

CONTORTOR LEGUM: THE HERO OF THE PHORMIO

Only once in his entire commentary does Donatus deem it important enough to mention who acted in a comedy of Terence. At *Phormio* 315 he notes that — to the poet's delight — Ambivius Turpio himself played the title role.

Phormio is, in fact, the only comedy of Terence which has a hero in the traditional sense. What is more unusual, the hero is a lawyer. Moreover, though at one point he is derided as being *contortor legum* (374), Phormio is far from being a typical shyster *gloriosus* like Maistre Pierre Pathelin of the medieval farce:

Pathelin: Il n'y a personne qui ait si haute connaissance du métier d'avocat.

Guillemette: Non, par Dieu, mais celui du trompeur... Terence's unique hero has true legal acumen; he uses rather than abuses the law of the land. Indeed, this in itself is a novelty in the annals of comic literature.

Comedy traditionally deals with law only to break it. Indeed, one of the basic themes of the genre is "getting away with it". As Eric Bentley reformulates the Freudian definition, the comic hero "is permitted the outrage, but spared the consequence."¹) For example, when the chorus of the *Birds* invites the spectators to their comic utopia, they insist that everything which is normally *αἰσχρὰ τῷ νόμῳ* is in their territory *καλά* (*Av.* 755–56). Furthermore, the protagonists energetically expel an intruder trying to sell *νόμοι νέοι* (1037).²) And we recall that Strepsiades, as his name suggests, cares only to "twist" the law, *στρεψοδικεῖν* (*Nub.* 434; cf. *στρεψοδικοπανουργία* *Av.* 1468). This is the traditional climate of comedy, a world which Johan Huizinga describes in his brilliant *Homo Ludens* as one which involves a temporary *suspension* of the rules.³)

1) Eric Bentley, "The Psychology of Farce", introductory essay to *Let's Get a Divorce and Other Plays* (New York, 1958), p. xiii.

2) Cf. the puns on *νόμος* and *νομός* in *Av.* 1286–87; 1343, 1346.

3) Johan Huizinga, *Homo Ludens: A Study of the Play Element in Culture* (Boston, 1950), pp. 8 ff.

Another Aristophanic hero, Philokleon, also longs for the courtroom. But he aspires less to be a Solon than a Sybarite (cf. *Vesp.* 578); he wants to judge for the fun and power of it:⁴⁾

Φιληλιαστής ἐστιν ὡς οὐδείς ἀνὴρ,
ἐρᾷ τε τούτον, τοῦ δικάζειν...
(88–89)

Praxagora's revolution in the *Ecclesiazusae* does indeed reorder the structure of the state, but it would still be inaccurate to call her – as one may dub Phormio – a legalizing hero. And even the famous Aristophanic *agon*, though it be, in one critic's words, a "dramatized debate," is never a real (or serious) legal procedure.

To counter our claim for Phormio's uniqueness, one might adduce Menander's *Epitrepontes*, which indeed contains a fair share of legal terminology. But, as its title suggests, it involves merely an arbitration by a third party, at best a mock-trial, as old Smikrines remarks, since the antagonists are both slaves (228–30).⁵⁾ True enough, Syrisus, one of the bondsmen, quips that everyone must be totally immersed in the legal codes merely to get along in Athenian daily life (417–18):

πάντων δ' ἀμελήσανθ', ὥς ἔοικε, δεῖ δίκας
μελετᾶν διὰ τοῦτι πάντα νονὶ σώζεται.

But nonetheless, the *Epitrepontes* is still far from being a comedy focused on the intricate workings of the law.

It is well known that Plautus teems with references to legal matters, in his case, a typically Plautine hodge-podge of Greek and Roman. But Plautus, like Terence, has most often been used merely as an archaeological site for scholars digging under literature to unearth legal knowledge of the classical world.⁶⁾ And

4) If one compares Phormio's delight in legalism with that of Philokleon, it is noteworthy that the Aristophanic protagonist's exuberance is far more physical. Terence's hero takes intellectual delight in judicial astuteness for its own sake. Even with regard to the litigation itself, the trial of the *Wasps* is a fantastic parody, while the legal material of the Phormio appears to be a faithful representation of Attic law. Cf. M. R. Lallier, "Le procès de Phormion," *Ann. de l'Assoc. des Etudes Grecques* 12 (1878), 61. It is completely consistent that Philokleon beats the way to his final triumph with his fists, whereas Phormio succeeds from beginning to end through cunning.

