Krakowskie Studia z Historii Państwa i Prawa
2023; 16 (3), s. 297–316
doi:10.4467/20844131KS.23.021.18385
www.ejournals.eu/Krakowskie-Studia-z-Historii-Panstwa-i-Prawa

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Animating the Past: History-Making, Memory-Making, Law-Making[*]

Abstract

This paper examines certain history-making and memory-making practices that allow us to see how the past may be animated. These practices are: first, the Ancient Greek sophistic arts, as exemplified by Gorgias's *Encomium of Helen*, and as revived, in dialogue form, in Renaissance humanism; and second, Ancient Greek, Ancient Roman, and medieval memory arts, with particular attention to the composite generative imagery of those arts. Animating the past – as these practices of history-making and memory-making do – is of great epistemic and political value to communities: it enables acts of argument and judgement, and, more generally, it is vital for vibrant democracies. The paper signals, albeit only briefly, how these practices are also intertwined with legal history, and in particular the history of legal reasoning, suggesting some ways forward, in future work, for investigating the entangled histories of history-making, memory-making, and law-making.

Keywords: history, memory, law, rhetoric, encomium, dialogue, imagery, Ancient Greek sophistry, Renaissance humanism, medieval monasteries

Słowa kluczowe: historia, pamięć, prawo, retoryka, panegiryk, dialog, obrazowość, sofistyka starożytnej Grecji, renesansowy humanizm, średniowieczne klasztory

Communities need to find ways of keeping the past alive. The tyranny of a single past is one of the most powerful and dangerous tyrannies there can be. When the past becomes frozen and dogmatic, communities begin to lose their past – the past then becomes less a resource and more a burden, and one which restricts possibilities for creative and criti-

[*] Warm thanks to Anna Ceglarska, Michael Lobban, Paul Roth, and this journal's two anonymous peer reviewers. A version of this paper was presented to the Leiden Hub of the Theory and History of International Law on October 19, 2022. My thanks to Letizia Lo Giacco, Adeel Hussain, Jens Iverson, and the audience for a lively discussion.

cal thought, such as acts of argument and judgement, in the present. This holds for both epistemic communities, i.e., communities of inquiry, in whatever discipline, as well as for political communities. The writing of history – historical work, including the work of memory – is, then, crucially important, but in a particular way. Where history-making or memory-making is done in such a way to close off, pin down, or freeze the past, then it poses a danger to a community, whether epistemic or political. When, however, history or memory work opens up the past, revealing it to be full of potential, showing how what we see as relevant about the past is related dynamically to our present projects and future projections – how it is Janus-faced, combining past-oriented and future-oriented cognition – then it is of great value. When the past is alive it enhances acts of argument and judgement, and more generally, it also enhances democracy and the prospects for active citizenship.

Animating the past – keeping it alive – is thus of great epistemic and political value, but how can it be done? In this paper, I look back, very selectively and suggestively, at certain history-making and memory-making practices to consider which attitudes and which related techniques we might draw on to animate the past.

The paper is in two parts. The first examines the history-making of the Ancient Greek sophists, as exemplified by Gorgias's *Encomium of Helen*. It examines the sophists' acknowledgement of multiple pasts, and their deployment of two tools (antithesis and parataxis) in bringing that multiplicity to life. This part also includes a brief discussion of the legacies of sophistic historiography in Renaissance humanism, especially via the technique of writing history in the form of a dialogue.

The second part turns to the memory arts, and how resourcefully Janus-faced these are. The focus here is on the use of composite generative imagery of the memory arts. This is evidenced in the memory practice of the Ancient Greek and Roman arts of memory, as well as the imagery deployed as part of the medieval monastic craft of memory.[1]

These practices may, at first blush, seem to have little to do with law. However, we shall see that the history and memory practices I point to intersect with law in all kinds of interesting ways – they are, in broad terms, ultimately inseparable from acts of argument and judgement. In the conclusion, I shall offer some suggestions for how future work might connect these history and memory work practices to legal history, especially the history of legal reasoning.

[1] Part of the reason I place such emphasis, in this paper, on the Ancient Greek and Roman sources, and their reception, is that the practice of reading (both generally, and reading the past specifically) is arguably very different to modern or contemporary approaches to reading. Crudely put, the ancient reader is understood as participating actively in the co-production of the past; the ancient pedagogy of reading was at once a pedagogy of performing as an active producer of culture. Ancient reading, then, is much closer to ancient writing and speaking, this being a link that is somewhat lost for the moderns, perhaps as a result of the Romantic cult of the author. For a discussion, see e.g., Tompkins, "The reader in history". Having said that, there may well be scope for connecting this Ancient approach to reading to 20th century developments in historiography and literary theory, such as those by Hans Blumenberg and Roman Ingarden, respectively.

