

C. J. Bannon, 'Self-Help and Social Status in Cicero's *Pro Quintio*', *Ancient Society*, 30 (2000), 71-94.

SELF-HELP AND SOCIAL STATUS  
IN CICERO'S *PRO QUINTIO*

The *Pro Quintio*, Cicero's earliest surviving speech<sup>1</sup>, has received little scholarly attention<sup>2</sup>, perhaps because its rhetoric is less sparkling than his later works, or because legal technicalities dominate its argument. Quintius' was a tough case; his first advocate dropped it shortly before the trial and Cicero took over. It seems unlikely that he won the case, because if he had, he probably wouldn't have passed up the opportunity of boasting that he had so early in his career bested Hortensius, who led the team of influential orators representing C. Naevius, Quintius' opponent in the suit. This paper offers a new reading of the *Pro Quintio* as an early contribution of Cicero's to the ongoing dialogue about the role of law in Roman society.

In the *Pro Quintio*, Cicero addresses the relationship between self-help — taking the law into one's own hands — and legal procedure in Roman private law. In both ancient and modern discussions, self-help is understood as an individual's taking action, even to the extent of using force, to assert or protect his rights without any formalized legal procedure<sup>3</sup>. Much of the political violence of the late Republic is often explained as self-help<sup>4</sup>, and these unsettled conditions also affected the private law system, as the evidence of the praetor's edict indicates: through the creation of special interdicts, the praetors in the first century

<sup>1</sup> The *Pro Quintio* is dated to 81, see T.E. KINSEY (ed.), *M. Tulli Ciceronis Pro P. Quintio Oratio*, Sydney 1971, p. 1; cf. M. FUHRMANN, *Cicero and the Roman Republic* (transl. W.E. YUILL), Oxford 1992, p. 26.

<sup>2</sup> With the notable exception of Kinsey's commentary. More recently, see the helpful remarks in J.M. MAY, *Trials of Character: The Eloquence of Ciceronian Ethos*, Chapel Hill 1988, p. 14-20, and C.P. CRAIG, *Form as Argument in Cicero's Speeches: A Study of Dilemma* (*American Classical Studies*, 31), Atlanta 1993, p. 182-183. Legal historians have mined the speech for the details of Republican procedure, e.g. M. KASER, *Das römische Zivilprozessrecht* [hereafter *RZP*], Munich 1996<sup>2</sup>, and E. COSTA, *Cicerone giureconsulto*, Rome 1964<sup>2</sup>, 2 vols. Two older legally oriented analyses are still useful, H.J. ROBY, *Roman Private Law in the Times of Cicero and of the Antonines*, Cambridge 1902, II, p. 453-485, and A.H.J. GREENIDGE, *The Legal Procedure of Cicero's Time*, Oxford 1901, p. 530-541.

<sup>3</sup> W. NIPPEL, *Public Order in Ancient Rome*, Cambridge 1995, p. 35-44; A.W. LINTOTT, *Violence in Republican Rome*, Oxford 1968, p. 9-23, with literature cited there.

<sup>4</sup> W. NIPPEL, *op. cit.*, p. 47-84; A.W. LINTOTT, *op. cit.*, p. 67-88.

BC attempted to restrict the private use of force or self-help<sup>5</sup>. In private law generally, self-help was mostly restricted to emergencies and self-defense<sup>6</sup>. In addition to this broader civic context, the specific legal issues in Quinctius' case involved self-help: Quinctius and Naevius were disputing a debt, and debt law was one area of private law that traditionally allowed for an element of self-help (i.e. *manus iniectio*) in conjunction with legal procedure.

Cicero organized his speech for Quinctius around an apparently simple opposition between correct legal procedure and incorrect use of law. Through recurrent imagery of weapons and bodily harm, he characterizes Naevius' use of law as illegal and immoral self-help. He further associates Naevius' forcible assertion of his rights with his low social status, socially unacceptable behavior and morality, thus creating an implicit rationale that justifies law on the basis of social prejudice. With this same imagery, Cicero yokes Naevius to his influential advocates to show that an ill-advised application of social clout also constitutes an irresponsible kind of self-help or abuse of the legal process. Cicero's approach to the relationship between law, force, and social morality is thus both idealistic and paradoxical: law should be used as an alternative to force and a counterweight to social prejudice but by the right sort of people for the right reasons. This conservative idealism may not surprise modern students of ancient Rome, but what is significant and perhaps surprising is the failure of this approach. The loss of Quinctius' case in fact attests to the integrity of the system of Roman private law and its resistance to social prejudice and rhetorical invention. The identity of the judge in the case may also have been a factor: Quinctius' suit was decided by C. Aquilius Gallus, a leading legal expert and contemporary of Cicero's with whom he studied law. The *Pro Quinctio*, then, whether it preserves Cicero's actual speech in court or instead is an after-the-fact concoction, its arguments offer insight into the terms of the debate about the proper role of force and social influence in the operation of Roman private law. That Cicero's arguments were unsuccessful in swaying the court does not detract from their interest for us; in a way, their failure makes it all the more significant that a written version of the speech survives as evidence for Roman attitudes towards law. While I do not seek to reconstruct the entire debate in this short paper, this analysis of the

<sup>5</sup> B.W. FRIER, *Urban Praetors and Rural Violence*, *TAPhA* 113 (1983), p. 221-241.

<sup>6</sup> M. KASER, *Das römische Privatrecht* [hereafter *RP*], Munich 1971<sup>2</sup>, I, p. 505.

*Pro Quintio* will offer at least the beginning of this reconstruction and a new view of the role of self-help in Roman private law.

In analyzing Cicero's approaches to law and self-help in the *Pro Quintio*, I will first briefly set out the events leading up to the trial and explain the relation of self-help to this case. Then, following Cicero's own argument, I will chart Cicero's arguments about law, self-help, and social status that unify his approach in the *Pro Quintio*.

#### EVENTS LEADING UP TO THE TRIAL

Quinctius' trial comes at the end of a complicated series of legal and financial events. In setting out this background, I follow Cicero's *narratio*. My summary skirts the legal technicalities and controversies, which my subsequent discussion will address.

Gaius Quinctius died leaving his brother Publius heir by will to his property, including an estate in Gaul which he owned in partnership with Sextus Naevius. After his brother's death, Quinctius set out for Gaul and spent a year there managing the property with Naevius and sorting out his brother's accounts (15)<sup>7</sup>. Quinctius decided to auction off his own property in Gaul (property separate from the partnership)<sup>8</sup>, intending to settle a debt that Gaius had owed to P. Scapula (15). Naevius dissuaded him, saying that he could get a better price at another time and promising to cover the debts from his own funds (16). When the time came for Naevius to deliver the cash, he refused to pay until Quinctius gave a full reckoning of the partnership: Naevius claimed that Quinctius owed him a debt stemming from the partnership in the Gallic estate. When negotiations failed, Naevius and Quinctius several times made arrangements to take their dispute to court (i.e. they agreed on a *vadimonium*)<sup>9</sup>, but each time, as Cicero tells it, Naevius failed to show up (21-22). Naevius claimed that he had already held an auction of the Gallic property to recover what the partnership owed him and that he was no longer interested in taking Quinctius to court. If on the other hand Quinctius wanted to bring suit against him, he would not refuse to appear in court (23).

All citations of paragraph numbers refer to the *Pro Quintio* unless otherwise specified.