5) References to Menander, unless otherwise indicated, are to the text of F. H. Sandbach, *Menandri Reliquiae Selectae* (Oxford, 1972).

6) See particularly U. E. Paoli, *Comici latini e diritto attico* (Milan, 1962); cf. also A. Schwind, *Über das Recht bei Terenz* (Würzburg, 1901), esp. 26–54, 83–84. One may note in Schwind that legal references are so much more

in Plautus the law is never taken seriously; the emphasis is ever and always on comic evasion. His protagonist is the slave and, however *callidus* he may be, he never shows even the pseudo-professional interest of Menander's Syrus. Plautus likes *malitia*, not *scientia*.⁷⁾

Not so in the case of Terence's only hero. He is an expert advocate in a play which abounds in legalistic maneuvers, legal language both straightforward and metaphorical, and which culminates in a transformation of the entire stage into a courtroom. Indeed, the word *lex* alone, in its denotation of statute, occurs no fewer than thirteen times in the *Phormio*. This is twice as often as in all of Terence's other plays combined. To ignore this phenomenon – as most critics have – is to ignore the artistic principle which animates the entire comedy.

If the old debate over what in Roman comedy is Attic and what is adaptation still flourishes anywhere, some zealous philhellene might retort that we are after all discussing what Günther Jachmann *atque alii* disparagingly call *Übersetzungsliteratur*.⁸⁾ After all, Terence's avowed model is the *Epidikazomenos* (*The Claimant*) by Apollodorus of Carystus, and even Karl Büchner, in the most recent major study of Terence, concedes that the *Phormio* alters the Apollodoran original only very slightly.⁹⁾ But this does not really weaken our discussion. For it must be recalled in the analysis of any Roman comedy that the Latin author was free to *choose* his Greek model. After all, it was not by some haphazard chance that Menander's *Adelphoe* was rendered into Latin for the Funeral Games of Lucius Aemilius Paullus (160 B. C.). How could the theme of giving one's son for adoption *not* have direct relevance to the man whose memory was being honored? Thus one must begin any discussion of the

numerous in *Phormio* than in any other Terentian play that his discussion of them is more than twice as long as that of any other comedy.

For other comments on legal matters in the *Phormio*, see O. Fredershausen, *De iure Plautino et Terentiano* (Göttingen, 1906), 61–62, and "Weitere Studien über das Recht bei Plautus und Terenz," *Hermes* 47 (1912), 209–10, 217–21, 229, 233, 235. Also see, in general, M. Radin, "Greek Law in Roman Comedy," *CP* 5 (1910), 365–67.

7) See Erich Segal, *Roman Laughter* (Cambridge, Mass., 1968), 99f.

8) See, for example, Jachmann's article on Terence in Pauly-Wissowa (VAI, 598ff.) which damns the playwright with such faint praise as "auch Übersetzen ist eine Kunstleistung" (625). This aesthetic position was, of course, made fashionable by A. W. Schlegel.

9) Cf. K. Büchner, *Das Theater des Terenz* (Heidelberg, 1974), 312. (But see also note 22 below, on the finale of the play.)

Phormio by acknowledging that Terence chose to render this play of Apollodorus in which law is so prominent, and then further emphasized the legalistics.

Like every Terentian play but *Adelphoe*, the *Phormio* involves a *cognitio*, the last-minute revelation that somebody is, in reality, somebody else. But the significant difference between Menandrian and Terentian comedy is that the secret identities are *not* vouchsafed to the Roman audience by means of an expository prologue. Thus the actors become autonomous instead of automata: ethos replaces *tyche*.¹⁰) In the case of *Phormio*, as Büchner remarks, the ignorance of both characters and audience strengthens "die *causae* der beiden Seiten,"¹¹) which is to say, the legal maneuvering of Phormio and Demipho.