I. History-making

IA. Sophistic history-making

Both the history-making and the memory-making practices I examine in this paper have connections to the practice of rhetoric. The history of rhetoric is, indeed, a crucial and under-estimated resource for historiographical reflection. Part of the reason for its neglect is, undoubtedly, the result of the attack it received, and perhaps never quite recovered from, in the hands of Plato. This attack on rhetoric, and its epistemic status, goes hand in hand in Plato with his attack on the practice of the sophists. As is well known, Plato's coining of the term "rhetorike" (rhetoric) was a way of denigrating the practice of sophistry, distinguishing it from his own practice of "philosophia", which he associated with the superiority of "dialektike"' (dialectic). As a property-owning aristocrat, trying to establish his own school of philosophy (the Academy), and to attract the most capable young men to it,[2] and as someone deeply opposed to democratic government in Athens, Plato's naming and, at once, shaming of rhetoric was a political move. Again, sophistry, and sophistic rhetoric, has arguably never quite recovered – indeed, already since Plato's day to call someone a "sophist" was not to pay them a compliment.

Right at the beginning of the history of rhetoric, then, or the alleged beginning, we have something contestable – a different way of telling that history. For, rather than starting the story with Plato's coining of the term, we can instead look earlier, at the practices of those travelling sophists, those often homeless refugees, travelling from far flung places rather than dwelling comfortably in aristocratic Athenian homes, who had to charge money in order to survive (with some getting rich, though probably never as rich as Plato), and who often trained, in the arts of speaking and persuading, non-aristocratic men, who could thereby rise through the ranks, challenging the rule of aristocrats and tyrants. The sophistic arts were, then, one of the earliest democratic arts. Indeed, one could argue that sophistic rhetoric begins precisely to meet a very specific and concrete need in 5th century BCE Sicily, i.e., upon the restoration of democracy in 467 BCE, to assist families whose belongings and rights had been taken away by tyrants, to argue in court for their return. The legend is that the first to offer training for effective presentation and argumentation was "Tisias" (also known by his nickname, Corax, which means crow in Greek).

One of the most famous of the sophists – the sophistic pedagogues – was Gorgias, who lived a long life (from c. 480 to c. 375 BCE) in Sicily, frequently visiting Athens.[3] Gorgias also happens to be the most derided, by Plato, of the sophists – Plato's dialogue, *Gorgias*, mocks him and makes fun of him in numerous ways (including in the way he is dramatized as a character, i.e., as someone boastful of his abilities, only to be punctured in his alleged hubris by Socrates's wily questions).[4]

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[2] We know of two women who attended Plato's Academy: Lastheneia of Mantinea and Axiothea of Phliasa. Their names are unfortunately all that we know about them.

[3] See Consigny, *Gorgias*.

[4] With Plato, however, matters are never so simple – certainly not as simple as these paragraphs (provocatively) suggest. They never are because Plato is too good a dramatist. Further, Plato's views of

Gorgias's most famous text – a display speech – is *The Encomium of Helen*. The genre of the "encomium" is itself a fascinating one, and has a history that is deeply entangled with the history of comedy (as so much of rhetoric, as well as philosophy, is): it is ostensibly a speech made in praise of someone, but it was often used as a rhetorical exercise requiring the orator to speak in favour of something seemingly in-defensible or un-worthy, e.g., there are plenty of so-called "paradoxical encomia", e.g., in favour of flies, dung, and baldness.[5] This may seem to be just fun and games, but it also has a serious political purpose; by showing how even the weakest cause can be defended, and the weaker argument appear to be stronger, the sophists were offering training in a form of resistance (to power) by speech. Gorgias's *Encomium of Helen*, then, is just such an exercise: it attempts to defend the seemingly indefensible Helen, who, by eloping with Paris, was said to have triggered so much violence and sorrow (ultimately, if we are to believe the legends, the fall of Troy), allegedly pursuing nothing but her own pleasure.[6]

This text, it turns out, also has a very interesting approach to history-making. Indeed, it exhibits perhaps one of our first and most prominent accounts of a sophistic (we could also say, sophistically rhetorical) historiography. An argument for this way of reading Gorgias's Helen is made by Susan Jarratt, who offers a feminist reading – and, at the same time, defence – of the sophists.[7] The concept of "history" itself, of course, has a history,[8] and on some accounts of what "history" is, the sophists never did practice it. For S. Jarratt, however, sophists can be understood as historians of a kind: through their own genres, such as that of a display speech in the form of an encomium, they exhibited a certain attitude to the past. According to S. Jarratt, the "practice of a sophistic historiography" entailed, inter alia, "the denial of progressive continuity: a conscious attempt to disrupt the metaphor of a complete and full chain of events with a telos."[9]