<sup>7</sup> T.E. KINSEY, *op. cit.* (n. 1), p. 72.

<sup>9</sup> On *vadimonium*, see M. KASER, *RZP*, p. 226-230; or see also A. BERGER, *Encyclopedic Dictionary of Roman Law* (*Transactions of the American Philosophical Society*, n.s. 43.2), Philadelphia 1953, p. 757, or J.A. CROOK, *Law and Life of Rome 90 B.C.–A.D. 212*, Ithaca 1967, p. 49, 75-76.

Quinctius decided to inspect the Gallic estate for himself, so after taking thirty days to settle business in Rome, he left for Gaul on the fourth day before the Kalends of February (23-24). On route to Gaul, Quinctius was met at Volterra by Naevius' friend, L. Publicius, who immediately reported their meeting to Naevius (24). As soon as he heard Publicius' report, Naevius began legal proceedings to take possession of Quinctius' property on the grounds that he had failed to appear in court on the Nones of February as he had promised (i.e. on a *vadimonium*, 25)<sup>10</sup>. He summoned his friends, then witnessed and sealed their statements, and finally appealed to the praetor, Burrienus, to grant him possession of Quinctius' property as security for the debt owed on the partnership. Quinctius' agent Sex. Alfenus blocked Naevius from taking possession of Quinctius' urban property and appealed to the tribune Brutus to postpone the trial until Quinctius could return to Rome. In the meantime in Gaul, Quinctius' own slaves were evicting him from his property on Naevius' order (27-28)<sup>11</sup>. When Quinctius subsequently returned to Rome and appeared in court, Naevius took no action to advance the trial for eighteen months. By this time, there was a new praetor in office, Cn. Dolabella. Naevius finally appealed to Dolabella to order Quinctius to give him security for payment of the judgment debt — the usual procedure when a creditor had held the debtor's property for thirty days without receiving payment of the debt<sup>12</sup>. Quinctius refused to give security and denied that his property had been possessed for thirty days. The praetor ordered the dispute to be settled by a trial in which Quinctius was the plaintiff and Naevius the defendant. Cicero's *Pro Quinctio* is the plaintiff's speech in this trial.

#### AN OVERVIEW OF CICERO'S ARGUMENT

Cicero is defending Quinctius in a suit arising from an alleged debt. Put simply, Naevius claimed that Quinctius owed him money and took legal action to recover it and also, eventually, to force Quinctius to give security against repayment.

Cicero's argument is based on the assumption that Quinctius never owed Naevius a debt on the partnership in the first place. Because there

<sup>10</sup> For the procedure, see M. KASER, *RZP*, p. 391-392.

<sup>11</sup> For the extension of the praetor's jurisdiction to the provinces, see M. KASER, *RZP*, p. 243-244.

<sup>12</sup> M. KASER, *RZP*, p. 281, 391-395; the period of time that had to elapse before the creditor could proceed with sale of the confiscated property varied, see *RZP*, p. 397.

was no debt, Naevius' attempts to use the legal system to 'recover' a debt are a pretense for his true aims of stealing Quinctius' property and destroying his reputation through the shameful public process of confiscating property to pay a judgment debt. After the *exordium* (1-11) and *narratio* (12-35), Cicero sets forth his argument in three parts (the *divisio*, 36), each dealing with separate but related questions of legal interpretation<sup>13</sup>:

1. There was no reason for Naevius to apply to the praetor to take possession of Quinctius' property (37-59).
2. Naevius could not have taken possession of Quinctius' property in accordance with the praetor's edict (60-85).
3. Naevius did not in fact take possession of Quinctius' property (89-90, only a summary of this part of the argument is preserved)<sup>14</sup>.

Though Cicero briefly presents circumstantial evidence for these points (57-59, 66-67, 75, 80-81), the bulk of the speech is devoted to depicting Naevius' and Quinctius' character and lifestyle. The speech ends with a summary of Cicero's argument and an appeal to the court not to reward Naevius' knavery but to take pity on Quinctius' plight and allow him to live out the rest of his old age with his reputation and fortune intact.

As Cicero portrays the situation, Quinctius was the victim first of Naevius' abuse of the legal system, then of the magistrates who validated Naevius' chicanery, and finally of the orators who defended him. He faults Naevius for using the law in innovative ways that are tantamount to bullying: Naevius has taken the law into his own hands, using the legal system to pursue a self-help solution to a dispute rather than resolving it through 'standard' legal procedure. His use of the imagery of violent force evokes the tradition of self-help in the execution of debt, namely, the legal procedure of *manus iniectio*. *Manus iniectio*, described in the Twelve Tables, allowed a creditor to take a debtor into custody and hold him against repayment. The procedure was connected with and could precede the execution of a judgment debt on the person of the debtor, by forced labor, sale into slavery, or death<sup>15</sup>. It is one of the

<sup>13</sup> On the form of the argument, see C.P. CRAIG, *The Structural Pedigree of Cicero's Speeches: Pro Archia, Pro Milone, and Pro Quinctio*, CP 80 (1985), p. 136-137; cf. H.J. ROBY, *op. cit.* (n. 2), II, p. 463; T.E. KINSEY, *op. cit.* (n. 1), p. 5.

<sup>14</sup> H.J. ROBY, *op. cit.* (n. 2), II, p. 469.

<sup>15</sup> R. ZIMMERMANN, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Cape Town 1990, p. 2-3; M. KASER, *RP I*, p. 152-153.

ancient legal procedures that is often explained as having its origin in self-help<sup>16</sup>. But even this individual use of force depended on a prior legal action: the creditor could only use *manus iniectio* against a judgment debt, that is, after he had acquired from the presiding magistrate an order recognizing his claim to the debt.

#### THE OPENING APPEAL TO THE COURT

Cicero's opening in the *Pro Quinctio* establishes the parameters for evaluating the relationship between legal procedure and self-help in both Naevius' and Quinctius' use of the legal system. A framework of rhetorical antitheses constructs a rationale for justice through proper procedure that depends on social status and elite values.

The *Pro Quinctio* opens with an appeal to C. Aquilius, the presiding judge (1-11). This appeal introduces several antitheses that unify the speech. Cicero asks Aquilius and his fellow jurors to be a bastion against force and favor, *vis* and *gratia*, and to let truth, *veritas*, guide their decision (1-5). The truth is Quinctius' only resource against Naevius and his powerful advocates, especially the orator Hortensius, whose experience and influence give him an unfair advantage against the young Cicero (3-4). In sustaining the truth of Quinctius' claim, the court will restore sanctity and equity to the legal process (5, 10-11) and at the same time reassert traditional social values such as *gravitas*, *virtus*, and *nobilitas* (9). Cicero explains to Aquilius, that his emphasis on truth does not arise from any doubt about Aquilius' or the court's integrity, but rather from fear of his opponents' influence and rhetorical abilities and their apparent willingness to use these advantages unscrupulously (5-9). Cicero links Aquilius' personal morality with the legitimacy of the legal process: a fair verdict depends on the integrity of the judge and on his ability to sympathize with the plaintiff. Justice emerges from a shared emotional response that validates a judgment about the correct application of legal procedure.

