidines recalls *esse effrenata audacia* from the famous opening sentence of the first Catilinarian (*quem ad finem esse effrenata iactabit audacia? In Cat. 1.1.1*), and *quae patent, quae nota sunt omnibus, quae tenetur* recalls Cicero’s admonition to Catiline: *teneris undique: luce sunt clariora nobis tua consilia omnia* *(1.1.6)*.

The character of “Milo” has become a mask assumed by the orator, under which he is able to enumerate the crimes of Clodius which the orator then confirms in his own voice -- in the rhetoric of the Catilinarians. These verbal echoes of the speeches against Catiline function in two ways. First, in the forensic use of *ethos* they confirm Clodius’ plans and potential crimes with the voice of experience, of one who has personally dealt with a problem of this magnitude and potential. Second, in a more literary use of *ethos*, these same words serve as a reminder that as Cicero defends and glorifies Milo, he defends and glorifies his own parallel actions in the case of Catiline. This is significant going into the next speech of Milo *(77)* in which he speaks in words reminiscent of the

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62E.g. *In Cat* 3.1.1: Rem publicam, Quirites, vitamque omnium vestrum, bona, fortunas, coniuges liberosque vestros atque hoc domicilium clarissimi imperii, fortunatissimam pulcherrimamque urbe...vobis conservatam ac restitutam videtis. Cf. *In Cat*. 3.10.23, 4.1.2, 4.2.3, 4.6.12, 4.8.18, 4.11.24).
words which Cicero himself used when boasting of his actions against the Catilinarian conspiracy:

‘Adeste, quaeo, atque audite, cives: P. Clodium interfeci, eius furores, quos nullis iam legibus, nullis iudiciis frenare poteramus, hoc ferro et hac dextra a cervicibus vestris reppuli, per me ut unum ius aequitas, leges libertas, pudor pudicitia maneret in civitate...

This recalls specifically In Cat. 3.1.2:

Nam toti urbi, templis, delubris, tectis ac moenibus subjectos prope iam ignis circumdatosque restinximus, idemque gladios in rem publicam dextricos rettudimus mucronesque eorum a iugulis vestris deiecimus.

By this point, Cicero and Milo have become virtually interchangeable, with Cicero speaking more and more in his own character through the Milo "mask", thereby blurring the distinctions between his own words and deeds and those of Milo, which he presents in his own voice through the mask of a client who has been established as a figure parallel to himself.

At the end of this prosopopeia Cicero provides the apodosis to the contrary-to-fact clause with which he introduced it: if Milo were to proclaim this service to the Republic proudly, he would have to bear the scrutiny (and invidia) of public opinion (... clamaret T. Annius... esset vero timendum quonam modo id ferret civitas!, 77) just as Cicero did in the aftermath of the conspiracy for his role in the execution of the conspirators.63 That

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63Here Cicero justifies (perhaps partly in answer to Brutus’ Pro Milone in which benefit to the state was employed as the primary line of defense [Asconius, In Mil. 36, Quintilian 3.6.93, May p. 34, Stone, 90]) not having used this as his primary defense in the original speech which failed to secure an acquittal for Milo. The justification is, of course, veiled in irony.
Cicero had foreseen the possibility of invidia resulting from his actions is apparent even in the Catilinarians (e.g. 1.11.28) and in the speeches in the period immediately following there are indications that he was already beginning to experience repercussions resulting from this invidia. In the Pro Sulla, for instance, Cicero purports to share the "credit" for the salvation of the Republic from the Catilinarians:

...quod mihi consuli praecipuum fuit praeter alios, id iam privato cum ceteris esse commune. Neque ego hoc partiendo invidiae, sed communicandae laudis causa loquor...(9).

In the Pro Flacco, Cicero again shows his anxiety over the invidia which he has encountered in the aftermath of the Catilinarian conspiracy:

Quam ob rem nisi hoc loco, nisi apud vos, nisi per vos, iudices, non auctoritatem, quae amissa est, sed salutem nostram, quae spe exigua extremaque pendet, tenerimus, nihil est praeterea quo confugere possimus...(2.4)

The invidia which Milo might encounter, just as the gloria he should gain from his service to the Republic recall Cicero's own experience as conservator rei publicae. This serves the forensic purpose of extending to the audience of jurors the opportunity not to repeat the disservice done to Cicero as a result of his heroism. The literary purpose served here is a wry commentary on the state of affairs when the savior of the state is

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"Batstone (255) suggests that the prosopopeia of the patria in In Cat. 1 "dismisses Cicero's putative fear of the invidia that will arise...(and) serves to erase any real invidia for Cicero's self-praise with an expression of gratitude for his success joined with an acknowledgment of his responsibilities."

"See also note 56 above."
unable to stand in front of those he has saved and proudly claim responsibility for his actions.

Following the elaborate hypothetical admission of Milo's guilt, Cicero comes out of the contrary-to-fact mode as he begins the next sentence with an emphatic nunc (i.e. in the case as he has argued it...) and declares that even though he did not make a planned attack on Clodius, Milo is unanimously hailed as a hero:

Nunc enim quis est qui non probet, qui non laudet, qui non unum post hominum memoriam T. Anni um plurimum rei publicae profuisse, maxima laetitia populum Romanum, cunctam Italiam, nationes omnis adfecisse et dicat et sentiat? (77)

This estimation appears to place Milo on an equal plane with Cicero, although rhetorical exaggeration requires that Milo seem to eclipse Cicero as the greatest hero of the Republic within memory of mankind, as he even is given the distinction of unus ille.64 This distinction is thus, in a sense, taken away from Pompey, on whom it was bestowed in section 19. But again, we know that Cicero considered himself the only one really deserving of this title and so he seems to be playing with the use of this heroic formula within the ethical matrix of the speech. First of all, Cicero has already described Pompey as unus ille vir, but we recall that he undercut the singularity of that distinction by placing himself last in the list of the ascending importance of Clodius' victims (18-20) and by connecting his own escape from Clodius with the salvation and good fortune of Rome. Now he takes the title away from Pompey again as he bestows it on Milo. Even here,

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64 Elsewhere this is implied of Milo without the use of the specific unus — e.g. section 30: the fate which binds one man's success or failure to the safety of the Republic.
however, the bestowal of *unus ille* on someone other than the orator is undercut by its context. Milo is only deserving of the heroic title because he saved Cicero, the true *unus ille vir* — that one man whose salvation meant the salvation of the Republic. This, after all, is the true sense of the heroic distinction. Thus, even as he gives the honor to Milo, he simultaneously usurps it. Cicero is the key element in the formula because he is directly linked to the Republic. Whether the chain of *beneficia* extends from Pompey to Cicero to the Republic or from Milo to Cicero to the Republic or even from Pompey to Milo to Cicero to the Republic, Cicero is the direct connection to the Republic. The success or failure of Pompey or Milo might help Cicero, but it is his fate, his success, and his salvation which is ultimately responsible for the safety of the Republic.

Furthermore, it is surely significant that Milo is only described as *unus ille vir* when his actions against Clodius are being recounted in such a way that they parallel precisely Cicero's own against Catiline, and it is his heroism against Catiline with which the orator has repeatedly and consistently supported his claim to the title as savior of the state. We see this in section 81, in a remarkable development of the *unus ille vir* formulation, as Cicero remarks on the ingratitude of the community, which will become a dominant theme in the peroration, and the injustice of the punishment of one who had brought about the safety of all its citizens:

Sin factum vobis non probaretur — quamquam qui poterat salus sua cuquam non probari? — sed tamen si minus fortissimi viri virtus civibus grata cecidisset, magno animo constantique cederet ex ingrata civitate. Nam quid esset ingratius quam lactari ceteros, lugere eum solum, propter quem ceteri laetarentur? (81)
This was, of course, like section 77, the fate which Cicero and Milo shared as a result of their actions. In the sentence which follows, Cicero acknowledges the fact that there is a trace of autobiography in the image of the patriot's fate at the hands of an ungrateful state when the patron-client identification of the speech reaches its climax and "comes full circle", so to speak, and the orator once again groups himself and Milo together with the use of the first person plural:

Quamquam hoc animo semper fuimus omnes in patriae proditoriibus opprimendis ut, quoniam futura esset nostra gloria, periculum quoque et invidiam nostram putarlemus. (82)

He goes on to supply the context of his own situation, which serves to tie together explicitly the parallel relationship built up principally by allusion throughout the speech as he moves from the first person plural including himself and Milo to the context of his own experience:

Nam quae mihi tribuenda ipsi laus esset, cum tantum in consulatu meo pro vobis ac liberis vestris ausus essem, si id quod consabar sine maximis dimicationibus meis me esse ausurum arbitrarer? (82)

Cicero returns to explicit identification with Milo in the next sentence, in which he includes Milo along with himself in a list of historical precedents. These precedents correspond exactly to the second part of the list begun in Milo's first prosopopeia (and echo the list in section 8 ending with Cicero "backing off" from responsibility for the execution of the conspirators). Significantly, it is at this point, at the culmination of these historical precedents and the culmination of patron-client identification with Milo, that Cicero claims personal responsibility for the actions taken in his consulship (Quam ob rem uteretur eadem confessione T. Annius, qua Ahala, qua Nasica, qua Opimius, qua Marius,
qua nosmet ipsi... 83), as he was accustomed to do in the speeches in the latter part of his career in which he refers to his consulship and his salvation of the Republic from the perspective of the vindicated hero saved from the undeserved fate of exile. But it is important to note that these later speeches reflect Cicero’s situation after he had overcome the invidia which resulted from his actions as consul and thus had less reason to be timid in proclaiming his responsibility for these actions. This proclamation in section 82 echoes exactly the list of precedents cited in section 8 (Neque enim posset aut Ahala ille Servilius aut P. Nasica aut L. Opimius aut C. Marius aut me consule senatus...). At that moment Cicero was not yet ready to exploit this aspect of his ethos to its fullest effect. This further supports the position that these early parts of the speech reflect the original situation in that they are reminiscent of the restraint shown by Cicero when open boasting of his sole responsibility for the events of his consulship has the potential to exacerbate an already precarious situation. Just as in the midst of the invidia he was facing in the immediate aftermath of the conspiracy, he attempted to “share the glory”, in this delicate situation when Milo’s fate hangs in the balance, he exercises the same sort of moderation when faced with (and menacingly surrounded by) the opposition of the same Clodian faction which had brought about his exile. In the published speech, however, the situation is no longer precarious, and he can assume once again the posture of the vindicated hero, a fact which he emphasizes by the conscious allusion in the later passage (82) to the earlier one (8). Thus, in the published version, Cicero constructs for himself a growing persona which suits his argument. He first argues that the murder is justifiable and so he requires the community’s assent and contrives the picture of shared responsibility which
results; at the end he claims that the murder was heroic and so he requires the heroic formula *unus ille vir* and he accepts a responsibility which is no longer shared (*nosi met ipsi*).

Cicero concludes the paragraph with another reference to the gratitude or ingratitude of the state, again foreshadowing this theme which is so prominent in the *epilogus*:

...et, si grata res publica esset, laetaretur; si ingrata, tamen in gravi fortuna conscientia sua niteretur. (83)

The climax of the patron-client identification comes just past the halfway point of the *extra-causam* section. The remainder of this part of the speech is devoted to the building up of the emotional pitch of pathetic argumentation which will be reached in the peroration, complete with appeals to the gods and divine power (84-86), another list of Clodius’ abominable crimes (87), divine responsibility for the encounter between Milo and Clodius (88) and finally an emotional appeal for the audience to recognize the potential evils and harm to them and the state which Milo alone had the power to stop (89-91).

