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Cicero and Barack Obama: How to Unite the Republic Without Losing Your Head

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CICERO AND BARACK OBAMA: HOW TO UNITE THE REPUBLIC WITHOUT LOSING YOUR HEAD

Michael J. Cedrone*

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INTRODUCTION

The rhetoric of political crisis offers lessons for lawyers about speaking in situations of extreme polarization. As this Article was written, the United States weathered a serious crisis. The United States House of Representatives impeached the forty-fifth president of the United States, based on allegations that he withheld military aid to Ukraine in an attempt to pressure the Ukrainian government to assist his reelection campaign.[1] The Articles of Impeachment also alleged that the president refused to cooperate with legitimate Congressional oversight of his actions.[2] A Senate trial acquitted the president in a proceeding that featured lengthy presentations by lawyers, but did not include taking testimony or introducing evidence into the record.[3] Throughout the Senate trial, supporters of the president advocated speedy acquittal, while opponents believed impeachment and removal from office were a necessary remedy for abuse of power.[4]

The beginning of the trial was characterized by particularly divisive rhetoric from both the House managers, serving as prosecutors, and from the president's defense team.[5] Rep. Jerrold Nadler (D-NY), a House manager, accused Republican Senators of voting in favor of a "cover-up" for a pretrial vote against a subpoena for a witness's testimony.[6] White House counsel Pat Cipol-

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[1] *See generally* Nicholas Fandos & Michael D. Shear, *Trump Impeached for Abuse of Power and Obstruction of Congress*, N.Y. TIMES (Dec. 18, 2019), https://www.nytimes.com/2019/12/18/us/politics/trump-impeached.html [https://perma.cc/HFQ8-AYPL].

[2] *Id.*

[3] Peter Baker, *Impeachment Trial Updates: Senate Acquits Trump, Ending Historic Trial*, N.Y. TIMES (Feb. 6, 2020), https://www.nytimes.com/2020/02/05/us/politics/impeachment-vote.html [https://perma.cc/93WQ-AZSS]; Andrew Duehren, *Senate Rejects Witnesses in Trump Impeachment Trial*, WALL ST. J. (Jan. 31, 2020, 8:29 PM), https://www.wsj.com/articles/trump-impeachment-trial-senators-vote-on-witnesses-11580508468 [https://perma.cc/Q4PH-JMQV].

[4] Duehren, *supra* note 3.

[5] Adam Liptak, *Rebuke From Roberts Signals His Limited Role in Trump's Senate Trial*, N.Y. TIMES (Jan. 23, 2020), https://www.nytimes.com/2020/01/22/us/chief-justice-john-roberts.html [https://perma.cc/F6LQ-MTCB]. Notably, the process is dominated by lawyers, many of whom have been described in the press as "aggressive" or "zealo[us]." *See, e.g.*, Hallie Jackson et al., *Meet Trump's Legal Team for the Impeachment Trial*, NBC NEWS (Jan. 17, 2020), https://www.nbcnews.com/politics/trump-impeachment-inquiry/meet-trump-s-legal-team-impeachment-trial-n1118156 [https://perma.cc/2Z37-HY5M] (profiling the lawyers presenting President Trump's impeachment defense); Michael Levenson, *Who Are the House Impeachment Managers in the Trump Trial?*, N.Y. TIMES (Jan. 22, 2020), https://www.nytimes.com/2020/01/22/us/impeachment-managers.html [https://perma.cc/WQ8Y-R8A8] (noting that nearly all house impeachment managers are lawyers); Todd S. Purdum, *Man in the News; Persistence Pays Off: Jerrold Lewis Nadler*, N.Y. TIMES (Sept. 25, 1992), https://www.nytimes.com/1992/09/25/nyregion/man-in-the-news-persistence-pays-off-jerrold-lewis-nadler.html [https://perma.cc/DK46-YVGG] (noting that Representative Nadler, an impeachment manager, is a lawyer).

[6] Liptak, *supra* note 5. The New York Times characterized Representative Nadler's presentation as "combative." *Id.*

lone responded by telling Representative Nadler, "You're not in charge here."[7] Following this exchange, Chief Justice of the United States John Roberts made the following comment:

> I think it is appropriate for me to admonish both the House managers and the [p]resident's counsel in equal terms to remember that they are addressing the world's greatest deliberative body, . . . [o]ne reason it has earned that title is because its members avoid speaking in a manner and using language that is not conducive to civil discourse.[8]

It is perhaps to be expected that the language of partisanship and division pervades political discourse in the present era, and particularly during a presidential impeachment trial. However, Chief Justice Roberts's admonition emphasizes that lawyers who engage in this kind of discourse risk becoming victims of their own rhetoric. At its extremes, divisive rhetoric by lawyers renders persuasion through civil discourse impossible. In the political arena, even when dealing with legal matters, this outcome is perhaps sadly predictable. However, lawyers in practice should take from the impeachment a lesson to avoid the traps of speaking in ways that foster disunity.

By turning to the works of Cicero and Barack Obama, we can find models of how to speak into crises in ways that foster unity. Cicero's Catilinarian orations were delivered in 63 BCE, during his one-year term as consul—the highest elected official in the Roman Republic.[9] Facing a conspiracy by certain noble Romans, Cicero delivered a series of four speeches that drove the chief conspirator out of Rome, turned public opinion against the conspirators, and convinced the Roman Senate to support the death penalty for conspirators who remained and were captured in Rome.[10] The Fourth Catilinarian, in which Cicero advocates for the death penalty, is a prime example of a legal speech delivered in a political forum during a divisive time.

Barack Obama delivered "A More Perfect Union" to defuse a crisis following media reports of incendiary remarks made by his pastor, Reverend Jeremiah Wright of the Trinity United Church of Christ in Chicago, Illinois.[11] In "A

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[7] *Id.*

[8] Paul LeBlanc, *John Roberts Scolds Legal Teams After Tense Exchange: 'Those Addressing the Senate Should Remember Where They Are'*, CNN (Jan. 22, 2020, 8:47 AM), https://www.cnn.com/2020/01/22/politics/john-roberts-scolds-legal-teams-senate-trial-chief-justice/index.html [https://perma.cc/6T66-BQQY].

[9] THE WORLD OF ROME: AN INTRODUCTION TO ROMAN CULTURE 39–40 (Peter Jones & Keith Sidwell eds., 1997) [hereinafter THE WORLD OF ROME].

[10] CICERO, CATILINARIANS 13 (Andrew R. Dyck ed., 2008) [hereinafter CATILINARIANS]. Again, however, it is worth noting that the tide soon turned on Cicero, who faced criticism for executing the conspirators without trial. MARY BEARD, SPQR: A HISTORY OF ANCIENT ROME 35–36 (2015).

[11] *See* Brian Ross & Rehab El-Buri, *Obama's Pastor: God Damn America, U.S. to Blame for 9/11*, ABC NEWS (May 7, 2008, 11:34 AM), https://abcnews.go.com/Blotter/DemocraticDebate/story?id=4443788&page=1 [https://perma.cc/4D8X-TRD2].

More Perfect Union," delivered on March 18, 2008, Obama defended himself and addressed larger question of race relations in America.[12]

There is much for lawyers to learn from the rhetoric of the Fourth Catilinarian and "A More Perfect Union." In each case, a very strong orator faces a crisis and marshals evidence and arguments in favor of legal or quasi-legal determinations.[13] The speakers do not hesitate to take strong positions, but the goal of each is unity: unity is an explicit call of each orator and a requirement to achieve the ends the speakers seek.[14] Moreover, each orator positions himself as embodying the unity he advocates.[15] These efforts to bridge deep divides can teach lawyers how to achieve results in challenging circumstances.

A useful starting point for that exploration is the rhetorical theory found in Cicero's treatise on rhetoric, *De Oratore.* Although it was written after his Catilinarian orations, *De Oratore* provides context for Cicero's approach.[16] In this work, Cicero presents a dialogue among noted orators of the generation before him and their followers.[17] Cicero's characters resynthesize and deepen the field of oratory.[18] They move beyond the rules offered by rhetorical handbooks of the day and set out goals for the orator.[19] *De Oratore* primarily advocates a

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[12] Senator Barack Obama, A More Perfect Union (Mar. 18, 2008) (transcript available at https://www.npr.org/templates/story/story.php?storyId=88478467 [https://perma.cc/T6GG-9KEP]).

[13] Because neither speech was offered as part of legal proceedings, this Article might be criticized for mixing genres involving legal and political rhetoric. However, both speeches have much in common with lawyer's rhetoric, hence this Article's use of the term "quasi-legal." The ancients perceived rhetoric about specific questions (as opposed to rhetoric about general matters) as falling into three genres: judicial , for advocacy in legal courts; deliberative, for public debate about political matters; and epideictic, that is speeches of praise or blame directed at individuals. CICERO, ON THE IDEAL ORATOR 28 (James M. May & Jakob Wisse trans., 2001) [hereinafter CICERO, IDEAL ORATOR]; *see also id.* at 135. Judicial and deliberative rhetoric were sometimes considered together, as they were largely located in the same place: advocacy before the courts of law and deliberation regarding public issues both took place in the Roman forum. *Id.* at 28. May and Wisse in part define the Roman forum as "the public square that was the center of Roman political, ceremonial, legal, and commercial life." *Id.* at 324; *see also id.* at 7. The merger of judicial and deliberative rhetoric can perhaps most clearly be seen during periods of political crisis, as deliberative rhetoric about public matters seems to take on a judicial character. Along these lines, Cicero's Fourth Catilinarian is effectively a prosecutor's argument in favor of the death penalty for treasonous citizens, though Cicero was speaking to the Roman Senate, a political rather than legal forum. In "A More Perfect Union," Obama defends himself from the charge that he was a radical extremist on matters of race, responding to attacks based on statements by his pastor, Revrend Jeremiah Wright. Obama, *supra* note 12. Obama's speech asks listeners to weigh evidence and credibility as he ponders matters of race and advocates a path forward for the country. *Id.*

[14] *See infra* Part III.

[15] *See infra* Part III.

[16] CICERO, IDEAL ORATOR, *supra* note 13, at 3.

[17] *Id.* at 13.

[18] *Id.* at 3 ("The form of the work is also unusual. It is not a regular handbook or treatise, but, apart from the prologues to the three books, a dialogue.").