In the midst of these remarks on the court's integrity, Cicero directly addresses the question of procedure by examining and criticizing the legal procedures that led to this trial. He blames the praetor Dolabella for setting up the trial so that Quinctius was plaintiff. In regular procedure, the roles of plaintiff and defendant are determined by the praetor's formula, the legal question that frames the arguments at trial: the plaintiff

<sup>16</sup> E.g. in A.W. LINTOTT, *op. cit.* (n. 3), p. 26-27.

argues for it, the defendant against it. The party who initiated legal proceedings would usually be the plaintiff<sup>17</sup>, in this case Naevius, because he approached the praetor to make Quinctius pay him security on the judgment debt, alleging that he had lawfully taken possession of Quinctius' property (according to an order granted him by the previous praetor, Burrienus) and had held it for thirty days without receiving repayment. But, because Quinctius denied these allegations, Dolabella issued a formula making Quinctius the plaintiff: *si bona sua ex edicto P. Burrieni praetoris dies XXX possessa non essent*, «if his [Quinctius'] property had not been possessed for thirty days according to the edict of the praetor Burrienus» (30). Dolabella's formula results from a conservative interpretation of the law: Dolabella assumed that his predecessor's order was valid and treated this new issue as a continuation of the first<sup>18</sup>. Cicero, however, interprets the praetor's formula as an improper innovation in praetorian law and he offers a reinterpretation of the formula and a reclassification of the trial based on his view of social issues and procedural implications.

Cicero offers his own interpretation of the wording of the formula in order to reclassify Quinctius' trial as a capital case. Because Dolabella's formula assumes the earlier order of his predecessor Burrienus, Quinctius must defend himself against both orders in the present trial. In order to prove that he does not owe security to Naevius (cf. Dolabella's order), Quinctius must prove that Naevius did not have possession for thirty days in accordance with Burrienus' order. The combination of issues doubles the stakes for Quinctius. If he cannot prove that Naevius did not take possession in accordance with the edict, he will lose his property. Furthermore, since Naevius' possession of his property was based on a claim that Quinctius had defaulted on a debt, losing in this trial would also effectively brand him as a defaulting debtor. Thus Quinctius stood to lose both property and reputation. For this reason, Cicero characterizes the trial as a capital case, as if Quinctius' very life were at stake:

<sup>17</sup> M. KASER, *RZP*, p. 204, 220-221; for an introduction to praetorian formulary procedure, see B. NICHOLAS, *An Introduction to Roman Law*, Oxford 1962, p. 23-27, or Appendix I in T.E. KINSEY, *op. cit.* (n. 1), p. 117-118.

<sup>18</sup> According to Roby's reconstruction of the praetor's logic, *op. cit.* (n. 2), II, p. 461-462, it made more sense for Quinctius to have «to shew a flaw or flaws in Naevius' position and conduct, than for Naevius to have to go through the whole proceedings bit by bit and shew their legality».

Deinde habet adversarium P. Quinctius verbo Sex. Naevium, re vera huiusce aetatis homines disertissimos, fortissimos, florentissimos nostrae civitatis, qui communi studio summis opibus Sex. Naevium defendunt, si id est defendere, cupiditati alterius obtemperare quo is facilius quem velit iniquo iudicio opprimere possit. nam quid hoc iniquius aut indignius, C. Aquili, dici aut commemorari potest, quam me qui caput alterius, famam fortunasque defendam priore loco causam dicere? cum praesertim Q. Hortensius qui in hoc iudicio partis accusatoris obtinet contra me sit dicturus, cui summam copiam facultatemque dicendi natura largita est. [7-8]

Then Quinctius has as his opponent Naevius, in name, but in fact the most well-spoken men of this generation, the strongest, most thriving in our state, who are defending Naevius with joint effort and all their resources, if it is defending to serve someone else's greed so that he can more easily crush whomever he likes with an unfair trial. For what could be said or remembered that is more unfair or undeserved than this, Aquilius, that I, although I am defending another man's life, reputation, and fortune, am arguing my case first? Especially since Hortensius, on whom nature has bestowed the greatest force and facility in speaking, although he holds the position of accuser in this trial, will speak in answer to me.

Cicero reclassifies the trial as a capital case, because the consequences of losing are tantamount to conviction on a capital charge<sup>19</sup>: Quinctius stands to lose both his property and his reputation. Though the description of the trial as a capital case may be transparent hyperbole, Cicero's treatment of the roles of plaintiff and defendant directly implicate social values in decisions about legal procedure.

Cicero explores the procedural implications of the formula. Because Dolabella's formula was a negative sentence, the plaintiff had to make a negative argument, disproving the assertion of the formula; in the case of a positive formula, the defendant would make the negative argument. In Roman trials, the plaintiff spoke first. Speaking first puts Quinctius and his advocate at a rhetorical disadvantage both because it is difficult to argue a negative point and because they had to present counter-arguments, as it were, before they heard the positive case. This rhetorical disadvantage is compounded by what Cicero constructs as a procedural

<sup>19</sup> See T.E. KINSEY, *op. cit.* (n. 1), p. 57-58 and Appendix II, p. 219-220. For the disgrace and legal consequences of judgment debts, see M. KASER, *RZP*, p. 394, and *RP I*, p. 271-274; or J.A. CROOK, *op. cit.* (n. 9), p. 83-85, and A. BERGER, *op. cit.* (n. 9), p. 500. On the implications of *caput*, see also E. COSTA, *op. cit.* (n. 2), I, p. 84-90. On *infamia* as a non-technical term, see J.M. KELLY, *Studies in the Civil Judicature of the Roman Republic*, Oxford 1976, p. 95-96.



disadvantage. Cicero argues that these rhetorical roles represent the true procedural roles of the parties: Quinctius is the true defendant in the case and Naevius the true plaintiff. Quinctius' position is not just rhetorically difficult, it is legally unjust because the defendant shouldn't have to speak first. Cicero emphasizes the unfairness of the trial by comparing the false accusation to a poisoned dart, *falsum crimen quasi venenatum aliquod telum* (8). Cicero appeals for the jurors' sympathy by describing his own and Quinctius' helplessness against Hortensius' rhetorical artillery and against Naevius' false accusation: how can they make a defense when their opponents have yet to hurl a weapon? The weapons represent the influence of Quinctius' opponents and their power to manipulate the legal system to their own advantage, suggesting that a certain kind of social clout is equivalent to self-help.

Both the praetor Dolabella and Naevius' advocates are responsible for the unfair conditions of the trial:

Id accidit praetoris iniquitate et iniuria, primum quod contra omnium consuetudinem iudicium prius de probro quam de re maluit fieri, deinde quod ita constituit id ipsum iudicium ut reus, ante quam verbum accusatoris audisset, causam dicere cogeretur. Quod eorum gratia et potentia factum est qui, quasi sua res aut honor agatur, ita diligenter Sex. Naevi studio et cupiditati morem gerunt et in eius modi rebus opes suas experiuntur, in quibus, quo plus propter virtutem nobilitatemque possunt, eo minus quantum possint debent ostendere. [9]

This resulted from the praetor's [Dolabella's] unfairness and injustice, first because he, contrary to the practice in all trials, preferred this trial to be *de probro* rather than about the partnership, and second because he set up the case itself in such a way that the defendant, before he heard his accuser's case, was forced to plead his own case. This was accomplished through the influence and power of those men who, as if the case concerned their own fortune and reputation, so indulged Naevius' interests and desires and so expended their own resources in the type of matters in which, as empowered as they were by dint of their virtue and nobility, because of this they should have thrown their weight around even less.