To achieve that, and express that attitude, the sophists employed "two-prelogical language *technai*, antithesis and parataxis, creating narratives distinguished by multiple or open causality, the indeterminacies of which are then resolved [if they are] through the self-conscious use of probable arguments."[10] The sophists, then, deployed a language and a structure in their speeches that conveyed the sense of multiple pasts, and even pasts

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rhetoric, and the sophists, is not static – arguably, his view of rhetoric is very different, and more positive, in the later dialogues. Equally, matters are not so simple with the sophists either – the sketch offered here, and the easy contrast between Plato and the sophists, is a caricature, of course. Nonetheless, it is a neglected caricature. For an example of a nuanced reading of the rhetorical and literary qualities of Plato's dialogues, interpreting them as examples of the serio-comic genre of satire, see Boyarin, *Socrates and the Fat Rabbis*.

[5] Isocrates mentions encomia of salt and bumblebees. There are also encomia of hair (Chrysostom), of baldness (Synesius), and, later, flies (Lucian of Samosata). The genre of the paradoxical encomium was revived in the Renaissance – one of the most famous is Erasmus's *In Praise of Folly*.

[6] It is not an accident that one of the most famous speeches of all time is made in defence of a woman and her sexual freedom. Although the basis of Gorgias's defence is not that she rightly had that freedom, nevertheless, the effect is to say that Helen is blameless. To be clear: these texts are still highly patriarchal – Helen has no voice; her praise- or blame-worthiness is debated by men – but, as S. Jarratt shows, there are ways of approaching these texts, and their methods, that point towards a feminist historiography.

[7] Jarratt, *Re-Reading the Sophists*. One could read S. Jarratt's book as itself a paradoxical encomium of sophistry.

[8] See e.g., Burrow, *A History of Histories*.

[9] Jarratt, *Re-Reading the Sophists*, 12.

[10] *Ibid*.

in tension with each other, generating possible ways of understanding the past, depending on one's aims or purposes in drawing on it.[11]

The two techniques S. Jarratt points to are very significant. Together, they open up the past, cracking open what may have solidified into some kind of settled narrative. Antithesis – the playful pairing of opposite words – "creates an openness to the multiplicity of possible causal relations."[12] Parataxis, in turn, is "the loose association of clauses without hierarchical connectives or embedding."[13] Antithesis works to un-make, and parataxis then re-makes, though in a way that does not prescribe an authorial truth, which a passive reader is but to discover, but instead describes probabilities that calls upon the active reader to do some of the work of constructing the narrative and its characters.

In his *Encomium*, Gorgias deploys both techniques. First, in terms of antithesis, he offers four possible causes for Helen's departure, each of which can be further broken down into opposites: fate/love, love/force, force/persuasion, persuasion/love.[14] The four causes are: first, fate ("because of the wishes of Chance and the purposes of the gods and the decrees of Necessity that she did what she did"); second, force ("she was seized by force"); third, speech (she was "persuaded by speech");[15] and fourth, love. Each of the four is introduced as nothing but a possibility, and each is also quickly related to the accusation made against her, e.g., "if it was love that brought all this about, she will without difficulty escape the accusation of the offence said to have been committed."[16] The past, spoken of in the subjunctive, is full of possibilities, which are themselves infused with normative significance.

Gorgias does not choose amongst the four causes. Indeed, he tells us specifically that he will not choose amongst them, e.g., he says: "Who fulfilled his love by obtaining Helen, and why, and how, I shall not say."[17] Instead, he plays them off against each other, mentioning probabilities in relation to each, allowing and indeed requiring the reader to form their own view as to the probable character (ethos) of Helen, based on the reader's inference as to what was likely to have happened. In doing so, he deploys the device of parataxis (loose association). Thus, for example, rather than saying it was from love that she acted, Gorgias instead offers an account of what it is to be under the influence of love (it being something that takes away one's will to choose) by reference to a probabilistic analogy of how the mind is affected by the sight of something scary:

> For instance, when the sight surveys hostile persons and a hostile array of bronze and iron for hostile armament, offensive array of the one and shields of the other, it is alarmed, and it alarms the mind, so that often people flee in panic when some danger is imminent as if it were present.[18]

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[11] Perhaps it could be said that the sophists were "irrealists" (neither realists nor anti-realists) about the past, working with a notion of many pasts: see Roth, *The Philosophical Structure*.

[12] Jarratt, *Re-Reading the Sophists*, 21.

[13] *Ibid*., 24.

[14] *Ibid*., 22.

[15] Gorg., *Encomium*, 23.

[16] *Ibid*., 25.

[17] *Ibid*., 21.