[19] *Id.*

rhetoric based on knowledge.[20] While knowledge is required for the content of a speech, *De Oratore* is really making a much deeper statement about ethos, that is, the speaker's self-presentation to the audience. The only trustworthy speakers know what they are talking about, in Cicero's view, thus merging message and messenger.[21] Cicero's work resonates with the idea that rhetoric is an exercise of power, rooted in the ability of rhetors and their speech to persuade audiences.[22]

Viewed in light of *De Oratore*'s precepts, the Catilinarians and "A More Perfect Union" provide a masterclass in building unity through ethos, audience, and persuasion. In the Catilinarians, Cicero creates himself, characterizes his role, and treats his audience in ways that embody and promote unity at a time of existential crisis for the Roman Republic.[23] For Obama, the stakes for "A More Perfect Union" are not so high, and yet higher. The safety of the state was not immediately threatened by Reverend Wright's remarks nor by the charge that Obama was an extremist on matters of race, though the sermons exposed social fault lines that stubbornly persist. However, Obama's political survival was very much put in peril by the media firestorm surrounding Reverend Wright. Obama's defense of himself charts a way forward on the path to election as president. Obama, like Cicero, positions himself as a uniter, addresses divides in his audience, and pursues a powerfully persuasive thesis advocating unity.[24] While Cicero and Obama both faced backlash in the changing tides of politics in the years following their speeches, their speeches contain valuable lessons for using ethos to create unity in fractious situations.[25]

Part I of this Article will explore Cicero's biography and theories of oratory to better understand his views of how a speaker creates ethos. Part II will turn to the Catilinarian controversies and the furor over Reverend Wright's remarks to understand the setting that both speakers address. Part III will examine how each speaker builds unity as an explicit thesis and as a necessary precondition for action through presentation of himself, through bridges built across the audience, and through the explicit pleas at the heart of the orations. Finally, the

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[20] *Id.* at 10.

[21] *Id.* at 11.

[22] Antonio Raul de Velasco, *Transgressive Eloquence: Bell Hooks, Cicero, and the Aims of Rhetorical Pedagogy*, *in* SIZING UP RHETORIC 394 (David Zarefsky & Elizabeth Benacka eds., 2008) (describing Cicero and bell hooks as sharing "a vision of political agency whose fulfillment arises from the rhetorical and ethical exigencies of our experience as individuals.").

[23] *See* BEARD, *supra* note 10, at 26, 40–41.

[24] *Infra* Part III.

[25] For backlash against Cicero, *see infra* notes 64–67 and accompanying text. For backlash against Obama, see, e.g., Cornell Belcher, *Trump is the Inevitable Backlash to an Obama Presidency*, GUARDIAN (Nov. 10, 2016), https://www.theguardian.com/commentisfree/2016/nov/10/donald-trump-election-backlash-obama-presidency-white-voters[https://perma.cc/98HF-4CQS] (contemporaneous commentary considering the election of Donald Trump as a backlash against the presidency of Barack Obama).

Conclusion will explore in a preliminary way how unity can become a greater focus of legal discourse, using the vision of the Model Rules of Professional Conduct as a framework for examining the lawyer's role and responsibilities.

I. AUTHOR AND AUDIENCE IN THE LIFE OF CICERO AND IN *DE ORATORE*

A. Cicero: A Career Built on Oratory

Marcus Tullius Cicero, called by Quintilian the "supreme manipulator of . . . hearts,"[26] was born on January 3, 106 BCE, in the town of Arpinum, some sixty to seventy miles southeast of Rome.[27] Cicero's family was part of the local elite at Arpinum, but no ancestor of Cicero's had ever served in politics in Rome.[28] As a result, Cicero was termed a *novus homo*, that is, a man[29] who was the first in his family to achieve the highest political office, that of consul, thereby raising his family to senatorial rank.[30]

Cicero achieved this success despite long odds. The Roman Republic, in its waning days, had democratic elements, but it would be a serious error to conflate it with modern notions of democracy. Roman government during Cicero's time balanced rule by an individual in the person of the consul, rule by wealthy elite in the Senate, and rule by various assemblies of powerful male citizens.[31] Social mobility was limited. Though Cicero boasted that any man of talent could climb the ranks of Roman government, the reality is that candidates for high office were drawn from the richest 2 percent of the population.[32] Cicero was part of this group, but his trajectory toward high office was anything but natural: he was a provincial from a non-senatorial family.[33] In fact, at the time of his consulship in 63 BCE, Cicero was the first *novus homo* elected to that office in over thirty years.[34]

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[26] L. P. Wilkinson, *Cicero and the Relationship of Oratory to Literature*, *in* 2 THE LATE REPUBLIC 65 (E. J. Kenney & W. V. Clausen eds., 1982) (translating Quintilian, *Institutio Oratoria*, 11.1.85).

[27] CATHERINE STEEL, READING CICERO 7–8 (2005); James M. May, *Cicero: His Life and Career*, *in* BRILL'S COMPANION TO CICERO: ORATORY AND RHETORIC 2 (James M. May ed., 2002).

[28] STEEL, *supra* note 27, at 8; May, *supra* note 27, at 2.

[29] "Man" is accurate in this context; political leadership at Rome was limited to men. *See, e.g.*, BEARD, *supra* note 10, at 127–28.

[30] May, *supra* note 27, at 102.

[31] THE WORLD OF ROME, *supra* note 9, at 83. Voters numbered in the tens of thousands, so Rome was not a place where everyone knew each other; nonetheless, pedigree, reputation, and wealth counted for a great deal in efforts to obtain political power. *Id.* at 100.

[32] *Id.* at 11. Likely, in considering who could climb the ranks of government, Cicero was referring to men *within* that top 2 percent.

[33] *See id.*

[34] William J. Dominik, *The Development of Roman Rhetoric*, *in* THE OXFORD HANDBOOK OF RHETORICAL STUDIES 160 (Michael J. MacDonald ed., 2017) (citing Cicero, *De lege agraria*, 2.3).

The foundation of Cicero's achievements was a rhetorical education; rhetoric was rope, harness, and belay during his political ascent.[35] Family wealth and his father's ambition put him on the path to power.[36] His father moved the family to Rome while Marcus and his brother, Quintus, were adolescents.[37] Cicero and his brother were received into the house of Lucius Licinius Crassus, a famous orator and politician.[38] There, Cicero—who had come to Rome already reading and writing Latin and acquainted with Greek literature and philosophy—received extensive education in rhetoric and philosophy.[39]

Cicero's military service was brief and undistinguished; oratory rather than military leadership provided his path to power.[40] The *Pro Quinctio* was Cicero's first published oration, delivered in 81 BCE; the case was an unremarkable civil matter.[41] The following year, he defended Sextus Roscius against the charge that he murdered his father.[42] Cicero considered this the speech that established his reputation.[43] Further education and travel followed, and Cicero set about a period of steady advocacy in the law courts.[44]

Eventually, the focus of Cicero's rhetoric turned from judicial to deliberative (i.e., political).[45] Cicero followed the *cursus honorum*, the path of political power for ambitious Romans, holding sequentially higher offices at the youngest ages permitted; he became consul in 63 BCE, when he was forty-three years old.[46] His consulship marked a turning point in his career and life. At the end of the year, Cicero faced the revolutionary conspiracy of Catiline.[47] History preserves the key orations by which Cicero prevailed against the conspirators.[48] Through the rhetoric of the Catilinarian orations, Cicero put down the conspiracy, arrested the conspirators, and secured the Senate's support to execute five

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[35] Mary Beard says that Cicero "relied on his native talents, on the high-level connections he assiduously cultivated—and on speaking his way to the top." BEARD, *supra* note 10, at 28–29.

[36] May, *supra* note 27, at 2. For a deeper discussion of Cicero's education, see Anthony Corbeill, *Rhetorical Education in Cicero's Youth*, *in* BRILL'S COMPANION TO CICERO: ORATORY AND RHETORIC 25 (James M. May ed., 2002).

[37] May, *supra* note 27, at 2.

[38] *Id.*

[39] Corbeill, *supra* note 36, at 26–27.

[40] May, *supra* note 27, at 4–5; *see also* Dominik, *supra* note 34, at 160 (Cicero's election as consul "owed much to the rhetorical and oratorical skills that he had acquired and displayed in his successful defense of prominent clients in the courts.").

[41] STEEL, *supra* note 27, at 8; STEPHEN USHER, CICERO'S SPEECHES: THE CRITIC IN ACTION 5 (2008).

[42] The oration is known as the *Pro Roscio*. *See* USHER, *supra* note 41, at 7.

[43] *Id.* (citing Cicero, *Brutus* 312).

[44] *Id.* at 12.

[45] *See supra* note 13 and accompanying text.

[46] STEEL, *supra* note 27, at 8. For a more detailed description of Cicero's path through the *cursus honorum*, see May *supra* note 27, at 6–7.

[47] May, *supra* note 27, at 8.

[48] *See* CATILINARIANS, *supra* note 10, at 8.

conspirators without trial.[49] Popular historian Mary Beard calls the affair Cicero's "finest hour."[50]

However, Cicero's actions to quell the conspiracy initiated a sequence of events that led to his death.[51] He received much criticism for executing the conspirators without a trial; in fact, he was not permitted the usual valedictory address at the conclusion of his term as consul for this reason.[52] By 58 BCE, he found himself in exile; though recalled a year later, his house had been demolished.[53] Cicero held the power of government for only one brief additional period, as governor of Cilicia in 50–51 BCE.[54] Much of Cicero's philosophic and rhetorical writing comes from this period, when he found himself largely out of power and waning in popularity.[55]

In the Senate, Cicero participated with varying degrees of enthusiasm in debates surrounding the civil wars that ultimately undid the Roman Republic, first siding with Pompeius over Julius Caesar, and later, after Caesar's murder, taking a strong stand in opposition to Mark Antony.[56] Cicero delivered a series of fourteen speeches, which he called Philippics, that "orchestrat[ed] the senatorial opposition" to Antony.[57] One commentator has called them "a genuine and sustained attempt to change the course of events through speech: the pendulum of oratory, oscillating between authoritative self-preservation . . . and dynamic intervention . . . ."[58] In hindsight, they were the roar of a lion in winter. Cicero's effort did not succeed.[59] He perished in the round of mass murder that followed; his head and right hand were pinned on the speaker's *rostra* in the Roman forum as a warning to others who might question the emerging autocracy that would ultimately result in Octavian becoming the first Roman Emperor, Augustus.[60] Mary Beard has deemed the death of Cicero a "symbolic finale to the Roman Republic."[61]

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[49] BEARD, *supra* note 10, at 35; STEEL, *supra* note 27, at 8.

[50] BEARD, *supra* note 10, at 21.

[51] CATILINARIANS, *supra* note 10, at 9–10.

[52] BEARD, *supra* note 10, at 35–36.

[53] *Id.* at 36.

[54] STEEL, *supra* note 27, at 8.

[55] Wilkinson, *supra* note 26, at 256–57. This must have been a trial for Cicero; Wilkinson points out that Cicero much preferred the active to the contemplative life. *Id.* at 231.

[56] STEEL, *supra* note 27, at 8–9; *see also* BEARD *supra* note 10, at 341–42.

[57] STEEL, *supra* note 27, at 9. In one of his letters, Cicero compared these speeches to Demosthenes's famous invectives against Philip of Macedon. Ad Atticus 2.1.3.

[58] *Id.* at 27.