Cicero blames the praetor for acting contrary to legal convention<sup>20</sup>, and he blames Naevius' advocates because they failed to behave appro-

<sup>20</sup> Though the edict is not entirely based in custom, *consuetudo*, Cicero recognized the role of custom in supporting the edict: E. COSTA, *op. cit.* (n. 2), I, p. 36. On praetorian adaption of the edict to respond to social issues and on the praetor's discretion in applying his edict, see B.W. Frier, *art. cit.* (n. 5).

privately, that is, in accordance with their valor and status<sup>21</sup>. Together they unlawfully manipulated the legal procedure using their social clout to give an advantage to the socially unacceptable Naevius against the honest Quinctius<sup>22</sup>. Dolabella's failure to apply legal procedure correctly is paired with Hortensius' lending his talent and prestige to further an unfair legal suit. Neither aristocrat lives up to the ideals, social or legal, that define their status, and their status is also at stake: *quasi sua res aut honor agatur*. Legal rules are thus paired with moral ideals: both must be employed correctly, otherwise they amount to unjustified use of force or bullying, pictured as poisoned darts: qualifying the weapon as 'poisoned darts' characterizes the attack as stealthy and treacherous rather than a straight-from-the-hip confrontation in accordance with the rules<sup>23</sup>. According to Cicero, Dolabella's formula was improper because it was influenced more by social considerations than by legal reasoning. Yet Cicero's own interpretation of the formula depends on social morality. This paradoxical rhetoric shows Cicero knowingly manipulating social issues to construct a just outcome for his client.

The weapons imagery gives a concrete expression to the force that law can have, implying that certain uses of the law are equivalent to self-help. First, the weapons imagery suggest the contrast between law and self-help. Where self-help depends on brute force, law can level the playing field so that more and less powerful parties can find a fair resolution to dispute. Such a perspective contributes to a sympathetic portrait of Quinctius as the virtuous but unempowered defendant<sup>24</sup>. The

<sup>21</sup> T.E. KINSEY, *op. cit.* (n. 1), p. 58, observes on (7) *fortissimos*, that «it is odd that Cicero should go out of his way to attribute this virtue to his opponents; *dissertissimos* and *florentissimos* correspond to the *eloquentia* and *gratia* of which he makes such a play in the *exordium*».

<sup>22</sup> The issue is not simply the fact of *gratia*, but what it was used for; a point Kinsey glosses over as he finds Cicero's tactics here unsuccessful: «... even if, as seems likely, Naevius did have more influence at this time than Quinctius and even if this fact did constitute the chief danger to Quinctius, it does not necessarily mean that Naevius did not have justice on his side as well»: *op. cit.* (n. 1), p. 51.

<sup>23</sup> The equation of physical force with improper legal procedure appears again in connection with the formula in 31, where Quinctius' friends, who have accompanied him to Dolabella's tribunal, are herded away still protesting the unfairness of the formula. In this same passage, Cicero dismisses Dolabella's formula as an aristocratic whim: the praetor was acting as only *nobiles* can, without regard for justification or consequences. Cf. also 71-73.

<sup>24</sup> Cf. J.M. MAY, *op. cit.* (n. 2), p. 19: «Cicero endeavors throughout the speech to undercut, to neutralize in some way, the *gratia* of his adversaries. By pointing to this

weapons imagery creates this impression, and then Cicero moves on to deal with the more complicated relationship between law and power that he and his audience expected to find in Roman courts. At Rome, as in most modern societies, those with social and economic power often have an advantage in the legal system over their less influential fellow citizens<sup>25</sup>. Cicero accepts this social reality in his characterization of Hortensius and Dolabella, but he qualifies it. Because aristocrats have greater power to use the law they have a corresponding responsibility to use it in an appropriate way. 'Appropriate' means in accord with legal precedent (not *contra consuetudinem*) and on behalf of the right sort of people for the right reasons (not to serve the desires of someone like Naevius). Aristocrats may use their privilege to defend their own fortune and honor, but they shouldn't throw their weight around heedlessly. Aristocrats should use their social power and their personal excellence to insure that the legal system works correctly, including following procedural rules. In the rest of the speech, it becomes clear that this relationship should be reciprocal, that law should reinforce social morality and traditional practices. This implicit reciprocity undermines an idealistic view of law as protection for the weak against the strong.

The movement in section 9 from *gratia et potentia* to *propter virtutem nobilitatemque possunt* demonstrates the moral ambiguity of aristocratic power over the courts. Helping Naevius is an inappropriate use of aristocratic clout to manipulate the legal system because, as Cicero argues through his characterization of Naevius, Naevius' social behavior and use of law threatens the social system that underlies aristocratic prestige. Quinctius, on the other hand, exemplifies the qualities that hold this system together. Cicero's rhetorical strategies exploit his audience's assumptions about the proper relationship between law and society. For Cicero and his audience, just legal procedure arises from the proper exercise of social status, whereas self-help is understood as social prejudice gone awry.

situation repeatedly, he has established his client and his case as an unfavored, unsupported cause, playing on the human predilection to favor the helpless, the disadvantaged». C. NICOLET, *The World of the Citizen in Republican Rome*, Berkeley 1980, p. 337, also quotes from the opening of the *Pro Quinctio* to illustrate the rhetorical manipulation of relative strength of litigants in Roman trials.

<sup>25</sup> For Rome, J.M. KELLY, *Roman Litigation*, Oxford 1966; for a modern theoretical approach, D. BLACK, *The Behavior of Law*, New York 1976.

## NARRATIO

In the *narratio*, Cicero depicts the antithesis in the characters of Quinctius and Naevius that underlies his legal interpretations. The Quinctii are described as *pater familias* — respectable citizens and men of means. In contrast, Cicero draws attention to Naevius' inborn character, his humble origins and disreputable occupation, inviting his audience to interpret Naevius' actions through the lens of their social prejudices. Naevius inherited from his father nothing but his freedom and had no resources but his voice to earn a living (11-12). When C. Quinctius formed a partnership with Naevius, he took him away from the assembly of public criers, a *praeconum consesssu*. But as Cicero notes, invoking the familiar Roman assumption that character is inborn and immutable, it was more a change of place than of his nature. Naevius' voice and his ability to talk is a recurrent motif in the speech involving the persona of the *scurra*, a good-for-nothing wise guy who earns his living through talk, entertaining his betters and chatting his way to a free lunch<sup>26</sup>. As a herald or auctioneer, Naevius held a profession at the bottom of the legal system, a necessary but disreputable job<sup>27</sup>, connected with the unpleasant details of confiscating property—a legal procedure that brings disrepute. Cicero's repeated references to Naevius' voice and his profession suggest that his use of the legal system against Quinctius is an extension of his job as auctioneer. The petty official is getting above himself, taking on legal powers that are beyond him in another kind of self-help, and Cicero wants his aristocratic patrons to realize that they are complicit in this attack on a respectable *pater familias*, an attack which undermines the value system that sustains aristocratic power.

## PROCEDURAL ISSUES

In addressing each of the three topics set out in his *divisio*, Cicero bases his interpretations of legal procedure on the contrasting characterizations

<sup>26</sup> Naevius' voice: 11, 50, 95. The fullest description of a *scurra* occurs at Plaut., *Trin.* 202, cf. *Mos.* 15; Hor., *S.* I 5.52 (a jester known for wit, verbal humor), *S.* II 3.229 (a hanger-on of rich men who lived by his wits), *Ep.* I 15.28 (a prodigal); Cat. 22.12 (*infacetius rure infacetiore*) with the note in C.J. FORDYCE, *Catullus*, Oxford 1961, p. 150. See the fine discussion of Naevius as *scurra* in C. DAMON, *The Mask of the Parasite: a Pathology of Roman Patronage*, Ann Arbor 1997, p. 109-110, 197-206, and on his job as *praeco*, p. 197.

