

PREMIÈRE PARTIE

DE L'ÉCRITURE À LA RÉCEPTION

DALLA SCRITTURA ALLA RICEZIONE

FROM COMPOSITION TO RECEPTION

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THE DATE OF COMPOSITION OF CICERO'S *DE INVENTIONE*¹

The exact time of composition of *inv.* has been the subject of major scholarly disagreement, with views ranging from the late 90s BC to the early 70s BC². Hence, this article will entirely reassess the question based on primary sources.

Inv. and *rhet. Her.* do not depend on each other. This means that their dates of composition are not directly linked to each other either. Thus, deter-

¹ I thank the anonymous peer reviewer of *COL* as well as Tobias Reinhardt, Henriette van der Blom, and Catherine Steel for their helpful comments on the manuscript. My thanks also go to Oxford University Press for authorizing me to publish the present as a journal article; the definitive version will be published as an introductory chapter in Hirsch (forthcoming).

² At the upper end of the spectrum, see, e.g., Hutchinson 2013, 235 (93-91 BC); Marx 1894, 76-77 (before 91 BC); Gruen 1990, 184-185 («not long after 92»); Caplan 1954, xxv (ca. 91 BC); Corbeill 2002, 33 («completed around 91 BC»); similarly, Corbeill 2007, 72, and 2013, 10; Kennedy 1972, 106-110 (91-89 or 88 BC at the latest); Dugan 2005, 82 (91-89 BC); Gaines 2007, 169 (91-88 BC); Hubbell 1949, viii (91-87 BC); Leeman *et al.* 1981-2008, I 32 (*de orat.* 1, 5 pointing to ca. 89 BC); Wisse 2002, 337-338 with n. 12 (89 BC; «seventeen-year-old Cicero»); Kraus 2014, 133 (ca. 89 BC); May 2002, 3 («most likely completed by 88 BC»); Riesenweber 2019, 392 (a major part completed by 91 BC, work completed before the death of M. Antonius in 87 BC; p. 396: 91-88 BC); Fantham 2004, 18 (early 80s BC). Somewhere in the middle of the spectrum, see, e.g., Negri 2007, 191 (88/87-85 BC); Dominik 2017, 163-164 (ca. 87-86 BC or a little afterward); Calboli 2020, I 14-19 (87-86 BC); Béranger 1972, 759 (87-80 BC); Laurand 1939, 12 (86 BC); Grimal 1986, 449 (86 BC); Büchner 1964, 64 (ca. 86-85 BC); Marinone-Malaspina 2004, 274 (86-83 BC); Bader 1869, 30 (indicates 84-82 BC; but bases himself on the *triennium* in *Brut.* 309 [*recte*: 308] of which Cicero says *noctes et dies in omnium doctrinarum meditatione versabar*, which refers to 86-84 BC); Adamietz 1960, 10 (86-84 BC); Nüßlein 1998, 365 (86-84 BC); Weidner 1878, IV-v (84-83 BC); Coleman-Norton 1939, 214 (84-83 BC); Pernot 2000, 152 (mid-80s BC, possibly 84-83 BC); Achard 2002, 5-10 (84-83 BC); Schwameis 2014, 170-171 (beginning possibly in 89 BC, finished in 83 BC); Wolff 2015, 149 (84-82 BC). At the lower end of the spectrum, see, e.g., Fuhrmann 1960, 58 n. 1 (85-80 BC); Greco 1998, 11 (85-80 BC); Adamik 1998, 276 (84-80 BC); Núñez 1997, 18-22 (material mainly compiled in 91-86, final editing of the extant text in the late 80s BC); Stroth 2009, 357 (before 81 BC); Bornecque 1932, I (81 BC); Kroll in *RE* VII A.1 1093 (up to 80 BC); Philippson 1886, 422-423 (after Cicero's return from Greece in 77 BC). Rawson 1983, 19, and 1985, 147 (80s BC), and Steel 2013a, 374 (91-80 BC), leave the question relatively wide open, showing that no universally accepted view and argumentation have been offered yet. In the following, references will be limited mainly to primary sources, as the secondary literature (if providing any arguments at all for the proposed dating) directly relies on them too.



mining the year(s) of composition of *inv.* can be carried out without reference to the time of composition of *rhet. Her.*, which is a problem in its own right³.

Inv. does not contain any element that would allow for a direct determination of the year(s) of its composition, such as «Writing under the consulship of...». An analysis thus must cover (1) later evidence by Cicero himself and by other authors, as well as (2) indirect internal evidence from *inv.* combined with historical considerations of the early 1st century BC.

1. Later evidence by Cicero himself and by other authors

A caveat beforehand: a major source for what follows is Cicero's autobiographical sketch in *Brut.* 303-314. Although Cicero's picture of himself in this passage may not always reflect historical truth, it is at times our only source, leaving us with no other choice to either follow it or accept the impossibility of reconstructing certain elements of his biography.

In Cicero's oeuvre, only one unambiguous⁴ reference to *inv.* is found, in *de orat.* 1, 5 (55 BC). Indeed, Cicero does not include *inv.* in his list of philosophical and rhetorical works in *div.* 2, 1-4⁵, nor does he mention it in the autobiographical sketch of his formative years in *Brut.* 303-314. In *de orat.* 1, 5, the mature Cicero ridicules his early work⁶:

Vis enim, ut mihi saepe dixisti, quoniam, quae pueris aut adolescentulis nobis ex commentariolis nostris incohata ac rudia exciderunt, vix sunt hac

³ I do not share the methodological approach by Achard 2002, 7-9, and others, who try to narrow down the period of composition of *inv.* e.g. from 86-83 BC to 84-83 BC by arguing that *rhet. Her.* was composed around 84-83 BC and that it does not yet refer to *inv.* Apart from the fact that neither handbook directly relies on the other, it is important to keep in mind that by the 80s BC Cicero was not yet famous and did not come from a leading Roman family. Compared to people such as M. Antonius (†87 BC), a leading orator who had composed a booklet on rhetoric in Latin, Cicero was still a nobody at that point. He had his first breakthrough as an advocate only with *S. Rosc.*, i.e., in 80 BC. Hence, hardly anyone in the 80s BC would have been on the lookout for a handbook by him, especially for one in which he largely draws on material that he found in other sources. It is only after *S. Rosc.* and especially after the trial of C. Verres (70 BC) that Cicero would acquire this kind of status.

⁴ Unlike *top.* 92, 96, 98, and 99, which could refer to *inv.*, *part.*, or more generally to any other rhetorical handbook.

⁵ *Div.* 2, 4 (early 44 BC) only refers to *de orat.*, *Brut.*, and *orat.*, thus leaving out *inv.* and *part.* The absence of *top.* is explained by the fact that it postdates *div.*

⁶ *Quae pueris* [...] *consecuti sumus* uses indicative mood, which shows that the criticism of *inv.* is Cicero's, not Quintus': should it have belonged to what «Quintus» says (*aliquid* [...] *proferri*), subjunctive mood would have been needed.

aetate digna et hoc usu, quem ex causis, quas diximus, tot tantisque consecuti sumus, aliquid eisdem de rebus politius a nobis perfectiusque proferri.

Given the aim of *de orat.* and its attitude towards standard rhetoric as found in handbooks like *inv.* or *rhet. Her.*⁷, one may wonder whether *de orat.* 1, 5 is similar to invective in character⁸. Complaining about the «leaking» of one's work could also be a commonplace⁹, and *inv.* 1, 55, *eorum ... cognoscere* shows that by the time he composed *inv.*, the young Cicero was already thinking about readers and hence about circulation or «publication» of his work. So we should be cautious as to how literally we can take Cicero's words used there¹⁰. *Puer*¹¹ is traditionally used up to the age of 17¹², but Cicero applies it even to 19-year-old Octavian¹³. *Adulescens* would refer to the subsequent age category, but Cicero in *de orat.* 1, 5 uses diminutive *adulescentulus*, which would point to the beginning of *adulescentia*. Quintilian, however, comments at *inst.* 3, 6, 59 that Cicero was *adulescens* when writing *inv.* As *de orat.* 1, 5 tries to heap scorn on *inv.*, it seems safe to assume that Cicero, if not stating the whole truth, would tend to indicate a younger age than he really was when writing *inv.* Thus, *puer*, if to be taken seriously at all, should be taken near its upper limit (ca. 17 years), and *adulescentulus* may be an attempt to avoid using *adulescens*. The fact that Cicero in *de orat.* 1, 5 in-

⁷ By 55 BC, Cicero had shown his complete mastery of rhetoric and felt no longer bound to follow rules of standard rhetoric. Whereas other authors were still writing rhetorical handbooks full of such rules, he could now rise above this level to write *about* rhetoric and do so with credibility. The ridicule or scorn expressed in *de orat.* could also be interpreted as looking down on those who still wrote handbooks as he had done in his early years while he himself had moved on to a higher level.

⁸ Cf. *div.*; in *Caec.* 47, *si ab isto libro, quem tibi magister ludi nescio qui ex alienis orationibus compositum dedit, verbo uno discesseris*. A similar use by Cicero of *adulescentulus* when mocking his earlier achievements is found in *orat.* 107, *quantis illa clamoribus adulescentuli diximus*, where the reference is to *S. Rosc.* (80 BC): here Cicero is stretching *adulescentulus* up to the age of 26. Negri 2007, 189, sees in it an attempt by Cicero to make himself look younger than he actually was at the moment of his first breakthrough as an advocate, while trying to excuse the marks of youthful passion that this speech shows.

⁹ In *de orat.* 1, 94 «M. Antonius» has a similar complaint regarding his booklet on rhetoric *qui me imprudente et inuito excidit et peruenit in manus hominum*. In contrast, Cicero's dismay in *Att.* 3, 12, 2 and 3, 15, 3 (58 BC) that a speech of his against Clodius had been published (leaked) without his knowledge and permission (see Crawford 1984, 106-108) is very different in tone and sounds real, as he feared significant consequences.

¹⁰ So also Steel 2001, 165, and 2005, 37.

¹¹ Cf. also *de orat.* 1, 23, *repetamque non ab incunabulis nostrae veteris puerilisque doctrinae quandam ordinem praeceptorum*.

¹² See e.g. Georges *et al.* 2013, II.A; Gaffiot-Flobert 2002, 2; Achard 2002, 6.

¹³ Cf. *fam.* 12, 25, 4; *Phil.* 3, 3; 4, 3.

troduces an imprecision by using *aut* seems to be another sign that he is not being entirely objective: he surely must have remembered when exactly he had written *inv.* – after all, it was his very first work on rhetoric. Another plausible interpretation of *aut* would be that Cicero is hinting at a longer period of composition: he started while still a *puer* (though at the upper limit of *pueritia*) and finished when an *adulescentulus* (or *adulescens*). This would be confirmed by the fact that some passages seem rather youthful (such as discrediting Gorgias and especially Hermagoras, e.g. through an unnecessary discussion involving *genus* and *species* in 1, 12-14), whereas others seem much more polished (such as the proems).