[59] For a robust discussion, *see* STEEL, *supra* note 27, at Chapter 4 ("Failure").

[60] BEARD, *supra* note 10, at 342.

[61] *Id.* at 341. In the long run of history, of course, Cicero is regarded as successful, especially so given that his works are still read and studied some 2,000 years later. Cicero's literary output was vast; he produced poetry, speeches, letters, and philosophical dialogues and treatises. *See generally*, Wilkinson, *supra* note 26, 245–67. He is credited with positing a "vision of Rome which was adopted by his contemporaries and succeeding generations," and developing the Latin language "in a way that enabled the language for the first time to cope ade-

B. De Oratore*'s Purposes: Gazing on the Orator*

De Oratore marked a departure from contemporary ways of writing about rhetoric by focusing squarely on the orator, thereby fronting the issue of ethos. Standard rhetorical treatises catalogued rules for how to compose public speeches.[62] These rules at the time of Cicero reflected two approaches. The first approach focused on the parts of a speech, including the prologue, narration, proposition, proof, refutation of counterarguments, and epilogue.[63] Cicero tended to view this approach as overly prescriptive and rigid.[64]

Cicero rooted his own work in the second approach, which focused on the "activities of the orator."[65] The five traditional "activities of [an] orator" are invention, arrangement, style, memory, and delivery.[66] At the tender age of seventeen, Cicero composed *De Inventione*, which focused on invention, the first activity.[67] *De Oratore* stakes new territory from its inception. In his own voice, Cicero declares that: "[T]he sketchy and unsophisticated work that found its way out of my notebooks when I was a boy (or rather a youth) [that is, *De Inventione*] is hardly worthy of my present age and of the experience I have acquired from pleading so many momentous cases."[68] In presenting this more considered, mature view, *De Oratore* focuses on the orator himself. Cicero posits the person of the orator as existing apart from the text of his speeches, an idea central to the focus and thesis of *De Oratore*.[69] Such a person, like his characters Crassus and Antonius, embodies the ideal orator.[70] This has led one commentator to observe that Cicero's "view of the process of composition centers . . . on the personal skills and activities of the orator," a view reflected in the title of the work itself, which elevates neither the act of speaking, nor the speech itself, nor any specific component of the speaker's process, but the person of the orator.[71] In an important sense, *De Oratore* reflects an Aristotelian

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quately with the expression of the abstract ideas at the heart of philosophy." THE WORLD OF ROME, *supra* note 9, at 40–41. Indeed, to be sure, Cicero had personal foibles and petty jealousies. These are on display in his letters to Atticus, which were published after his death. Wilkinson, *supra* note 26, at 248–49. He also had curious blind spots to some key political and social problems of his day. THE WORLD OF ROME, *supra* note 9, at 41 ("of the problems at home, the poverty, the indebtedness, the social distress in Italy, he showed no recognition, offered no solutions"). It is, in some ways, impossible for so prolific a writer, and one so concerned about ethos, to hide his flaws.

[62] CICERO, IDEAL ORATOR, *supra* note 13, at 3.

[63] *Id.* at 90 n.103.

[64] *Id.* at 10.

[65] *Id.*

[66] For a historical survey, see *id.* at 10.

[67] *See id.* at 31–32.

[68] *Id.* at 58.

[69] *Id.* at 10.

[70] *Id.* at 13 (noting that Crassus and Antonius were "the two most eminent orators of their time . . . .").

[71] *Id.* at 10.

approach, elevating ethos and placing it alongside logos and pathos as means of persuasion.[72]

De Oratore itself gains persuasive power from Cicero's ethos. Cicero gives readers a glimpse into his purposes for writing *De Oratore*. He was out of political power at the time of its composition, and his mood about his political fortunes has been characterized as "despair."[73] In the text, Cicero tells readers that teaching and theorizing about oratory are "comforts that are not only agreeable when our troubles are allayed, but that can also be invigorating even while these troubles are still with us."[74] Even in a political winter, Cicero's ambition was still to create himself through his words: writing and teaching about oratory were a means by which he could indirectly influence public affairs.[75] Yet the dangers of speaking out persisted: with the benefit of hindsight, the reader may recognize the irony and "added poignancy . . . [in the fact that] twelve years later [Cicero's] own head and hands were to be displayed [on the speakers' platform in the forum] by Antonius' grandson and namesake."[76]

C. Setting the Scene for De Oratore: *Location, Situation, Participants*

The dialogue in *De Oratore* unfolds over three days in September, 91 BCE, among an eminent group of politicians at the villa of Lucius Licinius Crassus in Tusculum, an ancient town in the Alban Hills outside Rome.[77] Crassus was the same man to whom Cicero's father had entrusted young Marcus and his brother for rhetorical education.[78] While attributing any of the characters' views directly to Cicero is inherently perilous, most scholars find that Crassus generally represents Cicero's thinking; Crassus has been termed "the figure of the ideal orator."[79] Also participating in the conversation was Marcus Antonius, a respected orator, skilled advocate, and influential politician.[80] The remaining participants included Scaevola, who was father-in-law of Crassus; two younger

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[72] *Id.* at 30. May and Wisse point out that Cicero is the only extant ancient author to return to Aristotle's systematic approach in considering rhetoric. *Id.* at 31. Consider Crassus's description of oratory as "impressive and distinguished speech that is adapted to the way most people think and feel." *Id.* at 70. "Impressive and distinguished speech" is created through the ethos of the speaker, speakers reach "the way most people think and feel" through logos and pathos respectively.

[73] *Id.* at 9.

[74] *Id.* at 228.

[75] *See id.* at 9 (noting that Cicero "despaired of the Republic" at the time he wrote *De Oratore*, but also noting that his efforts to shape public affairs continued); STEEL, *supra* note 27, at 70–76 (arguing that *De Oratore* was part of the "creation . . . of the 'politician'" in Cicero's post-consular writing).

[76] Wilkinson, *supra* note 26, at 257.

[77] CICERO, IDEAL ORATOR, *supra* note 13, at 13; Ralph A. Micken, *Introduction*, *in* CICERO ON ORATORY AND ORATORS xxxix (J.S. Watson trans., 1970).

[78] CICERO, IDEAL ORATOR, *supra* note 13, at 7.

[79] *Id.* at 16; Wilkinson, *supra* note 26, at 258.

[80] CICERO, IDEAL ORATOR, *supra* note 13, at 13.

"up-and-coming" orators, Cotta and Sulpicius Rufus; and two additional political and literary figures, Catulus and Caesar Strabo.[81]

The participants met in the midst of a crisis over Rome's Italian allies, a circumstance apparent from the text itself.[82] This crisis would claim the lives of six of the seven participants in the dialogue within four years, most murdered during periods of civil unrest.[83] The only survivor was Cotta; Cicero claims to have learned the content of the dialogue from him.[84]

Perhaps most astonishing to Cicero is the end that befell Marcus Antonius, whose head (which, "by its eloquence, had saved the civic status of many fellow citizens") was placed upon the speaker's *rostra* in the forum ("where as consul [Antonius] had so steadfastly defended the State.").[85] Cicero explicitly links their trials to his own; he "reflect[s] on the disasters that befell [the participants in the dialogue], and on the experiences that [he himself has] endured because of [his] incredible, singular love of country."[86] At this point in time, Cicero must partly be thinking of the Catilinarian conspiracy, which defined the end of his year as consul and resulted in his being caught in the turning tide of public opinion.

D. Rhetoric, Philosophy, Action, Audience, and Power

De Oratore argues for an integration of rhetoric and philosophy. Along the way, the work critiques the field of rhetoric as it was then conceived, engages elements of the Socratic and Platonic critique of rhetoric, and ultimately argues for a rhetoric based on knowledge that leads to action, transformation, and power. In the Prologue to Book I, Cicero maintains that eloquence is founded upon "the intellectual accomplishments of the most learned . . . ."[87] "The intellectual accomplishments of the most learned" refers to the philosopher's art.[88] In setting forth his priorities in this way, Cicero steps into the quarrel between rhetoric and philosophy.[89]

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[81] A fuller description of each of the participants and their dramatic roles in the work may be found in *id.* at 13–16.

[82] *Id.* at 63 n.20; *see also* Wilkinson, *supra* note 26, at 257.

[83] CICERO, IDEAL ORATOR, *supra* note 13, at 224–28. Cicero recounts these events bitterly in his Prologue to Book III. *Id.*

[84] *Id.* at 228. It should be noted that *De Oratore* is not a transcription of an actual conversation, of course, but rather a dialogue containing invented and imaginative elements within a historicized scene. *Id.* at 17–18.

[85] *Id.* at 227.

[86] *Id.* at 228.

[87] *Id.* at 58 n.6.

[88] The rhetorical manuals of the day typically identified three ingredients necessary for the attainment of eloquence: art, natural ability, and practice. *See id.* at 27. Cicero puts natural ability and practice secondary to art, specifically the philosopher's art. *Id.*

[89] For background, see *id.* at 20–26; ELAINE FANTHAM, THE ROMAN WORLD OF CICERO'S DE ORATORE 56–71 (2004); Kristen Konrad Robbins, *Philosophy v. Rhetoric in Legal Educa-*

Even for Cicero, the quarrel was an ancient one. Defenders of rhetoric claimed that it is an "art," which they understood to mean "a systematic body of real knowledge that constituted a reliable guide for attaining the desired practical results—in the case of rhetoric, persuasion of the audience."[90] The attack on rhetoric, dating back to Plato, is that it does not support a claim of absolute, philosophic truth; that is, rhetoric is not a systematic body of *real knowledge*, and consequently is not a path to moral probity.[91] Even Cicero's characters echo this critique: Crassus declares that if students of oratory do not have "integrity and the highest measure of good sense," rhetorical education "will certainly not make orators of them, but will put weapons in the hands of madmen."[92]

Cicero forges an integrative, Isocratean path through the divide.[93] In the Prologue to Book II, Cicero declares that "anyone who has ever achieved success and pre-eminence in eloquence can only have done so by relying on the whole of wisdom, not just on rhetorical rules."[94] Cicero calls for the orator to combine "the whole of wisdom" with "rhetorical rules." Put differently, rhetoric depends in part on philosophy: in Cicero's view, a speaker must know his subject well to "maintain a claim to the title of eloquence."[95]

Antonius, Crassus, and Cicero himself each find the rhetorical rules of the day to be too narrow to create success for the orator. Antonius and Crassus both use the same Latin word, *perridiculi* ("utterly ridiculous"), to describe the treatises typically used to train orators.[96] Antonius sees some value in the traditional rules, but finds them to be both self-evident and too rigid to assist the orator

tion: Understanding the Schism Between Doctrinal and Legal Writing Faculty, 3 J. ASS'N LEGAL WRITING DIRECTORS 108, 112–15 (2006).

[90] CICERO, IDEAL ORATOR, *supra* note 13, at 23.