<sup>27</sup> Auctioneers were usually freedmen, and some took pride in their profession: S. TREGGIARI, *Roman Freedmen during the Late Republic*, Oxford 1969, p. 99-100, and 230 for Cicero's appeal to prejudice against sons of freedmen in this passage.

of Naevius and Quinctius. In each case, his treatment of legal issues relating to Quinctius invites his audience to generalize about the legal system and the place of social values in establishing justice.

1. There was no reason for Naevius to apply to the praetor to take possession of Quinctius' property (37-59).

The first section of Cicero's argument deals with Naevius' first application to the praetor Burrienus to take possession of Quinctius' property. At the end of the first section, in three succinct paragraphs, Cicero presents convincing circumstantial evidence that undermines Naevius' legal grounds for seeking possession of Quinctius' property (57-59), taking up a small fraction of Cicero's treatment of this legal issue<sup>28</sup>. The rest of the section explores other reasons why Naevius was not justified in seeking the praetor's intervention. These other reasons are rooted not in legal requirements but in social expectations and personal morality. Cicero undermines Naevius' use of the legal system by showing that it was self-help rather than legitimate procedure because his attitude and motives were socially unacceptable.

Cicero first turns his attention to Naevius' style of financial management and finds it unsatisfactory. He characterizes Naevius' financial management style as irresponsible and socially unacceptable in order to undermine his grounds for seeking legal action. Managing one's affairs in a responsible fashion is an aspect of duty to family and close friends (39). If Naevius had been responsible, he would have settled any question about money with Quinctius promptly, that is, shortly after the death of Quinctius' brother (38). Instead, he lived with Quinctius for two years on the Gallic estate before asking for an audit of the accounts (40-42)<sup>29</sup>. According to Cicero, Naevius had wanted to create the impression that Quinctius owed him money so that he would appear to have a motive for making a court date with him (*vadimonium*). If Quinctius had owed a debt and was unwilling to pay, Naevius could legitimately make

<sup>28</sup> Naevius would have grounds for seeking possession if Quinctius had failed to appear in court on a day for which he had made a formal legal promise to appear, a *vadimonium*. Naevius claimed that on the Nones (5th) of February, Quinctius had made a *vadimonium* to appear in court. According to Quinctius' diary, however, he wasn't even in Rome on the Nones. He had left for Gaul on the day before the Kalends (i.e. January 31). And if the diary isn't enough proof, Cicero has witnesses who traveled with Quinctius to attest to the date.

<sup>29</sup> During this time, Naevius had also promised his own funds to pay Quinctius' debt to Scapula, though he later renege (43, cf. 17).

a claim on Quinctius' property and have grounds to bind Quinctius to appear in court with a *vadimonium*. Instead, Cicero argues, Naevius' true aim was to seize Quinctius' property and to destroy his reputation through the public process of confiscation. Naevius' ulterior motives are also betrayed by his quickness to take legal action: rushing to court before attempting to settle the dispute through personal negotiations (38, 53).

At the center of his treatment of the first issue, Cicero dramatizes the effects of Naevius' legal actions with a step-by-step description of this process and a comparison between this process and a funeral (50-51). This comparison suggests the results of *manus iniectio*, the old self-help procedure for executing a debt on the person of a debtor, thus characterizing Naevius' use of the law as self-help. In addition, the suggested comparison also reemphasizes what is wrong with Naevius' quickness to take legal action: he is applying the self-help remedy too fast, even before performing the necessary legal procedures. By graphically describing the consequences of Naevius' law suit, Cicero demonstrates the devastating effect of using the law in inappropriate ways.

When a man's property is confiscated and sold at auction, the experience is like attending his own funeral, or a perversion of that ritual. For, instead of friends mourning his death and honoring his life, it is a brutal ceremony of destruction, and Naevius, as auctioneer, presides over it.

Ergo hercule, cuius bona ex edicto possidentur, huius omnis fama et existimatio cum bonis simul possidetur; de quo libelli in celeberrimis locis proponuntur, huic ne perire quidem tacite obscureque conceditur; cui magistri fiunt et domini constituuntur, qui qua lege et qua condicione pereat pronuntient, de quo homine praeconis vox praedicat et pretium conficit, huic acerbissimum vivo videntique funus indicitur, si funus id habendum est quo non amici conveniunt ad exsequias cohonestandas, sed bonorum emptores ut carnifices ad reliquias vitae lacerandas et distrahendas. [50-51]

Thus, by Hercules, the man whose property is possessed according to the edict, his entire reputation and esteem is seized along with his goods; notices are posted about him in the most public places, so that he is not even allowed to perish in peaceful obscurity; they become his lord and master, those men who announce the terms and conditions by which he perishes; the man for whom the auctioneer's voice advertises and sets a price, for this man the most bitter funeral is ordained while he is still alive to see it, if this can be called a funeral when friends are not gathering to honor the dead but buyers of merchandise, like murderers, gather to rend and ruin the remains of his life.

While the loss of property causes financial ruin, it is the publicity of the process that damages the defendant's reputation beyond repair. The posting of bills and the auctioneer's voice invite the audience to hear and see the process of confiscation and auction as if they, too, were seeing for themselves the posters and hearing the auction take place. The vivid description implicates the audience in reenacting the events that destroy the defendant's reputation. These events haven't yet happened and the audience is the court that can prevent them from happening. The vivid description is an attempt to persuade the jurors by evoking feelings of guilt that they might (should?) feel if they should be responsible for bringing such destruction on a good man like themselves. They would be responsible for a perversion of justice as grievous as the perversion of the funeral that illustrates the effects of this legal action.

Comparing confiscation to a funeral establishes further connections between Naevius' legal maneuvers and their social consequences. Quinctius, like a man witnessing his own funeral, both suffers the loss and perceives the impact of that loss on his life and reputation through his friends' reactions to his death. In the comparison, mourning friends are replaced with vicious murderers who attack the corpse<sup>30</sup>. The effects of confiscation on Quinctius' life and reputation are represented with a visual image of painful, physical damage. The legal process appears to inflict bodily harm on the defendant, justifying Cicero's description of confiscation as murder, *iugulare* (44, 51)<sup>31</sup>, and his characterization of the present trial as a capital case in which Quinctius must speak first though his life is at stake. Again, the reference to bodily harm invokes the old procedure of *manus iniectio*, associating Naevius' use of the law with self-help. With this emotive image Cicero welds procedural issues to social values, implying that Naevius' use of law and of self-help are both flawed because his motives are socially unacceptable. Cicero expects the court to sympathize with Quinctius because they share his view of a man's social worth and he expects these shared sentiments to lead them to condemn Naevius' use of the legal system. The jurors will find that just use of the law (i.e. a decision for Quinctius) reinforces their own social values. Thus Cicero's use of description and comparison show that he understood how personal conscience and social values

<sup>30</sup> C. Damon, *op. cit.* (n. 26), p. 201-202, sees in *reliquiae* a reference to the *scurra's* practice of collecting leftovers at dinner parties to which his wit has bought attendance. Humor and horror are not incompatible here but mutually reinforcing.

