

Foreword

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As one who has spent a lifetime researching the history of rhetorical theory in the West,¹ had brushes with political life,² and taught many students who have later had illustrious careers in law, I congratulate the authors and editors of this marvellous and timely book, and also all readers and purchasers, because they are doing themselves a great favour. Here is a book by some of the greatest practitioners of the art of the advocate in Australia today, a book that explores the thousand-year legacy of Greek and Roman rhetorical theory and practice. Think about it. The ancient Greeks and Romans spent a millennium devising and refining the art of persuasion – without the distractions of television, radio, newspapers, photography, movies, mobile phones, computers or any of the digital wonders of the modern age. The Middle Ages carefully studied what the ancients had written on this subject³ and the Renaissance and early modern period submitted the entire subject to a fresh re-reading.⁴

Rhetoric then began a long decline in the clerical margins as technological, scientific and material progress took centre stage, leaving those most in need of persuasive technique – politicians and advocates – to scrape around and re-invent the wheel. But all that has now ended and in the volume before us we are presented with – among other things – a magnificent survey of ancient rhetorical theory – a topic the ancients were best at – carefully sifted and evaluated for adaptation to the conditions of the modern Bar.

I once took a group of students (taking an upper level course of mine on the history of rhetorical theory from Homer to Nietzsche) to hear the barrister in charge of summing up a defamation case. They listened to the barrister for a couple of hours, as he read closely from his prepared text, and at coffee afterwards the students said to me, ‘hasn’t he heard of Cicero? He seemed so unaware of everything Cicero wrote on the subject of effective courtroom persuasive techniques’ (the plaintiff lost the case,

1 See Constant J Mews, Cary J Nederman and Rodney M Thomson (eds), *Rhetoric and Renewal in the Latin West 1100-1540: essays in honour of John O Ward* (Turnhout: Brepols; Disputatio 2, 2003).

2 I was Mayor of Ashfield 1991-95 and an alderman/councillor there for 18 years.

3 See Virginia Cox and John Ward (eds), *The Rhetoric of Cicero in its Medieval and Early Renaissance Commentary Tradition* (Leiden: Brill, 2006).

4 *Ibid.*, at 55-69.

as it turned out). The contributors to the present volume have certainly played a key role in making sure that the barristers of the future *are* aware of what Cicero (and other informed ancients) wrote on this subject. They have provided easily accessible, widely informed, careful and scholarly introductions to the ancient rhetorical writers – Aristotle, Cicero, Quintilian, and, less well known but extensive and crucial, Hermogenes of Tarsus.⁵ They have intelligently digested the learning of these ancient fathers for application at the Bar today. They have, indeed, taken a major step towards the combination of eloquence and wisdom that Cicero himself insisted upon in the early pages of his youthful essay on the art of effective communication, his *De inventione*, ‘On the finding of arguments’. Practitioners and theoreticians themselves – like the ancients they study and evaluate⁶ – they have sought to arm us against the incessant spin and advertising of the modern world⁷ by wedding the word-bound nature of our species and the practice of law to a thorough knowledge of the best that the ancient world could devise on morally upright eloquence at the Bar and beyond. They have digested not only the secondary literature on their topic, but also a solid program of modern writings from Freud and Einstein onwards, and have provided illuminating discussions of a great number of surprisingly important and moving topics: why did Plato banish poets from his republic; what do *rhêtôrs* mean by the notion of ‘character’; the topic of silence and rhetoric;⁸ the use of analogical reasoning in law; the terrifying contexts of ancient rhetoric, for example, the circumstances surrounding Cicero’s speech for Milo, or the relationship between the *Philippics* of Cicero and his own assassination; Quintilian’s moving lament at the death of his wife and sons; the rise and fall of the English-speaking barrister class from the late middle ages to the present. One author argues that the great heyday of the barrister occurred in Britain during the last quarter of the 19th century, after which there has been decline, while another

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- 5 See most recently on later generations’ reading of Hermogenes John RC Martyn, ‘Lectures on rhetoric given by Pedro Nunes at the University of Lisbon: a tribute to Hermogenes’, (1999) *Euphrosyne* 27 at 147-154, and the same author’s *The Art of Public speaking: lectures on Greek rhetoric by Pedro Nunes (1502-78)* (Lewiston: Mellen, 2004); Lucia Calboli Montefusco ‘Ciceronian and Hermogenean Influences on George of Trebizond’s *Rhetoricorum Libri V*’, (2008) 26:2 *Rhetorica* 139-164. *Rhetorica*, the Journal of the International Society for the History of Rhetoric contains many papers of great interest to readers of the present volume.
- 6 See, for example, Olga Tellegen-Couperus (ed), *Quintilian and the Law: the art of persuasion in law and politics* (Louvain: Leuven University Press, 2003).
- 7 See Anthony Pratkanis and Elliot Aronson, *Age of Propaganda: the everyday use and abuse of persuasion* (New York: Freeman, 1992).
- 8 See Albertano da Brescia, *Liber de doctrina dicendi et tacendi, la parola del cittadino nell’Italia del Duecento* [‘The book of teaching on when to speak and when to be silent: citizen’s discourse in thirteenth-century Italy’], Paola Navone (ed) (Florence: Sismel, 1998).

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expresses optimism on this score, and hope for the Australian future in this arena.

There are summaries of the great cases that placed barristers fully in the public eye at the time of Oscar Wilde's trial; encomia of legendary Australian figures like Sir Garfield Barwick; penetrating and well illustrated comparisons between American presidential rhetoric in Lincoln's day and in the oratory of presidential candidate Barack Obama. Finally, experienced insights (from one who really knows!) are offered into the oratory of Winston Churchill 'one of the great platform orators of all time', of Robert Menzies - who said memorably 'The art of speech or of written language becomes supreme in politics [because] good or even great ideas can be quite infertile unless they are clearly conveyed to others' - and of Gough Whitlam, described as 'in the front rank of speakers'.

We have often been told how important the discussions of the Greek and Roman rhetoricians were for the ancient lawyers.⁹ We have not nearly so often been told how important they may be for modern barristers. After reading this book I can have no doubt that any lawyer, advocate or barrister today could not help but derive valuable tips and clues for their practice. They would also gain perspective on their practice by situating it within the large canvas of western rhetorical usage and theory across two-and-a-half thousand years. No reader of Quintilian's *Institutes of Oratory*, for example, carefully summarised in one of the chapters in the present volume, could help but see the value of a general introductory training in philosophy¹⁰ and the liberal arts for any lawyer or advocate, or, indeed, for anyone who cherishes the traditions of critical freedom that mark western democracies, in contrast to those states dominated by dictatorships and illiberal constitutions. Even the Middle Ages, dominated as they were by notions of compulsory salvation at the hands of the Catholic Church, revered their Quintilian.¹¹

From the insights of the Greek sophists to the decline of public discourse in Australia, this book is a crucial introduction to a vital thread in the history of the west, of the greatest value to lawyer, advocate, barrister, cultural historian, public speaker, orator and *rhêtôr*! I can only welcome it and recommend it most heartily to its audience.

9 See for example B Vonglis, *La Lettre et l'Esprit de la Loi dans la Jurisprudence Classique et la Rhétorique* (Paris: Institut de Droit Romain de l'Université de Paris, 1968).

10 See *Sydney Morning Herald*, 25 August 2008, p 17 for moves to act on this.

11 See John Ward 'Quintilian and the rhetorical revolution of the middle ages', (1995) 13:3 *Rhetorica* 231-284.