[91] *See, e.g.*, PLATO, GORGIAS 459–60 (W.R.M. Lamb trans., 1967); PLATO, PHAEDRUS 259–66 (Harold N. Fowler trans., 1925). It would be incorrect to view Cicero as an opponent of Plato. As May & Wisse point out, Cicero admired Plato as a philosopher and writer, even though he rejected Plato's hostility toward rhetoric. CICERO, IDEAL ORATOR, *supra* note 13, at 24.

[92] CICERO, IDEAL ORATOR, *supra* note 13, at 239. Cicero has been criticized for not addressing the shortcomings of rhetoric as a field adequately. Wilkinson, *supra* note 26, at 259; *see also* CICERO, IDEAL ORATOR, *supra* note 13, at 25. *De Oratore* may not provide an adequate and complete defense of the discipline of rhetoric in the face of philosophers' criticism that it does not build knowledge or lead to truth, but the work itself stands as testament to the importance of rhetoric as a tool for the well-ordering of society, as well as a systematic exposition of the orator's character, process, and tools.

[93] Wilkinson, *supra* note 26, at 258 (Cicero "is, for all his veneration of Plato, an Isocratean.").

[94] CICERO, IDEAL ORATOR, *supra* note 13, at 126. May and Wisse characterize this as Cicero's "maximalist" position: that the orator needs near universal knowledge. *Id.* at 19, 126 n.4. Observing that Crassus formulates the type of knowledge needed more narrowly in various places, May and Wisse conclude that the device of repetition-with-variation is being used to make "his bold claim about the knowledge of the ideal orator gradually acceptable to his readers." *Id.* at 19.

[95] *Id.* at 126.

[96] *Id.* at 144 (Antonius), 248 (Crassus).

in forming messages for all the particular occasions that arise.[97] Crassus regards the rules as unduly narrowing the field of rhetoric.[98] Cicero himself, in the Prologue to Book II, notes that "all the other arts hold their own separately," but claims that "speaking well . . . is not confined by the boundaries of any fixed area," that is, it requires wide access to all fields of human knowledge.[99]

The marriage of knowledge and eloquence is emphasized throughout the dialogue. As Crassus introduces the concept of style (that is, distinguished arrangement of words) in Book III, he asserts that content and style "cannot exist separately."[100] Crassus claims that "all discourse is made up of content [*res*] and words [*verba*]," and "words cannot have any basis if you withdraw the content, and the content will remain in the dark if you remove the words."[101] Going further, Crassus indicates that eloquence is a "unity;" that is, words can no more be separated from thoughts than the body from the soul: the separation "in both cases can only wreak destruction."[102] Later in the discussion, Crassus follows these ideas to a logical conclusion rooted in the purposes of oratory: if the "material" of the "true orator" is "all aspects of human life," the orator's knowledge and power will "drive the audience in whatever direction it has applied its weight."[103]

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[97] *Id.* at 136–37 (detailing situations where rhetorical rules do not provide answers), 144 (rhetorical rules as obvious).

[98] *Id.* at 246 (regarding the rules of rhetoricians as "driving the orator away from a vast and immense field and forcing him into a pretty narrow circle.").

[99] *Id.* at 126.

[100] *Id.* at 230.

[101] *Id.*

[102] *Id.* at 231.

[103] CICERO, IDEAL ORATOR, *supra* note 13, at 239. Antonius also supports the integration of philosophy and rhetoric, though on somewhat different terms. Antonius first argues in Book I that a skilled orator need not have deep substantive knowledge of the topics he addresses nor mastery of philosophy; however, the next day (Book II in the dialogue), he retracts this position, claiming he was merely refuting Crassus and not expressing his own views. *Id.* at 111, 134. What is likely going on here, as May and Wisse note, is an example the Aristotelian practice of arguing both sides of a disputed matter, which Cicero thought essential to the orator's skill. *See id.* at 13, 149. As part of this discussion, Antonius takes up topics related to invention and arrangement of content, and in doing so, he describes a methodical process for investigating a legal case that modern lawyers would recognize: client intake interviews, gathering documents, and otherwise investigating the case. *Id.* at 149–50. For him, judicial oratory is based on deep knowledge gained through assiduous investigation. Some distinction remains between Crassus and Antonius, however, and these differences show that Cicero is not ultimately arguing for a complete synthesis of rhetoric and philosophy. Crassus articulates a definition of philosophy in four places in the dialogue; these definitions proceed from narrow to broad. *See id.* at 19 (suggesting that Cicero's technique of "repetition with variations" is his way of making his "bold claim about the knowledge of the ideal orator gradually acceptable to his readers"). The initial, narrow conception of philosophy includes only ethics, that is psychology and politics, while the broader concept includes dialectic and physics. *Id.* In Book II, Antonius only embraces the narrow concept of philosophy. *See id.* at 141. While both men advocate a rhetoric rooted in philosophic learning and knowledge, it seems that both would at least at times admit that there are parts of the philosophical field that an orator need not till.

This entire passage is emphasized by two scene-setting literary devices. First, immediately preceding his discussion of style, Crassus "devoted th[e] entire midday break to intense, concentrated thinking."[104] As May and Wisse point out, the reference here is to Plato's *Symposium*, in which Socrates is absorbed in reflection before engaging in discussion.[105] Further, the dialogue that follows takes place in a grove described as a "very shady and very cool place."[106] Again, the reference is Platonic: Plato's Academy also occupied a grove.[107] These devices are designed to elevate Crassus to the level of a Socratic figure.

Through these devices, Cicero sets up Crassus as a new Socrates, or perhaps a revised Socrates.[108] Crassus has been critiquing the Socratic and Platonic traditions from Book I, in which he claims to admire "the way in which, while making fun of orators, [Plato] appeared to be a supreme orator himself."[109] By terming so keen a philosopher a supreme orator, Crassus posits that Plato embodies the very symbiosis of rhetoric and philosophy that *De Oratore* advocates. Crassus's famous critique of Socrates is sharper; he accuses Socrates of originating a "rupture, so to speak, between the tongue and the brain,"[110] that is, between rhetoric and philosophy.

Importantly, Crassus views this rupture as coming about because of philosophers' retreat from the public sphere.[111] Crassus characterizes the rupture between tongue and brain as a division of "action and speech;" proponents of this division "were amply endowed with learning and natural ability, but shirked politics and its responsibilities on deliberate principle; they criticized and scorned this practice of speaking."[112] Notably, Crassus here equates oratory with action in the public sphere. He finds the division of action and speech to be "quite absurd, harmful and reprehensible," and he disapproves of "having different teachers for thinking and for speaking."[113] Crassus notes, with irony, that Socrates, despite his condemnation of rhetoric, was himself eloquent, echoing his similar assessment of Plato.[114]

After a lengthy exposition of Socratic schools of Greek thought, Crassus returns to pre-Socratic Greeks, most prominently Isocrates, who "used to link the principles of oratory with the entire study and knowledge of everything that

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104 *Id.* at 229.
105 *Id.* at 229 n.25.
106 *Id.* at 229.
107 *Id.* at 229 n.26.
108 This supposition is not as farfetched as it may seem. According to L.P. Wilkinson, Cicero considered Crassus and Antonius to be the first Roman orators to equal the Greeks in achievement. Wilkinson, *supra* note 26, at 235.
109 CICERO, IDEAL ORATOR, *supra* note 13, at 69.
110 *Id.* at 241.
111 *Id.*
112 *Id.*
113 *Id.*
114 *Id.* at 241 n.71.

was relevant to human conduct, to human life, to virtue, and to the state."[115] For Crassus, this pre-Socratic ideal led to "an amazing sort of communion between speaking and understanding."[116] This communion was an ideal for Crassus, who claimed education in the forum, where his "teachers were practical experience, the laws, the institutions of the Roman people, and the traditions of [his] ancestors,"[117] areas that touch on legal and deliberative oratory. Cicero's training proceeded in the same places and involved the same activities: Cicero too was a man of action who pled cases and directed public affairs through oratory in the Roman forum.[118]

In this context, Crassus critiques the shortcomings of Roman rhetorical education and argues strongly that rhetoric based on knowledge leads to constructive and transformative power. Here is his forceful declaration:

> [T]hese people who set forth rhetorical systems . . . are utterly ridiculous [*perridiculus*], writing about the categories of lawsuits, about prologues, and about narrations. The real power of eloquence is so enormous that its scope includes the origin, essence, and transformations of everything: virtues, moral duties, and all the laws of nature that govern human conduct, characters, and life. It establishes traditions, law, and legal arrangements, governs the State, and addresses with distinction and copiousness all questions belonging to any area whatsoever.[119]

That Cicero, a man who owed his accomplishments and failures to his powers of oratory, would here have Crassus recognize the great power of oratory is not surprising. Crassus's rhetoric is constructive: through speech, a speaker constructs himself or herself (that is, his or her ethos), and constructs the reality around him or her.[120] This is the precise goal that Cicero takes up in the Catilinarian Orations and that Barack Obama takes up in "A More Perfect Union."

II. CICERO AND BARACK OBAMA: RIGHTING THE SHIP OF STATE

In *De Oratore*, Cicero's Antonius urges that the study of rhetoric should not dwell in theory but should be informed by experience.[121] The Fourth Catilinarian allows us to see Cicero—the master, the man of action—in action. Putting him next to a modern exponent, former President Barack Obama, helps reveal how a contemporary politician responds to similar struggles following

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[115] *Id.* at 246; *see also id.* at 65 ("[T]he leadership and wisdom of the perfect orator provide the chief basis, not only for his own dignity, but also for the safety of countless individuals and of the State at large.").

[116] *Id.* at 247.

[117] *Id.*

[118] Wilkinson, *supra* note 26, at 231 ("The debate that began among Aristotle's followers as to whether the life of contemplation was better than the life of action was continued intermittently in Cicero's soul. Normally the life of action prevailed.").

[119] CICERO, IDEAL ORATOR, *supra* note 13, at 248.

[120] *See* Velasco, *supra* note 22, at 394.

[121] CICERO, IDEAL ORATOR, *supra* note 13, at 143.

ancient models. Before turning to the speeches, let us examine in more detail the situations both speakers faced.