<sup>31</sup> Cf. 39, with T.E. KINSEY, *op. cit.* (n. 1), p. 113, 135.

could be manipulated to create a sense of justice or injustice through legal procedure.

Cicero follows up the funeral with three sets of question and answer, addressed first and last to Naevius, with a brief address to the court intervening<sup>32</sup>. In the question and answer, Cicero returns to Naevius' hasty appeal to the praetor for possession of Quinctius' property. In addressing Naevius, weapons imagery recurs, recalling the opening of the speech. Here weapons imagery creates the impression that Naevius' use of the legal system was wrong because it was out of proportion:

Ergo in eum qui semel hoc commisit, ut tibi praesto non esset, omnia tela coniecisti quae parata sunt in eos qui permulta male agendi causa fraudandique fecerunt? [52]

And so, at him, who once did this, namely was not ready in court for you, at him you hurl all the weapons that are aimed at those who have committed many, many acts of fraud for evil purposes?

In this question, Cicero ascribes to Naevius the power of the law, because Naevius is wielding the weapons. This rhetorical sleight of hand implies that Naevius' legal actions are nothing more than an extension of self-help, as if he physically threatened Quinctius<sup>33</sup>. But, the law's arsenal is prepared against repeated dishonest behavior and should not be used against a single failure to conform to procedure<sup>34</sup>. Naevius' use of the law is illegitimate because it goes against social norms.

Cicero then turns to the court and asks them to validate this standard for assessing Naevius' use of the law (54-55). He presents Quinctius' case as a legal hypothetical or, to use modern jargon, a fact pattern:

Vadimonium mihi non obiit quidam socius et adfinis meus quicum mihi necessitudo vetus, controversia de re pecuniaria recens intercedit;

<sup>32</sup> On the technique, see T.E. KINSEY, *op. cit.* (n. 1), p. 142.

<sup>33</sup> Earlier in the speech there is a similar slide. When Naevius appeals to the praetor Burrienus for possession of Quinctius' property, Cicero describes it as follows: *Postulat a Burrieno praetore Naevius ut ex edicto bona possidere liceat; iussit bona proscribi eius quicum familiaritas fuerat, societas erat, adfinitas liberis istius vivis divelli nullo modo poterat* (25). The way Cicero constructs Naevius' appeal to the praetor transfers the legal power to grant possession from the magistrate to Naevius. In the first clause, Naevius seeks a ruling from the praetor, *postulat... ut*; then Naevius himself seems to order that the property be confiscated, *iussit bona proscribi...* Thus Naevius' desire appears as equivalent to the power of law, creating an identification between legal rights and self-help.

<sup>34</sup> T.E. KINSEY, *op. cit.* (n. 1), p. 136, notes that Cicero's language here is misleading in the way it represents Quinctius' behavior and Naevius' options.



postulone a praetore ut eius bona mihi possidere liceat, an, cum Romae domus eius, uxor, liberi sint, domum potius denuntiem? [54]

My kinsman and partner failed to fulfill his *vadimonium* with me, someone with whom I have a long-standing connection, and only recently has a dispute about money arisen. Do I seek from the praetor permission to take possession of his property, or, since his home, his wife, and his children are at Rome, should I instead give him advance warning at home?

Cicero is confident in providing a response for the court. There are three steps the good man would take before approaching the praetor to get an order for possession. First, he would call together a group of friends, then he would make inquiries about who is acting as agent for his associate, and third he would bring word of his intentions to the man's home. Naevis did none of these things. Going to court to settle a dispute with a close associate is the last resort of a good man, therefore Naevis is not a good man (38, 53)<sup>35</sup>. Since the procedure for notifying a defendant was probably more customary rather than a legal requirement<sup>36</sup>, Cicero's rhetoric elevates social expectations to the status of law in order to make Naevis' social non-conformity appear also outside the law.

Turning back to Naevis, Cicero acts as ventriloquist for him, as if allowing him to explain his own position. Cicero has 'Naevis' assert that the reverence and responsibility of a good man have nothing to do with him; his methods are inborn:

"Quid mihi," inquit, "cum ista summa sanctimonia ac diligentia? Viderint," inquit, "ista officia viri boni, de me autem ita considerent: non quid habeam sed quibus rebus invenerim quaerant, et quem ad modum natus et quo pacto educatus sim. Memini; vetus est, 'de scurra multo facilius divitem quam patrem familias fieri posse.'" Haec ille, si verbis non audet, re quidem vera palam loquitur. Etenim si volt virorum bonorum instituto vivere, multa oportet discat ac dediscat, quorum illi aetati utrumque difficile est. [55-56]

"What's it to me, this deep reverence and responsibility?" he says. "Let good men see to those duties, but they should assess me as follows: let them ask not what I have but how I got it, and in what circumstance I was born and by what scheme I was raised. Remember, it is an old saw, 'it is much easier to turn a good-for-nothing into a rich man than into a *pater familias*.'" If he doesn't dare to say it in so

<sup>35</sup> The issue was moral not legal, as T.E. KINSEY, *op. cit.* (n. 1), p. 139, observed.

<sup>36</sup> M. KASER, *RZP*, p. 472-473.

many words, he says it clearly in deed. For if he wants to live according to the custom of good men, he ought to learn and unlearn many things — both of which are difficult for a man of that age.

According to Cicero, 'Naevius' openly rejects the standards of good men, instead taking pride in his own heritage, which he sets up as an alternative ethic. The distinction — not what he has but how he got it — implicitly criticizes good men, undermining their ethical goodness by suggesting that it is based on material wealth, the other kind of *bona*<sup>37</sup>. The methods of 'Naevius' are better because they at least honestly arise from his nature and upbringing. Of course Cicero expects his audience to take a different view and to condemn Naevius as a deviant because he belongs to a different social group. The axiom about the *scurra*<sup>38</sup> — which 'Naevius' interjects (a sample of the *scurra*'s wit?) — backfires, because the audience will identify Naevius with the *scurra*, an outsider to men of wealth and influence, and a disreputable character who is incapable of becoming a responsible good man<sup>39</sup>. Cicero depicts the good man in terms of his audience's own values, defining Naevius out of the circle of good men who will decide the case. Cicero cloaks his argument about procedure and law in social issues, appealing to the jurors' personal prejudices and ethical beliefs rather than its legal expertise.

In this passage and elsewhere in the speech, Cicero uses the notion of the good man, *bonus vir*, as an standard against which to measure both Naevius and Quinctius (e.g. 11, 38, 94)<sup>40</sup>. Cicero constructs his good man to serve his characterization of Naevius and Quinctius, but the standard also has implications for Cicero's legal arguments. In Roman law, the judgment of the good man became the standard for evaluating whether or not someone had lived up to his legal obligation under contracts<sup>41</sup>. This standard was taking shape during the late Republic, and Cicero's invocation of the *bonus vir* in the *Pro Quinctio* is evidence for that process. Cicero uses the *bonus vir* standard to suggest that Quinctius

<sup>37</sup> «Naevius is supposed to be suggesting that his opponents must not argue that he is *bonus* because he is wealthy»: T.E. KINSEY, *op. cit.* (n. 1), p. 142.

<sup>38</sup> Cf. Porphyr. on Hor., *Ep.* I 17.58, with A. OTTO, *Die Sprichwörter und sprichwörtlichen Redensarten*, Leipzig 1890, p. 314.

<sup>39</sup> The axiom also serves to highlight Cicero's rhetorical skill because it shows Naevius using rhetoric clumsily.