In conclusion, *de orat.* 1, 5 (on which the vast majority of scholars have based themselves when dating *inv.*) is of little help for a precise determination of the date of composition of *inv.* At most, it seems to indicate that Cicero was in his late teens or early twenties. Nevertheless, any date of composition proposed should be checked against it.

Apart from the above passage in Quintilian, external evidence from other authors is of little to no use. Indeed, already Quintilian, writing more than one and a half centuries after *inv.*, no longer knew when exactly Cicero had written it, although he is generally well informed about Cicero's life and works; moreover, his comments in *inst.* 3, 1, 20 and 3, 6, 59-60 seem entirely based on *de orat.* 1, 5. Thus, we must rely on indirect internal evidence as well as on events from the young Cicero's life and historical events to determine the date of composition of *inv.*

2. Indirect evidence from *inv.* combined with historical considerations of the early 1st century BC

2.1. The safe time frame

A safe *terminus post quem* is established by the latest events mentioned in *inv.* Cicero in 2, 111 refers to the consulship of L. Licinius Crassus in 95 BC¹⁴. This *terminus* can be further lowered if the case

¹⁴ *Inv.* 2, 111 should not be interpreted as referring to a proconsulship of Crassus. Some scholars, such as Achard 2002, 6, or Negri 2007, 190, date Crassus' campaign in Gaul to his proconsulship in 94 BC, probably based on Val. Max. 3, 7, 6. However, there seems to be no overwhelming reason why we should not believe the young Cicero, who knew Crassus personally already in 95 BC or shortly thereafter and would have known

about a secondary heir in 2, 122 is indeed the *causa Curiana* of ca. 92 BC, and the similarities with the *causa Curiana* are so strong that they should indeed not be considered fortuitous¹⁵.

A safe *terminus ante quem* is formed by Cicero's first known law court speech, *Quinct.* (81 BC)¹⁶. Cicero, who in *inv.* seems rather proud of himself, does not quote from one of his own speeches among his more than 130 examples, whereas he will do so decades later in *orat.* 102-104. Moreover, for someone whose career as an advocate takes off in 81-80 BC, especially with *S. Rosc.* (80 BC), little seems to be gained by «publishing» a rhetorical handbook if one can be known through a brilliant speech¹⁷. Furthermore, Cicero in *orat.* 107 mockingly calls himself *adulescentulus* at the time of delivery of *S. Rosc.*, which – if any chronological value can be attached to it – would place it after the *puer aut adulescentulus* of *de orat.* 1, 5; in other words, *inv.* would precede *S. Rosc.* For 79 BC, we know of at least two court cases in which Cicero appeared (*Pro muliere Arretina* and *Pro Titinia*; both speeches are lost), after which he left for Greece until 77 BC. Upon his return, he was active again as an advocate, in at least one case (*Pro Curtio*; the speech is lost)¹⁸. In 76 BC he campaigned for the quaestorship of 75 BC, which he would spend in Sicily.

The safe time frame within which *inv.* was composed is thus 92-81 BC. This can be further narrowed down by the combination of several considerations.

when exactly this happened (Achard 2002, 200 with n. 185 on 2, 111, translates «consul» and indicates 95 BC). On this question, see also Lewis 2006, 210 on *Asc. Pis.* 15C.

¹⁵ See below.

¹⁶ *Brut.* 311-312 indicates that before *S. Rosc.* (80 BC) Cicero had only appeared in private-law case(s), with no indication of the number of such cases. In *Quinct.* 4 (81 BC) Cicero claims to have appeared as an advocate before this speech, but without providing further details, *ita quod mihi consuevit in ceteris causis esse adiumento, id quoque in hac causa deficit*.

¹⁷ Achard 2002, 10 adds a further argument: after Sulla's return, rhetorical handbooks like *inv.* would present much less interest as, according to St. Jerome (*Chr. ad Olymp.* CLXXIV, 4 [PL 27 cols. 529-530]), a certain Latin *rhetor* by the name of Vultacilius Plotus (on whom see Suet. *rhet.* 27 with Kaster 1995, 297-299, who conjectures that the name was M'. Otacilius Pitholaus) opened a Latin school of rhetoric in 81 BC. However, apart from the question of the exactness of St. Jerome's information (see Kaster), namely regarding the year 81 BC, the very fact that Plotius Gallus and other *rhetores Latini* had already been teaching rhetoric in Latin by the late 90s BC (cf. the censors' edict of 92 BC) weakens this argument.

¹⁸ See Marinone-Malaspina 2004, 59-60, on Cicero's speeches in 79 and 77 BC.

2.2. Being busy until after the military service?

Cicero took the *toga virilis* in 90 BC¹⁹. According to *Brut.* 304-305, in 90 BC²⁰ Cicero spent time listening to speeches by Romans accused under Varius' law (the only law court active in 90 BC according to Cicero), but «almost daily» to *contiones*, i.e., to popular assembly speeches. There was, then, not much opportunity for forensic rhetoric in Rome in 90 BC apart from the high-profile trials under the *lex Varia*, whereas the focus in *inv.* is on the *genus iudiciale* (the *genus deliberativum* receives only a short treatment). This would point against 90 BC as a year in which Cicero wrote, or started to write, *inv.*²¹. By early 89 BC at least he was serving in the army with Gnaeus Pompeius Strabo²², then under Sulla at Nola²³. It seems unlikely that ca. 16-year-old Cicero would have had the time to sit down and compose as long a text as *inv.*, which relies on different sources and types of sources (rhetorical, philosophical, and legal) and which makes use of *clausulae* and contains internal cross-references: this suggests no rushed work.

Weidner 1878, III²⁴, thinks that *cottidieque et scribens et legens et commentans* in *Brut.* 305 (which refers to 90 BC) is to be linked to *de orat.* 1, 5 (*ex commentariolis nostris*) and indicates the beginning of Cicero's work on *inv.* The observation is interesting indeed and could refer to the oldest layer of composition of *inv.* However, certain proof for this interpretation is impossible, and the triad *scribens, legens, commentans* could in fact mean something like writing, reading, preparing or practising a speech²⁵. Indeed, the subsequent words (*oratoriis tantum exercitationibus contentus non eram*) suggest that the reference in the three verbs is to rhetorical exercises, not to the writing of theory. Also, one may wonder whether one can construe a solid link between two words of the same root used in 55 BC (*de orat.*) and 46 BC (*Brut.*) since this may be pure coincidence (when writing *Brut.* Cicero would cer-

¹⁹ *Brut.* 303 *nos in forum venimus* (with Kaster 2020, 156 n. 463), *Lael.* 1. Marinone-Malaspina 2004, 54, date the event to 17 March 90 BC (festival of the *Liberalia*).

²⁰ That *Brut.* 304-305 refers to 90 BC becomes clear through the reference in § 306 to Sulla's consulship in 88 BC.

²¹ A counterargument would be that it is not clear that Cicero needed *inv.* to have an immediate practical impact (being no *rhetor*, he was not looking for pupils) and most Romans may have hoped that the circumstances of 90 BC were transitory. I thank Catherine Steel for raising this point to me.

²² *Phil.* 12, 27.

²³ *Div.* 1, 72; 2, 65; *Plut. Cic.* 3, 1.

²⁴ He is followed by Schwameis 2014, 170.

²⁵ So e.g. Kaster 2020, 157 («practicing»); cf. *OLD* 2b.

tainly not have looked up which term he had used nearly ten years earlier in *de orat.*). Moreover, a close reading of *ex commentariolis nostris incohata ac rudia exciderunt* shows that *inv.* is represented by *incohata ac rudia*, not by *ex commentariolis*²⁶.

In conclusion, limited opportunities for forensic oratory and Cicero's service in the army make it plausible that the composition of *inv.* took place after 90/89 BC. Nevertheless, we have to admit that in comparison with other considerations below, this one is less secure and hence less strong an argument.

2.3. Roman law in *inv.*: shadowing the Scaevolae in the 80s BC?

Legal training²⁷ was separate from rhetorical training and was no prerequisite for advocates (there was indeed no formal prerequisite at all, though advocates – mostly from the Roman upper classes – would typically have been trained in rhetoric). The inclusion of legal elements in *inv.* therefore goes beyond the knowledge to be expected from a young author trained only in rhetoric. *Inv.* contains examples based on Roman court cases, both from private law (inheritance) and public law (murder, violence)²⁸. Moreover, there are two direct references to the Roman *iuris* (or *iure*) *consulti* (legal experts), in 1, 14 and 2, 68. *Inv.* also includes a discussion from the domain of legal theory: the subdivision of the law (or justice) into natural law, customary law, and statute law²⁹. Discussions like these are to be expected in legal handbooks like Gaius' *Institutes* (mid-2nd century AD), not in rhetorical ones like *inv.* or *rhet. Her.*³⁰ Moreover, even if the list of the six *partes iuris* or *iustitiae* in *inv.* and *rhet. Her.* could ultimately go back to a Greek source³¹, the examples based on Roman court cases (all of which are found outside of the dis-

²⁶ So already Leeman *et al.* 1981-2008, 132. Moreover, prose rhythm in *inv.* (on which see *e.g.* the data in Keeline-Kirby 2019) opposes the view that Cicero would have included class notes without any adaptations (an argument already mobilised by Kroll in *RE* VII.A 1092 against Marx 1894, 78, 80).

²⁷ See the chapter in Hirsch (forthcoming) on Cicero's education and sources.

²⁸ Cf. 2, 58 (parricide); 2, 59-60 (Roman knight); 2, 62 (secondary heir); 2, 116 (silver plate); 2, 122 (secondary heir); 2, 148-149 (succession and parricide). Hilder 2016, 168, stresses that no explicit distinction is made between civil and criminal trials in *inv.* and in *rhet. Her.*

²⁹ 2, 65-68; 2, 160-162. See the important discussion of these passages in Ferrary 2007.

³⁰ *Rhet. Her.* 2, 19-20; 3, 4. Cf. Harries 2006, 93 (*inv.* and *rhet. Her.* «both read at times like textbooks on law rather than rhetoric»).