After his usual polemic prolegomenon, Terence begins with an *in agendo* exposition, a dialogue between two slaves in which it is revealed that a pair of old men, brothers, have gone abroad, leaving their respective sons in the care of the slave Geta. Naturally the youths have misbehaved. But, as in every Terentian *duplex argumentum*, in different ways. First young Phaedria has become enamored of a *citharistria*. Too poor to purchase her from the *leno*, he merely gazes fondly at her from across the street.

As Phaedria sits and pines, his cousin Antipho hears of a beautiful young girl who also sits—just around the corner—weeping over her dead mother. A mere look at the lachrymose lass, and Antipho is struck with love. But the next morning when he tries to "get acquainted" with the girl, her nurse warns him that she is freeborn. If he wants her, he must marry her. Antipho is willing to wed, yet fears the wrath of his parsimonious father who would, he is certain, want him to marry a rich woman, for a huge dowry (cf. 120–21). He thus needs a strong pretext to wed the poor girl. Indeed, since his father is astute (a rarity in Roman Comedy), he needs a strong legal pretext. Ergo, he needs Phormio.

The title character is introduced in narrative. Indeed, he will appear in person in but two scenes, occupying merely one-third of the play. But from the moment his name is introduced, the stage is his. We hear:

...est parasitus quidam Phormio
homo confidens...

(122–23)

10) Cf. Varro *ap.* Non. 374. 9: *in ethesin Terentius poscit palmam*.

11) Büchner (n. 9), 325.

Critics as early as Cicero have leapt upon these words either to call the protagonist "parasite" or "confidence man,"¹²⁾ neither of which is an adequate description. Firstly, he is much more than the stereotypical food-mad, flattering *parasitus* like Plautus' bread-munching Artotrogus in the *Miles*, or sponging Peniculus in the *Menaechmi*. Nor do his fleeting references to feasting make him very much like Terence's real portrayal of the type, Gnatho in the *Eunuch*. And *homo confidens* is merely an epithet, not an occupation. True enough, Phormio is bold, as W.G. Arnott's recent analysis of his language demonstrates.¹³⁾ He is hubristic in every sense, but he is essentially a canny barrister. Significantly, Phormio's very first words in the play (as reported by Geta) are *lex est...* (125).

Phormio proposes to act on behalf of his young client in an *epidikasia*. By Athenian law an orphaned girl (*orba* = *epikleros*) had to be married to her next of kin.¹⁴⁾ Terence explains this law carefully in 125-26, since it was literally foreign to his Roman audience. Phormio has promised swift success and will pretend to be a friend of the girl's father, "suing" Antipho as next-of-kin and "forcing" him to marry his beloved. He puns freely: *ego te cognatum dicam et tibi scribam dicam* (127), playing with the legal term *dica* (= *dikē*). (Cf. 329, 439, 668.) Naturally, he wins. And though he is aware that he will encounter opposition when the young man's father comes, he shows no fear: *mibi paratae lites: quid mea?* (133), "what do I care, I'm ready for action." Or, over-literally rendered, "my legal case is prepared." Phormio is a lawyer even in metaphor. Contrast the insouciance of the Plautine slave who embarks on audacity with merely his "back prepared": *tux tux tergo erit meo, non curo!* (*Persa* 264).¹⁵⁾

Naturally, as in all such comedies, the father returns unexpectedly (heralded by Geta, the sprinting slave, 179ff.). Young

12) Cf. Cic. *Pro Caecina* 27: *nec minus confidens quam ille Terentianus est Phormio*. Yet when alluding to him in *Phil.* 2. 6. 15 Cicero seems to be stressing Phormio's "parasitical" aspect.

13) See W.G. Arnott, "Phormio Parasitus," *Greece and Rome* 17 (1970), 32-57.