[18] *Ibid*., 25. Gorgias is here echoing, playfully, a vital element of Ancient Greek culture, the practice of ekphrasis, especially as applied to shields, e.g., the shield of Achilles in Homer's *The Iliad*. Ekphrasis, understood broadly not as the description of artworks, but as describing events with *enargeia*, or painting

This experience, Gorgias subtly proposes, is related to the experience of love, i.e., in this case, of Helen seeing Paris: "So if [notice again the 'if'] Helen's eye, pleased by Alexander's [*sic!* – Paris is sometimes referred to as Alexander] body, transmitted an eagerness and striving of love to her mind, what is surprising?"[19]

This is a highly generative and self-reflexive form of history-writing: it creates multiple possible pasts, making the links between them and evaluative judgements explicit (rather than hidden), and giving the reader probabilistic clues or cues with which to form their own, though still necessarily fragile, judgement about what happened, and therefore also whether someone is blame- or praise-worthy. Put another way, this is a very dynamic way of narrative-making: it produces a structure that contains multiple possible narratives, some of which compete against each other, with each also accompanied by probabilities (often in the form of loose analogies with other realms of experience, which may resonate with the reader), leaving the reader to the opportunity, but also the burden, of coming to a judgement. It is a very interactive mode of story-telling in that sense: it is not a self-certifying, confident, and self-enclosed monologue of an authoritative author; it is, instead, setting up a playful interaction with a listener or reader, giving them resources within which to orient themselves, and to react in a certain way to the invitations and suggestions made by the author or speaker. Throughout, once again, the reader is reminded of the pragmatic nature of investigating the past, and thus how it is linked to the making of evaluative judgements (especially, of character).

Indeed, the text is highly self-reflexive, with Gorgias referring to himself and what he is doing, in composing the speech, several times, including early on when he says "I shall proceed to the beginning of my intended speech,"[20] through to the end, when in the last sentence he says: "I have attempted to dispel injustice of blame and ignorance of belief, I wished to write the speech as an encomium of Helen and an amusement for myself."[21] In fact, as this last line makes clear, Gorgias is to an extent undermining his own authority – having argued in defence of Helen, he self-mockingly says that he did it all for his own amusement. Gorgias does not hide the authorial first-person – quite the contrary, he reminds us that the text is composed, artificially, by him. This is very far from the naïve and boastful portrait he receives in Plato's *Gorgias*; here, Gorgias appears as a self-ironic, playful maker of possible normative pasts, so as to exercise the flexible faculty of judgement of his readers. Gorgias, here, is an animator of the past, but one that recognises that animating the past is an interactive and collective act.

Susan Jarratt suggests that this was part of a political project for Gorgias, and one he pursued as "a democratic diplomat and politician during the last third of the fifth century, which saw the beginning of the Second Peloponnesian War in 431 and the death of Pericles in 429."[22] "In that unstable time," she continues, "the rhetor, like his contemporary, the historian Thucydides, may have sought to call into question simple causal

with words so that readers or listeners have the experience of being present at the events in question, is also an ancient technique of animating the past. It is also of course a principle of persuasive circumstantial proof in the absence of direct evidence, and thus of vital importance also to legal history. For two brilliant discussions of ekphrasis, see Thein, *Ecphrastic Shields*, and Webb, *Ekphrasis, Imagination and Persuasion*.

[19] Gorg., *Encomium*, 27.

[20] *Ibid*., 21.

[21] *Ibid*., 27.

[22] Jarratt, *Re-Reading the Sophists*, 24.

explanations of the past in favour of opening up alternative possibilities to account for the confusing turbulence of the present."[23] Indeed, as we know from past and current events, there is hardly anything more politically dangerous than someone in power convinced, beyond any doubt, of a particular account of the past (e.g., of their nation's past, typically said to have been stolen or robbed and now rightfully to be restored, by that person, their acts being figured as the heroic culmination of that continuous progress narrative). Gorgias's historiography, we might say, is directly opposed to that tyrannical form of history-making; it is, instead, democratic – it calls upon the exercise of a self-reflexive democratic judgement (made by readers or listeners, in the plural), rather than the imposition of a single, monologic, tyrannical view.[24]

Gorgias's approach to history-making, and to the composition of narratives, can suggest to us that (sophistic) rhetoric, rather than being only or even mainly an art of persuasion, is much more so an art of generation[25] – indeed, of social (interactive and communal) generation. Gorgias speaks or writes in such a way as to generate possibilities and probabilities, enabling and requiring the reader to join in with him in order to make a judgement. On this view of rhetoric, its techniques – such as antithesis and parataxis – are resources for generating such possibilities and probabilities, undoubtedly complicating the process of judgement, but also thereby precisely slowing it down and also making it more self-reflexive. Further, such techniques, as Gorgias indeed emphasises playfully in his *Encomium*, are designed to give pleasure: not so much the pleasure, as is emphasised when rhetoric is thought to be exclusively about persuasion, of deceiving readers into agreeing with the speaker or author, but instead the pleasure of irresolution, of multiplicity, and thus also of the difficulty of judgment. In other words, Gorgias teaches his audience – and still today us, his new readers – how to take pleasure in animating the past.