A. Rhetorical Situation and Historical Context of the Catilinarian Orations

These speeches' importance in the life and career of Cicero can hardly be gainsaid; quashing the Catilinarian conspiracy was Cicero's defining achievement as a politician.[122] Besides the eyewitness accounts of Cicero, the episode was recorded a generation later by the historian Sallust and over a century later by the Suetonius, a biographer of members of the Caesar lineage.[123] Considering these ancient sources, our view of the conspiracy and Catiline's downfall is as clear and detailed as any historical episode from antiquity.[124] The speeches themselves are canonical Latin texts; preserved and circulated by medieval monk-copyists, assigned to centuries of students in their study of Latin, and analyzed for their historical, literary, and rhetorical qualities.[125]

The conspiracy seems to have arisen from Catiline's efforts to achieve political power in Rome.[126] In the years leading up to the conspiracy, Catiline served in the military, as a provincial governor, and as *praetor*, an office below that of consul.[127] During this period, he was implicated in four murders, and charged and acquitted of extortion.[128] In fact, Cicero debates defending Catiline against this charge in 65 BCE, a mere two years before the conspiracy of 63 BCE.[129] Two failed attempts (in July, 64 BCE, and July, 63 BCE) to attain the office of consul, an expensive undertaking in Rome, contributed to near-bankruptcy for Catiline.[130] Unable to gain political power through normal channels, Catiline turned to a violent coup.[131] He promised debt relief and land redistribution to various classes of Romans with grievances, including upper-class debtors, the poor of Rome, military veterans, and those dispossessed in earlier civil wars.[132] Because Catiline was from an old senatorial family, at first the Senate was reluctant to take action against him.[133]

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[122] *See* BEARD, *supra* note 10, at 35.

[123] *See* SELECTED POLITICAL SPEECHES OF CICERO 71 (Michael Grant trans., 1989).

[124] *See* BEARD, *supra* note 10, at 23. D. H. Berry calls it "the most fully attested event in Roman history." CICERO, POLITICAL SPEECHES 134 (D. H. Berry trans., 2006).

[125] BEARD, *supra* note 10, at 41.

[126] *Id.* at 27–28.

[127] CICERO, POLITICAL SPEECHES, *supra* note 124 at 134–35.

[128] *Id.* at 135.

[129] *Id.* In letters to his friend Atticus, Cicero makes clear that he believed Catiline to be guilty but thought it might be in his own political interests to defend Catiline. *See* BEARD, *supra* note 10, at 39.

[130] *See* BEARD, *supra* note 10, at 27–28; CICERO, POLITICAL SPEECHES, *supra* note 124, at 135, 138.

[131] *See* BEARD, *supra* note 10, at 28.

[132] CICERO, POLITICAL SPEECHES, *supra* note 124, at 138; SELECTED POLITICAL SPEECHES OF CICERO, *supra* note 123, at 72. The civil war referred to here was that of Sulla, c. 81–80 BCE. The main sources of the facts in the text are Cicero and Sallust; one must always be

By mid-October, 63 BCE, however, Cicero had come into possession of letters proving the conspiracy.[134] These letters spurred the Senate to action: a *senatus consults ultimum* (emergency decree) was passed on or about October 20 urging Cicero, the consul, "to take whatever action [he] considered necessary for the security of the state . . . ."[135] Cicero took measures to put down rebellions in the provinces and fortify the city.[136] With the aid of spies and informers, Cicero gathered evidence linking Catiline to the threats against Rome and to a plot to assassinate Cicero himself.[137] On or about November 8, 63 BCE, Cicero summoned the Senate to a special session at the Temple of Jupiter Stator, protector of the city, and delivered the speech known as the First Catilinarian Oration.[138] Catiline himself showed up for this session of the Senate, though Sallust and Cicero disagree about whether he responded to the charges Cicero leveled.[139] In any event, shortly after the Senate session concluded, Catiline left Rome.[140]

Two days or so later, a triumphant Cicero delivered the Second Catilinarian to Roman citizens in the forum; the speech is an attempt to convince Romans who were perhaps attracted by Catiline's promises of debt relief that Catiline and his followers were a clear and present danger to the Roman state.[141] The Third Catilinarian, delivered in the forum about a month later, finds the plot fully exposed and the Rome-based conspirators arrested; Cicero has been lauded by the Senate in most generous terms, and he aims at putting down any remaining support for Catiline.[142]

The Fourth Catilinarian finds Cicero again before the Senate, this time arguing for the punishment that the Rome-based conspirators deserved.[143] Speeches of the senators centered on two alternatives: the death penalty and life

cautious in evaluating Cicero, who was known to exaggerate for persuasive effect. There is also some suggestion that Catiline's efforts on behalf of various groups of suffering Romans was more opportunistic than genuine. *See* CICERO, POLITICAL SPEECHES, *supra* note 124, at 139.

[133] CICERO, POLITICAL SPEECHES, *supra* note 124, at 134, 140.

[134] *Id.* at 140.

[135] *Id.* at 141.

[136] *Id.*

[137] *Id.* at 142. In fact, throughout the conspiracy's many twists and turns, Cicero managed to stay one step ahead of Catiline. USHER, *supra* note 41, at 51.

[138] *See* BEARD, *supra* note 10, at 31; CICERO, POLITICAL SPEECHES, *supra* note 124, at 142–43.

[139] CICERO, POLITICAL SPEECHES, *supra* note 124, at 142–43. Sallust reports Catiline's response; Cicero, writing seventeen years later, claims Catiline did not reply. *Id.*

[140] *Id.* at 143.

[141] USHER, *supra* note 41, at 53–54.

[142] *Id.* at 54–55; *see also* CICERO, POLITICAL SPEECHES, *supra* note 124, at 143–47. Usher notes that this speech "does not stint on self-congratulation." USHER, *supra* note 41, at 54.

[143] USHER, *supra* note 41, at 56.

imprisonment.[144] Important Romans supported each position; numerous former consuls supported the death penalty; Julius Caesar was the principal supporter of life imprisonment.[145] The Senate debate on this matter has been called "a full and free exchange of views, with many individual changes of mind as powerful and persuasive speeches were made, in a situation in which there was (as modern scholarship abundantly confirms) no right answer."[146]

Cicero in the Fourth Catilinarian made clear his preference for execution, though he did not explicitly so state. Though the Senate was technically only an advisory body, Cicero did not want to take action without its support.[147] That support appears to have come finally after a speech from the then-young tribune-elect Cato.[148] Cicero ensured that the death penalty was carried out the very same night, setting in motion the chain of events that would ultimately lead to his own exile from Rome.[149]

Cicero's speeches are preserved because they were published in his lifetime. Cicero "efficient[ly] preserved written versions" of his speeches, through the assistance of a secretary, and sent them to his friend and correspondent Titus Pomponius Atticus, who maintained a staff of copyists.[150] The text as published is therefore a recreation. Thus, we should keep in mind that there are two potential audiences. The first audience is the Roman Senate (for speeches I and IV) and the assembly of citizens (for speeches II and III). Catiline himself was present in the Senate for the first speech; the most likely conjecture is that Cicero and he engaged in a series of back-and-forth speeches, a practice the Romans called *altercatio*.[151] With respect to these audiences, historian Mary Beard says that "the text we have presumably lies somewhere between what he remembered saying and what he would have liked to have said."[152]

Other scholars note that the speeches were published more than two years after they were delivered, at a time when Cicero came under attack for his punishment of the conspirators.[153] Thus, they may be seen as an effort to defend Cicero's reputation and handling of the affair in view of later criticism; on this

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[144] CICERO, POLITICAL SPEECHES, *supra* note 124, at 147–48. It should be noted that "life imprisonment" in the ancient world meant something very different than what it means today. *See id.* at 148. Berry terms life imprisonment "completely impractical" in the ancient world. *Id.*

[145] *Id.* Berry suggests that the proposal was political genius for Caesar: it permitted him to appear tough on the conspirators to the Senate but as their savior to the Roman people. *Id.*

[146] *Id.* at 147–48.

[147] *Id.* at 148.

[148] *Id.* at 149. Cicero does not mention Cato's speech; it is lost, but the sources for it include Sallust and Plutarch. *See id.*

[149] *Id.* at 149–50.

[150] USHER, *supra* note 41, at 1 n.1. The esteemed British classicist D. R. Shackleton Bailey called Atticus "in a certain sense Cicero's publisher." *Id.*

[151] SELECTED POLITICAL SPEECHES OF CICERO, *supra* note 123, at 75.

[152] BEARD, *supra* note 10, at 44.

[153] Wilkinson, *supra* note 26, at 250.

view, the audience is primarily Romans of the period just after the conspiracy.[154] With respect to either, the audience at the time of delivery or the audience at the time of publication, it is worth keeping Beard's admonition in mind: "one basic question for us should be not *whether* Cicero exaggerated the dangers of the conspiracy, but *how far*."[155] In particular, one scholar observes that the Fourth Oration has been "recast in ways that bring it close to a *legal* speech, . . . one written in [his own] self-defen[se]."[156]

While the historical record is fascinating, this Article focuses on the rhetorical record by looking at how Cicero and Barack Obama create themselves, build unity in their audiences, and encourage a unified approach to issues of significant challenge.[157]

B. Barack Obama and the Jeremiah Wright Controversy

There is no shortage of great orators among the roster of American presidents.[158] The country's most recent past president, Barack H. Obama, serves as a useful example. Like Cicero, Obama was not born into a political dynasty. His breakout moment occurred at the 2004 Democratic National Convention in Boston, Massachusetts.[159] In this speech, Obama, then a state senator and candidate for the United States Senate, introduced himself to a national audience, characterizing his meteoric rise in the political world as "unlikely," and taking note of the paradoxical national climate that at once facilitated and militated against his rise to power.[160] Obama also outlined a policy agenda in the 2004 speech that contained the seeds of his governing agenda as president (2008–2016), raising concerns about health care, economic opportunity, and energy independence.[161] This speech introduced Obama to the national stage: like Cicero, he used rhetoric to become a credible player in not only senatorial politics, but national politics.

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154 *See* USHER, *supra* note 41, at 53; Wilkinson, *supra* note 26, at 250.

155 BEARD, *supra* note 10, at 48.

156 MICHAEL WINTERBOTTOM, PAPERS ON QUINTILIAN & ANCIENT DECLAMATION 95 (Antonio Stramaglia ed., 2019). Winterbottom sees particular evidence at the beginning and end of the speech and regards passages there as "hardly conceivable in the original senatorial speech." *Id.* at 96; *see also supra* note 13 and accompanying text.

157 *See infra* Part III.A.

158 *See* JULIE OSEID, COMMUNICATORS-IN-CHIEF: LESSONS IN PERSUASION FROM FIVE ELOQUENT AMERICAN PRESIDENTS xv–xvii (2017).

159 David Lawler & Barney Henderson, *Barack Obama's 21 Greatest Moments as US President*, TELEGRAPH (Jul. 27, 2016, 6:13 PM), https://www.telegraph.co.uk/news/2016/07/27/barack-obamas-21-greatest-moments-as-us-president/ [https://perma.cc/MY6Z-Q99Q].

160 Barack Obama, Keynote Address at the Democratic National Convention (July 27, 2004) (transcript available at https://www.blackpast.org/african-american-history/speeches-africana merican-history/2004-barack-obama-keynote-address-democratic-national-convention-bo ston/ [https://perma.cc/NG4Z-5ECY]).