<sup>40</sup> Cicero also applies the *vir bonus* standard to Quinctius' agent, Alfenus (60-67).

<sup>41</sup> M. KASER, *RP* I, p. 490; R. ZIMMERMANN, *op. cit.* (n. 15), p. 456-457.

and Naevius were parties to a contract, namely the partnership in Quinctius' brother's property in Gaul. Cicero reinforces this suggestion by repeatedly describing one or the other of them as partner, *socius* (12, 52, 54, 74, 88). Yet, in his account of events leading up to the trial, Cicero never mentions the formation of such a partnership between Quinctius and Naevius. Without the legal agreement (contract), there was no partnership; the partnership between Naevius and Quinctius' brother ended with the brother's death and Quinctius could not inherit the legal status of partner<sup>42</sup>. Why does Cicero want to create the impression that Naevius and Quinctius were legally partners? In emphasizing the partnership, Cicero reminds the court that Naevius could have brought a suit on the partnership to settle any financial dispute arising from the defunct partnership with Quinctius' brother. Instead, as Cicero describes it, Naevius forced Quinctius to engage in a suit about the judgment debt, technically a *sponsio de probro*, a legal wager undertaken to disprove dishonorable allegations<sup>43</sup>. Naevius preferred this kind of suit, even though it was potentially more damaging to Quinctius, because it served his aim of stealing Quinctius' property and ruining his reputation (46) through a use of law that resembles self-help in its results and recalls the old self-help procedure of *manus iniectio*<sup>44</sup>. If, as Watson argues<sup>45</sup>, the legal partnership did continue after the death of Quinctius' brother, Cicero's strategy makes Quinctius' position even more sympathetic because Naevius has chosen to avoid the obvious legal remedy, a suit on the partnership. Combining the *vir bonus* concept with an emphasis on partnership, Cicero furthers his characterization of Naevius as one who breaks social rules by using law in inappropriate and illegitimate ways. This strategy is ironic because in fact this characterization depends on misrepresentation of the legal relationship between Naevius and Quinctius. Correct use of the law then is seen as the result not only of correct legal reasoning but of proper observance of social practices.

<sup>42</sup> M. KASER, *RP I*, p. 575; cf. H.J. ROBY, *op. cit.* (n. 2), II, p. 454.

<sup>43</sup> M. DE BERNARDI, *Lex irnitana LXXXIV-LXXXV-LXXXIX: nuovi spunti per una riflessione sulla sponsio nel processo romano*, in *Testimonium Amicitiae (Università degli studi di Milano. Facoltà di giurisprudenza. Pubblicazioni dell'istituto di diritto romano, 27)*, Milan 1992, p. 128.

<sup>44</sup> Costa's interpretation, *op. cit.* (n. 2), I, p. 188-191 — Cicero sustains the pretense of partnership to create a sense of duty, *officium*, that Naevius has violated — is apposite.

<sup>45</sup> A. WATSON, *The Law of Obligations in the Later Roman Republic*, Oxford 1965, p. 131-132.

2. Naevius could not have taken possession of Quinctius' property in accordance with the praetor's edict (60-73).

This section of Cicero's argument concerns the order by the praetor Burrienus granting Naevius possession of Quinctius' property. The praetor's order recognized Quinctius' debt as outstanding and allowed Naevius to take his property as security for repayment of the debt. This formal taking possession is important for Naevius because it is a prerequisite for confiscating the debtor's property. But the possession is only valid if it is carried out in accordance with the specific terms of the order and if no agent intervenes on behalf of the debtor to stop the process, that is, to indicate that the debt will be repaid. Cicero maintains that Naevius could not have lawfully taken possession because Quinctius was properly defended in court by his agent Alfenus, when Naevius brought the claim for the debt during Quinctius' sojourn in Gaul. Cicero examines two of Alfenus' actions in particular: his appearance in court answering Naevius and his appeal to the tribune Brutus to intervene in the proceedings. The section concludes with a consideration of circumstantial evidence that blackens Naevius' character at the same time as it exonerates Quinctius.

While Quinctius was visiting the property in Gaul, Naevius had approached the praetor Burrienus and obtained an order granting him possession of Quinctius' property on the grounds that Quinctius had failed to appear in court for the hearing on the debt that was allegedly owed to Naevius. At that point, Quinctius' agent Alfenus entered the picture, interfering with Naevius' attempts to take possession and announcing himself as Quinctius' representative and accepting the law suit<sup>46</sup>. In response, Naevius asked Alfenus to give security for the debt, in the event that he should lose the case. Alfenus claimed that Naevius' demand for security was unfair. Cicero justifies Alfenus' refusal to give security through a misrepresentation of the legal rules defining the circumstances in which a creditor could seek security. He creates a plausible misrepresentation through the rhetorical technique of definition, defining the legal term *latitare* and demonstrating that Quinctius' behavior did not fit the definition (60ff.)<sup>47</sup>. Cicero implies that a creditor could

<sup>46</sup> On the role of agent for an absent defendant in this kind of case, see M. KASER, *RZP*, p. 222-223, and 290 on accepting the law suit.

<sup>47</sup> For the admissible defenses against a charge of evasion, *latitare*, see M. KASER, *RZP*, p. 228-229.

only demand security if the debtor was absent and undefended or if he fraudulently avoided appearing in court, *latitare*. In fact, if a creditor did not appear himself, his agent could be expected to provide security<sup>48</sup>. Cicero argues as if Quinctius were accused of fraudulent avoidance, even though the legal consequences were the same for fraud as for an honest failure to appear or be defended in court. In this way, Cicero ups the ante, inviting his audience to feel outrage that this honest man has been accused of fraud, when in fact his opponent is prosecuting him fraudulently. He represents Naevius' appeal to the praetor as unjust and unconventional, while at the same time himself offering an unconventional interpretation of the praetorian edict. Because Alfenus appeared for Quinctius, his actions could not be construed as 'fraudulent avoidance', Cicero argued. He is careful not to say that Alfenus refused to give security, as Roby noted<sup>49</sup>, perhaps signaling his own accurate knowledge of the legal rules at the same time as he bent their interpretation to play on the emotions of the court.

In recounting Alfenus' actions on behalf of Quinctius, Cicero returns to the theme of improper influence on the legal process when he presents Alfenus' appeal to the tribune Brutus. This time, Hortensius is accusing Quinctius' agent Alfenus of getting a legal advantage through social clout. It is not the appeal to the tribune in and of itself that occasions criticism from Naevius' and his advocates<sup>50</sup>, but rather the identity of the tribune. Because the tribune Brutus was an associate of Alfenus, Hortensius cries foul, accusing Alfenus of seeking to use his influence to change the course of the litigation, that is, to use *gratia* to make the rules of procedure work in his favor (68-69). Cicero attempts to neutralize

<sup>48</sup> The creditor could take possession of the debtor's property unless the debtor himself or his agent appeared in court; the agent was also required to give security for repayment of the debt, M. KASER, *RP* I, p. 163-166 and *RZP*, p. 222, 390-391. If no one appeared for the debtor, the creditor could hold the debtor's property for thirty days in safekeeping, as a substitute for security. At the end of that time, if the debtor still had not appeared, the creditor could seek an order from the praetor to sell the property and recover the debt. If the debtor was shown to have fraudulently avoided appearing in court and giving security, the praetor could grant the creditor permission to sell the property to recover the debt. Luckily for Quinctius, he returned to Rome before Naevius proceeded to the auction. Cf. E. COSTA, *op. cit.* (n. 2), II, p. 46-47, 54.