³¹ As Ferrary 2007, 81, suspects (based on *aequum et bonum* in *rhet. Her.* vs. *par* in *inv.*, which would be a translation of Greek ἴσον). Stein 1978, 28, takes Cicero's view in 2, 65 (the evolution from *naturae ius* to *consuetudo* to *lex*) to go back to Stoic doctrine.

cussion of the subdivision of the law³², unlike in *rhet. Her. 2*, 19-20) make it clear that Cicero cannot simply have relied on Greek written sources or on a Greek *rhetor*. Legal handbooks like the one by Gaius seem not to have existed in the early 1st century BC, but only under the Empire. The acquisition of legal knowledge in Cicero's times came mainly³³ via another channel: shadowing *iuris consulti*, who would give legal advice to their clients and possibly have discussions with their «pupils» (but not provide any formal «classroom» teaching)³⁴. The inclusion of examples based on Roman court cases and, possibly³⁵, of the discussion of the subdivision of the law indicate that Cicero had already been, or still was, observing legal experts by the time he wrote *inv.* Purely rhetorical knowledge would not have allowed him to write these passages. As shown below, the key legal elements from *inv.* for dating purposes are the subdivision of the law in *inv.* 2, 65-68 and 2, 160-162 and what seems to be the *causa Curiana* in 2, 122.

In his works Cicero indicates two names of legal experts with whom he «studied» in his youth: Q. Mucius Scaevola Augur and Q. Mucius Scaevola Pontifex. Scaevola Augur (cos. 117 BC) was an eminent *iuris consultus*, son-in-law of C. Laelius and father-in-law of L. Licinius Crassus, whom he may have instructed in Roman law. According to *Lael.* 1, Cicero was introduced by his father to Scaevola Augur upon taking the *toga virilis*, specifying *ut, quoad possem et liceret, a senis latere numquam discederem*. Since taking the *toga virilis* happened at around age sixteen, this would have been in 90 BC, as is confirmed by *Brut.* 303³⁶.

³² 2, 58; 2, 59-60; 2, 62; 2, 116; 2, 122; 2, 148-149.

³³ It seems that Cicero (and Atticus) had memorised the Twelve Tables already as boys, cf. *leg.* 2, 59.

³⁴ In Cicero's times, there was no «school training» in law in the way it existed in rhetoric. Cicero describes his shadowing of Scaevola (Augur or Pontifex, see below) as follows in *Brut.* 306, *ego autem iuris civilis studio multum operae dabam Q. Scaevolae P. f. [or Q. f., see below], qui quamquam nemini <se> ad docendum dabat, tamen consulentibus respondendo studiosos audiendi docebat*.

³⁵ While Ferrary 2007, 90, identifies traces of philosophical reflection from *leg.* in *part.*, he does not seem to see any philosophical influence on the treatment of the *partes iuris / iustitiae* in *inv.* Rather, he supposes that the legal and judicial realities of Rome influenced *inv.* (and *rhet. Her.*) and that Cicero's organisation of the six *partes iuris* (he includes *pactum*, *par*, and *iudicatum* under *consuetudo* and in 2, 65 describes an evolution from *ius naturae* to *consuetudo* to *lex*) was introduced by Cicero himself. While the first two points seem right, one may wonder, however, whether it is not more likely that this organisation goes back to a leading *iuris consultus* (such as one of the Scaevolae, see below) than to a young man more thoroughly trained in rhetoric (and philosophy) than in law.

³⁶ This seems to be backed up by *Phil.* 8, 31. *Leg.* 1, 13 *Scaevolam* is taken by some to refer to Scaevola Augur (so e.g. Keyes 1928, 528; Gelzer 1969, 5). However, all other ref-

Scaevola Pontifex held the consulship in 95 BC together with Crassus and was the author of a book of legal definitions and of a treatise on the *ius civile*³⁷ in 18 books that would remain highly influential for centuries. Cicero repeatedly praises him as the most eloquent among the *iuris consulti*³⁸. In *Lael.* 1 Cicero claims to have attached himself to Pontifex after the death of Augur (possibly in early 87 BC)³⁹ and calls him *unum nostrae civitatis et ingenio et iustitia praestantissimum*.

How much Cicero really learned from Scaevola Augur (then in his eighties) has been questioned. A central passage for this is *Brut.* 306 about Cicero's activities in 89 BC:

ego autem iuris civilis studio multum operae dabam Q. Scaeuolae P. f., qui quamquam nemini <se> ad docendum dabat, tamen consulentibus respondendo studiosos audiendi docebat.

Scholars have debated whether the text should read *Q. Scaevolae P. f.*, referring to Scaevola Pontifex, or *Q. Scaevolae Q. f.*, referring to Scaevola Augur⁴⁰. If the reference is to Scaevola Augur, *Brut.* 306 would mean that Cicero was studying with Augur in 89 BC until his death (ca. 87 BC) and only thereafter with Scaevola Pontifex (†82 BC)⁴¹; if, however, *Brut.* 306 refers to Scaevola Pontifex, Cicero would have studied with him already from 89 BC onwards and his claims about his close attachment with Augur would be mostly fictive or exaggerated or else he would have studied with both at the same time. The debate mainly turns on the question of how much we can trust Cicero's claims in *Lael.* 1 about his close links with Scaevola Augur, as his aim to lend credibility to his dialogues may have played a role in his choice of interlocutors or *exempla*⁴².

ferences to a Scaevola in *leg.* (2, 47; 2, 49-50; 2, 52) are to Scaevola Pontifex and, where the plural is used, to his father (who had also been *pontifex maximus*, see *RE* XVI.1 425).

³⁷ *I.e.*, the law applying to Roman citizens.

³⁸ *De orat.* 1, 180 («Crassus» is speaking); *Brut.* 145; 148.

³⁹ *Val. Max.* 3, 8, 5 shows that he was still alive by 88 BC, but he must have died soon after (he is not mentioned again), cf. *RE* XVI.1 435.

⁴⁰ Badian 1967, 228-229, defends the reading *P. f.* (referring to Scaevola Pontifex). He is followed by Fantham 2004, 106 n. 9, Kaster 2020, 157 n. 470, and, it seems, Rawson 1983, 13-14 and 16-17, but is criticised *e.g.* by Gelzer 1969, 5 n. 37, who reads *Q. f.* (referring to Scaevola Augur) and is followed *e.g.* by Corbeill 2002, 26 with n. 13, and Treggiari 2015, 243.

⁴¹ *Brut.* 311.

⁴² Cicero's purpose could indeed have been to mention either Scaevola in his dialogues. On genealogies in Cicero's interlocutors and *exempla*, see *e.g.* van der Blom 2010 and 2018, Steel 2013b (esp. 228-229), Gildenhard 2013 (esp. 253-270).

If the divisions of the law in *inv.* 2, 65-68 and 2, 160-162 do indeed go back to a legal source – which seems likely⁴³ –, Iust. *Dig.* 1, 2, 2, 41 [Pomponius] possibly offers the crucial clue as to which Scaevola is the, or the most important, source of Cicero's legal knowledge: *Quintus Mucius Publii filius pontifex maximus ius civile primus constituit generatim in libros decem et octo redigendo*. This suggests that Scaevola Pontifex (in contrast to Scaevola Augur) played a particularly important role in founding the *ius civile* and in organising it into a coherent doctrine⁴⁴: according to this passage, he was «the first lawyer to give serious attention to classification»⁴⁵. This makes the subdivision of the law in *inv.* 2, 65-68 and 2, 160-162 point to Scaevola Pontifex as the main source for Cicero's legal knowledge in *inv.* If Cicero really «studied» with Scaevola Augur⁴⁶ and at his death in 87 BC transferred to Scaevola Pontifex, the legal knowledge in *inv.* 2, 65-68 and 2, 160-162 would point to 87 BC or later; if, on the contrary, Cicero's true «legal mentor» already from 89 BC onwards was Scaevola Pontifex, his legal knowledge in question would date to 89 BC or later.

The legal case in 2, 122, which does not include any names, is strongly reminiscent of the *causa Curiana* (ca. 92 BC) and has been identified with it⁴⁷. The young Cicero must have known this case well⁴⁸: it juxtaposed Crassus (by then his mentor) and Scaevola Pontifex (who would become his mentor only in the 80s BC) as advocates⁴⁹. Yet, he does not clearly identify it: one may wonder why, given its fame for juxtaposing the leading orator and the leading *iuris consultus* of the day. Cicero mentions his first great mentor Crassus in 2, 111, but there is no mention of any Scaevola in *inv.* If Cicero had only been closely attached to Crassus, the winner in the *causa Curiana*, he would probably have identified the case. So there are

⁴³ See n. 35 above.

⁴⁴ The fact that all references in *leg.* except 1, 13 clearly refer to Scaevola Pontifex and his father also suggest that – at least for Cicero – Scaevola Pontifex played a more prominent role in the development of the *ius civile* than Scaevola Augur.

⁴⁵ *OCD Mucius Scaevola* (2), *Quintus* «Pontifex».

⁴⁶ See the *caveat* above.

⁴⁷ So, e.g., Vaughn 1985, 208-209 n. 2 (with further literature); Negri 2009, 165; Tellegen-Couperus-Tellegen 2016, 32 n. 19; Hilder 2016, 171-172; Babusiaux 2023, 52 n. 14 (who has further literature, especially from the perspective of legal history). The case in 2, 62 is similar in nature but not identical to the one in 2, 122. Raschieri 2017, 136, nevertheless identifies it with the *causa Curiana*; see also Raschieri 2015, 139-143.

⁴⁸ Cicero elsewhere refers to the case in *Caecin.* 53; 67; 69; *de orat.* 1, 180; 1, 238; 1, 242-244; 2, 24; 2, 140-141; 2, 220-222; *Brut.* 144-149; 194-198; 256; and *top.* 44.

⁴⁹ Hilder 2016, 172, suggests that Cicero's personal connection to both «may explain why he chooses to use this example of the *causa Curiana* [2, 122] as well as the previous inheritance case [2, 62] despite their similarity».

good grounds to suspect that Cicero avoided the clear label «*causa Curiana*» for a reason⁵⁰. Scaevola Pontifex lost the famous case and died only in 82 BC. Did Cicero avoid a clear identification of the *causa Curiana* so as not to draw attention to possibly the most famous defeat of his legal mentor?⁵¹ In this case the non-identification of the *causa Curiana* would allow for dating *inv.* even to the second half of the 80s BC. But due to a lack of sources, this remains purely speculative (at least at this stage of our investigation)⁵².

In conclusion, the discussion of Cicero's legal knowledge and his shadowing Scaevola Augur and/or Scaevola Pontifex proves at least that *inv.* cannot have been written before 89 BC as Cicero would not have had legal «instruction» by a Scaevola by then⁵³: his legal knowledge in *inv.* goes beyond what a purely rhetorical education offered. It seems not unreasonable to expect that it took more than a year for Cicero to get all the legal knowledge found in *inv.* This would mean that *inv.* cannot have been written before 88 BC. Moreover, the missing label «*causa Curiana*» could point to the second half of the 80s BC as period of composition of *inv.*

2.4. *Philosophical content and examples: studying with Philo of Larissa in 88 BC?*

Several elements in *inv.* suggest that by the time he was working on *inv.* Cicero must have studied, or started studying, with Philo of Larissa. The then head of the Academy had fled from Athens to Rome in

⁵⁰ Since an expression like *causa Curiana* is different from indicating the name of a person (e.g., Manius Curius), the argument about ancient authors' refusal to mention the names of persons still alive may not apply here.