14) Cf. Men. *Aspis* 138f. and A.R.W. Harrison, *The Law of Athens I* (Oxford, 1968), 132 f. For Roman usage of this law, cf. U.E. Paoli, "L'ἐπίκληρος attica nella palliata romana," *Atene e Roma*, ser. III, 11 (1943), 19-29.

15) Cf. Geta at *Phormio* 248-50:

Meditata mihi sunt omnia mea incommoda, erus si redierit: Molendum usque in pistrino, uapulandum; habendae compedes, Opus ruri faciundum....]

Antipho bolts. Geta is left holding the bag – or in this instance – the case. For old Demipho is wise in the laws of Athens and justifiably indignant that his son did not act more shrewdly in court. Geta argues that there was nothing to be done, *lex coegit* (236). Demipho rages that they bungled the proceedings, *causam tradere advorsariis* (237). Young Phaedria “pleads” that his newly married cousin be forgiven for his lack of courtroom expertise (270ff.), while Demipho insists he should have “lawyered” better. Bondsman Geta then adds that he too is aware of his own legal situation, i. e., *servom hominem causam orare leges non sinunt* (292). But at 293ff., Demipho explains how the case might have otherwise been handled. He knows his *epidikasia* no less than Phormio. They could have supplied the girl with a dowry and married her off. And while he seeks further legal counsel, he demands to see *istum patronum mulieris* (307) ... Phormio.

To say the least, the audience has been set up for the hero’s appearance. And when Phormio bursts on the scene at 315ff., he does not disappoint. Before he faces Demipho, he treats us to a bit of self-celebration. Whereas Geta the slave fears for Phormio’s future, the man himself boasts that he is so clever he can “beat up anybody,” i. e., commit assault and battery without any fear of repercussions. He explains his legal immunity to Geta:

factumst periculum,¹⁶ iam pedum visast via.
quot me censes homines iam deverberasse usque ad necem?
hospites, tum civis? quo magis novi, tanto saepius.
cedo dum, enumquam iniuriarum audisti mihi scriptam dicam?
(326–29)

The explanation is that since he’s poor, he cannot be sued for damages and thus if condemned (it is Roman law this time – straight from the XII Tables), he would become *addictus*, i. e., an indentured servant working for the man he had wronged.¹⁷) But this would be further damaging to his victim:

dices ‘ducent damnatum domum’:
alere nolunt hominem edacem et sapiunt mea sententia,
pro maleficio si beneficium summum nolunt reddere.

(334–36)

For a brief moment Phormio does play the parasite. He puns about the joy of eating a *cena dubia* ... *ubi tu dubites quid sumas potis-*

¹⁶ Since *Periculum* (326) is also a legal term (cf. Cicero *Imp. Pomp.* 1. 2) there may also be in Phormio’s *factum periculum* an echo of *mibi paratae lites* (133).

¹⁷ Cf. Paoli (n. 6), 52–53.

sumum (342-43).¹⁸ But to call Phormio merely a *parasitus* is tantamount to calling Falstaff merely a *miles gloriosus*.

Now for once a theatrical *agon* is a genuine judicial debate. Demipho enters with a trio of *advocati*. The stage teems with lawyers. Demipho argues well, indeed so strongly that Phormio has a temporary lapse of memory. But in the end, the stronger legal stance prevails. Phormio asserts that the old man is no exception to the law, and a case once tried cannot be reopened:

at tu qui sapiens es magistratus adi,
iudicium de eadem causa iterum ut reddant tibi,
quandoquidem solus regnas et soli licet
hic de eadem causa bis iudicium apiscier.
(403-406)

Demipho offers *id quod lex iubet* (409), i. e., to pay a dowry and have the girl marry someone else. Phormio parries this thrust as well, and after a speech heavily emphasizing the weight of law (*lex iubet* 414), concludes with the admonitory proverb "*actum ne agas*" (419), "Never open a closed case." And for good measure, Phormio exits threatening, that should Demipho offend the girl in any way, he will respond with a huge lawsuit, *dicam tibi inpingam grandem* (439).