**Conclusion**

May, who uses the term "ethica digressio" to describe the *extra-causam* section, suggests that in the persuasive process of the speech, this section "prepares the listener (or reader) emotionally and psychologically for the pathetic appeal that will be made in the peroration."\(^{67}\) Thus, it facilitates the progression of the *pisteis* from *logos* [to *ethos*] to *pathos* in what May calls "a true process of persuasion."\(^{68}\)

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\(^{67}\)May, "Ethica Digressio", 245.

\(^{68}\)Ibid.
Outside of the forensic context of the speech, however, we discover a literary use of ethos. It never loses its forensic function as a pistis which is employed by the orator primarily to sway a body of judices by claiming the support of Pompey, the most visible and powerful figure at the trial, and by lending the weight of his own auctoritas to the case and to his client (with a secondary function of self-representation intended to win the recognition of those gathered to listen in the forum). If we look closely underneath the facade of necessary deference to Pompey, we can see how Cicero manipulates the ethical matrix of the speech in such a way that he himself emerges supreme in the hierarchy of the rhetorical situation, establishing himself as the paradigm of Roman statesmanship ( unus ille vir ) while simultaneously providing commentary on the state of affairs which led to the circumstances which once again severely tested the auctoritas and of that statesmanship. Significantly, however, all of this is accomplished by the orator without the interruption of the logical process of persuasion and without sacrificing the forensic verisimilitude of the published speech. Thus, a situation in which Cicero’s ethos must at first yield to the greater visibility and power of Pompey is manipulated to reveal that, in their own ways, both Pompey and Milo are only weak reflections of Cicero’s paradigmatic act. In the trial, this creates a trio of saviors supporting each other; after the trial, the paradigm itself becomes a touchstone by which to criticize Pompey’s actions. These opposite functions do not undermine each other because it is only the fact of the verdict which changes flattery into irony, or, put another way, the fiction that the case is still undecided allows the irony to act as if it were flattery. What we have in the Pro Milone, then, is a use of the rhetoric of advocacy which reaches beyond its immediate
forensic situation to convey to the reading audience a favorable record of Milo, Cicero’s client in the case and his personal benefactor, as a patriotic national hero who deserved better than he got. At the same time, however, through the construction of the parallel relationship between himself and Milo by means of patron-client identification, Cicero is representing himself in the same manner. As he defends Milo’s actions against Clodius (portrayed to readers as another Catiline) he defends his own actions against the Catilinarian conspirators, making his actions the paradigmatic act of *conservatio rei publicae*. Milo’s *ethos* is developed simultaneously with Cicero’s own, both eclipsed by Pompey in the beginning, but evolving in the latter sections of the speech together represented as Rome’s saviors after Pompey’s *ethos* effectively disappears from the speech. The result is that Milo’s *ethos* is represented for the record, but in large part it is reduced to the role of a persona which Cicero assumes and a role which he himself plays. This allows Cicero to do three things simultaneously: first, he shows that Milo deserves acquittal because he is a parallel figure to Cicero at his finest hour as savior of the state; second, he establishes himself as the role model, and his act of heroism is reenacted by Milo; third, he demonstrates that he himself is the true savior of Rome and the only one deserving the title *unus ille vir* by virtue of his heroism and his time-tested *auctoritas*, which is now put to the task of saving another savior of Rome. In all of this Pompey retains his importance as the man empowered to protect the process of protecting the saviors of the state.

The progression from literary *ethos* to literary *pathos* is also facilitated by the equation of Milo with Cicero. In the same way that the justification of Clodius’ murder
represents justification of Cicero's actions eleven years earlier, the indignation over the
ingratitude of the Roman people toward their great benefactor (alluded to in the extra-
causam section and played out in full in the peroration) will represent Cicero's personal
indignation at the treatment he, their self-proclaimed savior, received at the hands of the
ungrateful Republic. Finally, the lament over Milo's fate becomes a lament of Cicero's
own exile when "Milo's" voice in the highly pathetic peroration becomes indistinguishable
from Cicero's own voice. The result is an extension of forensic pathos to perform both
the literary and forensic functions which will be the subject of the next chapter.
CHAPTER IV

Pathos and Consolatio

In the two previous chapters we have seen the way in which forensic logos works in the Pro Milone and the ways in which ethos functions in both a forensic and a literary capacity as the orator represents himself to the audience of listeners and later readers primarily through identification with Pompey and with Milo. In this chapter I will demonstrate how the pathos of Cicero’s argumentation in the Pro Milone performs three different functions: the forensic function of influencing the audience of jurors by means of emotional appeal; the literary function of apologia for his performance at the trial; and the epistolary function of consolatio to Milo. I will argue that Cicero’s use of pathos to appeal to the emotions of his audience of fictive jurors (and of later readers) as it fulfills the forensic purpose of arousing the desired emotions toward himself as advocate, his client, and the opposition, simultaneously provides him with a personal forum, a medium of conveying his personal convictions through the genre of the forensic speech.¹

The greatest part of the pathos of the published speech is concerned with these agenda and

¹Cf. Enos, p. 92: "...many of the topics and conflicts Cicero chose to highlight [in his forensic orations] were representative of social conditions so that his published compositions functioned as generalized criticisms of the prevailing conditions which Cicero’s private letters reveal as personally distressing. These published speeches, then, were oblique responses to conditions, and his pleadings served as a medium for commentary."
thus, I will argue, is not merely forensic, but that it builds upon the ethical matrix of the speech in order to deliver an apologia for the original, to console Milo in his exile, and to express the orator’s dismay and indignation at the ingratitude of the Roman people toward Milo and Cicero who had acted as saviors of the Republic in times of grave national crises.

Pathos as a rhetorical pístis

Pathos was classified by Aristotle as a pístis which has its source in the audience, as opposed to ethos which comes from the speaker (διὰ δὲ τῶν ἀκροατῶν, δταν εἰς πάθος ὑπὸ τοῦ λόγου προσαχθῶσιν. Rhet. 1356a 5). As a persuasive device, it functions in a speech as a means of influencing the audience by arousing them to emotions such as sadness, happiness, love or hate, which, according to Aristotle, were much more influential over men than any judgment based upon reason.²

For the Romans, as for Aristotle, pathos was closely related to ethos, but they perceived that, like ethos, pathos had its source in the speaker.¹ Cicero, and later Quintilian, recognized pathos as the arousal of stronger emotions and reactions from the audience than those evoked by the ethos of the speaker. In the De Oratore Cicero


³The author of the Ad Herennium classifies pathetical appeal as having its source in the speaker (Ad Her. 1.5.8) as does Cicero in De Inv. 1.15.22.
attempts to explain the intimate and somewhat ambiguous relationship between these two
degrees of emotional pleading, although he never uses the exact terms *ethos* and *pathos*,
but the verbs *conciliare* and *excitare*, with which he describes the *officia oratoris*:

Sed est quaedam in his duobus generibus, quorum alterum lene,
alterum vehemens esse volumus, *difficilis ad distinguendum*
similitudo; nam et ex illa lenitate, qua *conciliamur* eis, qui
audiunt, ad hanc vim acerrimam, qua eosdem excitamus, influat
opertet aliquid, et ex hac vi non numquam animi aliquid
infandum est illi lenitati... *(De Orat. 2.53.212)*

Cicero maintained that emotional appeal was the most important of the *officia*
Orat. 3*), and in the *De Oratore* we find the reasoning behind this view succinctly stated:

...nihil est enim in dicendo...maius, quam ut faveat orator
is qui audiet, utique ipse sic moveatur, ut impetu quodam
animi et perturbatione magis quam iudicio aut consilio regatur:
plura enim multo homines iudicant odio aut amore aut cupiditate
aut iracundia aut dolore aut laetitia aut spe aut timore aut
errore aut aliqua permotione mentis quam veritate aut praescripto
aut iuris nor:na aliqua aut iudici formula aut legibus.
*(De Orat. 2.42.178)*

Given the fact that Cicero attached such importance to this type of pleading, it is
not surprising that this is the area in which he was especially regarded by his peers as
preeminent. In the *Orator* (37.129-30) Cicero himself boasts of his excellence in this type
of pleading and explains why the most emotional parts of the case were accustomed
always to be argued by him:

Quid ego de miserationibus loquar? quibus eo sum usus
pluribus, quod, etiam si plures dicebamus, perorationem
mihi tamem omnes reliquebant...(130)⁶

But Cicero did not believe that pathos should be confined to the exordium and the
epilogus, although these were generally considered to be the most appropriate places for
it.⁷ Rather, he advocated its use in every part of a speech:

Et quoniam, quod saepe iam dixi tribus rebus homines ad nostram
sententiam perducimus, aut docendo aut conciliando aut permovendo,
una ex tribus his rebus res prae nobis est ferenda, ut nihil aliud
nisi docere velle videamus, reliquae duae, sicuti sanguis in corporibus,
sic illae in perpetuis orationibus fusae esse deebunt.
(De Orat. 2.77.310)

The Pro Milone was certainly a case which called for this type of treatment (...vel
utroque loco, vel omnibus, si habet eam causa dignitatem atque copiam..., De Orat.
2.77.312), since it was ambiguous⁸ at best, and relied on the emotions of the audience

⁶Cf. Brutus 51.190: Tum Brutus:...Hortensius...qui cum partiretur tecum
causas...perorandi locum, ubi plurimum pollet oratio, semper tibi reliquebat.

⁷De Orat. 2.77.311: ...maxime proprius est locus et in exoriendo et in perorando....
Cf. Ad Her. 1.5.8, 2.30.48-31.50; De Inv. 1.16.22; Rhet. ad Alex. 1445a.

⁸Ad Her. 1.3.5: Genera causarum sunt quattuor: honestum, turpe, dubium, humile.
Honestum causae genus putatur cum aut id defendimus quod ab omnibus defendendum
videtur, aut oppugnabimus quod ab omnibus videtur oppugnari debere, ut pro viro foni,
contra parricidam. Turpe genus intellegitur cum aut honesta res oppugnatur aut defenditur turpis. Dubium genus est cum habet in se causa et honestatis et turpitudinis partem.
Cicero defends Milo as a fortis vir while he simultaneously condemns Clodius as the
worst kind of criminal, and thus attempts to make a case of the genus honestum out of
Milo’s case which seems at best of the genus dubium. See also C. Neumeister,
Grundätze der forensischen Rhetorik, gezeigt an Gerichtsreden Ciceros (Munich, 1964),
p. 87.
to overcome the weakness and the obviously fallacious logical argumentation on which his defense of Milo is built. In this chapter, though, it is my intention to look at the pathetical argumentation of the published Pro Milone and to consider the function it serves as a medium within the genre of forensic discourse by means of which the orator could communicate his personal agenda to an audience of readers.