⁵¹ Cicero still seems very fond of Scaevola in 80 BC, as he mentions him and his cruel death in his first speech in a case of public law (*S. Rosc.* 33-34). Cf. Harries 2013, 109 («The *causa Curiana* also offered an example of a jurist whose rhetorical skills fell short, although Cicero acknowledged that Scaevola was “the best orator among jurists and the best jurist among orators”»).

⁵² Hilder 2016, 173, following Harries 2006, 97-102 and 105-108, gives a different explanation with a fair point: «Cicero's decision not to include the name of Malleolus [in 2, 149], just as he did not refer to any names in the *causa Curiana*, may show the additional influence of the juristic hypothetical case on his writing». If Harries and Hilder, who stress a major difference here between *inv.* (recent Roman cases are anonymised) and *rhet. Her.* (recent Roman cases mostly include names), are right, then my argument above falls, but another is added: that the young Cicero is even more, and more subtly, influenced by the thinking of the jurists (namely Scaevola Augur and/or Scaevola Pontifex) than appears at first sight. The difference between *inv.* and *rhet. Her.* could also be explained by the fact that Cicero was still young and had not yet openly taken sides in the dangerous political struggles of the 80s BC, whereas the *Auctor* seems to have been older and done so, meaning that there was no additional danger for the *Auctor* in indicating his political choices in a handbook (Harries seems to acknowledge this alternative explanation at p. 107).

⁵³ This results from the combination of *Lael.* 1 and *Brut.* 303 and 306.

89/88 BC⁵⁴, where he would stay probably from 88 to 84 BC⁵⁵. Despite the political chaos of 88-87 BC, Philo was lecturing in Rome⁵⁶, both on philosophy and rhetoric, as Cicero reports in *Tusc.* 2, 9⁵⁷. He may have done so already in Athens⁵⁸; if this is true, it would show that his teaching of rhetoric, too, was not due to any special circumstances when he was living in Rome.

Cicero dates his (one may probably add: first) meeting Philo to 88 BC and in *Brut.* 306 describes what a deep impression the philosopher left on him⁵⁹:

atque huic anno proximus Sulla consule et Pompeio fuit. Tum P. Sulpici in tribunatu cotidie contionantis totum genus dicendi penitus cognovimus; eodemque tempore, cum princeps Academiae Philo cum Atheniensium optumatis Mithridatico bello domo profugisset Romamque uenisset, totum ei me tradidi admirabili quodam ad philosophiam studio concitatus; in quo hoc etiam commorabar attentius – etsi rerum ipsarum varietas et magnitudo summa me delectatione retinebat –, sed tamen sublata iam esse in perpetuum ratio iudiciorum videbatur.

As a sceptical Academic, Philo in his thinking proceeded *in utramque partem*, leading to the belief that truth could not be found since «there were equally plausible arguments for and against [...] and that judgement was to be suspended therefore»⁶⁰. This sceptical approach seems to be mirrored in the proem to *inv.* 2, in which Cicero adopts an eclectic approach and refuses to blindly follow only one doctrine, concluding with the following words (2, 9-10):

Sin autem temere aliquid alicuius praeterisse aut non satis eleganter secuti videbimur, docti ab aliquo facile et libenter sententiam commutabimus. Non

⁵⁴ The reasons for his flight are not entirely clear; see the discussion in Brittain 2001, 60-64.

⁵⁵ Brittain 2001, 64. See also Fleischer 2017 on the dates of Philo's birth and death.

⁵⁶ Brittain 2001, 65 n. 74, rejects Glucker's 1978, 88, claim that Philo would have lectured out of a need to support himself, and argues in favour of Philo's vocation as his motive; Lévy 2010, 97-102, questions Brittain's arguments and thinks that Philo may have started to teach rhetoric in Rome to attract more students but also to cover the two main pillars of Greek culture, rhetoric and philosophy, when teaching a Roman audience.

⁵⁷ *Tusc.* 2, 9, *nostra autem memoria Philo, quem nos frequenter audivimus, instituit alio tempore rhetorum praecepta tradere, alio philosophorum*. Cf. also *de orat.* 3, 110.

⁵⁸ *De orat.* 3, 110. Brittain 2001, 331 dates the beginnings of Philo's teaching of a technical form of rhetoric to ca. 95 BC; Lévy 2010, 96-98, argues that Philo may have started teaching rhetoric only in Rome.

⁵⁹ Elsewhere, Cicero's attending Philo's lectures in Rome is mentioned at *fam.* 13, 1, 2; *nat. deor.* 1, 6; 1, 17; *Plut. Cic.* 3, 1.

⁶⁰ Reinhardt 2000, 542-543.

enim parum cognosse sed in parum cognito stulte et diu perseverasse turpe est, propterea quod alterum communi hominum infirmitati, alterum singulari cuiusque vitio est adtributum. Quare nos quidem sine ulla adfirmatione simul quaerentes dubitanter unum quicque dicemus ne, dum hoc parvulum consequamur ut satis haec commode praescripsisse videamur, illud amittamus quod maximum est ut ne cui rei temere atque arroganter assenserimus. Verum hoc quidem nos et in hoc tempore et in omni vita studiose, quoad facultas feret, consequemur.

This passionate profession of philosophical scepticism in a rhetorical handbook comes surprisingly if not «somewhat inappropriately»⁶¹. It could be explained by a young man meeting a person who has left a very strong impression on him. Even decades later, Cicero in the above passage from *Brut.* is full of passion when he says of Philo that *totum ei me tradidi admirabili quodam ad philosophiam studio concitatus* (compare *Brut.* 306 *totum* with *inv.* 2, 10 *in omni uita*).

We know of only two philosophers whom the young Cicero had met or had lessons with before Philo: Phaedrus the Epicurean⁶² and (possibly by then) Staseas the Peripatetic, who was living in the house of M. Pupius Piso⁶³. However, name-dropping of philosophers in *inv.* – which in itself is surprising for a rhetorical handbook⁶⁴ – suggests that Cicero was mostly acquainted with philosophers of the Academy:

- Plato or Socrates, who are indirectly referred to via the reference to Gorgias of Leontini (1, 8) that points to Plato's Socratic dialogue of the same name;
- Aeschines the Socratic, author of the dialogue *Aspasia* involving Socrates, Aspasia, and Xenophon, a passage of which Cicero seems to translate in 1, 51-52;
- Socrates and his students (1, 53; 1, 61; 1, 90);
- Aristippus, student of Socrates and founder of the Cyrenaic school of philosophy (2, 176).

The only two remaining philosophers mentioned in *inv.* are Aristotle⁶⁵, who, though founding his own school later, had been a student of

⁶¹ Reinhardt 2000, 531.

⁶² *Fam.* 13, 1, 2.

⁶³ *De orat.* 1, 104-105; *fin.* 4, 73; 5, 8; 5, 75; *Asc. Pis.* 15C.

⁶⁴ Contrast, e.g., *rhet. Her.*

⁶⁵ 1, 7; 1, 9; 1, 61; 2, 6-7; 2, 156.

Plato, and Theophrastus⁶⁶, who had been a student of Aristotle but who, according to Diogenes Laertius (5, 2, 36)⁶⁷, had studied with Plato first. Although Cicero could have learned about Aristotle and Theophrastus from Staseas the Peripatetic, it seems not implausible that he did so from Philo, who, like Aristotle and Theophrastus, showed interest in rhetoric.

The above list of philosophers shows a clear focus on the Academy. No Epicurean or Stoic philosophers are mentioned by name. Although *inv.* does contain some Stoic and even Epicurean material, it is possible that Cicero had it from Philo, whose studies with a Stoic philosopher, though not unusual, had been remarkably long (seven years), even among Academics⁶⁸. The chronology in *Brut.* 306-309 suggests that Cicero started studying (and living) with Diodotus the Stoic only after meeting Philo⁶⁹.

Moreover, in Philo we see a re-unification of philosophy and rhetoric, and Cicero's *plaidoyer* in favour of such a re-unification of both disciplines in the proem to Book 1 would come less as a surprise if he had already been taught by Philo at that point.

Yet another point would become more intelligible: Cicero's criticism of Hermagoras in 1, 8 regarding the attribution of both ὑπόθεσις (*causa*) and θέσις (*quaestio*) to the orator⁷⁰. Although Cicero in the proem of Book 1 has just advocated for a re-union of philosophy and rhetoric, he limits the rhetorician's or orator's scope to the ὑπόθεσις, reserving the θέσις for the philosopher. The traditional division had indeed been θέσις for the philosopher, ὑπόθεσις for the rhetorician or orator. However, since the mid-2nd century BC, the rivalry between philosophers and rhetoricians reignited when it came to attracting students, and rhetoricians like Hermagoras started to infringe on the philosophers' domain of the θέσις. By teaching the ὑπόθεσις too, Philo was inversely entering the rhetoricians' domain⁷¹. The young Cicero in 1, 8 denies the θέσις to the rhetorician/orator, although he would later change his mind considerably, notably in *de orat.* One may wonder whether Cicero's criticism of Hermagoras' position is due to him following the opinion of other rhe-

⁶⁶ 1, 61.

⁶⁷ Whether Diogenes Laertius is right is irrelevant: what matters is that there was an ancient tradition affirming such a link.

⁶⁸ Brittain 2001, 49-50. However, Cicero may have had access even without Philo, as Stoic texts seem to have been more widely available.

⁶⁹ But, as we shall see, the dating proposed for *inv.* below would allow for Diodotus as a source too.

⁷⁰ On this topic cf. the article of M. Oliva in this volume.

⁷¹ Brittain 2001, 328-341; Reinhardt 2000.

toricians who exclusively treated the ὑπόθεσις⁷², or whether Philo did not want to open the field of the θέσις to the rhetoricians/orators and had influenced the young Cicero on this point⁷³. The way in which this is phrased (placing philosophers above rhetoricians) suggests a philosophical, not a rhetorical source.

The combination of the above reasons leads to the conclusion that Cicero did not compose, or at least complete, *inv.* before being taught by Philo, *i.e.*, before 88 or 87 BC. Given how spread out the influence by Philo and the Academy is in *inv.*, composition or completion in 87 BC (or even later) would seem more likely than 88 BC, all the more because we do not know which month of 88 BC Cicero's comment in *Brut.* 306 refers to and when Cicero's studies with Philo ended (at Philo's death in ca. 84 BC?).