161 *Id.*

Tempting as it is to examine the 2004 speech in detail, it seems fairer to President Obama to put a more mature work next to Cicero's Fourth Catilinarian Oration. Fortunately, an episode from the 2008 presidential campaign occasioned a speech that fits the bill. As a young activist in Chicago, Obama encountered Trinity United Church of Christ, then led by Senior Pastor Jeremiah Wright.[162] Reverend Wright profoundly influenced Obama; in a 2007 interview, prior to any controversy, Obama called Reverend Wright a "sounding board for me to make sure that I am speaking as truthfully about what I believe as possible and that I'm not losing myself in some of the hype and hoopla and stress that's involved in national politics."[163] One of Wright's sermons, "Audacity to Hope," influenced Obama's 2004 convention address speech and inspired the title of Obama's second memoir, *The Audacity of Hope*.[164]

At the beginning of March 2008, Obama found himself locked in a primary election battle with Senator Hillary Clinton of New York—a contest that would not be decided until Senator Hillary Clinton suspended her campaign on June 7, some three months later.[165] In the midst of this campaign, ABC News reported incendiary remarks made by Reverend Wright in sermons following September 11, 2001.[166] ABC described the remarks as "repeated denunciations of the U.S. based on what [Wright] described as his reading of the Gospels and the treatment of black Americans."[167] ABC's 2008 article about Reverend Wright begins with the statement that "Sen. Barack Obama's pastor says blacks should not sing 'God Bless America' but 'God damn America.' "[168] Videos of Reverend Wright's most controversial sermons soon began to circulate online.

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[162] Manya A. Brachear, *Rev. Jeremiah A. Wright, Jr.: Pastor Inspires Obama's 'Audacity'*, CHI. TRIB. (Jan. 21, 2007, 2:00 AM), https://www.chicagotribune.com/nation-world/chi-070121-obama-pastor-story.html [https://perma.cc/U4ST-LQ9R].

[163] *Id.*

[164] *Id.*

[165] Hillary Clinton, Speech Ending Presidential Campaign (June 7, 2008, 3:09 PM) (transcript available at https://www.cbsnews.com/news/text-of-clinton-speech-ending-campaign/ [https://perma.cc/J77V-L56A]). For delegate counts throughout the primary season, see *Primary Season Election Results*, N.Y. TIMES (Dec. 6, 2016), https://www.nytimes.com/elections/2008/primaries/results/votes/index.html [https://perma.cc/7YTH-4JT5].

[166] Ross & El-Buri, *supra* note 11.

[167] *Id.*

[168] *Id.* This lead plays up the controversy by including Obama's name but not Wright's and by divorcing Wright's remarks from their context. *See id.* Several paragraphs later, the article provided the following paragraph from a Wright sermon:

> The government gives them the drugs, builds bigger prisons, passes a three-strike law and then wants us to sing 'God Bless America.' No, no, no, God damn America, that's in the Bible for killing innocent people . . . . God damn America for treating our citizens as less than human. God damn America for as long as she acts like she is God and she is supreme.

Id.

Obama initially condemned the remarks in a piece for the *Huffington Post*.[169] Noting that he was married at Trinity and that his daughters were baptized there, he refused to cut ties with the church, hoping "that Americans will judge me not on the basis of what someone else said, but on the basis of who I am and what I believe in; on my values, judgment and experience to be President of the United States."[170] The Obama campaign dismissed Reverend Wright from its spiritual advisory committee.[171] However, the controversy refused to die down. According to Pew Research Center surveys conducted March 14–17, 2008, approximately two-thirds of Americans had heard at least a little about the Wright videos.[172] The matter had become unavoidable; Obama addressed the issues at greater length in a March 18, 2008, speech entitled "A More Perfect Union," delivered at the Constitution Center in Philadelphia.[173] By contemporary accounts, the speech was successful.[174] The country paid attention. On March 27, 2008, Pew reported that nearly 85 percent of Americans had heard at least a little about the speech, and fully 54 percent had heard a lot about it.[175] Further, Pew also stated that "the Wright controversy does not appear to have undermined support for Obama's candidacy."[176]

III. CONSIDERING THE WORDS AND TECHNIQUES OF CICERO AND OBAMA

For both speakers, unity is a central theme. In the speeches, both speakers present themselves as embodiments of unity, tying their own well-being to the

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169 Barack Obama, *On My Faith and My Church*, HUFFINGTON POST (May 8, 2014, 4:34 PM), https://www.huffpost.com/entry/on-my-faith-and-my-church_b_91623 [https://perma.cc/57DW-GKWY].

170 *Id.*

171 M. Alex Johnson, *Controversial Minister Leaves Obama Campaign*, NBC NEWS (Mar. 14, 2008, 9:09 PM), http://www.nbcnews.com/id/23634881 [https://perma.cc/MY8P-KPDG].

172 *Obama and Wright Controversy Dominate News Cycle*, PEW RESEARCH CTR. (Mar. 27, 2008) [hereinafter *Obama and Wright Controversy*], https://www.people-press.org/2008/03/27/obama-and-wright-controversy-dominate-news-cycle/ [https://perma.cc/8R5Z-2R29].

173 Obama, *supra* note 12.

174 *See, e.g.*, Tim Rutten, *Obama's Lincoln Moment*, L.A. TIMES (Mar. 19, 2008, 7:00 AM), https://www.latimes.com/archives/la-xpm-2008-mar-19-oe-rutten19-story.html [https://perma.cc/23WF-9ZQW] (calling the speech "Obama's Lincoln Moment," one day after it was delivered). On December 24, 2009, NBC News called it the top political speech of the decade. Mark Murray & Domenico Montanaro, *Decade's Top 10 Political Speeches*, NBC NEWS (Dec. 24, 2009, 9:45 AM), http://firstread.nbcnews.com/_news/2009/12/24/4426652-decades-top-10-political-speeches?lite [https://perma.cc/3QPX-ECC9].

175 *Obama and Wright Controversy*, *supra* note 172.

176 *Obama Weathers the Wright Storm, Clinton Faces Credibility Problem*, PEW RESEARCH CTR. (Mar. 27, 2008) [hereinafter *Obama Weathers the Wright Storm*], https://www.people-press.org/2008/03/27/obama-weathers-the-wright-storm-clinton-faces-credibility-problem/ [https://perma.cc/87FA-NQE8]. Of course, the long-term success of the speech is tied to one's views of how successful a president Obama was. At minimum, it seems fair to say that a country that elected Donald Trump in 2016 has surely not given Barack Obama the last word on matters of racial justice.

security and prosperity of the state. They further reach across divides in their audiences in sometimes provocative and surprising ways. Finally, they ultimately advocate for a coming together on important matters of public concern.

A. At the Outset: The Speakers Present Themselves as Embodiments of Unity

Cicero in the Fourth Catilinarian and Obama in "A More Perfect Union" both faced divisive situations and sought to cast themselves as leaders who could bring people together. Cicero's speech was given at what might be likened to the penalty phase of a capital trial: the Senate, acting as jury, was trying to decide between the death penalty and life imprisonment.[177] While Cicero was indirect, he made his preference for the death penalty clear in the Fourth Catilinarian.[178] More than this, certain passages in the speech function as a defense of Cicero himself. As scholars have noted, by the time the speech was published two years after delivery, the political tide had turned, and Cicero was on the defensive.[179]

Barack Obama also faced a crisis: Reverend Wright trenchantly criticized America and fomented division along racial lines when he went so far as to say that blacks should sing "God damn America" rather than "God Bless America."[180] Whatever the merits of Reverend Wright's views (a topic debated before the 2008 controversy),[181] public attention to these statements caused a political problem for candidate Obama.[182] Despite his plea to be judged on his own merits rather than those of his pastor, Obama had to defend himself to the American electorate from the notion that he shared Reverend Wright's most radical positions and state a vision of race relations that could garner political support.[183]

Both speakers begin by presenting themselves carefully to their audiences:

Cicero	Obama
I see, conscript fathers [i.e. senators], that the eyes and faces of all of you are turned in my direction: I see that you are concerned not just about the danger to yourselves and the country, but also, if that is averted, about the danger to me. Your goodwill towards me comforts me in my	I am the son of a black man from Kenya and a white woman from Kansas. I was raised with the help of a white grandfather who survived a Depression to serve in Patton's Army during World War II and a white grandmother who worked on a bomber assembly line at Fort Leaven-

177 CICERO, POLITICAL SPEECHES, *supra* note 124, at 148.

178 *Id.* at 148–49.

179 *See* WINTERBOTTOM, *supra* note 156, at 95.

180 *See* Ross & El-Buri, *supra* note 11.

181 *See, e.g.*, Anthony E. Cook, *Encountering the Other: Evangelicalism and Terrorism in a Post 911 World*, 20 J.L. & RELIGION 1, 16–23 (2004).

182 *See Obama Weathers the Wright Storm*, *supra* note 176.

183 Of course, there are important differences. The comments of Reverend Wright, while potentially damaging to Obama's political aspirations, did not call into question the security of the American state. Nor did I find any serious suggestion that Reverend Wright was seditious. In fact, his comments may be read as fitting into a long First Amendment tradition of critique of the state.

> troubles and relieves my pain, but—by the immortal gods!—put aside that goodwill and forget my safety, and think instead of yourselves and your children! As far as I am concerned, if I was given the consulship on condition that I should have to endure every kind of suffering, every kind of pain and torture, then I will bear it not just bravely but even gladly, so long as my efforts result in security and honour for you and the Roman people.[184]

> worth while he was overseas. I've gone to some of the best schools in America and lived in one of the world's poorest nations. I am married to a black American who carries within her the blood of slaves and slaveowners—an inheritance we pass on to our two precious daughters. I have brothers, sisters, nieces, nephews, uncles and cousins of every race and every hue, scattered across three continents, and for as long as I live, I will never forget that in no other country on Earth is my story even possible.[185]

Both orators bring themselves into their speeches at the very beginning. Cicero expresses gratitude that the senators seem concerned about his trials.[186] He highlights his labors to fight the conspiracy and the appreciation senators have given him for those efforts.[187] He then ceremonially puts aside their concern for him and urges the senators to think of themselves and their children.[188] Yet he is really advocating a result that will benefit both the Roman people and himself, a result based on political support from a Roman Senate united behind the consul. Similarly, Obama presents himself as an instrument of unity: he is son of "a black man from Kenya and a white woman from Kansas."[189] He has attended "the best schools in America" and lived in "the world's poorest nations."[190] By this description, he positions himself as uniquely able to pull together a broad coalition of Americans ("of every race and hue") to take on recalcitrant problems.[191]

Both speakers speak of themselves in exceptional terms, tying their own fortunes to the well-being of the state. Cicero casts aside personal concerns, saying he would bear the consulship "bravely [and] gladly" even if he "should have to endure every kind of suffering, every kind of pain and torture."[192] Later in the speech, he tells the senators that "[o]thers have received your thanks for having served the country well—but I alone for having saved it."[193] Obama claims the mantle of American exceptionalism, saying that "in no other country on Earth is my story even possible."[194] This language echoes his 2004 conven-

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184 CICERO, POLITICAL SPEECHES, *supra* note 124, at 193.
185 Obama, *supra* note 12.
186 CICERO, POLITICAL SPEECHES, *supra* note 124, at 193.
187 *Id.*
188 *Id.*
189 Obama, *supra* note 12.
190 *Id.*
191 *Id.*
192 CICERO, POLITICAL SPEECHES, *supra* note 124 at 193.
193 *Id.* at 201.
194 Obama, *supra* note 12.

tion speech, in which he called his parents' interracial love "improbable," and called himself an "unlikely" presence on the Democratic National Convention stage.[195]

Through these self-presentations, both writers build a credible ethos, consistent with the recommendations Cicero will later make in *De Oratore*.[196] Cicero implies actions spoken and unspoken in unending service of the state: "There is much that I have said nothing about, much that I have endured, much that I have forfeited, and much that I have put right, at no little personal cost, to relieve your fear."[197] He positions himself as the consul, protector of the state, who has eyes and ears everywhere open to threats against the safety of all.[198] Obama likewise positions himself as a person whose "story . . . has seared into my genetic makeup the idea that this nation is more than the sum of its parts—that out of many, we are truly one."[199] Both speakers create an ethos that is tied into the well-being and foundations of the social order; doing so permits them to later make recommendations that some hearers might find difficult to accept.