Kirby suggests that instead of being merely a stronger degree of ethos, "...pathos in some instances may be considered the target of ethos." It is my view that this is precisely what is going on in the published Pro Milone. In chapter three it was demonstrated how through ethical argument Cicero identifies himself with Milo and draws parallels between their situations as heroic benefactors of an ungrateful state. This patron-client identification in turn develops throughout the speech and comes to its plateau in the peroration (95-105), where Cicero and Milo become virtually indistinguishable at times as Cicero laments the fate of the unjustly exiled patriot in the midst of political turmoil, and it is in the peroration that all of the "strands" which have run throughout the speech come together for a final appeal. On a forensic level, pathos is employed within the speech to play upon the emotions of the jurors. In this case it serves primarily to arouse their odium for Clodius, invidia for his faction, misericordia for Milo (and Cicero himself as identified with Milo as having endured the same sort of misfortune), and finally timor in the midst of the political chaos of the time, the implications of the success of


De Orat. 2.51.206:...haec fere maxime sunt in iudicium animis...apud quos agernus, oratione molienda, amor odium iracundia, invidia misericordia, spes laetitia, timor molestia...
Clodius’ political programs, and the unprecedented surroundings in which they find themselves during the trial under the watchful eyes of Pompey.\footnote{At the same time, he works to allay their fears by assuring them that they will not be going against Pompey’s wishes if they acquit Milo, but, quite the contrary, meeting his expectations (e.g. 15, 23, 68-71). Gruen (p. 338) points out that just the opposite was true: “Although Pompey himself was officially neutral, it was common knowledge that he hoped for a conviction.” See Vell. Pat. 2.47.4: Milonem reum non magis invidia facti quam Pompei damnavit voluntas; Schol. Bob. 112 Stangl: Pompeius obnixe studens in damnationem Milonis. But Cicero only refers to the equanimity with which Pompey reacted to his defense of Milo (Fam. 3.10.10: qua denique ille facilitate, qua humanitate tutil contentionem meam pro Milone adversante interdum actionibus suis) and his protection of Cicero at the trial (ad Att. 9.7b.2: Hac re mihi placet, si tibi videtur, te ad eum scribere et ab eo praesidium petere, ut petisti a Pompeio me quidem adprobante temporibus Milonianis).

Pathetical argumentation in the Pro Milone extends beyond the forensic level, though, and into the literary realm of the published speech by providing the medium for the emergence of Cicero’s personal agenda. As a literary work, the speech functions on a number of different levels. First, it serves as an \textit{apologia} for the original forensic performance in that it represents Cicero’s official, "for the record" defense of Milo and at the same time, in a different sense of the word, a self-defense in the form of justification for his inadequate performance at the trial. This justification is aimed both at the reading audience in general, who no doubt were aware of what had happened at the trial, and to Milo in particular, as a personal apology for Cicero’s failure to save him from the sentence of exile. In addition to a message of \textit{apologia}, the peroration seems to be intended to deliver, among other things, a personal missive of consolation\footnote{Cf. Clark and Ruebel (72) who note in their concluding paragraph that this is a possible function of the published speech, but do not pursue the implications of this statement: “In part, at least, the revised speech was intended for Milo himself, as a \textit{consolatio}...”} to Milo as
he endures the pain of exile. Cicero's personal agenda is also represented in the speech as he refers repeatedly (both explicitly and implicitly through parallels with Milo) to his own political downfall and undeserved exile as well as to the current political turmoil. In this chapter I will demonstrate how all of these purposes are accomplished within the forensic pathos of the published speech, and how the literary elements of apologia and consolatio are contained within the emotional appeals which are aimed at the fictive audience of jurors in the published speech.\textsuperscript{13}

True to Cicero's customary practice, pathetical argumentation is employed throughout the Pro Milone, but it builds in intensity as the speech progresses, until in the final one-third of the speech it becomes the predominant means of argument. Elsewhere in the speech, appeals to the emotions are scattered and often used to great effect among the sections which for the most part are strictly devoted to logical/textbook proof.\textsuperscript{14} However, pathos does not become the predominant means of persuasion until the lengthy digression of the extra-causam section (72-91) and the final emotional crescendo of the peroration, all of which, by Cicero's own admission (92), lies outside the case proper. It is in these parts of the speech, along with the exordium, which are the rhetorically

\textsuperscript{13}See Enos, p. 92. The published speech necessarily adheres to the genre of Roman forensic oratory, and conforms stylistically and conveys its message in accordance with the established elements of that genre.

\textsuperscript{14}E.g. the digression on natural vs. statutory law (10-11), which rebuts the prosecution's assertion (as Cicero represents it) that all murder is to be condemned; the appeal to the memories of great Romans whose murders brought about no such special inquiry (16), designed to place Clodius' death in perspective with that of truly valuable citizens, and which concludes with Cicero and Pompey as potential victims of Clodius (20).
appropriate places for this type of pleading, that the pathos of the speech is most clearly
demonstrable as a literary device which serves Cicero’s purpose in reaching his readers
in the aftermath of the trial. In addition to its forensic effect, though, in the context of
the published speech the pathos of these sections reaches beyond the fictive audience of
jurors to the reading audience, conveying the message(s) which Cicero wants in the
written record: apologia for the original performance; personal invective against Clodius
"for the record"; the orator’s personal commentary on the present situation and, by
extension, his own earlier (and similar) one as consul. This extension of Milo’s situation
to represent Cicero’s own is accomplished and anticipated by the patron-client
identification of himself and Milo; and, finally, a message of consolatio to Milo, which
uses the consolatory topoi outlined by Menander Rhetor and fits the model of the private
missives of consolation which are contained among Cicero’s letters ad Familiares.

Pathos as apologia in the captatio benevolentiae

The pathos in the exordium begins immediately with the tone of apologia. In the first
paragraph, Cicero appeals to the emotions of the audience in a typical captatio
benevolentiae in which he emphasizes his own fear in the face of the unusual
circumstances:

Et si vereor, iudices, ne turpe sit pro fortissimo viro
dicere incipientem timere minimeque debeat...tamen haec
novi iudici nova forma territ oculos...quamquam prae-
sidis salutaribus et necessariis saepti sumus, tamen
ne non timere quidem sine aliquo timore possimus.

\textsuperscript{15}Ad Her. 1.5.8: Ab nostra persona benivolentiæ contraheremus...si nostra incommoda
proferemus, inopiam, solitudinem, calamitate...; Cf. De Inv. 1.16.22.
Citing Quintilian (4.1.5-7), Kirby claims that the captatio is an argument properly classed as ethical, but concedes that "it shows how closely linked the arguments of ethos and pathos can be: the poor orator, struggling manfully with an almost insurmountable task deserves (in essence) the sympathy of his audience." Here I classify the captatio as pathos, and I argue that it is designed, in this instance at least, to stir the emotions (permovere) more strongly than simply to please (conciliare). By crossing this boundary between ethos and pathos, Cicero appears to be acknowledging the fact that in this speech, under these circumstances, his ethos arguments could not happen without some pathos. Forensically, this beginning constitutes an emotional appeal to the jurors of the original occasion, seeking to evoke their pity for the orator having to plead this case under the most adverse conditions. Also, however, it plays upon the fear of all those in the forum for whom the sight of troops within the city and the unprecedented political circumstances which they represented must have been as unsettling as it was for Cicero. In the published speech, the captatio is aimed at the reading audience, and so has a different set of intentions. These intentions, however, are met by the same process of persuasion as are the forensic goals of the original occasion and are inextricably integrated.

16F.P. Donnelly, Cicero's Milo: A Rhetorical Commentary (New York, 1935), notes the presence of three different types of fear represented by the verbs in this paragraph: "vercor - mental, 'have fear'; timere, bodily, 'feel fear'; terrere, objective, 'cause fear.'"

17Kirby, p. 21.

18Cf. De Orat. 2.77.310: ...nam et principia et ceterae partes orationis...habere hanc vim magnopere debent, ut ad eorum mentis apud eos agetur, movendas pertinere possint...
into that process, which in the captatio seeks to win sympathy for the orator and his cause, as well as to describe vividly for the later readers the pervasive sense of fear which filled the forum that day. Now, however, the decision about Milo has already been made. In the published speech it is Cicero who is being judged\(^9\) -- by Milo, by his contemporaries and by posterity. Thus, for the reader of the speech the exordium immediately sets up for the justification of Cicero’s substandard performance at the trial, fulfilling the literary purpose of apologia. Also, there can be detected a subtle undercurrent of political comment on the trial situation which had been created arbitrarily by Pompey, as the orator remarks ironically that he is not even able to be free from fear without being afraid (\textit{tamen ne non timere quidem sine aliquo timore possimus} 2), suggesting that something sinister is in reality lurking behind the supposed protection of the soldiers.\(^{20}\) The truth about the presence of the troops is intimated more clearly by the orator’s comments that a fortified forum is no longer a place which is appropriate for oratory or for the constitutional laws: \textit{...nec inter tantam vim armorum existimarem esse orator} locum... (2); \textit{...silent enim leges inter arma...} (11).

\(^9\)Cf. Aristotle on \textit{epideixis}, \textit{Rhet.} 1358b.

\(^{20}\)No doubt they served as a warning, as well, of Pompey’s supremacy and the possible consequences of crossing him (as Cicero is doing as he speaks in defense of Milo). See Seager, pp. 146-7: "...despite his protestations to the contrary, the troops were there primarily to make sure that Milo was condemned... The significance of Pompeius’ attitude is shown by the outcome of the trials that followed... it is clear that, where Pompeius did not intervene to influence the result, opinion was favourable to Milo and his supporters." See also Gruen, p. 338. As noted above (n. 11) Cicero’s later references to the trial in the letters, however, speak only of Pompey’s indulgence and protection of him at the time of the trial (\textit{Att.} 9.7B.2; \textit{Fam.} 3.10.10).
The tone of *apologia* continues in the opening paragraph as Cicero describes the unusual and thus unsettling situation (with the repeated emphasis on *non*)\(^2\) in such a way as to justify his fear to an audience of readers, and perhaps to Milo above all:

*Non enim corona consessus vester cinctus est, ut solebat; non usitata frequentia stipati sumus; non illa praesidia quae pro templis omnibus cernitis, etsi contra vim conlocata sunt, non adferunt tamen oratori terroris aliquid...* (1-2)

It is near the end of the *tractatio* (32-71), that the *pathos* and political commentary which will culminate in the high state of emotion reached in the end of the speech really begin to build as Cicero addresses Pompey at length (67-68), to be followed immediately by a direct appeal to the sole consul by "Milo" in the form of *prosopopeia* (69). In Cicero’s address to Pompey, he points out that the real danger to Milo is not the charges he is having to answer before the court, but the perceived enmity of Pompey:

...*tametsi metuitur etiam nunc Milo. Non iam hoc Clodianum crimen timemus, sed tuas, Cn. Pompei -- te enim iam appello et ea voce ut me exaudire possis -- tuas, inquam, suspiciones perhorrescimus.* (66-67)

With these words, Cicero goes "on record" in the published speech with an *apologia* which takes up, in effect, where the exordium left off, with the emphasis on fear and on the cause of that fear, pointing an accusatory finger, as it were, with the repetition of *tu.* This "accusation" effectively shifts the blame for Milo’s conviction away from the orator, sending the message in the aftermath of the trial that he had done all he could -- it had

\(^{2}\)Cf. May (*Trials of Character*, p. 140): "...one must...acknowledge that the speech...has an element of unreality about it...attributable, at least in part, to the circumstances of the speech, which in many ways must have seemed very strange to the Republican orator...For an orator who had spent thirty-five years pleading in Republican courtrooms, the unreality of the circumstances must have seemed very real indeed."
not been a matter simply of defending his client against some criminal charge (that he could have done, as this published masterpiece of defensive rhetoric shows), but of dealing with the paranoia of an extra-constitutional ruler in the face of unprecedented intimidation, and it is this to which Cicero calls attention in his own defense. This section, in effect, marks a transition to the upcoming parts of the speech which will focus primarily upon Cicero’s personal agenda. Accordingly, it works as a re-opening of sorts to the second part of the speech, bringing the focus back to emotional argumentation from the logical argumentation on which the praeudicia (7-22), narration (24-29) and tractatio (32-71) primarily relied.