In the ensuing scene, Demipho, who is no fool, turns to his three advisors, who are. They each offer contradictory legal conclusions, clouded in courtroom jargon and cliché (including the famous *quot homines tot sententiae* 454). The only one who understands anything is Demipho who observes, *incertior sum multo quam dudum* (459). Indeed the *advocati* are farcical figures, lawyers *gloriosi*, traditional comic foolish "professors," like the *dottori* in the *commedia dell'arte*. Phormio, who is quite the opposite, has won his debate on the merits of legal acumen, with a bit of *audacia* thrown in for good measure.

In the second plot, the *leno* who has promised to sell Phaedria's girl to a *miles* has his own legal code (cf. 533: *mea lege utar*): first paying first served. Thus, if Phaedria can get the money now, he'll get the girl. This is a rather Plautine dilemma, and so, understandably, the youth turns to his slave for salvation. But unlike the Plautine clever slave, Geta must himself turn again to Phormio (560). Indeed, the deliberate diminution of the slave's resourcefulness has prompted at least one critic to remark that

18) Cf. Plautus' similar pun in *Cure.* 412 ff.

Terence has created Phormio as a kind of new rival-hero to Plautus' familiar *architectus doli*.¹⁹)

To obtain the money to free Phaedria's girl from the *leno*, Phormio engages once again in legalistic manipulations, which are, like his original acts of lawyering, described in detail by Geta (592 ff.). The slave reports that Phormio (again posing as *amicus familiae*) has agreed to make a cash settlement for – not coincidentally – exactly the amount young Phaedria needs to redeem his music girl. In return for this payment Phormio has agreed to *desistere litibus* (634). The oldsters in the play are now duped to satisfy the love of the second *adulescens*. But by legal maneuver, not *malitia*.

At 829 Phormio enters again with a pithy triumphal paean to his own accomplishments: *argentum accepi, tradidi lenoni: abduxi mulierem*. Overenthusiastic critics have too flatteringly compared his speech to Caesar's *veni vidi vici*, confusing the Battle of Zela and the triumph of zeal. But again there is a future risk, when the old men discover what has really become of the thirty *minae* "dowry." Still, for the moment, Phormio can close his office and have a holiday:

nunc una mihi *res* etiam *restat* quae est *conficiunda*, *otium*
ad *senibus* ad *potandum* ut *habeam*...

(831–32)

But, uncharacteristically for a so-called *parasitus*, it is Phormio himself who offers to throw the drinking party: *nam potaturus est apud me* (837).

Geta enters for the second time, again as a sprinting slave, but now bearing good tidings (841 ff.). He has eavesdropped and discovered that Antipho's undowered wife – the cause of the first legal dispute – is not only of good family, but the long-lost daughter of his uncle, old Chremes. But she is the issue of a bigamous, long-kept-secret marriage. This juicy bit of information sets the stage not merely for a standard *cognitio* (though the girl never appears), but for a final move by Phormio to make sure that the thirty *minae* need never be reimbursed.

The two old men enter to confront our hero. They are anxious to get back their dowry-money since the once-"impro-

19) Cf. C.W. Amerasinghe, "The Part of the Slave in Terence's Drama," *Greece and Rome* 19 (1950), 62–72. Cf. Fraenkel's chapter in *Plautinisches im Plautus = Elementi Plautini in Plauto*, trans. Franco Munari (Firenze, 1960), 223 ff.

per" wedding now suits them both just fine. Phormio again argues an *actum ne agas*. In slapstick fashion they now try quite literally to "shake him down." Marouzeau describes the action as "une parodie juridique... qui dégénère en scène de violence."²⁰) Phormio does not relent. Indeed he shouts for Nausistrata, Chremes' current wife, so he can reveal her husband's bigamy. Some scholars point to this ploy to accuse Phormio of being a petty blackmailer.²¹) But in fact he persists even after they offer him the money to keep. And to a special purpose.

Since Phormio has been so obdurate, Demipho now suggests the oldsters themselves reveal Chremes' bigamy, plead for mercy – and get back their cash. Note carefully Phormio's reaction:

Demipho: In ius eamus!