2.5. Revival of law court activity after 88-87 BC

88 BC saw Sulla march on Rome for the first time, plunging the city into chaos until 87 BC. Cicero, writing about his studies with Philo, states in *Brut.* 306 that in 88 BC *in quo [i.e., admirabili quodam ad philosophiam studio] hoc etiam commorabar attentius – etsi rerum ipsarum varietas et magnitudo summa me delectatione retinebat – quod tamen sublata iam esse in perpetuum ratio iudiciorum videbatur*. Cicero kept himself busy with philosophy – not rhetoric – because he seemed desperate about law court activity («the familiar judicial system seemed to have been swept away for good», tr. Kaster): this does not sound like the right time and mindset for a young man to work on *inv.* The focus on philosophy seems significant, since Cicero could have chosen to work on rhetorical *theory* while oratorical *practice* was impossible: this would later be the case *e.g.* with *Brut.* (as he tells us in §§ 329-330).

In 87 BC three major orators were killed, including M. Antonius, to whom Cicero's family had links of friendship⁷⁴. Only in 86 BC did major

⁷² On the problems related to Cicero's criticism, see Hirsch (forthcoming); Woerther 2011 and 2012, LXII-LXIII, 79-85.

⁷³ See also Reinhardt 2000, 547 n. 57: «In *inv.* 1, 8 he attacks Hermagoras for making the θέσις the subject-area of rhetoric, because only philosophers can deal with difficult philosophical problems. This might mirror a claim Philo himself made for his rhetoric (cf. Posidonius' attack on Hermagoras for the same reason). It would have been very high-minded if Cicero had taken sides with Philo at this early stage; alternatively, since it is likely that Cicero, when writing *inv.*, was still strongly influenced by his rhetorical teachers, he might be merely relating their views».

⁷⁴ See below.

court activity resume (*Brut.* 307-308). Against this background, it seems to make little sense to write a handbook that focuses mainly on judicial rhetoric in 88-87 BC, contrary to 86-84 BC, when Rome was free from armed conflict. Cicero lists a number of advocates who were active in the courts in 86-84 BC, the leading one being Hortensius (*Brut.* 308). Although he does not say so explicitly, one may wonder whether he went to observe them in action and felt inspired.

A major reason for Cicero to write *inv.* might have been that he himself could not start pleading in the law courts in 86-84 BC yet, but wanted to be active somehow and make himself known (his mentor Crassus pleaded his first case at age 21)⁷⁵. The case of 88-87 BC is very different in that (according to *Brut.* 306) the entire law court activity came to a stillstand in those years, *i.e.*, hardly any or no orator at all would have been pleading at that moment: while in 86-84 BC there might have been a “market” for handbooks on rhetoric in Latin – since there were orators active in the courts, *though not Cicero* –, the same was not true for 88-87 BC.

2.6. *The absence of M. Antonius (and others) from inv.*

Cicero’s family had two direct links to the orator M. Antonius: his uncle L. Cicero had been a member of Antonius’ personal staff during his Cilician command (102-100 BC)⁷⁶, just like Cicero’s grandfather’s brother-in-law Gratidius, who had been Antonius’ close friend and prefect in Cilicia⁷⁷. In *de orat.* 2, 3 Cicero affirms to have personally met the great orator frequently in his youth:

ipse adulescentulus⁷⁸, quantum illius ineuntis aetatis meae patiebatur pudor, multa ex eo saepe quaesivi. Non erit profecto tibi, quod scribo, hoc novum; nam iam tum ex me audiebas mihi illum ex multis variisque sermonibus nullius rei, quae quidem esset in eis artibus, de quibus aliquid existimare possem, rudem aut ignarum esse visum.

However, in his account on his formative years in *Brut.* 303-316, Cicero says nothing of such a close relationship. He mentions M. Antoni-

⁷⁵ See the chapter in Hirsch (forthcoming) on why Cicero wrote a work like *inv.*

⁷⁶ *De orat.* 2, 2-3.

⁷⁷ *Brut.* 168.

⁷⁸ For the reasons explained above, we should be cautious about too literal an interpretation of *de orat.* 1, 5 *pueris aut adulescentulis nobis* and thus about seeing too strong a terminological parallel with *de orat.* 2, 3 here.

us' absence from Rome in 90 BC (§ 304) and his cruel death in 87 BC (§ 307). This raises the question of whether M. Antonius indeed played an important role in Cicero's youth, as suggested by *de orat.* 2, 3, and when.⁷⁹ Depending on this question is the one whether any significance should be attributed to Cicero's silence about him in *inv.* It is worth comparing two lists of names of famous Roman orators in *inv.* 1, 5 and *rhet. Her.* 4, 7:

inv. 1, 5:

Quod nostrum illum non fugit
Catonem neque Laelium neque
eorum, ut vere dicam, discipulum
Africanum [neque Gracchos Africani
nepotes]: quibus in hominibus erat
summa virtus et summa virtute
amplificata auctoritas et, quae et his
rebus ornamento et rei publicae
praesidio esset, eloquentia.

rhet. Her. 4, 7:

Allatis igitur exemplis a Catone,
a Gracchis, a Laelio, a Scipione,
Galba, Porcina, Crasso, Antonio,
ceteris *e.q.s.*

The list in *rhet. Her.* includes four additional orators: two from the mid-2nd century (Servius Sulpicius Galba, cos. 144 BC; M. Aemilius Lepidus Porcina, cos. 137 BC) as well as L. Licinius Crassus (†91 BC), much admired by Cicero, and M. Antonius (†87 BC). Crassus is mentioned in *inv.* 2, 111, M. Antonius is totally absent in *inv.*, as are any other orators from the early 1st century BC (with the sole exception of Crassus). The *Auctor's* list is more or less chronologically ordered, so one may wonder whether *ceteris* refers (at least in part) to other great orators of the early 1st century BC. Cicero knew many of them by name and had heard some of them or read their speeches. In *Brut.* 303-311 (about his formative years) he names: Cotta (§ 303), Hortensius, Sulpicius, M. Antonius, L. Memmius, Q. Pompeius, Philippus (§ 304), C. Curio, Q. Metellus Celer, Q. Varius, C. Carbo, Cn. Pomponius, C. Iulius (Strabo) (§ 305), Sulpicius (§ 306), Sulpicius, Q. Catullus, M. Antonius, C. Iulius (Strabo), Hortensius (§ 307), M. Crassus, the two Lentuli, Hortensius, Antistius, Piso, Pomponius, Carbo, Philippus (§ 308), Scaevola, Carbo, Antistius, Cotta, Curio, M. Crassus, the two Lentuli,

⁷⁹ See also Zetzel 2022 on the way in which Cicero reshapes M. Antonius (and Crassus) in *de orat.* to fit the narrative of his own life.

Pompey, Pomponius, Censorinus, Murena (§ 311)⁸⁰. Their great number makes their absence – even under as general and anonymous a term like *ceteri* – in *inv.* noticeable⁸¹. However, the list is shocking in that Cicero in *Brut.* 303-311 indicates for almost all of these orators a violent death or (temporary) exile. *Brut.* 303-311 covers the years 90-82 BC, *i.e.*, almost exactly the period of the «safe time frame» of 92-81 BC identified above for the period of composition of *inv.* This leads to the conclusion that these orators were exposed to grave danger, which in turn might have meant grave danger for anyone erecting them as examples. This could be the simple reason for Cicero's silence in *inv.* about these men⁸². Nevertheless, M. Antonius' absence in *inv.* stands out, for several reasons: if we are to trust *de orat.* 2, 3, the young Cicero knew him personally and admired him; the inclusion as Crassus' main interlocutor in *de orat.* shows the importance Cicero attributed him (at least by 55 BC); Crassus, who appears in the list of great Roman orators in *rhet. Her.* 4, 9, is mentioned in *inv.*, even though only at 2, 111 and not in the list of great Roman orators at 1, 5 – by contrast, M. Antonius, who also appears in *rhet. Her.* 4, 9, is nowhere mentioned in *inv.*; M. Antonius had written a booklet on rhetoric in Latin⁸³, which the young Cicero may have known and which may have been one of the several sources that Cicero in the proem to Book 2 claims to have consulted; yet, he does not hint at it anywhere. Moreover, the mature Cicero illustrates the Issue of Definition as he does in *inv.* 2, 52 with a charge of *maiestatem minuere*, but instead of choosing a case dating from the far past like the one about Flaminius' father (232 BC) in *inv.*, he repeatedly chooses one in which M. Antonius acted as an advocate: the cause of Norbanus (95 BC)⁸⁴. If M. Antonius' absence in *inv.* can be construed as a chronological pointer (*argumentum e silentio*), then it is indicative of the period around his death at the hand of the allies of Marius and Cinna (87 BC), possibly also of the years thereafter under Cinna (†84 BC). By contrast, mentioning Crassus was not nearly as dangerous: since he had died in 91 BC, he had not participated in the struggles of

⁸⁰ The list of orators stops there, while Cicero's autobiographical sketch of his formative years continues until § 316. For a classification of these orators by generation based on their year of birth, see Charrier 2003, 96.

⁸¹ The C. Scribonius Curio mentioned in *inv.* 1, 80 (*praetor* 121 BC) is not the one mentioned in *Brut.* 305 and 311 (*tribunus plebis* 90 BC). Thus, no link can be established here regarding the «rule» of not mentioning any authors alive, on which see below.

⁸² Writing about them decades later is of course quite another thing in this respect.

⁸³ On this booklet, see Scholz 1963, 96-114.

⁸⁴ Cf. *de orat.* 2, 107-109; 2, 164; 2, 201; *part.* 104-105; Leeman *et al.* 1981-2008, III 47.

the Social War (91-87 BC) and had thus not been forced to pick sides for or against Sulla and Marius⁸⁵.

Cicero could of course be following the common rule of not citing or even naming people still alive at the time of writing⁸⁶. However, the subsequent arguments, which suggest at least a date of *completion* after 87 BC, *i.e.*, after M. Antonius' death, would mean that Cicero could have mentioned M. Antonius just as he did Crassus. But he does not. This seems to be a strong sign that other factors, namely the political situation and its dangers, played a role in Cicero's silence⁸⁷.