*Prosopopoeia*

After spending the next section (68) attempting to persuade Pompey that he had never had anything to fear from Milo, Cicero speaks as Milo addressing Pompey directly in a *prosopopoeia* which, revealing hindsight from a reader’s perspective, contains both a lament of Milo’s misfortune and political commentary in a warning to Pompey regarding the precarious nature of life and fortune, which Cicero himself knows only too well:

Erit, erit illud profecto tempus et inlucescet ille aliquando dies, cum tu salvis, ut spero, rebus tuis, sed fortasse in motu aliquo communium temporum, qui quam crebro accidat experti scire debemus, et amicissimi benevolentiam et gravissimi hominis fidem et unius post homines natos fortissimi viri magnitudinem animi desideres. (69)

The forensic purpose of this *prosopopoeia* is to put Milo “on stage” as Pompey’s friend and champion, a characterization emphasized by the superlatives *amicissimus*, *gravissimus* and *fortissimus*. May notes that one of the functions of *ethos* in the speech
is to portray Milo as Pompey’s friend,\textsuperscript{22} and in general it is. However, the effect of this particular passage not only depicts Milo as Pompey’s friend, but by bringing Milo into the speech as the speaker, it becomes \textit{pathos} using the immediacy of a dramatic emotional appeal. The audience of fictive jurors seems to witness a one-to-one plea from one friend to another and thus it seeks their pity for Milo as the ever-loyal \textit{amicus}, the victim of unwarranted suspicions and undeserved misfortune. This passage also represents Milo as one who foresees the inevitable difficulties which Pompey will face as a result of the unprecedented and unconstitutional political situation in which he has involved himself. Forensically, this plays upon the uncertainties of the times about which those gathered in the forum must have been uneasy as well. Thus, it serves not only as a warning to Pompey, but to the audience as a whole (both of listeners and contemporary readers) that there will be a need for men like Milo in the Republic when the tensions which have become evident among the triumvirs finally erupt.

We do not know precisely when the \textit{Pro Milone} was published. The tone of this passage, however, indicates that Cicero either knew of trouble already between Pompey and Caesar or that he could foresee a time when such a break would occur. The conference of Luca in 56 had renewed the ties of the triumvirate among Caesar, Pompey and Crassus, and with the joint consulship of Crassus and Pompey in 55 all seemed well for the arrangement. The death of Julia in 54, however, broke the marriage tie between Pompey and Caesar, and when Caesar proposed a new marriage alliance in 53 — Pompey

\textsuperscript{22}May, \textit{Trials of Character}, p. 133. "...in order to condemn Cicero’s client, according to the scenario that the orator has staged, they must condemn Pompey’s friend."
to marry Caesar's great-niece Octavia and Caesar to marry Pompey's daughter — Pompey rejected the offer, opting instead for an alliance by marriage with senatorial optimates in the following year. The death of Crassus in 53 meant that the three-cornered power of the triumvirate was now down to a more precarious balance of power between just Pompey and Caesar. In 52, the year of Milo's trial, Pompey undertook his sole consulship at the urging of the Senate while Caesar was proconsul in Gaul, although he was still cooperating with Caesar by exempting the proconsular command in Gaul from the lex Pompeia de provinciis and assuring for Caesar the right to stand in absentia for the consulship. We can see, then, the balancing act which Pompey was attempting to perform by keeping his agreements with Caesar, since his power over Caesar in this capacity was crucial to his political supremacy with the optimates in the Senate, who were dependent upon him to keep Caesar in check. This balancing act was to become more difficult in the years after 52 leading up to the inevitable break and civil war between these two men, one of whom could tolerate no equal, the other of whom could endure no superior (nec ille [Pompeius] ferebat parem, nec hic [Caesar] superiorem, Florus, 2.13.14). The tensions which were evident more than four years before the trial of Milo and which necessitated the conference at Luca could only increase as Pompey endeavored to maintain his balance of power between the Senate and Caesar, as well as the balance between his own ambitions and those of Caesar. The inevitability of these tensions coming to a dangerous climax could not possibly have escaped the notice of an astute political observer such as Cicero, even well in advance of any formal break between Pompey and Caesar. Whether two weeks or two years passed between the time of Milo's trial and the
publication of the *Pro Milone*, although dark clouds were on the horizon that Cicero could have had complete confidence in hindsight, or even "pre-hindsight" at a prescient moment in 52, that trouble was coming between the two leaders.

The emphasis of the above passage is on the future, of which Cicero ("Milo") speaks with certainty. It gives Cicero (and Milo) an opportunity to go on record with "I told you so" to Pompey, "in front of" the audience of jurors as well as of readers, and only serves to reinforce for them the unreasonable nature of Pompey's previous paranoia concerning Milo.

This use of *prosopopeia* which walks the fine line between ethos and pathos by bringing the character of Milo into the spotlight but doing so for the purposes of stirring the emotions is typical of the way in which *prosopopeia* works in Ciceronian oratory in general. Whether the orator is assuming the role of his client, of the *patria*, or of

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23 Although we do not have a precise date for the publication of the speech, the evidence we do have strongly suggests that it was published shortly after the trial. We have the *terminus ante quem* of Milo's departure from Massilia to become involved in the Civil War. He was captured and executed at Cosa in 48. Moreover, because of the ambiguity of the warning words to Pompey, it seems likely to have been before the rift between Pompey and Caesar became dangerous in late 50, the situation to which Cicero returned from his proconsulship in Cilicia which lasted from July 51-July 50.

24 Cf. Batstone, 253, on "Ciceronian providence" in the first Catilinarian: "With extraordinary finesse, Cicero...inserts into this tour de force of information and foreknowledge what amounts to a prediction that has nothing to do with what Cicero knows but which depends upon the fact that Cicero is presenting himself as one who does know."


26 cf. *In Catilinam* 1.18, 27-29; *Pro Plancio* 38.92.
some other character which might be useful to his case, the effect is always to bring the influence and authority of that character into the case to the advantage of his side (ethos argument), but the inherent drama of this device results always in emotional appeal (pathos argument) stirring pity, fear, patriotism, ill will or even laughter. Quintilian classifies pro sopopoeia as pathos resulting from the immediacy of the first-person perspective:

...nudae tantum res movent: at cum ipsos loqui fingimus, ex personis quoque trahitur adfectus. Non enim audire iudex videtur aliena mala defleuitis, sed sensum ac vocem auribus accipere miserorum, quorum etiam mutus aspectus lacrimas movet; quantoque essent miserabiliора si ea dicerent ipsi, tanto sunt quadem portione ad adficiendum potentiora, cum velut ipsorum ore dicuntur, ut scaenicis actoribus eadem vox eademque pronuntiatio plus ad movendos adfectus sub persona valet. (Inst. Orat. 6.1.25-26)\(^\text{2}\)

The effect which Cicero achieves by assuming a different persona varies from speech to speech, depending on the exigencies of the rhetorical situation. Early in his career in defense of Sextus Roscius of Ameria (80 B.C.) Cicero assumes the voice of his client\(^\text{2}\) by "slipping" into it without introduction and addressing the prosecution, which was orchestrated by Chrysogonus, an associate of Sulla. In the persona of his client Cicero charges that the prosecutors themselves committed the murder of the elder Roscius

\(^{27}\)Cf. Clodia's famous ancestor Appius Claudius and infamous brother Publius Clodius whom Cicero brings on stage to speak to her in the Pro Caelio 35-36.

\(^{28}\)It should be noted here that this passage comes just after a citation of the Pro Milone in sections 24-5, and is followed by "Itaque idem Cicero" and another example from the Pro Milone in section 27.

(with which his client has been charged) and demands to know if, in addition to his property and his money, they are determined to take his life (32). Roscius’ appearance "on stage" goes beyond ethical argument. His auctoritas added nothing to the case, but his emotional appeal must have been calculated to influence the jury by obtaining a reaction of misericordia for Roscius and at the same time invidia for Chrysogonus. By assuming the persona of Roscius, the orator is able to put words in the mouth of Roscius that would be too dangerous for him to say himself, but which are designed to arouse pity and indignation in the jury for the injustices suffered by the defendant. Thus, prosopopeia proves actually to be a reversal of the rhetoric of advocacy. If the advocate can say some things that the client cannot, so he is also prevented from the immediacy of a first-person appeal to the emotions. Prosopopeia provides the antidote to this inherent limitation of advocacy.

In the first oration against Catiline, which as a political speech has different goals than a forensic speech, and in which self-promotion is perhaps to be considered the primary purpose, Cicero puts on the "mask" of the patria twice. The first time the prosopopeia speaks to Catiline (In Cat. 1.18), reproaching him for his past crimes and beseeching him to leave Rome in order to prevent her destruction. The second time the patria appears, Cicero portrays its approach to him, the consul, its last best hope, to reproach him for not taking action against the conspirators (In Cat. 1.27b-29). In the immediate context of the rhetorical situation, the speeches of the patria accomplish two things. First, they add to the pathos of the speech by arousing the desired emotions from the audience (in this case, primarily their patriotism and their admiration for Cicero’s
position and his cautious fortitude in a crisis with such grave implications that the patria itself is in danger of extinction without his help). Second, they add the auctoritas of the patria for the purpose of enhancing Cicero’s own consular ethos. At the same time, a literary purpose is also being served by the prosopopeiae in the first Catilinarian; by portraying himself as the only hope of the preservation of the patria Cicero is able to justify his suppression of the conspiracy by any means possible.

In the later sections of the Pro Milone, prosopopeia features prominently in adding pathos to Cicero’s arguments as the logos which dominates the first two-thirds of the speech gives way to the ever-increasing pathos of the extra-causam section and the peroration, on which the forensic speech depends for its success. In a review of the five instances of prosopopeia which are found in these sections of the speech we will see how the literary functions of these passages are fulfilled simultaneously with the forensic function of influencing the emotions of the jurors.