Phormio: In ius? *huc* si quid lubet!

(981)

Indeed, in what has been acknowledged to be a Terentian addition to the original ending,²²) the *entire stage* is here transformed into a court of law. There are arguments presented for both defense and prosecution of old Chremes' bigamy. His wife appears. Phormio recounts the particulars of the case (995 ff.) and the crime: a secret wife on Lemnos (1004).

At this point old Demipho, the "defendant's" brother, steps in to deliver an intelligent, if somewhat sophisticated, defense oration (1014 ff.). Like any good advocate, he gilds the facts to suit his client's argument (cf. the "true details" learned at 873). His is a plea for clemency: it was long ago, Chremes was rather drunk, 'twas in another country and besides, the wench is dead (1016 ff.). But Nausistrata is not placated (1021 ff.). Phormio then proposes a punishment. He proposes that the thirty *minae* be employed to free the music girl. The wife agrees: "How can it be improper when a youngster has *one* mistress if his father had *two* wives?" (1041–42).

In sum, a total triumph for every one of Phormio's arguments, and his ecstatic shout at 1027 is hardly humble:

sic dabo: age nunc, Phormionem qui volet lacesito:

faxo tali sit mactatus atque hic est infortunio.

(1027–28)

20) J. Marouzeau, *Térence* (Paris, 1947), II, 191, n. 1.

21) Cf. Arnott (n. 13), 32 and 46–52.

22) Cf. Büchner (n. 9), 355–60, 479–81.

He can at last relinquish advocacy and become what he is called before the play began, a parasite. He gets himself a dinner invitation. But even here, all go to the final banquet with one legal issue still unresolved: Phaedria must ultimately decide what to do about his philandering father. In the final line of the play (1055), Nausistrata appoints him *index noster*. Thus Terence's comedy begins with a lawsuit closed and concludes with a lawsuit opened. "*Lex est*" is the overture, entr'acte and finale.

But who is this unique Phormio, and why does legal action so dominate Terence's play from start to finish? We have already seen that he is more than the traditional parasite. And it is also true that he shares many of the characteristics of the Old Comedy *sykophantes* who plied his trade in the Athenian courts.²³ The type persisted in New Comedy (cf. Menander, *Georgos* frg. 1, OCT, p. 34). We find him in Plautus as well (cf. *Persa* 62ff., where *quadrupulatores* = *sykophantai*). Plautus' Curculio is a so-called *sycophanta*, but is rather a petty thief and resourceful con-man, more like Molière's Scapin than Terence's Phormio. The Latin hero displays a particular type of roguery that is aptly described in another Terentian play: *ius summum saepe summast malitia* (*H. T.* 796).²⁴ Yet even granting that Phormio has some Athenian ancestry, and not ignoring the fact that Donatus calls him *sycophanta*,²⁵ we cannot totally explain why Terence has chosen and developed this character as the hero of his Latin comedy.

From earliest times, law was so inherent a part of the Roman mentality that one might paraphrase Tacitus and claim *urbem Romam a principio leges habuere*. And their importance increased with each succeeding era.²⁶ The first Roman schoolbook was not Homer, but the Twelve Tables.²⁷ At the end of the fourth

23) Cf. Ar. *Ach.* 818f., *Av.* 1410f., *Plu.* 850f. See J. O. Lofberg, "The Sycophant-Parasite," *CP* 15 (1920), 61-72.

24) This is clearly proverbial: see P. McGlynn, *Lexicon Terentianum* (London and Glasgow, 1963), s. v. *malitia*. A fragment of Menander (635 K.) associates the shyster and the sycophant:

καλὸν οἱ νόμοι σφόδρ' εἶσιν ὁ δ' ὄρων τοὺς νόμους
λίαν ἀκριβῶς συκοφάντης φαίνεται.

25) Cf. Donatus on 279, 319, and 352.

26) Cf. Tacitus' cynical description of the growth – and hypertrophy – of law in Rome, which concludes with the observation that it reached such complexity that *corruptissima re publica plurimae leges* (*Ann.* 3, 27).