2.7. 86-84 BC: years crammed with studies

Brut. 308 opens with a statement that 86-84 BC were again more peaceful years in Rome. It closes with a sentence that seems of special interest here: *At vero ego hoc tempore omni noctes et dies in omnium doctrinarum meditatione versabar*. In §§ 309-310 Cicero goes on to speak about his intensive studies with Diodotus the Stoic, who instructed him, «among other things, in dialectic», and states that with Diodotus' many and varied skills, «no day was free of oratorical exercises»⁸⁸, which, based on the subsequent sentence, seems to refer to declaiming. He tells us that he declaimed in Latin or, more frequently, in Greek. In other words: in 86-84 BC Cicero is busy with studies of all kinds, especially dialectic and rhetoric, and he declaims in both languages. The young Cice-

⁸⁵ Note in this context, too, that, unlike *inv.*, *rhet. Her.* 4, 31 mentions the violent death of the tribune of the *plebs* M. Livius Drusus in 91 BC, whose political reform package included a proposal to grant Roman citizenship to the Italic allies; its rejection led to the Social War of 91-87 BC. Cicero seems to wish to avoid using examples from recent Roman history that could be potentially dangerous for him, given his family's connexions (on Marius, see below) and given his young age (which would have made him an easy target). Moreover, at his age, not wanting to take sides politically yet in such a situation might have been sensible in view of a future political career. In this sense, one could say that *inv.* does not really talk about great Roman orators who turned things political on their head. The Gracchi are only lightly touched upon, without Cicero positioning himself politically (1, 91, where the example is used as an illustration of a defective, ridiculous argument; as for 1, 5, there are strong arguments in favour of deleting *neque Gracchos Africani nepotes*, *e.g.*, *Africanum* and *Africani* in 1, 5 do not refer to the same person: *Africanum* refers to the Younger Scipio Africanus, *Africani* to the Elder Scipio Africanus, making this silent change look suspicious).

⁸⁶ Cf. *S. Rosc.* 47; *Att.* 13, 19, 3 (where Cicero says that, as a rule, he does not include living persons in his dialogues); *Brut.* 231-232; 244; 248; *orat.* (where Brutus, the addressee, is the only person alive mentioned); *Quint.* 10, 1, 104. This argument is put forward, *e.g.*, by Kennedy 1972, 108-109, and Núñez 1997, 18. On this rule, see also Steel 2003.

⁸⁷ The same reasoning applies in the case of Marius (see below).

⁸⁸ This statement is rather odd, given Cicero's criticism of Stoic rhetorical style, on which see Atherton 1988, esp. 403-404.

ro includes several declamation themes in *inv.*, some Greek, some Roman in character. Moreover, some passages in *inv.* suppose familiarity with Stoic philosophy and rhetoric. If Cicero did not have this kind of information from Philo⁸⁹, the obvious source would be Diodotus. Be that as it may, the way in which Cicero describes his activities in 86-84 BC makes them look very much like the context in which a young author might be working on his «first book».

2.8. *Translating Socratic dialogues*

In 1, 51-52 Cicero translates an entire passage from Aeschines the Socratic's dialogue *Aspasia*, in which Socrates gives an account of how Aspasia reasoned with Xenophon's wife and with Xenophon himself. The length of the passage and the dialogue style that is reminiscent of the Socratic dialogues by Plato and Xenophon make it safe to assume that Cicero had access to the Greek text by Aeschines. We know of another translation by the young Cicero of a Socratic dialogue: Xenophon's *Oeconomicus*. Cicero mentions this translation in *off.* 2, 87 and specifies that he made it when he was about the age of his son, Marcus, whom he addresses there. Cicero wrote *off.* in 44 BC and his son had been born in 65 BC, meaning that Cicero must have translated Xenophon's dialogue around the age of 21, *i.e.*, in ca. 85 BC. Translating two⁹⁰ Socratic dialogues in their entirety or in part points to studies with an Academic philosopher: Philo of Larissa, whom Cicero first met in 88 BC. Cicero's translation of the *Oeconomicus* shows that the translation in 1, 51-52 could well date to the mid-80s BC too.

2.9. *Concealing Marius' name: writing in the shadow of Sulla's return?*

In 2, 124 Cicero gives the example of a (Roman) soldier who killed a military tribune who tried to rape him. The identity of neither is revealed, but the use of *in eo milite qui* («in the case of the soldier who») suggests that the case must have been commonly known in Rome, at least in certain circles, and that Cicero expects his readers to have heard of it. According to Plu. *Mar.* 14, 3-6, the event predates Marius' third consulship (103 BC) and seems to have taken place in 104 BC (cf. *Mar.* 11, 1), *i.e.*, after

⁸⁹ See above.

⁹⁰ Some scholars think that Cicero's translation of Plato's *Protagoras* – yet another Socratic dialogue – dates to his youth (*i.e.*, 90s or 80s BC), while others place it after *fin.*; see Marinone-Malaspina 2004, 273. For a list of Cicero's translations of passages from Greek texts, see White 2015, 147-230, 338-355 (*inv.* 1, 51-2 is missing).

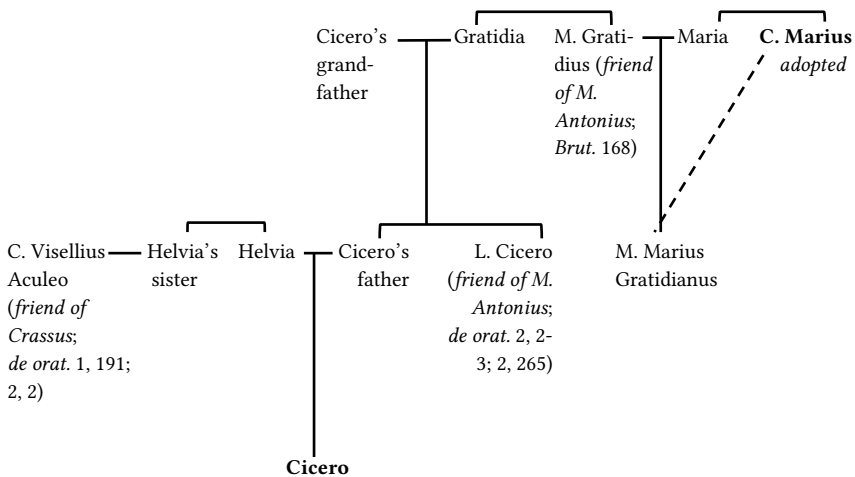
Cicero was born (106 BC). Cicero might have known the identity of one of the two persons involved, for he reveals more details in *Mil.* 9 (52 BC):

Pudicitiam cum eriperet militi tribunus militaris in exercitu C. Mari, propinquus eius imperatoris, interfectus ab eo est cui vim adferebat; facere enim probus adulescens periculose quam perpeti turpiter maluit. Atque hunc ille summus vir scelere solutum periculo liberavit.

This passage contains two important pieces of information:

- (1) Cicero knows that the military tribune was a relative of Marius;
- (2) Cicero praises Marius for his fair treatment of the aggressed soldier.

(1) is important because Cicero himself was distantly related to Marius by marriage. The Tullii Cicerones, the Gratidii, and the Marii, all three from Arpinum, were related by marriage. The brother-in-law of Cicero's grandfather was married to Marius' sister, as shown by the following simplified family tree of Cicero:



Moreover, according to Cornelius Nepos (*Att.* 1, 4), the younger Gaius Marius was taught with the young Cicero. So when writing *inv.* Cicero must already have known the identity of the military tribune in question. He cites the very case as an example in 2, 124 and uses *in eo milite*, not the more indefinite *in aliquo milite*. As an ambitious young *homo novus* from Arpinum, Cicero was certainly aware of his family's links to Marius, himself a *homo novus* from Arpinum who was six-time

consul by the time Cicero turned ten and seven-time consul by the time Cicero turned twenty. Moreover, Cicero composed a poem, *Marius*, in his honour; its date of composition is not certain, but several scholars assume it to date from the 90s or 80s BC (others from the 50s or 40s BC)⁹¹. Furthermore, the incident may have been used by the followers of Marius and/or those of Sulla in their propaganda for or against Marius. As pointed out above, Cicero's *in eo milite qui* confirms wide-spread knowledge in Rome of the incident, at least in military and in elite, political circles.

(2) shows that Cicero had a positive opinion of how Marius handled the situation. The fact that in 2, 124 he refers to this case shows that he did not have a negative or neutral opinion about it either, for otherwise he would have used a different example. Similarly, if Cicero had thought that the story had implied some disgrace for Marius because the military tribune was a relative of his (and, who knows, possibly of the Cicerones, too), he would not have got around this issue by leaving out the general's name (readers would still have been expected to get the reference *in eo milite qui*): he would in that case have chosen a different example altogether. The example is Roman, so it will not have come from a Greek source, and it is not found in *rhet. Her.*, which suggests that it does not go back to a shared source but was introduced by the young Cicero. Cicero chose the example and decided how to tell it.

This leads to the conclusion that, since it would have been natural for Cicero to proudly mention Marius' name, his silence in *inv.* about Marius' involvement seems odd and must have a good reason. After all, Marius was still powerful in the early 80s BC (he was named consul for the seventh time before his death in 86 BC). Furthermore, in 87 BC many of Marius' political enemies were assassinated and Sulla was declared *hostis publicus*. Cicero in 57 BC states that he saw his «fellow-townsmen» Marius in 87 BC, who seems to have left a deep impression on him⁹².

Hence, it seems safe to take the silence about Marius in *inv.* 2, 124 as a strong chronological pointer. Indeed, in 87-86 BC Marius was again among the most powerful people in Rome, as is shown by his appointment to the consulship for 86 BC together with L. Cornelius Cinna, who

⁹¹ Marinone-Malaspina 2004, 276, have a convenient overview. On the young Cicero and Marius, see also Rawson 1971, 76-78.

⁹² Cf. *p. red. ad Quir.* 19-21, *vidi ego fortissimum virum, municipem meum, C. Marium [...]; eum tamen vidi, cum esset summa senectute.*

supported him against Sulla. Cinna remained consul until his own death in 84 BC. Thus for the period 87-84 BC, there seems to be no reason why Cicero would have been silent about his «fellow-townsmen» Marius (*argumentum e silentio*), and after Marius' death in 86 BC the above mentioned rule of not naming any person alive would no longer have prevented Cicero from naming him⁹³. But things look different for 88 BC and for 83 BC onwards. In 88 BC Sulla was the first Roman to march on Rome with an army, and the outcome might not have been immediately foreseeable. In 84 BC Cinna, Sulla's then most powerful enemy in Rome, died. In spring 83 BC, Sulla returned with his legions to Italy from mainland Greece, arriving at Brundisium. The fights ended with Sulla's victory in the battle of the Colline Gate on 1st November 82 BC, after which he introduced his punitive measures. An estimated 10% of all Roman citizens on the Italian peninsula had died⁹⁴. As pointed out above, the influence of Philo of Larissa on the young Cicero makes 87 BC more likely than 88 BC as a «transitional» *terminus post quem*; moreover, Cicero describes the period of 86-84 BC as one in which *noctes et dies in omnium doctrinarum meditatione versabar* (*Brut.* 308). This means that of the two periods in which Sulla posed a grave danger (88 BC and 83 BC onwards), the one of concern here is the second one. An example of the danger posed to members of Marius' family during that second period is M. Marius Gratidianus, Cicero's father's cousin⁹⁵, who was a follower of Marius (his uncle and adoptive father) and was assassinated by Catiline, supporter of Sulla, after Sulla took Rome in 82 BC⁹⁶. The threat starting in 83 BC was indeed much greater than in 88 BC, as Sulla's march on Rome had longer-lasting effect. The young Cicero had served under Sulla in Nola⁹⁷ and may have known what kind of person was marching on Rome.