IB. Legacies of Sophistic historiography

One can well imagine a historian being confronted with Gorgias's *Encomium of Helen*, and, in an exasperated tone, saying, "But that's not history! It's an encomium – a rhetorical speech made in praise of someone or something". The objection is understandable,

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[23] *Ibid*.

[24] Gorgias's *Encomium* is one of many possible examples of this social (interactive and communal) form of narrative-making, and, at once, historiography. An excellent example is that of Lysias's (c. 445 to 380 BCE, and thus roughly a contemporary of Gorgias's) display speech, *On the Death of Eratosthenes*. As James Fredal ingeniously shows, via a focus on Lysias's use of the technique of enthymising, Lysias's speech can also be read as a political fable, i.e., as a veiled attack on Eratosthenes, one of the thirty tyrants (or pro-Spartan oligarchs), who took power in Athens at the end of the Peloponnesian War. See Fredal, *The Enthymeme*, chapters 8 and 9. For an attempt to show why Fredal's discussion is so important for legal reasoning, see Del Mar, "Enthymising".

[25] See also Attwill, *Rhetoric Reclaimed*, who argues for a view of rhetoric as knowledge production, though not a "stable form of knowledge that depends on standardisation" (137–8), but instead a changeable, adaptative form of cunning intelligence (or "metis"), and thus of rhetoric as having a concern with how things can be otherwise, of rhetoric "as a valued mode of intervention into existing conditions and a means for the invention of new possibilities" (189), a knowledge perhaps more of oneself and one's proclivities to judge too quickly.

although one can also answer, with equal exasperation, as to why history-making must take on any particular form or genre of expression. Why cannot history-making, and historical consciousness, be expressed, in part, via the genre of encomia? In any event, as Nancy Struever has discussed,[26] one need not look far beyond Gorgias to see the legacy of sophistic approaches to history-making in more recognisable forms of history writing. Thus, in Thucydides' (c. 460 to 400 BCE) *History of the Peloponnesian War*, written towards the end of the 5th century, one can, argues N. Struever, see the influence of "sophistic attitudes":

> […] a definite but chaste concern for the pragmatic value of artistic form; an emphasis on will and choice in the structure and content of history; the consciousness of the creativity of the historian in attributing meaning and form to events; and the conviction that the operations of discourse can never precisely parallel phenomenal reality: that language requires the utmost self-consciousness and sophistication in its handling.[27]

Thucydides expresses these "sophistic attitudes" in a variety of ways. Sometimes, he expressly says that "he has designed his speeches […] to reflect the imperfect record of what was said but also the demands of the circumstances which had surrounded their delivery and impelled a particular reaction."[28] He also expresses them formally or structurally, for instance by pairing speeches "to create historical distance", setting out two points of view, as per the sophistic technique of antithesis.[29]

Nancy Struever's main focus, however, is not on the immediate legacy of sophistic historiography in Ancient Greece, but rather, its importance for understanding attitudes and practices of history-making in the Renaissance.[30] As N. Struever argues, Renaissance writers and historians drew on Gorgias, and the sophistic arts, to articulate their own form of "historical insight and thus political competence."[31] The Renaissance, N. Struever argues, "re-created the original Sophistic concepts and made them a possession of the modern Western intellectual tradition,"[32] constructing once again the conditions for a sophisticated (pun intended!) historical self-consciousness. For the Renaissance humanists, as for the Ancient Greek sophists, "rhetorical concepts of discourse emphasise change, not permanence, the many, not the one, the particular, not the universal – emphases

[26] Struever, *The Language of History*.

[27] *Ibid*., 16.

[28] *Ibid*., 17.

[29] *Ibid*., 19.

[30] This of course skips many centuries. We might well ask the following question: how exactly did the sophistic arts of history-making make their way through to the Renaissance? Who were the carriers of sophistic sensibility – historiographical, but not only, and thus also the sense in which it such a playfully and self-reflexive mode of thought? One answer, not discussed by N. Struever, lies in a figure from what is known as the Second Sophistic: Lucian of Samosata (c. 125 to 180 CE). Lucian wrote in dialogue form, and he also experimented with history writing, and its relationship, famously writing what he called a "True History" in which, he says, explicitly and disarmingly, "I am lying" (see Lucian, *True History*, 59). We know that Lucian was highly influential amongst humanist rhetoricians – Erasmus and Thomas More translated him together – so he is a good candidate to be one of the carriers of this sophistic, self-reflexive, playful, and generative (if not also sceptical) approach to history-making. Lucian also practised the art of paradoxical encomia (writing, for instance, in praise of the fly). On Lucian, see also: Marsh, *Lucian and the Latins*, and Branham, *Unruly Eloquence*.