B. The Speakers Build Unity in Their Audiences

Both orations also work to bridge divides in their audiences. For Obama, as noted above, unity is his central thesis and solution to the problems of race relations in the contemporary United States.[200] Cicero's plea for unity is more complex. The question of punishment for the conspirators captured at Rome was thorny. Execution upon decree of the Senate was likely illegal.[201] The other option considered, life imprisonment, was "completely impractical," given that Rome did not have a strong infrastructure of prisons.[202] Though not legally required to do so, Cicero referred the matter of punishment for the conspirators captured at Rome to the Senate.[203] He needed political support from the Senate

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[195] Obama, *supra* note 160. A sort of parallel may be found in the Fourth Catilinarian Oration, in which Cicero notes that he "of all people" should be aware of support from the Roman equestrians, a privileged group one step below the senatorial class, and the order of citizens from which Cicero came. CICERO, POLITICAL SPEECHES, *supra* note 124, at 199.

[196] *Supra* Part I.B.

[197] CICERO, POLITICAL SPEECHES, *supra* note 124, at 193.

[198] Numerous examples of Cicero's assiduous investigation of the conspiracy may be found throughout the four Orations. *See, e.g.*, CICERO, POLITICAL SPEECHES, *supra* note 124, at 157, 160, 165 ("I discovered all this almost as soon as your meeting had broken up.") ("I already know that you . . . sent a force ahead to wait for you . . . ."). Stephen Usher notes that the Roman historian Sallust confirms that Cicero stayed ahead of Catiline through the use of informants. USHER, *supra* note 41, at 51.

[199] Obama, *supra* note 12.

[200] *Supra* Part III.A.

[201] *See* CICERO, POLITICAL SPEECHES, *supra* note 124, at 147–48.

[202] *See id.* at 148 (proposing that the life sentence be served in a fortified town in Italy instead of an actual prison).

[203] *Id.* at 195. Of course, Cicero needed support again two years later, at the time the speech was published in a different political climate.

for the death penalty in view of its dubious legality and had to speak across factions of senators.[204] Again, let us consider the speakers' words:

Cicero	Obama
I see that so far we have two proposals, one from Decimus Silanus, who proposes that those who have attempted to destroy Rome should be punished by death, and one from Gaius Caesar, who rules out the death penalty but recommends the strictest penalties otherwise available. Each of them proposes a punishment of the greatest severity, as befits his own standing and the scale of the crime that has been committed.[205]	As imperfect as he may be, [Reverend Wright] has been like family to me. He strengthened my faith, officiated my wedding, and baptized my children. Not once in my conversations with him have I heard him talk about any ethnic group in derogatory terms, or treat whites with whom he interacted with anything but courtesy and respect. He contains within him the contradictions—the good and the bad—of the community that he has served diligently for so many years. I can no more disown him than I can disown the black community. I can no more disown him than I can disown my white grandmother—a woman who helped raise me, a woman who sacrificed again and again for me, a woman who loves me as much as she loves anything in this world, but a woman who once confessed her fear of black men who passed her by on the street, and who on more than one occasion has uttered racial or ethnic stereotypes that made me cringe.[206]

Cicero takes several deliberate steps to overcome doubts of some in the Senate that execution is the appropriate remedy. First, Cicero speaks in generous terms of Gaius Julius Caesar, the main proponent of imprisonment rather than execution.[207] He emphasizes that both Caesar and the proponents of execution "propose[] a punishment of the greatest severity."[208] This observation minimizes the differences between the positions and emphasizes that senators face

[204] *Supra* Part I.A.

[205] CICERO, POLITICAL SPEECHES, *supra* note 124, at 195.

[206] Obama, *supra* note 12.

[207] *See* CICERO, POLITICAL SPEECHES, *supra* note 124, at 195–96. Cicero chooses not to attack Caesar's proposal as impractical or unworkable. *See id.*

[208] *Id.* at 195.

a serious threat to the state. Cicero paints them as unanimously desiring strong punishment. The passage quoted above is followed by a detailed assessment of the proposals of Silanus and Caesar.[209]

The Obama passage above has been much commented upon, with some commentators accusing him of throwing his grandmother and Reverend Wright "under the bus."[210] Whatever one makes of that controversy, this passage illustrates Obama's effort to bring the black community and the white community into the American tent.[211] He recognizes that tension between black and white communities is "where we are right now . . . a racial stalemate we've been stuck in for years." He offers himself—a mixed-race man who "can no more disown" either the black anger of Reverend Wright or white fear of his grandmother—as able to help the country reach a solution to racial divides.[212]

"Anger" functions as a hinge that joins both communities, an effort to reach common ground between them.[213] Black anger, he says, is real, born of the history of our "unfinished" Constitution, "stained by . . . slavery."[214] Obama traces race relations through Jim Crow into legalized racial discrimination in education, housing, banking, and employment which "help[] explain the wealth and income gap between blacks and whites, and the concentrated pockets of poverty that persist."[215] He notes that anger in the black community may not be "expressed in public," but finds its voice in private spaces: "in the barbershop or the beauty shop or around the kitchen table."[216] Similarly, anger in the white community is not "expressed in polite company," but comes from "white Americans [who] don't feel that they have been particularly privileged by their

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[209] *Id.*

[210] Laura Jones, *Under the Bus: A Rhetorical Reading of Barack Obama's "More Perfect Union"*, 21 J. INTERDISC. THOUGHT ON CONTEMP. CULTURES 1, 1 (2011).

[211] Race relations in the United States are much more complex than the framing "black community" and "white community" would suggest. That framing excludes many groups and renders invisible individuals and communities whose racial origins are mixed. My use of the terms in this discussion reflects the way they are used in Obama's speech. Obama, whose views on race seem anything but simplistic, was likely responding to the framing of Reverend Wright's more incendiary remarks, which were premised on a conflict between the black community and the white community.

[212] Obama, *supra* note 12.

[213] Of course, the racial landscape of the United States is more complicated than the black-and-white construct in this portion of Obama's oration. Obama himself recognizes this in his comment that he has family of "every race and hue." However, Reverend Wright's comments were directed at tensions between black Americans and white Americans, and Obama frames his response in those terms.

[214] Obama, *supra* note 12. This critique was famously made by Justice Thurgood Marshall in remarks on the Bicentennial of the Constitution. *See* Thurgood Marshall, The Bicentennial Speech at the San Francisco Patent and Trademark Law Association (May 6, 1987) (transcript available at http://thurgoodmarshall.com/the-bicentennial-speech/ [https://perma.cc/K2RK-W5ND]).

[215] Obama, *supra* note 12.

[216] *Id.*

race."[217] Obama even applies the same phrase to both communities: neither black anger nor white anger should be "wish[ed] away."[218] Obama's validation of political and economic grievances of both communities is notable, and not unlike Cicero's attempts to bridge his own position and that of Caesar. Obama invites racial discussions to move from private to public spheres. His repeated reference to domestic and personal settings, including the barber shop, beauty shop, and kitchen table, invites candid and difficult discussions into political discourse for public scrutiny.[219]

Cicero too gives voice to wide swaths of Roman society. He describes the state itself as a "common homeland stretch[ing] her suppliant hands to" the senators.[220] Cicero urges the senators that they may be perceived as "cruel towards our country" if they fail to deal severely with the remaining conspirators.[221] Cicero later outlines support from all segments of Roman society—from knights to slaves—and urges the senators to follow the will of the people.[222]

Moreover, Cicero even seeks to bridge positions of two individuals by exploiting their silence. He claims that Caesar recognizes that the Sempronian law forbids execution of Roman citizen without trial but claims that Caesar also recognizes that "someone who is an enemy of the state cannot conceivably be viewed as a citizen."[223] Cicero himself had made that same argument in the First Oration; scholars perceive it as having no legal basis.[224] Putting these words in Julius Caesar's mouth in his very presence is a gutsy move![225]

Cicero also notes that Licinius Crassus, "one of those who wish to be considered [a] popular politician[]," was absent, "evidently so as not to have to vote on the life or death of Roman citizens."[226] However, Cicero turns this around. Cicero points out that L. Crassus voted to approve "custody for the defendant, thanks for the investigator [i.e., Cicero himself], and rewards for the informer."[227] He claims that in that posture "no one, surely, can be in any doubt as to what verdict he has arrived at" regarding the question of punishment.[228] This is a shocking, envelope-pushing move: a senator who has chosen to absent himself from the debate is characterized as part of Cicero's coalition. It is per-

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[217] *Id.*
[218] *Id.*
[219] *Id.*
[220] CICERO, POLITICAL SPEECHES, *supra* note 124, at 201.
[221] *Id.* at 199.
[222] *Id.* at 199–201.
[223] *Id.* at 197; *see also id.* at 292 (on Caesar's view of the Sempronian law).
[224] *Id.* at 166–67, 306 n.28.
[225] *Id.* at 315 n.10 (citing A. W. LINTOTT, VIOLENCE IN REPUBLICAN ROME 170 (1999)) (recognizing that we do not know exactly what Caesar said, Lintott nonetheless believes Cicero was making "inferences" in this passage).
[226] *Id* at 196.
[227] *Id.* at 196–97.
[228] *Id.* at 197.

haps even more striking than Obama's effort to bring kitchen table conversation into public discourse: Cicero's language drags Crassus, who sought to avoid public debate, into the Senate.