⁹³ If Marius had still been alive, explaining Cicero's silence by the «rule» of not mentioning people alive would be precluded here by the fact that the use of such a well-known incident as an example even without names would directly point to Marius, so this «rule» would have prevented Cicero from using this example even in an anonymised form.

⁹⁴ Cf. *OCD Cornelius Sulla Felix, Lucius*.

⁹⁵ See the simplified family tree above. In *Brut.* 168 Cicero calls Gratidianus' father *propinquus noster*.

⁹⁶ Broughton 1951, II 40, II 72; Kaster 2020, 105 n. 264, 124-125 n. 339. Rawson 1971, 76, stresses that there seems to have been a «real split» between the Cicerones and Gratidianus, but it might be difficult for us to know how much importance Sulla and his followers would have attributed to such a split. For the danger caused by family relations in those times, see also *Nep. Att.* 2, 1-2.

⁹⁷ See above; *div.* 1, 72; 2, 65; *Plut. Cic.* 3, 1.

Sulla's violent return to Italy and Rome in 83-82 BC realistically puts an end to the *inv.* project in 83 BC. The number of Roman casualties from spring 83 BC onwards is enormous and may explain why a young author might not have been in any mental state to continue writing a handbook⁹⁸. It is possible that Cicero had initially mentioned Marius' name in the example at 2, 124 and that under the threat posed by Sulla's return he decided to keep the example, but to delete Marius' name and possibly any praise for the fairness he showed towards the aggressed soldier.

Thus, early 83 BC is a realistic and strong *terminus ante quem*.

3. Conclusion

The considerations above can be summed up as follows:

- Cicero's military service at least in early 89 BC makes it unlikely that he was composing *inv.*, which lowers the *terminus post quem* to later in 89 BC or even 88 BC.
- *Inv.* includes several passages that show legal knowledge that Cicero must have acquired from Scaevola Augur and/or Scaevola Pontifex. The earliest year for which Cicero indicates legal studies is 89 BC, and it seems reasonable to think that acquiring the level of knowledge shown in *inv.* took more than one year. This lowers the *terminus post quem* to 89-88 BC, potentially even to 87 BC or later.
- Several elements of *inv.* presuppose that the young Cicero was studying or had already studied with Philo of Larissa by the time he wrote *inv.*, which lowers the *terminus post quem* to late 88 BC, 87 BC or even later.
- Cicero complains that by 88 BC law court activity had almost completely stopped. For 87 BC he signals the death of several leading orators, and only for 86-84 BC indicates a major revival of the law courts. Thus, it is reasonable to lower the *terminus post quem* to 87 BC or later.
- With the sole exception of Crassus, no orator of the 1st century BC is mentioned in *inv.*, although Cicero knew the names of

⁹⁸ The psychological suffering (traumata, diminished capacity to concentrate, etc.) of modern-day war refugees can give a good idea of how traumatising and «time- and energy-consuming» it is to live in a war zone or under the threat of war. Civil war, as between the Sullan and Marian factions in Rome, can be even more traumatising than war against an external enemy as it creates rifts among families or friends.

many orators and even heard or read some of their speeches. The notable absence of M. Antonius, which may not be due to any rules of literary etiquette, raises the question of whether it might have been advisable for Cicero not to mention him. This would have been the case in 87 BC or even until Cinna's death in 84 BC.

- Cicero describes 86-84 BC as years crammed with studies of all kinds. This, together with the major revival of law court activity in the same years, makes 86-84 BC a very likely period for Cicero to embark on a project like writing a rhetorical handbook.
- In ca. 85 BC, Cicero translates Xenophon's Socratic dialogue *Oeconomicus*. In *inv.* 1, 51-52 he translates a passage from the Socratic dialogue *Aspasia* by Aeschines the Socratic; the mid-80s BC thus seem a likely period for such a translation.
- The absence of Marius' name in the example involving his nephew is striking for several reasons. Avoiding Marius' name would have made sense whenever the danger posed by Sulla and his followers was greatest, *i.e.*, in 88-87 BC and again from late 84 BC and especially early 83 BC onwards. It is well possible that the example initially included Marius' name and that Cicero deleted it upon Sulla's return to Italian soil in early 83 BC.

The above reasons make late 87-84 BC or even 86-84 BC a very likely period for the start of (or at least the main work on) the project: 87 BC is a reasonable *terminus post quem*. The moment the young Cicero heard of Sulla's return to Italy in late 84 BC/early 83 BC can be considered a reasonable *terminus ante quem*. The many internal cross-references show a careful organisation within *inv.*, suggesting that Cicero gave it more care than he would later acknowledge in *de orat.* 1, 5. Some parts of the work may be called *rudia*, but certainly not all of them. Thus, one should grant the young Cicero enough time to compose his work: the diversity of material (both for the theory and the examples used: rhetorical, philosophical, legal) speaks against a rushed work. How long Cicero actually worked on *inv.* is impossible to say. It is equally impossible to know whether his writing was more or less continuously spread out or whether there were periods of intense work separated by periods of little or no work. Some parts (*e.g.*, his passionate criticism of Hermagoras in 1, 8) seem much more youthful and less polished than others (such as the proems). In the proem to Book 2 Cic-

ero affirms to have consulted various sources, and one may wonder whether he collected them all before «sitting down and starting the writing» or whether there are different layers of composition with some passages being more thoroughly revised than others⁹⁹. In any case, the most important phase would have been late 84 BC/early 83 BC: it seems to be at this time that Cicero was in the final stages of writing and decided to stop working on *inv.* and on the «big project» covering all *partes artis* – in *de orat.* 1, 5 Cicero speaks not only of *rudia*, but also of *incohata*, meaning «begun», implying «not finished» or «stopped». In anachronistic, modern terms¹⁰⁰: late 84 BC–early 83 BC is the time by which Cicero had, so to speak, made his editorial choices, and (without wanting to suggest anything about the circulation or «publication» of *inv.*, about which we know little to nothing) the time «by which this book went to press».

This dating has several additional advantages:

- Methodologically speaking, even if one of the above arguments were wrong, their sheer number is in itself a strong argument pointing to 86 BC/early 84 BC for the beginning of (or main work on) the *inv.* project and late 84 BC/early 83 BC for the end.
- Sulla's invasion of Italy and his march on Rome would explain why Cicero may not have been able to or been interested in carrying out the rest of the «big project» to write on all *partes artis*¹⁰¹, leaving it *incoh[at]um*. The fact that *inv.* includes several internal cross-references suggests that he did not rush the composition, whereas the fact that announcements regarding the treatment of *partes artis* other than *inventio* remain unfulfilled suggest that the end of the composition of *inv.* may have come rather abruptly: Cicero may not have had the time to go over the entire text again or (which is more likely) may have wanted to keep the doors of the «big project» open at that point so as to continue it later (after all, the Sullan episode of 88-87 BC had not lasted very long, so there may have been some hope still in 83-82 BC to finish the «big project»), which in the end he did not do for

⁹⁹ Achard 2002, 8, has the same kind of thoughts.

¹⁰⁰ Which might be helpful to see that the *terminus ante quem* may be more important than the *terminus post quem*.

¹⁰¹ Similarly, Achard 2002, 7-8. Some of the current political crises and wars give an idea of how intellectual life can be interrupted by major historical events.

political or professional¹⁰² reasons. Not discarding those unfulfilled announcements after losing interest in *inv.* seems unlikely since it would at the same time mean that Cicero would have «published» a work that he considered boring, of mediocre quality, or of little interest. It seems more probable that circulation of his handbook started at a time when he had not yet completely ruled out continuing with the «big project» and that once the book was «out», it was beyond his control.

- If we are to believe *Quinct.* 4 (81 BC) *Ita quod mihi consuevit in ceteris causis esse adiumento*, Cicero appeared for the first time as an advocate in court earlier in 81 BC or already before 81 BC. This would place the beginning of his lawcourt activity even closer to the end of composition of *inv.* and add a further reason for why he did not spend more time on his rhetorical treatise. His aim was not to become a *rhetor* and to attract students; to build his career as an advocate and future politician, appearing – and being seen – in court was much more important.
- Crassus seems to have left a very deep impression already on the young Cicero: he is the only Roman active in the 1st century BC to be included in *inv.*¹⁰³. Although Cicero seems to have been enthusiastic about attending lessons with a *rhetor Latinus*¹⁰⁴, he did not do so after Crassus and his colleague as censor had reproved the activities of Plotius Gallus and the *rhetores Latini* by edict in 92 BC¹⁰⁵. In the «Titinius letter» quoted by Suetonius¹⁰⁶, Cicero states that he was not allowed to attend a Latin rhetor because *continebar [...] doctissimorum hominum auctoritate, qui existimabant Graecis exercitationibus ali melius ingenia posse*. *De orat.* 2, 2 leads to the conclusion that Crassus must have been among these *doctissimi homines*. If rhetoric being taught in *Latin* was indeed among Cras-

¹⁰² See below.

¹⁰³ The example in 1, 94 may be inspired by Accius (170-ca. 86 BC), but this is uncertain and in any event Cicero does not clearly identify him.

¹⁰⁴ Cf. Suet. *rhet.* 26, 1, *equidem memoria teneo pueris nobis primum Latine docere coepisse Plotium quendam. Ad quem cum fieret concursus et studiosissimus quisque apud eum exerceretur, dolebam mihi idem non licere.*

¹⁰⁵ The text of the edict is found in Suet. *rhet.* 25, 2; Gell. 15, 11, 2. Cf. also Cic. *de orat.* 3, 93-95; Tac. *dial.* 35, 1. On Plotius Gallus, see Kaster 1995, 291-294.

¹⁰⁶ Suet. *rhet.* 26, 1. Kaster 1995, 291 («a letter of Cicero»), and Vacher 2003, 29, do not question the authenticity of this letter.

sus' motives for this edict¹⁰⁷, writing and «publishing» a rhetorical handbook in Latin not long after Crassus' death in 91 BC could have been seen as offensive to Crassus' memory. Doing so in the year(s) leading up to 83 BC would have been much less so.