[31] Struever, *The Language of History*, 19.

[32] *Ibid*., 37.

which are essential in a serious commitment to historical understanding."[33] "Rhetorical modes", on this view, including its metaphors, its analogies, and its ironies, "are historicist possibilities: language as "social" or pragmatic permits history as anthropocentric; language as perverse and irrational allows history as irreverent and inclusive."[34]

This, too, is a vision of rhetoric as interactive and communal. It is no accident that one of the favourite genres of the Renaissance was the dialogue, which N. Struever describes as the "vehicle of pluralism", which "developed a taste for polemic and confrontation of opinions and the capacity for illuminating contrasts of existence, without the decisive will to resolve these contrasts."[35] Further, as with the Ancient Greek paradoxical encomium, so here, in the Renaissance dialogue, with its many uses of irony and self-reflexivity, there is an attempt "to involve the reader in the imaginative re-creation of difficult choice."[36] The reader is encouraged to enter into a "subjunctive mental mode", practicing an art of "rhetorical detachment, the sense of distance,"[37] assisted by the writer's signalling of attention to the artifice of language, and ideally also taking pleasure in this process of self-aware aesthetic invention.

Readers of Renaissance dialogues – though also forms and genres of more recognisable historical writing, such as collections of anecdotes[38] – are invited into an "impure", "probable", "dynamic",[39] and unstable world, which often "seems to question, not define, the truth", and which requires "the reader to hesitate."[40] The ludic theatre of the Renaissance dialogue, which reincarnates a kind of sophistic historiography, doubles as the training of a political and ethical virtue: "The lucidity", as N. Struever puts it, "which is the aim of the rhetorical-historical temper is an ethical vigilance, not a system."[41] Once again, this is a form of rhetorical making and training of democratic communities – of vigilant citizens, who are aware of the difficulties of judgement, and equally aware of how an individual and a community can all too easily become a prisoner and victim of a single, monolithic, over-confident view of "the past".[42] The Renaissance humanist arts of history-making echo the sophistic arts of interactive and collective animation of the past.

Learning from the sophists, then, we can begin to uncover a different approach to history-making, and one that recognises how intimate the relationship between past, present, and future are in the making of history. Further, we can begin to see that certain cultures, in certain moments, develop forms of historical expression that avoid positing any one monolithic, frozen, and static meaning of "the past", preferring forms

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[33] *Ibid*.

[34] *Ibid*., 38.

[35] *Ibid*., 160.

[36] *Ibid*., 134.

[37] *Ibid*., 145.

[38] N. Struever argues that "Anecdote demands mobility, a willingness to pursue lines of continuity and relevance and to find the implicit argument […] the narrative [of an anecdote] engenders movement", and thus also "change in the reader" (see *ibid*., 77).

[39] *Ibid*., 132.

[40] *Ibid*., 160–1.

[41] *Ibid*., 198.

[42] For more on the Renaissance art of dialogue, including its links to comic devices (such as irony), see Cox, *The Renaissance Dialogue*, and Marsh, *The Quattrocento Dialogue*.

(the encomium, the dialogue), and associated techniques (as above, antithesis and parataxis) that present themselves as incomplete, and even in tension with one another, so as to enable a creative, inventive, and forward-looking mode of history-making. These practices of animating the past are, in turn, entangled with the making of arguments and with the interactive and communal exercise of judgement (for instance, about the praise- or blame-worthiness of Helen). Put another way, we could say that certain techniques of history-making – such as those of the Ancient Greek sophists and the Renaissance humanists – are valuable because of how they enable acts of argument and judgement in a community, allowing a culture to draw on its past while transforming its normative present and future. History-making here is a crucial means of resisting tyranny and defending democracy.

II. Memory-making

I turn now, in the second part of this paper, to consider how memory-making offers us another resource for seeing how the past can be animated and why that matters.

Memory is one of the five canons of rhetoric – the others being invention, arrangement, style, and delivery – but it is also much more significant than such a separation into canons suggests. Memory, both for the Ancients and medieval thinkers, was itself a deeply inventive art. Invention, as it were, permeates it, as it does arguably all of the canons – all of them, really, are part of the overall inventive or generative practice of rhetoric.

To see how this is so, we need to first recover some of the Ancient Greek and Roman arts of memory, and the techniques that enabled it to be such a resourceful and forward-looking way of recollecting the past. Central to that technique was the use of imagery, and in particular the making of composite generative images. Composite generative imagery also characterises another memory art tradition, i.e., the medieval monastic crafts of memory, and its meditational practices.

In both contexts, images – of a certain sort – and the many things one can do with them, are crucial, working as complex Janus-faced mediators, enabling those who use them to engage generatively with the past, while looking towards the future. As with Sophistic, and then Renaissance, history-making, so with memory-making: the Ancient and medieval arts of memory hunt for forms that can animate the past, making the past present in a forward-looking way and enabling memory-makers to also be future-makers.