27) Cf. Friedrich Leo, *Geschichte der röm. Literatur* (Berlin 1913): "Spurius Carvilius, der in der Zeit der beginnenden Literatur die erste Elementarschule auftrat (Plutarch qu. Rom. 278^e), hatte vielleicht kein anderes

century BC, when the *Ius Flavianum* made public the judicial deliberations of the pontiffs, law became a still wider subject of conversation.²⁸⁾ At about the time of Plautus' birth, Tiberius Coruncianus became the first academician of law, offering public lectures on the subject.²⁹⁾

Rome's first systematic legal thinker was a contemporary of Plautus: Sextus Aelius Catus, praised by Ennius as *egregie cordatus homo catus*, and in a later age, by Cicero as *iuris quidem civilis peritissimus*.³⁰⁾ Aelius composed the so-called *Tripertita*, a meticulous account of Roman legal evolution.³¹⁾ It therefore comes as no surprise that Plautus emphasizes the primacy of law in Roman education. In the *Mostellaria*, for example, young Philolaches bemoans the fact that he has disappointed the hopes of his parents, who have spared no expense for his training. Clearly, law is the crowning touch: *expoliunt: docent litteras, iura leges* (*Most.* 126 ff)³²⁾.

One certainly would not expect to find such a speech in Terence. Unlike Plautus, he rarely if ever reflects Roman values – and surely never Roman politics. This at least is the traditional view.³³⁾ But a close reading of the *Phormio* will dispel this misconception. For Terence's lawyer-comedy is in fact *more* topical than any play of Plautus. The very year *Phormio* was presented, the Senate was hotly debating the *nova disciplina*, passing the SC *de philosophis et rhetoribus* (Gell. 15, 11, 1; Suet. *Gramm.* 25. 1). Furthermore, David Daube has recently observed that the *Phormio* contains what seems to be the earliest reference to payment *ob rem datum*. "It may well have been new then and Terence brags with it."³⁴⁾ How can we explain the allegedly

Schulbuch...." (40 n. 2). Even in Cicero's day, children still learned the Tables by heart.

28) Livy 9. 46. 5: *civile ius, repositum in penetralibus pontificum, evulgavit*.

29) Pomponius *Dig.* I, 2, 2, 35: *ante Ti. Coruncianum publice professum neminem traditur*.

30) *Annales* X. 326; Cicero *Brut.* 78.

31) *Exstat illius liber qui inscribitur Tripertita, qui liber velut cunabula iuris continet. Tripertita autem dicitur, quoniam lege duodecim tabularum praeposita iungitur interpretatio, deinde subtexitur legis actio* (Pomponius *Dig.* I, 2, 2, 38).

32) Leo (op. cit. n. 27) refers to these lines as being "von besonderer römischer Färbung... das ist römischer Jugendunterricht" (113).

33) For example, D.C. Earl, "Terence and Roman Politics," *Historia* 11 (1962) 469–485, esp. 474 ff. This complements the same author's "Political Terminology in Plautus," *Historia* 9 (1960) 234–243.

34) Professor Daube was kind enough to read an early draft of this paper and permit us to publish his comments. In his view, line 715 "con-

philhellenic playwright's Roman technical specificity? Was he not only *puri sermonis amator* but *iuris civilis peritissimus* as well?

We know from Suetonius of the close connection between Terence and Scipio Aemilianus. And we know from Polybius that as a youth Scipio received much criticism for his reluctance to plead in the courts as a good Roman should.³⁵⁾ This behavior seems all the more strange in light of the illustrious tradition for oratory in Scipio's family.³⁶⁾ Furthermore, he had been given both Roman and Greek education. Plutarch reports that he was taught by *grammatikoi sophistai* and *rhetoires*.³⁷⁾ And of course he did ultimately earn fame as a great orator.³⁸⁾ One may therefore conclude that his youthful avoidance of the courts was merely a kind of "play-acting."³⁹⁾

The *Phormio* was composed when Terence's patron was in his early twenties. Is it not then possible that the play is a kind of Scipionic inside joke, a comic riposte to the young noble's critics? The play both mocks and parodies the legal profession in an ambience at least recognizably Roman. Could we not then see in the *Phormio* some cultural index of the times? After all, a mere century separates comic Terentian „*contortio*“ from scholarly Ciceronian *conceptio* (*Inv.* 2. 19. 58).