The pathos which was begun by "Milo’s" first impassioned address to Pompey (69) continues to build throughout the lengthy digression of the extra-causam section as the orator endeavors to arouse the sentiments of the audience against Clodius in preparation for the emotional plea of the peroration. This section combines ethos and pathos arguments first by completing the process of patron-client identification between Cicero and Milo (see ch. 3) and then by arousing the audience to fear and indignation with the

30So, Batstone, 255: "...Cicero...adopts the voice of the Fatherland, a tactic that allows him to...validate his own self-praise as the authoritative view of Rome herself.” Cf. Pro Plancio 38.92 where the patria addresses Cicero as hero of Rome in the context of the Catilinarian crisis.
enumeration of Clodius’ past and potential crimes. The ethos and the pathos of this
digression are not, however, neatly “packaged” in such a way as to be altogether
distinguishable, but are at work simultaneously as the orator prepares for his final
emotional appeal.31

The first half of the extra-causam section is in large part devoted to the completion
of the process of patron-client identification which has been at work from the opening
sections of the speech. The lengthy prosopopeia of Milo (72-75) with which this pars
adsumptiva begins consists solely of relentless invective against Clodius, enumerating his
infamous crimes. The forensic purpose of this enumeration of Clodius’ misdeeds is
obviously to arouse odium against Clodius and gratitude toward Milo as the one who put
an end to those crimes. At the same time, Cicero is afforded the opportunity of hiding
behind the voice of his client to mask his own indulgence in bitter personal invective
against a dead inimicus. Again, this is an example of the “antidote” to the rhetoric of
advocacy which is provided by the device of prosopopeia as the advocate puts into the
mouth of another character things which he himself should not say. In this case, however,
it is not so much that he cannot say them as that it is more effective to put part of the
Clodius invective into the mouth of Milo. This accomplishes three things: first, the
prosopopeia provides a change of character and thus an opportunity to break the
monotony of the long list of Clodius’ crimes; second, it gives the effect of another

31May, “The ethica digressio and Cicero’s Pro Milone”, 245: “...he binds together, by
the portrayal of ethos, the logical proof with ethical and pathetical persuasion. ...This
“ethical digression” not only corroborates the arguments presented in the argumentatio by
using a different thrust, but likewise prepares the listener (or reader) emotionally and
psychologically for the pathetic appeal that will be made in the peroration.”
individual bearing witness to Clodius' misdeeds; and third, it gives Cicero the opportunity to bring Milo on stage in front of the audience of fictive jurors to justify in the client's persona the numerous reasons he (and all good citizens) had for wanting Clodius dead. This is also particularly effective forensically to offset further the difficulty presented by Milo's stoic, unrepentant demeanor at the trial. The literary purpose which this prospopoeia represents is clearly the opportunity to record yet another tirade against his bitter enemy and to show the audience of later readers as well as the jurors of the original occasion that the murder of Clodius was a definite benefit to the Republic.

In sections 77 to 82, the process of patron-client identification is completed and in the second half of the extra-causam section (83-94) ethos argument gives way to pathos. In the remainder of this section, Cicero comes out from behind the mask of Milo and launches into his own personal tirade against the crimes of Clodius, indulging himself "for the record". He expands on themes which were treated in a more restrained manner in the sections which revolve primarily around logical argumentation (i.e. the praesidicia, 7-22 and the tractatio, 32-71). For instance, the execution of the Catilinarian conspirators, which he attributes to the Senate in section 8, and proudly proclaims in section 83,12 using exactly the same list of precedents leading up to that event in each section, so that his claim of heroism for this action in the extra-causam section deliberately echoes his previous disavowal of personal responsibility. Similarly, in his apostrophe to the divinities in sections 85-86, Cicero reveals unapologetically in the abuse of Clodius'

corpse, attributing his lack of proper burial to divine anger, whereas in the earlier part of
the speech (33), he displays a greater degree of restraint in his satisfaction at the fate of
his inimicus (laudare non possum, irasci certe non debo). These deliberate echoes of
themes from one part of the speech treated very differently in the other clearly suggest
that the extra-causam section of the speech, like the peroration which follows, were in fact
later additions to the speech for the written record. Freed from the forensic necessity of
winning the case for Milo by presenting his own ethos in the best (and least controversial)
light, Cicero is able in the published speech, without interrupting the persuasive process
or abandoning the forensic fiction, to proclaim proudly his personal heroism during the
Catilinarian crisis and to revel in the fact that his most bitter enemy had met with such
a grisly end. Thus, to the reading audience, the orator is able to present his personal
ethos in the way in which he wishes it to be handed down as part of the written record,
just as he is able to take advantage of the forensic pathos of the speech as a medium for
his personal agenda. In the extra-causam section, this takes the form primarily of
invective against Clodius and his faction. The pathos of the peroration, however, gives
Cicero the opportunity to fulfill his other intentions for the published speech — i.e.
apologia, consolatio, and political commentary.

Epistolary pathos in the peroratio

In the peroration, Cicero turns from invective against Clodius to a different kind
of pathos, which I will term epistolary. Forensically, it functions as one last appeal to the
jurors to take pity and vote for Milo's acquittal. In the published speech, with its wider
range of intentions, the peroration fulfills at least three different purposes. First, it
represents an opportunity for Cicero to condemn in general terms the ingratitude of the citizens of Rome and the forces at work in the city which would allow the undeserved persecution and exile of such benefactors of the state as the parallel figures of Cicero and Milo. Second, it serves as a Cicero's apologia for his failure to help Milo as Milo had once helped him at the time when he had been forced into exile. Third, it represents a private consolatory epistle from Cicero to Milo in exile, and, in fact, incorporates many of the standard topos of the consolatory epistles found in Cicero's ad Familiares.33

Cicero begins the peroration by excusing Milo's seeming indifference (which must have seemed out of place on the part of a man whose very life was at the mercy of the jury)44 with a description of Milo as being like a brave gladiator who deserves respect

33The genre of the consolatory epistle has as its source the traditional, formal genres of consolation which originated in Greek epideictic oratory and poems of lamentation (see Kennedy, Art of Persuasion in Greece, pp. 154-66, M.E. Fern, The Latin Consolatio as a Literary Type, [St. Louis, 1941], pp. 2-8). The conventional topos of these genres, however, have been coopted in the letters of Cicero into the more personal, one-to-one world of private correspondence (contrast the less personal, more "literary" consolatory epistles of the younger Pliny [3.7, 5.5, 5.16] and the younger Seneca [63, 99]) and it is this form of consolation which has been subsumed by Cicero into the forensic rhetorical context of the Pro Milone. For a detailed discussion of the history of consolatory literature in antiquity, see Rudolf Kassel, Untersuchungen zur griechischen und römischen Konsolationsliteratur (Munich, 1958). See also Jose Esteve-Forriol, Die Trauer- und Trostgedichte in der römischen Literatur, Dissertation, University of Munich, 1962, for a study of the genre of epicedion. For the philosophical background and influences on this literature see Horst-Theodor Johan, Trauer und Trost (Munich, 1968).

44Albert C. Clark, M. Tulli Ciceronis: Pro T. Annio Milone (Oxford, 1895, reprinted, Amsterdam, 1967), p. lvii, notes how this affects Cicero's pleading of the case: "The usual course is to awaken the pity of the jurors by the tears of the accused, and by a description of the ruin which condemnation will entail. In the present case the demeanor of Milo makes it impossible to appeal for mercy towards him and so Cicero pleads for pity upon himself." Also, unable to bring in any children or other relatives of Milo to appeal for mercy upon, Cicero is compelled to bring up his own children as well as his
and mercy all the more on account of his valor. Since Milo will not speak on his own behalf, Cicero speaks for him in a prosopopeia which in itself contains all the various elements of the peroration — consolation and apology to Milo, comment on the current political situation in Rome, as well as commentary on Cicero’s personal misfortune in the wake of the Catilinarian crisis. In fact, in the first part of this prosopopeia, Cicero’s words acting as Milo’s could be taken for the words the orator himself might have spoken at the time of his own exile, and it is interesting to note the number of instances (17) of the first person pronoun in the first part of this passage, which gives the impression that Cicero is emphasizing himself as the actor behind the mask as much as he is speaking for Milo:

‘Valeant,’ inquit, ‘valeant cives mei; sint incolures, sint florentes, sint beatí; stet haec urbs praeterea mihique patria carissimá, quoque modo erit merita de me; tranquilla re publica mei cives, quoniam mihi cum illis non licet, sine me ipsi, sed propter me tamen perfruantur. ego cedam atque abibo. Si mihi bona re publica frui non liceat, at carebo mala, et quam primum tetigero bene moram et liberam civitatem, in ea conquiescam. O frustra,’ inquit, ‘mei suscepti labores! o spes fallaces, o cogitationes inanes meae! (93-94)  

brother Quintus in order to heighten the pathos of the peroration (102).


36. Clark and Ruebel (72): "...represented as a Stoic hero, Milo should be consoled by his altruistic self-sacrifice on behalf of the Republic...Milo himself would endure exilium in a manner worthy of his stature...", p. 72. Cf. Fam. 4.5.6., 5.16.5, 5.17.5, 5.18.1.
One recalls that in a passage starting with *De Orat.* 2.45.189, Cicero compares the orator’s own emotional engagement with his speech to that of an actor’s with his role, and notes that one of the requirements to reach this stage of emotional engagement is that the actor must feel the emotions of the character, as must the author of the words.\(^{37}\) In the speech, Cicero is both actor and author, and nowhere is this metaphor more appropriate than when he assumes the mask of *prosopopeia*. There is no one who would feel "Milo’s" pain more keenly than Cicero himself, who has experienced that same pain firsthand. Thus, as Milo’s *ethos* here becomes the mask which Cicero wears to advance Milo’s case, that mask itself speaks all the more forcefully as Cicero’s own character begins to emerge increasingly from behind the mask (*mei, mihi, de me, mei, mihi, sine me, propter me, ego, mihi, mihi, meae*).

Milo’s acted virtues become the representation of Cicero’s historical virtues when we hear Cicero’s intertextual allusions to the record of his struggle with Catiline. That Cicero expected intertextual allusions to his struggle with Catiline to be heard in the descriptions of the experiences of others is evident from a passage in the *Pro Sestio* where the orator recalls a performance of a tragedy by Accius during his exile in which the actor’s words, presumably about the Greek hero Ajax, were intended and taken to be referring to Cicero:

\(^{37}\) *De Orat.* 2.46.191-3: *ipsa enim natura orationis eius, quae suscipitur ad aliorum animos permovendos, oratorem ipsum magis etiam quam quemquam eorum qui audiant permovet.* *...saepe ipse vidi, ut ex persona mihi ardere oculi hominis histrionis viderentur spondalli illa dicentis...at idem inflexa ad miserabilem sonum voce...flens ac lugens dicere videbatur; quae si ille histrion, cotidie cum ageret, tamen [recte] agere sine dolore non poterat, quid Pacuvium putatis in scribingo leni animo ac remisso fuisse? Fieri nullo modo potuit.*
Quid fuit illud quod recenti nuntio de illo senatus consulto
quod factum est in templo Virtutis ad ludos scaenamque perlato,
concessu maximo summus artifex et me hercule semper partium in
re publica tam quam in scaena optinarum, flens et recenti laetitia
et mixto dolore ac desiderio mei, ego apud populum Romanum
multo gravioribus verbis meam causam quam egomet de me agere
potuissem? Summi enim poetae ingenium non solum arte sua,
sed etiam dolore exprimebat. Qua enim vi:

qui rem publicam certo animo adiuverit,
statuerit, steterit cum Achivis --

vobiscum me stetisse dicebat, vestros ordines demonstrabat!
revocabatur ab universis --

re dubia haut dubitarit vitam offerre nec capiti
pepercrit.

Haec quantis ab illo clamoribus agebantur! Cum iam omissa
gestu verbis poetae et studio actoris et exspectationi nostrae
plauderetur:

summum amicum summo in bello --

Nam illud ipse actor adiungebat amico animo et fortasse homines
propter aliquod desiderium adprobabant:

summo ingenio praeditum.

Iam illa quanto cum gemitu populi Romani ab eodem paulo post in
eadem fabula sunt acta!