IIA. The Ancient Greek and Roman memory arts

Tracing the Ancient arts of memory does not require us to leave the Sophists behind – to the contrary. The set of lecture notes known as the *Dissoi Logoi* (400 BCE), or "Contrasting Arguments", are said to have most likely been those of a travelling sophist pedagogue. The lectures are very playful, presenting what at first seems like something good, true, and just, as also, at the same time, its opposite. The last section of the notes

we have is a fragment about the art of memory – once again, this is the earliest known evidence of the Ancient Greek arts of memory, though clearly it must have been describing practices that were already well-established:

> (1) The greatest and fairest discovery has been found to be memory; it is useful for everything, for wisdom as well as for the conduct of life. (2) This is the first step: if you focus your attention, your mind, making progress by this means, will perceive more. (3) The second step is to practice whatever you hear. If you hear the same things many times and repeat them, what you have learned presents itself to your memory as a connected whole. (4) The third step is: whenever you hear something, connect it with what you know already. For instance, suppose you need to remember the name "Chrysippos", you must connect it with chrusos (gold) and hippos (horse). (5) Or another example: if you need to remember the name "Pyrilampes" you must connect it with pyr (fire) and lampein (to shine). These are examples for words. (6) In the case of things, do this: if you want to remember courage, think of Ares and Achilles, or metal working, of Hephaistos, or cowardice, of Epeios.[43]

This already contains several elements that were to continue to be highly influential in the memory arts, as part of the history of rhetoric. One is the distinction made between remembering words and recollecting things.[44] There are distinct methods for remembering words, such as Chrysippos and Pyrilampes (though significantly, even these are linked to images of a kind), and for recollecting things. In fact, the example provided in the *Dissoi Logoi* for recollecting things is complex: it is about recollecting the concepts of courage, metal working or cowardice. No abstract definitions are offered. Instead, the concepts are linked to certain mythical figures. To recall courage, we are told, "think of Ares [the Greek God of War] and Achilles [the hero of the Trojan War]". We are also given a contrast case, of Epeios, as a mnemonic icon for cowardice. At first, it makes little sense to include Hephaistos, the Greek God of blacksmiths, metalworking, and carpenters, in between courage and cowardice. However, when we know the story of Epeios, this inclusion of Hephaistos makes much more sense: for Epeios was a great craftsman – the one who built the Trojan horse. He was a man of great strength – and a good boxer – but he was also known for shirking confrontation during the Trojan war (thus, because he was so capable, the only explanation for his behaviour during the war is cowardice).

Right at the beginning, then, of our evidence for the Ancient Greek memory arts, we have a generative image: to recollect things – in this case, courage, metal working and cowardice – we are invited to draw on our associations (imaginative, affective, and sensory associations) with the stories of Ares, Achilles, Hephaistos and Epeios. The stories do not offer any straightforward understanding of – and certainly no static, propositional beliefs about – courage or cowardice, but they do offer a complex, dynamic resource for knowing, in a sense, what courage or cowardice might consist of. This is achieved by a complex picture – a composite image – composed of a number of icons, including contrasting ones, echoing stories told about these figures. The image is a memorable one,

[43] See Sprague, "Dissoi Logoi", 166–7.

[44] The same word is used in the above translation, but, as we shall see, there is an important difference between remembering and recollecting. In brief, remembering is thought to be more passive and less inventive, while recollecting is the more active and inventive process. This does not mean remembering words cannot be inventive in its own way – just that recollecting things is more active and inventive.

even in this very sketchy, indeed skeletal, example, but it is also dynamically memorable: it contains within itself a tension between icons, and it relates the three figures it points to via an associative, imagistic logic (the link between Hephaistos and Epeios). It is a composite image that helps generate reflection about and exploration of what these otherwise difficult to grasp concepts – these inherited concepts of a culture (especially courage) – might mean now and in the future.

Another complex composite generative image is present in the *Rhetorica ad Herennium*, the 1st century (c. 86–82 BCE) rhetorical training manual, attributed (now we know mistakenly) to Cicero for many centuries. Here, right at the outset, memory is associated with invention, and described as "the guardian of all the parts of rhetoric."[45] Whereas we have natural memories, we can also train our memory, and thus develop our "artificial memory". The training of this artificial memory is what is known as the memory arts. This artificial memory is composed of "backgrounds and images": the backgrounds are, ideally, architectural structures one imagines, with distinct and well-lit spaces, and it is on or in these spaces (such as the space between two columns) that one places images. This way, by walking through – in one's mind – the background (made up of spaces), one can recollect the relevant images as associated with that space. Note also that an effect of this method is that one can walk in different ways through one's memory "palace" (as it also been called), thereby relating the knowledge contained in any one image with another. The background, then, is already an inventive technology – it enables a rich, associative cognitive process, of relating different images together in different ways. One can walk through one's memory, generating possibilities for thought and reasoning by actively linking images together into new combinations and syntheses. The memory palace and our imaginary journeys through it are almost literally – if they were not imaginary! – animations of the past.