Cicero recognizes the controversial nature of what he is advocating; he claims that he is "willing to submit, alone, to whatever fortune may have in store."[229] He ends the Fourth Oration promising that whatever the Senate should decide, he will "defend your decision, and answer for it personally, for the rest of his days."[230] These lines are part of his construction of ethos and a powerful instrument of persuasion. He has described all of society as supporting his desired result, and, in volunteering to defend its decision, he is demonstrating his loyalty to the Senate, having explicitly told senators "[y]ou have a leader who is thinking of you and not of himself—something you do not always have."[231]

Both Obama and Cicero use rhetoric to connect their listeners to each other and to themselves. Neither modifies his own position; instead, both seek to build bridges in a way that advances their desired results: a decision for the safety and survival of the Roman Republic for Cicero, and a group of political solutions that Americans can achieve "working together" for Obama.

C. The Heart of the Orations.

Finally, both Cicero and Obama reach the heart of their orations in memorable language. Obama criticizes politicians who "gin up votes along racial lines," and he saves his harshest critique for "a politics that breeds division and conflict and cynicism"[232] Moving past this destruction requires that he underline his thesis of unity by means of a new vision of politics. Cicero's message also drives toward a result—execution of the conspirators—and in reaching this goal, he must build support. In numerous places, Cicero calls attention to the severity of the conspirator's crimes and emphasizes that a grave response is required.[233] But his ultimate call to senators is framed in positive terms of encouragement built on the support of all ranks of Roman society and even the homeland itself. Again, in their own words:

Cicero	Obama
Conscript fathers, that is how the matter stands. The support of the Roman people does not fail you: so you make sure that you do not	But I have asserted a firm conviction—a conviction rooted in my faith in God and my faith in the American people—that, working

[229] *Id.* 193.

[230] *Id.* at 203.

[231] *Id.* at 201.

[232] Obama, *supra* note 12. This characterization of political opponents echoes what he claimed to be the problem with Reverend Wright's comments, that they were "not only wrong but divisive." *Id.*

[233] *See, e.g.*, CICERO, POLITICAL SPEECHES, *supra* note 124, at 197 ("how can we call [punishing the conspirators] cruelty when the crime we are punishing is so monstrous?").

> appear to be failing the Roman people. . . . All the orders are united in heart, mind, determination, courage, and voice to save our country. Beset by the torches and weapons of a diabolical conspiracy, our common homeland stretches her suppliant hands to you. To you she commends herself, to you she commends the lives of all her citizens, to you she commends the citadel and the Capitol, to you she commends the altars of her household gods, to you she commands yonder eternal fire of Vesta, to you she commends the temples and shrines of all the gods, and to you she commends the walls and houses of the city. And it is on your own lives, on those of your wives and children, on your property, on your homes, and on your hearths that you must today reach your decision.[234]

> together, we can move beyond some of our old racial wounds, and that in fact we have no choice if we are to continue on the path of a more perfect union.
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> . . .
>
> In the end, then, what is called for is nothing more and nothing less than what all the world's great religions demand—that we do unto others as we would have them do unto us. Let us be our brother's keeper, scripture tells us. Let us be our sister's keeper. Let us find that common stake we all have in one another, and let our politics reflect that spirit as well.[235]

These passages advocate unity and connectedness within society, though what "unity" means in ancient Rome and in the modern United States differs. To demonstrate to senators that "[t]he support of the Roman people does not fail you," Cicero talks about the "orders" of society.[236] In the passage immediately preceding the one quoted above, Cicero details the support of the subsenatorial orders: equestrians (the order into which Cicero himself was born), treasury tribunes, scribes, free-born citizens, freedmen, and even slaves.[237] This encompassing view of Roman citizens demonstrates that the foundation of Cicero's message is the shared agreement of the Roman people on appropriate punishment for the conspirators. Of course, this unity must be understood within the social hierarchy of the ancient world, in which men mattered and women were largely silenced, and in which those at the top benefitted from those beneath them in social standing.[238]

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[234] *Id.* at 200–01. Scholars speculate that this was the final paragraph of the original speech and that the text that follows was added for publication, as it returns the focus to Cicero's own role in putting down the crisis. *See id.* at 316 n.18.

[235] Obama, *supra* note 12.

[236] CICERO, POLITICAL SPEECHES, *supra* note 124, at 199–200.

[237] *Id.*

[238] *See* BEARD, *supra* note 10, at 127–28.

Obama too recognizes inequality and injustice in American society, a society in which the Constitution's equality principle is imperfectly attained.[239] Obama uses the phrase "a more perfect union" as a call for progress, rather than a celebration of attainment of his goals. Obama calls people to "work[] together," to "move beyond some of our old racial wounds," and to recognize obligations to be "brother's keeper" and "sister's keeper," as well as to acknowledge the "common stake we all have in one another."[240] Obama's vision of the "more perfect union" is based on shared recognition of a unity of interest among the American people.

The passage from the Fourth Catilinarian Oration quoted above, likely the final paragraph of the speech as delivered, gathers up all the ranks of Roman society and the homeland itself: it "commends" itself to the senators, including the "lives of [its] citizens," the places of political power, the domestic and national deities, and finally the very walls and houses of the city.[241] The implication is clear: the survival of the city itself rests in the hands of the Senate. Having intimated a threat to the stability of the society, Cicero asks the senators to reach a decision with an eye towards themselves, their families, and their own homes.[242] He implicitly connects what the senators may be considered to hold most dear to the survival of the state itself.[243]

Obama follows the passage quoted above by laying out a choice between the politics of "division and conflict and cynicism" and a different approach in which diverse citizens come together to tackle a policy agenda of common concerns.[244] These concerns include education, health care, jobs and economic concerns, and an end to the hostilities in Iraq and Afghanistan.[245] Obama ends with a moving story of common cause between a twenty-three-year-old poor white woman and an elderly black man who each joined his campaign to make each other better.[246] The story illustrates powerfully the unity to which the entire speech has driven.

CONCLUSION: TOWARDS A UNIFYING LEGAL RHETORIC

This Article began by observing the extreme polarization that characterized the impeachment trial of the president and positing that partisan rhetoric can be a risk for lawyers in practice. The Article then looked to Cicero and Barack Obama for ways to speak about divisive legal and factual matters at times of civic crisis. The works of both skilled orators demonstrate ways in which they

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239 Obama, *supra* note 12.

240 *Id.*

241 CICERO, POLITICAL SPEECHES, *supra* note 124, at 201.

242 *Id.*

243 As noted above, scholars speculate that the paragraphs of text following this one may have been added for publication by Cicero two years later. *Id.* at 316 n.18.

244 Obama, *supra* note 12.

245 *Id.*

246 *Id.*

use ethos, thesis, and persuasive rhetoric to build unity. A perfect unity is ultimately elusive; both Cicero and Obama faced backlash within a few years of holding high political office. Yet, both sought to reach beyond their closest allies for support.

For lawyers in practice, persuading those who are not natural allies is an essential part of advocacy. A lawyer is not merely a hired gun; her rhetoric must be addressed to her client, to tribunals of various sorts, to other parties, and at times to the general public. Further, she must often build bridges between and among those groups. These lessons are, to some extent, embedded in the Model Rules of Professional Conduct, which envision a lawyerly role as broader than partisan advocate. Model Rule 2.1, which addresses a lawyer's advice to clients, envisions advice that is "candid" and based on the lawyer's "independent professional judgment."[247] The Rule further affirms that a lawyer may "refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."[248] Thus, before speaking about a case to a tribunal or to opposing counsel, a lawyer might first take account of what she would say to her own client. A candid explanation of the strengths and weaknesses of the client's position may well lead to a more nuanced external position and better efforts to bridge divides.

Moving outward from the lawyer's relationship to client, the Model Rules also check aggressive partisanship and rhetorical excess before tribunals.[249] Parts of Model Rule 3.3 forbid lawyers from offering false statements and evidence; more interesting for present purposes is the affirmative obligations imposed by the Rule.[250] A lawyer must "correct a false statement" previously made to a tribunal, and must take "reasonable remedial measures" to counter false evidence if offered by a lawyer, her client, or her witnesses.[251] Further, a lawyer must disclose adverse binding authority, even if opposing counsel has failed to raise it.[252] The comment to the Rule indicates that its purpose is to "avoid conduct that undermines the integrity of the adjudicative process;" moreover, the comment explicitly notes that the duty of candor to the tribunal "qualifie[s]" the lawyer's obligation of zealous advocacy.[253] While much can and has been said about whether this Rule is more observed in its breach, it aspires to a world in which lawyers contribute more light than heat in their court-based advocacy.

Moving further outward still, the Model Rules combine with the practical realities of legal practice to encourage bridge building with counterparties to litigation and transactional matters. Various rules forbid lawyers from making

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[247] MODEL RULES OF PROF'L CONDUCT r. 2.1 (AM. BAR ASS'N 2018).
[248] *Id.*
[249] *Id.* at r. 3.3.
[250] *Id.* at r. 3.3(a)(1), (3).
[251] *Id.*
[252] *Id.* at r. 3.3(a)(2).
[253] *Id.* at r 3.3 cmt. 2.

false statements to nonclients, whether they are opposing parties in litigation or not.[254] Moreover, the reality of the modern world is that most litigated matters are resolved through negotiated or mediated settlement.[255] Further, lawyers working in non-litigation contexts frequently find themselves working with counterparties whose interests vary in charting courses of action that account for future risks. Put differently, building bridges and finding places of unity is a central concern of all aspects of the practice of law, whether a lawyer is dealing with a client, an opponent, or a court.

While lawyers must be careful to protect their clients' rights, a smart lawyer will look for opportunities to narrow disputes and forge consensus. Reasonable concessions facilitate decision making, painting one's client as reasonable, and creating space for a resolution in which both sides feel heard. Settlements and negotiated deals can recognize the merits as well as the shortcomings of the position on the other side. Cicero and Obama provide models. Neither shies from taking difficult positions on matters of controversy. However, the speech of both is artful and crafted, building on the ethos of the speaker and the characteristics of the audience in its persuasive mission. By offering a personal witness of unity, by recognizing legitimate grievances of various actors in the disputes, and by offering a path forward designed to attract most (if not all) of the audience, Cicero and Obama offer effective rhetorical models. If law schools and lawyers took unity seriously as a goal of lawyerly advocacy, imagine the better path we might set for ourselves and the revitalized health of our profession and public institutions.

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[254] *Id.* at r. 3.4, 4.1, 4.4.

[255] A quick Google search reveals articles about the "vanishing jury trial" over a period of some thirty years; for more on this topic, see *Civil Jury Project*, NYU SCH. LAW, https://civiljuryproject.law.nyu.edu [https://perma.cc/7TG6-CSEC] (last visited Apr. 7, 2020). On the criminal side, a 2018 study from the National Academy of Criminal Defense Lawyers finds that 97 percent of criminal cases are resolved by plea bargain. *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It*, NAT'L ASS'N CRIMINAL DEF. LAWYERS (July 10, 2018), https://www.nacdl.org/Document/TrialPenaltySixthAmendmentRighttoTrialNearExtinct [https://perma.cc/J25B-E7UT].