O pater --

Me, me ille absentem ut patrem deplorandum putabat, quem Q.
Catulus, quem multi alii saepe in senatu patrem patriae
nominabant.

...illud scripsit disertissimus poeta pro me, egit
fortissimus actor, non solum optimus, de me, cum omnis
ordines demonstraret, senatum, equites Romanos, universum
populum Romanum accusaret:
Exsulare sinitis, sistis pelli, pulsum patimini!

(*Pro Sesto*, 56.120-57.122)

Just as the words of the actor on stage are deemed by the orator to have been transparent, calling to mind not the deeds of a Greek hero but Cicero's own struggles and his heroism on behalf of the Republic, so the words of Cicero as actor in the *Pro Milone*, speaking from behind the mask of Milo, must have been expected to recall his own actions in defense of the Republic.38 Thus, beneath the bravado of "Milo's" words in the *prosopopeia* of 93-94 lies Cicero's other agenda. Besides reminding the audience (of fictive jurors as well as later readers) of Milo's services to their state and evoking both sympathy and guilty conscience from them, Cicero's audience would glean from the fact that the description of Milo's exile matches Cicero's situation as consul exactly - that of savior of the Republic being unable to stay in the city that he saved, as well as from the repetition of the first person pronoun, that the speaker behind the mask of Milo and Milo himself have by this point become practically interchangeable. This accomplishes three things for the orator. First, it adds the *auctoritas* of Cicero's *ethos* to Milo's own. Second, it increases the *pathos* of the section by reminding the jurors not just of Cicero's own misfortune but of Cicero's own pain. It is requisite that the actor feel the pain to be believed (*De Orat.* 2.45.189-46.193) and Cicero has created a literary production in which the actor (Cicero) is absolutely and thoroughly certified as one who knows and feels that pain. Third, it begins the orator's consolation of Milo, containing two of the standard

38 Cf. discussion of the parallels with Cicero's Catilinarian speeches in ch. 3.
consolatory topos: This aspect of the passage will be discussed in more detail in the section on consolatio which follows.

The second part of this prosopopeia acknowledges Cicero’s failure in Milo’s case and the fact that he does indeed owe Milo an apology, as "Milo" reproaches the so-called “good men” of Rome and, above all, his patronus. The forensic function of this reproach is to place the burden of responsibility squarely on the jury -- to compel them to realize their obligation not only to Milo but also to Cicero. This follows logically and coherently the first part of the prosopopeia in which the jurors were reminded of all that Cicero had undergone on their behalf and of the potential for yet another savior of the state to endure the same injustice. The shift in the forensic function from putting Cicero’s and Milo’s misfortune "on stage" for the purpose of winning the admiration and gratitude of the jury to reproaching those jurors into voting for Milo’s acquittal out of a sense of obligation and shame is matched by a shift in the literary function from autobiography and consolation to apologia. This new function is marked by the clash of first and second person pronouns which are now present and mark a divide between Milo and Cicero:

'Ego cum te' -- mecum enim saepissime loquitur -- 'patriae reddidisset, mihi putarem in patria non futurum locum? Ubi nunc senatus est quem securi sumus, ubi equites Romani illi, illi' inquit 'tu? ubi studia municipiorum, ubi Italiae voces, ubi denique tua, M. Tulli, quae plurimis fuit auxilio, vox atque defensio? Mihine ea soli, quis pro te totiens morti me obtuli nihil potest epituliri?' (94)

Once again, these words echo the sentiments which Cicero himself must have had on the subject of his own banishment, expressing indignant incredulity at the lack of support from the very men on whose help he should be most able to rely - the leading citizens,
the senate, the *equites* to whom he had delivered the Republic safe from harm after a crisis. Then, as Cicero turns to the apologetic acknowledgement of blame for Milo's similar plight, the issue becomes even more personal - that is, it becomes a private matter between himself and Milo, which is stressed by the repetition of *ego* and *tu* ("this is between you and me, Milo").

*Consolatio*

After "Milo's" speech, the orator continues to "reveal" his client's words and thoughts in indirect speech in the next few paragraphs. As he does this, Cicero accomplishes not only forensic *pathos* to win the sympathy of the jury, but he also incorporates into the epistolary *pathos* of this peroration a personal message of consolation to Milo himself. This message, moreover, is not incidental, but is deliberately created and employs the standard *topoi* of formal *consolatio* which are outlined by Menander Rhetor (IX) and found in the consolatory epistles of Cicero's letters *ad Familiaris*.

Menander divides the consolatory address into two distinct parts -- lament and consolation. The lament consists first of the expression of the speaker's own grief; second of praise of the deceased; third of complaint against the powers that brought about the death. In the consolation, the speaker should first remind the bereaved that death is really a blessing, providing a release from the anxieties of life; second, the speaker should philosophize on the precarious nature of the human condition; third, he must assure the bereaved of an afterlife for the deceased; and finally he should remind them of the futility of grief.
We find these topoi adapted into formal Roman consolation literature (funeral oratory and epicedion),\textsuperscript{39} as well as into the personal, one-to-one world of private correspondence. We find two examples of this type of correspondence among Cicero's ad Familiaris, one (5.16) written by the orator to a friend whose son had died and one (4.5) sent to Cicero from Servius Sulpicius Rufus upon hearing of the death of Cicero's daughter Tullia. Each of these letters follows the model of lament and consolation which Menander prescribes for the consolatory address, but they both contain an added emphasis on the praise of the bereaved -- i.e. "you have so much to live for and you have the strength of character to overcome the present grief" (4.5.6, 5.16.5).

Also found in Cicero's ad Familiaris are two letters of consolation (5.17, 5.18) written by the orator to two friends exiled under the regime of Pompey in 52 B.C. In this type of consolation as well, Cicero employs the standard topoi of consolatio and follows the same model of lament and consolation which is set forth by Menander. There is one important modification, however, in that the bereaved and the departed are, in the case of exile, the same individual. The connection is a natural one, though, since exile meant the loss of caput and was equivalent in the Roman world to the loss of life. In his lament, the orator addresses the "departed", first expressing his own dismay over the misfortune which has befallen his friend (5.18.1); second, complaining about the unjust powers in the Republic which brought about the exile (5.17.3, 5.18.2); and third, praising his exiled compatriot (5.17.5, 5.18.1). In the consolation, Cicero addresses the same man

\textsuperscript{39}For a thorough survey of the genres of Roman funeral oratory and epicedion see J. Esteve-Forriol's treatment in "Die Trauer-und Trostgedichte in der römischen Literatur".
now as the "bereaved". First he suggests that the fate of exile should be viewed as a release from the anxieties of life in the Republic in troubled times (5.17.3, 5.18.2); second, he reminds the bereaved that the lives of men are subject to vicissitudes and reversals of fortune (5.17.3, 5.18.1); third, he assures his friend that there will be an "afterlife", in that his reputation and the memory of his accomplishments will live on in the minds of men (5.17.5); finally, Cicero reminds his exiled amicus of the futility of grief and the need to overcome the present misfortune (5.17.5, 5.18.2).

These are the same topoi that construct the consolatio in the peroration of the Pro Milone. All of the elements of both the lament and the consolation are present within the pathos arguments of the final sections of the speech. Cicero laments by (1) emphasizing his own grief over Milo’s downfall:

Me quidem, iudices, examinant et interimunt hae voces
Milonis quas audio adsidue et quibus intersum cotidie. 
(93)

Nec vero, si mihi eriperes, reliqua est illa saltem ad consolandum querela ut eis irisci possim a quibus tantum volnus accepero... (99)

O me miserum, o me infelice! Revocare tu me in patriam,
Milo, potuisti per hos, ego te in patria per eodem
retinere non potero? (102)

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⁴⁰This, after all, was afterlife for Cicero. Cf. Tusc. 1.38.91: Itaque non deterret sapientem mors quae propter incertos casus cotidie imminet, propter brevitatem vitae numquam potest longe abesse, quo minus in omne tempus rei publicae suisque consult, ut posteritatem ipsum, cuius sensum habiturus non sit, ad se putet pertinere. Qua re licet etiam mortalem esse animum iudicantem aeterna moliri, non gloriae cupiditate, quam sensurus non sit, sed virtutis, quam necessario gloria etiam si tu id non agas, consequatur.
(2) by praising Milo profusely as *fortissimus civis* (92), and as one who has performed so many services for the benefit of the Republic (*nee timet ne... vos non conciliaret meritis in rem publicam singularibus*, 95), as a brave and wise man who has always endeavored to do the right thing (*fortis et sapientis viros non tam praemia sequi solere recte factorum quam ipsa recte facta*, 96), and finally as a man with unshakable strength of soul -- i.e. the type of individual who has the strength to overcome the present difficulties (*his lacrimis non movetur Milo -- est quodam incredibili robore animi*, 101); (3) by (in prosopopeia of Milo) complaining against the conditions in the Republic which have precipitated Milo's downfall:

'O frusta' inquit, 'mei suscepi labores...Ego cum tribunus plebis re publica oppressa me senatus dedissem quem extinctum asceperam, equitibus Romanis quorum vires erant debiles, bonis viris qui omnem auctoritatem Clodianis armis abiecerant, mihi umquam bonorum praesidium defuturum putarem?' (94)

The orator continues to adhere to the established schema in the consolation of Milo in which he (1) suggests that exile should really be considered a relief in view of the current condition of the Republic: *Si mihi bona re publica frui non licuerit, at carebo malam* (93) (Cf. *re publica oppressa*, 94); (2) reminds Milo of the inevitability of death (*mortem naturae finem esse, non poenam*, 101); (3) spends three paragraphs on what was for him the most important of all aspects of consolation for the injustices suffered in life -- assuring Milo of an "afterlife" in the form of the eternal memory of his deeds and accomplishments (95-98). He begins by urging Milo to remember - as (forensically) he reminds the jury - how great a position he had attained in Rome (95-96):

Senatus erga se benevolentiam temporibus his ipsis saepe esse
perspectam, vestras vero et vestrorum ordinum occursationes, 
studia, sermones, quemcumque cursum fortuna ceperit, secum se 
ablaturum esse dicit. Meminit etiam vocem sibi praecoris modo 
defuisse, quam minime desiderari, populi vero cunctis suffragis, 
quod unum cupierit, se consulem declaratum; nunc denique, si haec 
contra se sintutura, sibi facinoris suspicionem, non facti crimen
obstare.