- In 84-83 BC, Cicero would have been 22-23 years old, which could be called *adulescens* and, in an attempt of ridicule, be downgraded into *adulescentulus* or *puer* (*de orat.* 1, 5), especially if Cicero took some time to write *inv.*, starting at the age of around 20 (ca. 86 BC). Moreover, in *off.* 2, 51 Cicero says that he delivered his *S. Rosc.* (80 BC) as *adulescens*, meaning that this term can be stretched to the age of 26 years. This confirms that *adulescens* would be acceptable for 84-83 BC by Cicero's own standards and could even explain a neutral use of the diminutive form for 84-83 BC if the normal form can be used for Cicero up to 80 BC¹⁰⁸.
- It is surprising that the sections in *inv.* on the *genus deliberativum* and the *genus demonstrativum* contain hardly any or no examples: out of the 131 examples identified, only three are found in the section on the *genus deliberativum* and none in that on the *genus demonstrativum*. The use of examples is unrelated to the relative shortness of treatment that these two *genera* receive in *inv.* and which could go back to Cicero's sources. Cicero could have used more examples to illustrate the theory of these two *genera*, had he wished to do so. The use of the Casilinum example in 2, 171 for the *genus demonstrativum* shows that Cicero did not simply translate a Greek source without making any adaptations. Unlike the *genus iudiciale* (except for

¹⁰⁷ Potential reasons for this edict may have been (for an overview of scholarship prior to 1996, see Leeman *et al.* 1981-2008, IV 305): that the Latin rhetoricians' teaching undermined the traditional «*tirocinium fori*» (so *e.g.* Schmidt 1975); that it diluted or distorted traditional Greek rhetoric, which by then had become part of the *mos maiorum* (so *e.g.* Gruen 1990, 187-191); and/or that it changed the social status of the Latin teachers (independent professionals instead of slaves or freedmen), who occupied their students for long hours and made them less available for the traditional «*tirocinium fori*» (so *e.g.* Stroup 2007, 28-33). The old argument that the Latin rhetoricians would have made rhetoric as a weapon accessible to less wealthy classes in Rome not fluent in Greek has been more and more rejected. On the edict of 92 BC, see *e.g.* the commentaries by Leeman *et al.* 1981-2008, IV 304-306 on *de orat.* 3, 93-94 and by Kaster 1995, 272-275 on Suet. *rhet.* 25, 2, as well as Pina Polo 1996, 81-88, and the in-depth study by Luzzatto 2002.

¹⁰⁸ For the reasons explained above, we should not take as a serious standard the use of *adulescentulus* for the 26-year-old Cicero in *orat.* 107 (which refers to *S. Rosc.*, 80 BC). But even if we did, this would support the view that *puer* or *adulescentulus* in *de orat.* 1, 5 can be applied to 84-83 BC.

political trials), the other two *genera* are linked much more directly to politics, so a young author might have wanted to stay out of trouble. Cicero's statement in *Brut.* 308 about the revival of law court activity in 86–84 BC suggests that the *genus iudiciale* was not subject to the same number of restrictions as expressing one's political views freely and without danger then, at least for those opposed to the political faction in power.

- Cicero seems to have met Apollonius Molon in Rome in 87 BC¹⁰⁹. This could¹¹⁰ explain why some material may be of Rhodian origin, such as the examples in 1, 47 (the Rhodians farming out their customs-duties on contract), 2, 87 and 2, 124 (the Rhodian ambassadors), 2, 98 and 2, 124 (a Rhodian law prohibiting ships with rams to enter the harbour). That the Apollonius mentioned in 1, 109 seems not to be Apollonius Molon, but Apollonius Malakos, has no impact on this, as Cicero all his life called Molon by this name («Molon», not «Apollonius»)¹¹¹ and because he could have had the quotation in 1, 109 from M. Antonius, who had met Malakos.
- Prose rhythm in *inv.* is strikingly similar to that in Cicero's first two speeches (*Quinct.*, 81 BC; *S. Rosc.*, 80 BC)¹¹². This suggests a date for the end of composition and hence final «editorial choices» that is not too far away from 81/80 BC: late 84/early 83 BC seems plausible in this respect.
- Dating *rhet. Her.* is equally difficult. Many scholars date it to the mid–80s BC, meaning that *inv.* and *rhet. Her.* are roughly contemporary. Some of their material must go back to a common Latin oral source. Yet, as Cicero did not attend the school of a Latin *rhetor* (Plotius Gallus) although he would have liked to¹¹³, he seems to have relied on the class notes of someone else («X»). Given that Cicero wished to be taught rhetoric in Latin, it is possible that he asked X for his class notes at the time when he was

¹⁰⁹ Cf. *Brut.* 307, *eodem anno etiam Moloni Rhodio Romae dedimus operam et actori summo causarum et magistro*. Kaster 2020, 158 n. 473, argues that the strangeness of Molon's «unexplained» presence in Rome in 87 BC is no proof that the passage is interpolated.

¹¹⁰ Another explanation would of course be that some of the other sources used by Cicero was (were) directly or indirectly linked to Rhodes.

¹¹¹ See RE II *Apollonios* 84.

¹¹² Compare the respective data in Keeline-Kirby 2019.

¹¹³ Suet. *rhet.* 26, 1.

not allowed to attend a Latin *rhetor*'s school¹¹⁴; this would be before Crassus' death, *i.e.*, in the late 90s BC. Some of the differences in phrasing and content between *inv.* and *rhet. Her.* in passages that seem to go back to a common oral Latin source could be explained if X and the *Auctor* were taught by the same Latin *rhetor* (Plotius Gallus?), but in different years, sometime between the second half of the 90s BC and the mid-80s BC.

4. Identification of layers of composition

The determination of different layers of *inv.* is a difficult and partially speculative topic: we have no idea whether Cicero worked more or less continuously on *inv.*, or whether at more or less regular intervals, or whether he wrote a first «draft» of *inv.* and returned to it only years later.

If it is at all possible to identify layers, it would be safe to assume that 1, 5b-17 or 1, 5b-19a is among the oldest if not the oldest layer, for two reasons:

(i) this passage includes harsh criticism of Hermagoras of Temnos (1, 8; 1, 12-14)¹¹⁵ that carries a «youthful» flavour and is less tolerant in tone than Cicero's disagreement with Hermagoras about *digressio* in 1, 97, which shows less *studium et ira*¹¹⁶;

(ii) there are good reasons of style and content to believe that the proems are among the latest layers of composition; if this is true, Cicero may have started with 1, 5b or 1, 6, *i.e.*, with the definition of rhetoric and other preliminary definitions and subdivi-

¹¹⁴ See the chapter in Hirsch (forthcoming) on Cicero's education and sources.

¹¹⁵ Cf. *inv.* 1, 8, *nam Hermagoras quidem nec quid dicat attendere nec quid polliceatur intellegere videtur [...]. Quas quaestiones procul ab oratoris officio remotas facile omnes intellegere existimamus [...]. Magna amentia videtur. Quodsi magnam in his Hermagoras habuisset facultatem studio et disciplina comparatam, videretur fretus sua scientia falsum quiddam constituisse de oratoris artificio et non quid ars, sed quid ipse posset, exposuisse. Nunc vero ea vis est in homine ut ei multo rhetoricam citius quis ademerit quam philosophiam concesserit: neque eo quo eius ars quam edidit mihi mendosissime scripta videatur; nam satis in ea videtur ex antiquis artibus ingeniose et diligenter electas res collocasse et non nihil ipse quoque novi protulisse; verum oratori minimum est de arte loqui, quod hic fecit, multo maximum ex arte dicere, quod eum minime potuisse omnes videmus. *Inv.* 1, 12, *quod eius, ut nos putamus, non mediocre peccatum reprehendendum videtur, verum brevi, ne aut, si taciti praeterierimus, sine causa non secuti putemur aut, si diutius in hoc constiterimus, moram atque impedimentum reliquis praeceptis intulisse videamur.* The pedantic demonstration that follows also points to a not yet very mature author.*

¹¹⁶ *Inv.* 1, 97, *hanc si qui partem putabit esse orationis, sequatur licebit. [...] Nobis autem non placuit.*

sions – which would be a rather natural starting point for any author writing a theoretical text.

More speculative already is the question whether the bulk of Book 2 was written next, possibly after some time: no *ad hominem* comments against Hermagoras or other rhetoricians are found in 2, 11-178, making Book 2 already look more mature. Book 2 makes use of the three Aristotelian *genera causarum* (*iudiciale, deliberativum, demonstrativum*) presented in 1, 7 as well as of the theory of Issues and of the *iudicatio* scheme discussed in 1, 10-19a. Sticking with these topics before moving on to the next major block (the *partes orationis*) would make sense for an author. Moreover, the absence of philosophical examples in Book 2, with the exception of Aristippus in 2, 176, is conspicuous. We know for sure that Cicero's main philosophical education starts with Philo of Larissa in or after 88 BC, *i.e.*, years after he started rhetorical education. Thus, he would have had the knowledge required to write Book 2 before those parts of Book 1 that show philosophical knowledge. Moreover, in 1, 49 (before moving on to forms of argumentation taken from philosophy) Cicero refers to Book 2, which could be explained in two ways: by 1, 49, he has already (*a*) decided on the general structure of *inv.*, or (*b*) written (most of) Book 2. Two passages of Book 2 (2, 65-68; 2, 160-162) show legal knowledge that Cicero could have acquired from Q. Mucius Scaevola Augur or (more likely) from Q. Mucius Scaevola Pontifex, possibly from 89 BC onwards, which would place it before or towards the beginning of Cicero's main philosophical education. Yet, while all these are possible hints, they are not conclusive evidence.

While 1, 20-33 and 1, 97-109 show no major philosophical influence, the same cannot be said of 1, 34-96 and especially of 1, 51-96. This may be a sign that the latter are among the latest technical passages to have been written. The transition in 1, 49b, *ac fons [...]*-1, 50 could be a sign of different layers of composition: 1, 20-49a and 1, 97-109 having been written before 1, 51-96. This would have implications for 1, 12 *Si deliberatio [...]*-1, 14 *alicuius constitutionis*, where Cicero uses the fivefold syllogistic pattern explained in 1, 58-59 and 1, 67: this passage would be later than the rest of 1, 5b-17 (or 1, 5b-19a) and replace a shorter (NB 1, 12 *brevi*) disdainful comment about Hermagoras in 1, 12.

As pointed out above, the proems, which are stylistically quite polished and bear clear marks of philosophical education, could be among the latest layers of composition, after which Cicero would have gone

over the entire text again to add certain transitions and make minor modifications. The fact that he did not delete unfulfilled promises to write about the other *partes artis* points to an abrupt end of working on *inv.*, which could be explained by Sulla's return to Italy in early 83 BC and the panic and chaos it caused in Rome.

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