J.M. Kelly has examined the personal elements in Roman litigation and noted that it is always the more powerful party who brings suit against the weaker.⁴⁰⁾ Of the lawsuits in Roman comedy he observes, "it is remarkable how generally comic liti-

tains the technical description of ... *ob rem datum*. As far as I can see, this has not so far been spotted. Alan Watson does not consider the scene in his discussion of Republican *condictio* and Karlowa was quite daring when he wrote that the notion of *damus aut ob causam aut ob rem*, propounded in Pomponius' commentary on Q. Mucius (D. 12. 6. 52) "probably went back to the latter; no mention even of this text in Watson."

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35) Polybius 31. 23. 11-12. See also 31. 29. 8.

36) Cf. Cicero, *Brut.* 77.

37) Plutarch, *Aem. Paul.* 6. 9.

38) Cicero praises his eloquence in *Brut.* 82, 83.

39) D.C. Earl (*op. cit.* n. 33) observes that in the long run Scipio demonstrated that "in politics he was thoroughly traditionalist." In fact, "the career and attitude of young Scipio touch the old Cato at many points (478; 480).

40) J.M. Kelly, *Roman Litigation* (Oxford 1966) 61-62. As Kelly explains throughout the chapter, *gratia*, *potentia* and *pecunia* were the most persuasive arguments in a Roman court. Hence the strong never hesitated to bring action against the weak.

gation conforms to the hypothesis that inferiors do not tend to sue superiors...." 41) Indeed among the thirteen threatened litigations in the comedies, Kelly finds but a single exception:

Phormio (*parasitus*) v. Demipho (*senex*) 42)

Terence has literally turned Roman legal practice upside down. And that is precisely the *monde renversé* which Henri Bergson describes as the essential comic situation. 43) But we cannot ignore the fact that this particular world was one to which Scipio Aemilianus was for a long time egregiously truant. Might he not have had a personal interest in deriding it? Ancient rumor claimed that Terence's plays were actually composed by the nobles of the Scipionic "circle." We need not accept this total negation of the playwright's autonomy, but it is at least reasonable to accept that, to some extent, the young men "advised" him. Is it therefore not equally reasonable to suggest that Scipio specifically asked Terence to render Apollodorus' *Epidicazomenos*—and then accent the legal antics? 44) Terence's close relations to his young patrons are acknowledged by the playwright himself:

nam quod isti dicunt maliuoli, homines nobilis
hunc adiutare adsidueque una scribere:
quod illi maledictum uehemens esse existunt,
eam laudem hic ducit maxumam....

(*Adelphoe* 15–18)

In short, the *Phormio* may be as much a testimony to Terence's art as to Scipio's sense of humor. 45)

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41) *Ibid.* 64.

42) *Phormio* 438 ff. Kelly offers a possible explanation: "Terence is, of course, 'less Roman' than Plautus, and this may partly account for the apparent anomaly of this case." (64). We have earlier questioned this normally unquestioned donnée of Terentian scholarship.

43) "... nous rions du prévenu qui fait de la morale au juge ... enfin de ce qui vient se classer sous la rubrique du monde renversé." *Le rire* (Paris 1900) 72.

44) This hypothesis goes less far than Suetonius, who reports that Laelius actually claimed to have written some of Terence's dialogue. *Vita Terenti* (Teubner) 30.

45) For Scipio's "playful" nature, we have the intriguing anecdote of Suetonius: *C. Memmius in oratione pro se 'P. Africanus' inquit, 'a Terentio personam mutuatus, quae domus luserat ipse, nomine illius in scaenam detulit*, (Teubner 30). Dare we speculate on who the *persona* was.