Then Cicero consoles Milo with the thought in which he himself took the most 
comfort later in his life — the fact that the pain of exile resulting from the salvation of 
the Republic will all be worthwhile because he will no doubt be remembered always as 
the great benefactor to the state which he is; this glory will compensate for the 
misfortunes suffered as a result of the actions which achieved it:

...se nihil in vita nisi praecellarissime necisse, si quidem nihil 
sit praestabiliti viro quam pericullus patriam liberare. Beatosis 
esse quibus ea res honoris fuerit a suis civibus, nec tamen eos 
miseros qui beneficio civis suos vicerint. Sed tamen ex omnibus 
praemiis virtutis, si esset habenda ratio praemiorum, amplissimum 
esse praemium gloriam; esse hanc unam quae brevitatem vitae 
posteritatis memoria consolaretur, qua efferetur absentes 
adessemus, mortui vivereamus; hanc denique esse cuius gradibus 
etiam in caelum homines viderentur ascendere. ‘De me’ inquit 
‘semper populus Romanus, semper omnes gentes loquentur, nulla 
umquam obmutescat vetustas. Quin hoc tempore ipso, cum omnes 
a meis inimicis faces invidiae meae subicantur, tamen omni in 
hominum coetu gratis agendis et gratulationibus habendis et 
omni sermone celebrazur. (96-98)

It is surely no accident that these words are very similar to the words Cicero used 
of his own situation with Catiline:

Memoria vestra, Quirites, nostrae res alentur, sermonibus 
crescent, litterarum monumentis inveterascent et con-
roborabuntur; eandemque diem intellego, quam spero aeternam 
fore, propagatam esse et ad salutem urbis et ad memoriam 
consulatus mei, unoque tempore in hac re publica duos civis 
exitisse quorum alter finis vestri imperi non terrae sed 
caeli regionibus terminaret, alter huius imperi domicilium
sedisque servaret. (In Cat. 3.11.26)

Also, it is no accident that these sentiments which are designed to console Milo are the very ones on which Cicero relied as his own primary source of consolation for his own political downfall — namely that because of his personal and political sacrifices he would forever live in the memories of men as the savior of Rome:

Periculose autem rerum actiones partim iis sunt, qui eas suscipiunt, partim rei publicae. Itemque alii de vita, alii de gloria et benevolentia civium in discernmen vocantur. Promptiores igitur debemus esse ad nostra pericula quam ad communia dimicareque paratus de honore et gloria quam de ceteris commodis. (De Officiis 1.24.83)\(^4\)

Sed si aut ingrati universi aut invidi multi aut inimici potentes suis virtutem praemiiis spoliat, ne illa se multis solaciis oblectat maximeque suo decore se ipsa sustentat. (De Re Publica 3.28.40)

Finally, (4) the orator (again in prosopopeia) admonishes Milo of the futility of grieving over his fate and the need to get on with his life in a place which is even better than Rome in the current state of affairs: 'quam ob rem ubi corpus hoe sit non' inquit 'laboro, quoniam omnibus in terris et iam versatur et semper hic habitabit nominis mei gloria'. (98).

When his consolatory message to Milo has come to this appropriate conclusion, Cicero goes from speaking to his client indirectly to a direct address to Milo, as apologia follows consolatio. The orator justifies to Milo his efforts on his behalf, emphasizing to

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\(^4\) Cf. Tusc. 1.38.91 (above n. 40).
him (and the rest of the reading audience) that he had gone above and beyond the duties both of amicitia and of advocacy in Milo's case:

Nunc me una consolatio sustentat, quod tibi, T. Anni, nullum a me amoris, nullum studii, nullum pietatis officium defuit. Ego inimicitiias potentium pro te appetivi; ego meum saepe corpus et vitam obieci armis inimicorum tuorum; ego me plurimis pro te supplicem abieci; bona, fortunas meas ac liberorum meorum in communionem tuorum temporum contuli; hoc denique ipso die, si qua vis est parata, si qua dimicatio capitis futura, deposco. Quid iam restat? quid habeo quod faciam pro tuis in me meritis nisi ut eam fortunam quaecumque erit tua, ducam meam? Non abnuo, non recuso... (100)

It is noteworthy that the first line of this apologia is termed a consolatio by Cicero, though. This last mention of consolation, in which the orator moves from the consolation of Milo to the consolation of himself, is actually a topos of consolation which has a parallel in Cicero's letter to Sittius (5.17). In this letter, by way of emphasizing his own dismay over the plight of his exiled friend, the orator is quick to point out to Sittius that he, as a dutiful amicus, has done all he could on Sittius' behalf in Rome (...ut potui accuratissime, te tuamque causam tutatus sum...nulla re saluti tuae defui, 5.17.2), and for his son as well (Publio tuo neque opera neque consilio neque labore neque gratia neque testimonio defui, 5.17.2). Thus, this last mention of consolation accomplishes two things. First, it incorporates this last element of consolatio/apologia, which is unique to the context of consoling an exiled amicus. Second, it marks a transition in the speech, whereby the orator brings himself back into the forefront. He is now "on stage" once again by himself as Cicero the advocate in preparation for the one final plea to the jury based on his own ethos, with the mask of prosopopeia which was used to such great effect
throughout the consolation now put aside for good. His apology to Milo is, in fact, effectively expressed in a passage which rhetorically serves to bring the focus back to himself and his personal ethos, a process which was begun in the closing portion of the consolatio (98) with the Catilinarian parallels and which is completed in section 103 with the explicit reference to this aspect of his ethos:

Quodnam ego concepi tantum scelus aut quod in me tantum
facinus admisi, iudices, cum illa indicia communis
exitii indigavi, patefecit, protuli, extinxi? Omnes
mihi meisque redundant ex fonte illo dolores. (103)

The ethos of the orator, constructed upon the foundation of his salvation of the Republic from Catiline, is used, however, for the effect of pathos. The jurors are not only supposed to be influenced by the usual rhetoric of advocacy -- i.e. the fact that it is Cicero their savior who is on Milo's side -- but they are supposed to be influenced by the appeal to the emotions which Cicero can get from his status as savior of the Republic who has been treated so unfairly and must withstand yet another blow if Milo is taken from him. This passage, then, marks a transition to the conclusion of the forensic speech. This one last appeal based on ethos and pathos which are almost too closely related to be distinguished, is followed immediately by one last emotional appeal directly to the jury and one last mention of Pompey and the whole trial situation (104) -- something which has been conspicuously absent from the speech throughout the extra-causam section and the peroration. The effect of this for the reader is to bring the speech suddenly back from the perspective of post-trial hindsight to the fictive situation of the original occasion. For the audience of fictive jurors it serves as one last rejoinder to render a judgment of the
case (and of its participants) in accordance with the presentation they have just received (105).

Kirby suggests that it is not only the jury to whom Cicero is speaking, but the reading audience as well, and that it is up to us to judge the guilt or innocence of his client as presented to us in this speech. The purpose of presenting this case to a reading audience is not to persuade them that they, in the place of the jury, would have voted for acquittal, but to present to later readers Cicero's apologia for his performance at the trial, a record of the case and his defense of Milo from his perspective in the aftermath of the trial, and, finally, a portrait of his client and himself to the reading audience as heroes who deserved better than ingratitude from the citizens of Rome.

Conclusion

The implications of the published Pro Milone go far beyond the question of Milo's guilt or innocence. From Milo's first prosopopoeia predicting Pompey's difficulties and reproaching him for his complete abandonment, to the philosophical and apologetical ramblings of the consolation contained in the peroration, the pathos of the second half of the speech is not only forensic, but, like ethos, serves a literary purpose. It is through the pathos of the exordium, extra-causam section and, especially, the peroration, that Cicero's personal (and literary) agenda of apologia, political commentary and consolatio are able to emerge. Logos holds the speech together, giving it a persuasive unity which allows it to adhere to the forensic fiction of the original context and to its rhetorical genre. Ethos, which is built up in this speech primarily out of the process of patron-client identification

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42Kirby, p. 177.
by establishing Cicero's parallel relationship with Milo, anticipates the pathos of the final sections of the speech by putting the case into the context of the parallels between the orator's earlier salvation of the state from Catiline (and the outcome) and Milo's salvation of the state from Clodius. Thus, the ethos serves both forensic and literary purposes by reminding the jurors of the original occasion and the later readers of exactly who it is who will be making the pathos arguments. Ethos, then, sets up for pathos so that, just as in earlier sections Cicero's justification of Milo's murder of a dangerous conspirator (e.g. 11) functions simultaneously as a justification of Cicero's earlier actions against the Catilinarian conspirators, the literary elements of apologia, lamentatio, and consolatio, which are by nature emotional rather than logical or ethical, are already established as coming from the prototypical example of what Milo is facing. Thus, the orator's encomium, lament and consolation of Milo as unappreciated savior of Rome are all the more effective emotionally because they read simultaneously as praise of his own heroic actions eleven years earlier and echo the sentiments with which he consoled other unjustly condemned friends and himself above all. It becomes clear, then, that what we have is no longer simply a defense of Milo against murder charges. Instead, the speech has become a representation of the case, its participants and its outcome, all placed deliberately within the context of Cicero's own experience as consul, so that he becomes the model of statesmanship which Milo is represented in the speech as following. Thus, the pathos of Milo's situation in the speech becomes the pathos of Cicero's personal experience. From this perspective in the published speech, freed from the responsibility of securing acquittal for his client in the forensic situation, Cicero is able to look beyond the jurors, who are
nothing more than a necessary fiction inherent to the genre of oratory, to the real audience made up of readers both contemporary and in the future. The speech, then, is more than an instrument of persuasion of Milo's guilt or innocence. By means of its publication, it has become a medium of communication of the orator's apologia, his commentary on the ills of the Republic, and his consolation to his friend and victim of these ills, not only from Cicero to his contemporaries (Milo, Pompey, those present at the trial), but also to future readers for whom it will serve as a record of these events and their participants.
CHAPTER V

Conclusion

Cicero's speech for Milo, as it has come down to us in its published form, need not be approached in the traditional way of looking at the speech, with a view to distinguishing between the elements of the original speech and the passages which must have been added later for publication. While it is true that Cicero did alter the speech substantially before publishing it, a more important question seems to be not what he added to the published speech to make it represent the one that would have won, but what he hoped to gain by writing up for publication a speech which had initially failed. The answer to this question can only be found by looking beyond the surface of the forensic arguments in order to discern all of Cicero's literary intentions for the published speech. It is, therefore, more productive to look at the speech not as some conglomeration of original and added elements to be dissected and compared, but in the way in which Cicero intended for us to look at the speech -- as a literary, persuasive whole which represents not only the orator's apologia for the original speech which failed, but also a masterful combination of the elements of logical argument, political program, and consolatio for Milo, all of which only serves to support the persuasive process.

The Pro Milone is unique among Cicero's orations in that it is the only example we have of the reworking and publication of a failed forensic effort. If the object were
simply vindication for the orator in the wake of failure, we must wonder why he chose to write up a new speech in this case alone and not other, if not all, of his failures in court. The singularity of the Pro Milone as the only case for which Cicero was compelled to compose an apologia suggests that it carries a significance which extends beyond the circulation of a model of the forensic performance which might have secured Milo’s acquittal.

Ever conscious of his role in the Republic and his importance within the broad scope of Roman history, it is only reasonable to suppose that Cicero would have viewed the publication of his speeches as an opportunity to represent for the written record himself and his role as he saw it to a reading audience for posterity. Although this is not one of the purposes of speech publication which is explicitly set out in any of the rhetorical treatises, we have seen from evidence in Cicero’s correspondence (e.g. ad Att. 2.1) as well as from the speeches themselves (e.g. Pro Sestio 65.136) that the published orations were intended as models of statesmanship and public policy and that Cicero intended for himself to be represented as the paradigmatic Roman leader.