<sup>49</sup> H.J. ROBY, *op. cit.* (n. 2), II, p. 477.

<sup>50</sup> The tribunes had broad powers to intercede on behalf of an individual against a magistrate, M. KASER, *RZP*, p. 501-502; cf. H.J. ROBY, *op. cit.* (n. 2), II, p. 479 n. 2. Tacitus, *Ann.* XIII 28, reports that in 56 AD, the Senate passed a resolution forbidding tribunes from taking over the functions of praetors and consuls; the need for such a rule suggests that tribunes frequently intervened in such cases.

Hortensius' strategy by turning it back on Naevius. Cicero admits that Alfenus was looking for favors. But, Naevius is in no position to criticize because he has done the same thing and in order to pursue an unjust trial, whereas Alfenus was only doing his duty as Quinctius' agent when he sought Brutus' help: the ends justify the means. Naevius' social status and personal morality are again at issue. Alfenus may have sought influence from powerful friends, but at least he shared a lasting relationship with them and a common background, whereas Naevius made friends with powerful men only because they could do something for him. In fact, Cicero casts Naevius as a hypocrite as well, claiming that he taught Alfenus to seek friends from his own class: *quem tu a puero sic instituisses ut nobili ne gladiatori quidem faveret*, «don't take sides with a well-known gladiator (or with an aristocrat, even if he's a gladiator)» (69)<sup>51</sup>. By ascribing this lesson to Naevius, Cicero reveals to his aristocratic backers Naevius' contempt for them because the term gladiator identifies them with men of violence and of the lowest social status and with Naevius himself, whom Cicero has branded a gladiator earlier in the speech (29)<sup>52</sup>. Cicero's remark equates Naevius and his aristocratic backers, blurring the social distinctions that no doubt Hortensius and Philippus thought separated them from the likes of Naevius. In this way, he in fact undermines the influence of Naevius' advocates and their allegiance to him. In contrast, Alfenus is not a gladiator because he only fights with friends for friends; his duty is not for sale. Alfenus, like Quinctius, exemplifies the social standards of the aristocrats whose status and integrity should guarantee justice instead of perverting it by supporting the legal chicanery of a social-climber like Naevius.

After treating Alfenus' role, Cicero turns to circumstantial evidence proving that Naevius could not have taken possession in accordance with the praetor's edict, because he began taking possession even before he had appealed to the praetor. He presents this argument through Quinctius' kinsman, Q. Roscius, the famous actor, who had asked

<sup>51</sup> For the pun on *nobilis*, see T.E. KINSEY, *op. cit.* (n. 1), p. 166.

<sup>52</sup> On the status and ambivalent symbolism of gladiators, see for example Cic., *Mil.* 92 and *Tusc.* II 41, with C. BARTON, *The Sorrows of the Ancient Romans. The Gladiator and the Monster*, Princeton 1993, p. 15-31. According to Barton (p. 29) elite Romans came «to identify with, and assume, the role of the gladiator» when political circumstances, namely the coming of empire, put them in similar, desperate circumstances. The gladiator was «in one aspect, a metaphor of empowerment» (p. 35); Cicero's use of the metaphor in the *Pro Quinctio* emphasizes the danger of Naevius' use of the law courts as a threat to elite control of legal sanction.

Cicero to take the case. According to Roscius, Naevius had appealed to the praetor for possession five days before the intercalary Kalends (20 February), and Quinctius was evicted from the Gallic property one day before the Kalends (23 February)<sup>53</sup>. The praetor's order granting Naevius possession had to have been made before the eviction in order for it to be lawful. Yet no messenger (except Pegasus, suggests Cicero), could carry the order seven hundred miles from Rome to Gaul in just three days (79). Cicero concludes with a dilemma<sup>54</sup>: either the messenger traveled seven hundred miles in three days or Naevius sent the messenger before he had the court order. Since the first option is impossible, the second must be true and thus Naevius' deceitful manipulation of the legal system is revealed (80).

In the course of the discussion of circumstantial evidence, Cicero addresses Aquilius three times in quick succession, once at the start, again just before he goes through the dates and events, and finally when he exclaims over the impossibility of completing a seven hundred mile journey in three days. He asks him to pay close attention to the details because they are the key to a correct interpretation of both Naevius' and Quinctius' positions. This evidence shows that Naevius' lawsuit was a means to satisfy greed and wanton aggression (*cupiditas, audacia*) whereas Quinctius' case was the simple truth and restraint (*veritas, pudor*). Cicero expects the court to reward truth and restraint and to condemn greed and aggression because they disrupt the status quo, that is, not just socially but legally. Naevius, by trying to take Quinctius' property and ruin his reputation, is trying to climb the social ladder at some one else's expense. With this stark rhetorical antithesis, Cicero represents this social system as a zero-sum game where Naevius' gain is Quinctius' loss: there is not room for both of them. This polarization associates the correct use of law with aristocratic virtues and conversely links greed and aggression with unlawful use of the legal system. In this way, Cicero undermines the distinction between law and self-help: Naevius' improper legal actions amount to an extension of self-help. Ideally, the legal system counters the social and physical advantages that make self-help an unjust solution in many circumstances. Paradoxically, Cicero's argument asserts a different ideal: the social elite monopolize the right to self-help because their values determine what is just and

<sup>53</sup> For the chronology, H.J. ROBY, *op. cit.* (n. 2), II, p. 467-468.

<sup>54</sup> A rhetorical dilemma: see C.P. CRAIG, *op. cit.* (n. 2), p. 183.

what is not. Cicero's argument is conservative in refusing Naevius the opportunity to use the courts to extend self-help while at the same time arguing that aristocratic values should govern legal decisions.

#### CONCLUSIONS

In the *Pro Quinctio*, Cicero summons class prejudice to justify Quinctius' use of the law and to condemn the legal actions of his opponent C. Naevius. He invites the jurors to sympathize with Quinctius and to support him because he exemplifies traditional, aristocratic values. He classifies Naevius' use of the law as an unjust kind of self-help because Naevius is a social outsider whose legal actions threaten traditional social patterns and beliefs. At the same time, he also holds Naevius' influential advocates accountable for using their clout to manipulate the legal system to achieve the socially disruptive goals of someone like Naevius. Recurrent imagery of physical force and weapons characterize Naevius' legal maneuvers as a kind of destructive use of force or what we might call self-help, that is, taking the law into one's own hands. Cicero identifies undue influence and innovative interpretations of law with self-help when he condemns Naevius for trying to use law to extend self-help. Yet he, too, advances innovative interpretations of the law in Quinctius' favor, arguing that they are just. In this paradoxical strategy, self-help is just if it serves elite social values — unjust otherwise. In arguing both sides of the self-help question, Cicero seeks to capitalize on contemporary skepticism about the legal system and its capacity to attain justice, social and legal. Throughout the speech, Cicero appeals to C. Aquilius to validate his interpretations of the law, but as judge in Quinctius' case, Aquilius seems to have rejected Cicero's approach. Cicero may have lost Quinctius' case, if in fact he did lose, in part because he misjudged his contemporaries' views on the just balance between social clout, force, and procedure in negotiating justice through private law.

*Indiana University*  
Department of Classical Studies  
Bloomington, IN 47405

Cynthia J. BANNON