Stroh has argued that the published speeches were intended by Cicero primarily to serve as exemplars of persuasion for students of rhetoric,¹ and to an extent he is right. The up and coming generation of citizen orators must certainly have been included in the orator’s intended audience for his speeches, and to this end he published speeches which are exemplary as models of persuasion for the purpose of their study of oratory. But this rather narrow view of the purposes for publication does not take into account the fact that

¹Stroh, p. 52.
as these future generations of Roman orators/statesmen studied Cicero's words, they were simultaneously studying him as a model of statesmanship as he represents himself within the orations -- and in much the same way that he had modeled his own statesmanship on the careers of the past generations of Roman orators whose speeches he had studied, and as we have seen from Cicero's own words on the model of statesmanship which he perceived Demosthenes to be from the study of that orator's speeches. *Quae gesserim et quae dixerim* (ad Att. 2.1) were inseparable for Cicero, and were simultaneously represented in the speeches he published -- speeches which were undoubtedly meant to be *monumenta* to his public career. Even in their literary function of *monumenta*, the *sine qua non* for the published speeches is the forensic verisimilitude of *exempla dicendi*. In chapter two we saw how the logical forensic argument of the *Pro Milone* works throughout at a coherent persuasive process. The "formal" plea of self-defense is maintained throughout, even as the "informal" plea of state benefit emerges into the forefront and gradually comes to eclipse the self-defense argument completely in its importance. This is possible because from the beginning the self-defense argument is not simply the story of Clodius' potential victimization of Milo, but it is the story of Clodius' violence in general. The unity of the persuasive process of the speech is the maintenance of the claim that Milo acted in self-defense against the aggression of Clodius as a "legal" facade beneath which the more effective defense based on the benefit which Clodius' death brought to the state is able to be developed.

Since the fact that Clodius was killed by Milo's men is undeniable, the rhetorical challenge for Cicero is to justify that act, and for this he must rely on a juridical issue
(constitutio juridicalis) as the source of his argumentation. The juridical issue on which the defense turns encompasses both self-defense and state benefit within its two subdivisions — the pars absoluta and the pars adsumptiva. The pars absoluta justifies the act of self-defense against the attack of a violent aggressor, and it is to this end that the first two-thirds of the speech are directed. In the process of proving that Clodius had both the motive and the character to carry out an unprovoked attack on an innocent man traveling with his wife, however, Cicero is simultaneously laying the groundwork for the pars adsumptiva which is to follow in the extra-causam section of the speech. The extra-causam section builds upon this foundation to bring the significance of Clodius' death and his potential for violence beyond the scope of the confrontation with Milo to its broader significance for the Republic. At no time, however, does Cicero abandon his original claim that Milo acted in self-defense, and throughout the pars adsumptiva the claims of Milo's heroism and his purposeful killing of Clodius, the enemy of the Republic, are expressed in hypothetical and contrafactual terms. Thus, the coherence of the logical argumentation and the forensic verisimilitude are preserved by the fact that the two lines of defense are pleaded concurrently and inextricably.

Within the persuasive process of the logos of the speech, is developed the ethical complex of Cicero, Pompey and Milo. We have seen how in speeches throughout his career Cicero takes advantage of the rhetoric of advocacy to bring his own ethos into the spotlight not only to advance the cause of his client, but also to provide an opportunity for the showcasing of his role in the case and in the Republic in general. In the published speech, the ethical argument which puts Cicero on stage reaches beyond the immediate
forensic situation and its audience of jurors to an audience of readers both contemporary and in posterity. The difference in these two audiences is significant in that they are approaching the speech from entirely different perspectives. The original audience hears the speech from the mouth of the orator and is the target primarily of the persuasive force of the orator’s argument, because on the original occasion of delivery, his primary goal is to effect persuasion. The audience of later readers, however, approaches the speech from the perspective of hindsight, with knowledge of the outcome of the trial, at leisure, and not with the concern of being persuaded toward a verdict one way or another. However, even as a work of literature which has been published with goals other than persuasion in mind, the sine qua non of the published speech is forensic verisimilitude.

This is significant in the Pro Milone because the message which Cicero wants to relay to the audience of readers has political and personal implications which do not belong in the speech of the original occasion. Therefore, Cicero must achieve his literary goals in a manner which is appropriate to the rhetorical situation of the trial which is being recreated for the reader. Pompey’s auctoritas as sole consul overshadows Cicero’s own customarily supreme ethos of pater patriae, and this necessitates a unique approach to ethical argument in this speech. Cicero’s solution to this rhetorical challenge is to assume an air of deference to Pompey’s ethos and auctoritas, portraying him throughout the speech as the great and wise patron of both Milo and the state during troubled times, as well as the patron of Cicero himself at the time of his exile. Cicero’s own ethos, ordinarily put on center stage in the manner of the rhetoric of advocacy, is represented in the Pro Milone in a manner which is uncharacteristically indirect. It is developed
almost exclusively in the form of patron-client identification with Milo, who is portrayed, like Pompey, as a steadfast supporter of the exiled Cicero, but also, and more prominently, as the savior of Rome from a second Catiline (i.e. Clodius). By means of verbal and thematic echoes of Cicero's Catilinarian rhetoric as he builds Milo's ethos, it becomes clear that Milo is to be understood as a representation of Cicero's own ethos as savior of the state, and by the later sections of the speech Milo's ethos is reduced to little more than a persona which Cicero assumes in prosopopeia of his client to evoke the emotions from the audience which they ought to have toward him, the man who preserved the state from the destruction plotted by Catiline.

The absence of Cicero's customarily dominant use of his personal ethos does not keep his ethos from becoming the focus of the competition of ethos which results from the unusual ethical matrix of the speech. At different points in the speech, Cicero bestows the title of unus ille vir on Pompey and Milo. It becomes abundantly clear, however, from the chains of beneficia which connect these three amici that whether it extends from Pompey to Cicero to the Republic, or from Milo to Cicero to the Republic, or even from Pompey to Milo to Cicero to the Republic, Cicero without fail is the key element in the formula, providing the direct connection to the Republic. Pompey as patronus and Milo as cliens might help Cicero, but it is his salvation which is ultimately responsible for the safety of the Republic. Pompey's ethos is supreme in the rhetorical situation, and so the competition of ethos is not one which has winners and losers, but it is rather a relative relationship among three important people. Pompey's auctoritas in the immediate forensic situation receives all outward signs of deference and is thus made to serve Milo, while the
history of Pompey's beneficia and auctoritas serves the Republic by serving Cicero. Thus, in a speech about three saviors helping each other, Cicero emerges not at the top of a hierarchy, but as the focus of the beneficia which ultimately saves the state. Cicero, then represents the one true example of unus ille vir and stands as the paradigm of the pater patriae, a distinction in which both Milo and Pompey are but pale imitations.

In the final one-third of the speech, ethical argument gives way to pathetical argument, although pathos is not entirely absent from the earlier sections of the speech. In the exordium, for instance, the pathos of Cicero's declaration of aporia and fear, designed forensically as a captatio benevolentiae, serves as vivid description of the scene for later readers as well as comment on the situation and the beginning of his apologia for his failure. The ethical argument of the earlier part of the speech which establishes Milo and Cicero as parallel figures acting as saviors of the state sets up for the pathos of the extra-causam section in which Cicero, in prosopopeia of Milo, laments the fate of the conservator rei publicae in a nation of ungrateful citizens. In the emotional argumentation of the peroration, Cicero turns to the consolation of Milo, incorporating into this part of the speech a personal message of consolation to his friend which reads very much like letters written by the orator to other friends exiled in this same year. These letters, in turn, as I have demonstrated in chapter 4, employ the standard topoi of formal consolatio which are outlined by Menander Rhetor. Thus, the pathos of the peroration which represents the advocate's one final bid for the sympathy of the jurors simultaneously functions as a private missive of consolation to Milo in exile, one of Cicero's intended audiences for the published speech.
The opening description of the fear and hopelessness of the situation in which Cicero was forced to defend Milo which work forensically to win the sympathy of the jurors for the onerous task facing the advocate, function in the published speech as apologia for Cicero’s failure and as commentary on the political circumstances which have brought the city to such a pass. The pathos of Cicero’s encomium, lament and consolation of Milo as the unappreciated savior of Rome which functions forensically to stir pity for Milo and admiration for his deeds, simultaneously acts as praise and justification of Cicero’s own actions eleven years earlier. The speech which Cicero published functions coherently and effectively throughout as a process of persuasion appropriate to the fictive forensic occasion. But publication has extended the forensic functions of pathos to the literary function of communicating his apologia, his commentary on the problems of the Republic, and his message of consolation to Milo as the victim of these circumstances.

As I have demonstrated in this dissertation, the published Pro Milone as a work of rhetorical literature serves three different purposes. First, it provides an exemplary forensic model and as such adheres to absolute forensic verisimilitude. Second, it serves the literary function of representing Cicero’s political program and autobiography, including criticism of Pompey’s role in the Republic. Third, it serves an epistolary purpose in its message of consolation to Milo. These purposes are so intertwined within the persuasive process of the speech that they are ultimately inextricable, even though they can be isolated and discussed separately. The reason for this inextricability is that the same rhetorical tactic within the speech can serve both forensic and literary functions.
The description of the unusual surroundings both heightens the forensic pathos and records the event for posterity. The pathos of the final sections of the speech wins sympathy for Milo from the fictive audience of jurors, but also becomes apology and consolation from Cicero. Finally, and most importantly from the standpoint of Cicero's preservation of his role in all of this for the written record, the ethical argument of the speech makes Milo a hero and makes Cicero the model of heroism.

The analysis offered here is descriptive of Cicero's complex art, and not the development of a tool with which to distinguish reliably between the original and the published speech. It is, rather, the development of a way of reading the speech to distinguish the many layers and purposes which lie beneath the forensic fiction, thereby coming to a more complete understanding of a speech which has been traditionally understood only inadequately.
BIBLIOGRAPHY

Alexander, Michael C. Trials in the Late Roman Republic 149 B.C. to 50 B.C., Mnemosyne Suppl. 80 (Toronto: University of Toronto Press, 1990).


Bonner, Stanley F. Roman Declamation in the Late Republic and Early Empire (Liverpool: University Press of Liverpool, 1949).

_____, Education in Ancient Rome: From the Elder Cato to the Younger Pliny (Berkeley, 1977).


Canter, H. "Digressio in the Orations of Cicero", *AJP* 52 (1931) 351-61.


____., Form as Argument in Cicero’s Speeches: A Study of Dilemma (Atlanta: Scholars Press, 1993)


Fern, M.E. *The Latin Consolatio as a Literary Type* (St. Louis, 1941).


Grant, W.L., "Cicero, Pro Milone, 98" *Classical Review* N.S. 1 (1951) 9.


____, "Pompey, the Roman Aristocracy and the Conference of Luca", *Historia* 18 (1969) 71-108.

Gudeman, A., "Literary Frauds among the Romans", *TAPA* 25 (1894) 140-64.


Heinze, R., "Auctoritas". *Hermes* 60 (1925) 348-66.


Levy, Harry L., "Cicero the Lawyer as Seen in his Correspondence", CW 52 (1958-9) 147-54.


Loposzko, Tadeusz and Slapek, Dariusz, "Was there any gladiator among the followers of Publius Clodius?", Eos 77 (1989) 275-87.


"Excepta oratio, the other Pro Milone and the question of shorthand" Latomus 46 (1987) 730-36.


Metaxaki-Mitrou, F. "Violence in the contio during the Ciceronian Age" AC 54 (1985) 180-87.


Miller, A.B., "Rhetorical Exigence", Ph & Rh 5 (1972) 111-18.


_____ , "The Trial of Milo and the other Pro Milone", *TAPA* 94 (1963) 268-80


___, *Das Ethische in der Rhetorik des Aristoteles* (Munich: Karl Alber Freiburg, 1990).