In addition to the backgrounds, which are already at this time accompanied by quite strict instructions for how to imagine them, it matters what kinds of images one places in the background. Here again, images will be different depending on whether they are designed to remember words or to recollect things. The example for recollecting things is a striking one. Interestingly, it is of a legal case – helping the orator to recall one of the circumstances in which an inheritance can be invalidated. The advice to the orator is to build a composite image, which he can then position in an appropriate place in his memory palace:

> Often we encompass the record of an entire matter by one notation, a single image. For example, the prosecutor has said that the defendant killed a man by poison, has charged that the motive for the crime was an inheritance, and declared that there are many witnesses and accessories to this act. If in order to facilitate our defence we wish to remember this first point, we shall in our first background form an image of the whole matter. We shall picture the man in question as lying ill in bed, if we know his person. If we do not know him, we shall yet take someone to be our invalid, but a man of the lowest class, so that he may come to mind at once. And we shall place the defendant at the bedside, holding in his right hand a cup, and in his left tablets, and on the fourth finger a ram's testicles. In this way we can record the man who was poisoned, the inheritance, and the witnesses. In like fashion we shall set the other counts of the charge in backgrounds successively, following their order, and whenever we wish to remember a point, by properly arranging the patterns of

[45] *Rhet. Her*., 16.28.

> the backgrounds and carefully imprinting the images, we shall easily succeed in calling back to mind what we wish.[46]

Note, for a start, that this composite image – containing "the record of an entire matter by one notation" – is linked to any future task we may have in defending someone. The image, in fact, is designed to help us, as a defender, to recollect the legal argument made by a prosecutor. In other words, if we are acting for the heir in a case, it is helpful to recall that one of the grounds upon which the inheritance could be invalidated is an allegation that the heir murdered the person whose inheritance he now claims. To put it this way, though, is already to put it too abstractly, for the image itself is more concrete. One could say that the cup is there to remind us of the poisoning, and the tablets of the will – but it is more accurate to note that these are not in themselves abstractions, but instead indicate, concretely, but one method of poisoning and but one mode of succession (in writing). It may be that our case does not involve a written will, or involves some other act, which may or may not be analogous to giving someone poison to drink.

The image is not one, then, to apply directly – it does not give us an abstract, static, and complete proposition from a past case to apply to a present one. It offers a more dynamic, imagistic form of knowing a past case. It is an image to think with – to reason with in a new case, and in potentially similar hypothetical cases in the future. Part of its dynamism, apart from its concreteness, is that it is a composite image: it holds, within one image, several icons. It offers a dynamic scene, though also an unrealistic one – a fantastic scene – involving the defendant holding numerous objects on his hands and fingers (the ungainliness of this holding may also be important, for it requires skill to do, and thus may suggest premeditation). Again, the image offers an active, forward-looking way of recollecting a possible ground (and its requirements, e.g., the two witnesses) of invalidating an inheritance claim – one that we are to draw on (not apply) and transform in the process of using when we are defending in court. This is not a rule from a past case to apply to a present one. It is a generative image – a fantastic and suggestive image – to reason with inventively. It is precisely a means of animating the past: a way of knowing the past such that one can invent with it in the present (e.g., in the course of making an argument as an advocate).

There are a number of other elements to note about it. For instance, the image is a very witty one: the ram's testicles are a play on words, with "testes" in Latin reminding one of testimony, and thus of the necessary witnesses (most probably also indicating that two witnesses are needed). Further, the orator is invited to imagine the sick man as someone they know or as a member of the lower classes. In other words, the image is both personal and it is situated culturally – it has a distinctive personal and cultural resonance for the persons recollecting. This is not an image that hides away the subjective experience of the orator – on the contrary, it invites the orator to draw on that personal and cultural knowledge.

The images of the Ancient rhetorical arts – both Greek and Roman – are, then, very distinctive. Writing about this particular image in her famous book, *The Art of Memory*, Frances Yates says of it that it "is an example of a classical memory image – consisting of human figures, active, dramatic, striking, with accessories to remind of the whole

[46] *Ibid*., 20.33–34.

«thing» which is being recorded in memory."[47] These images are what are also called *imagines agentes* – active images, and at once images with agency: they "represent human figures of a striking and unusual character and in striking dramatic situations."[48] Their use of unrealistic and fantastic elements – e.g., of unnatural acts or exaggeration, a comic technology – is no accident.[49] These make the image memorable, but they also connect to the way we invent, or reason creatively: they surprise us, they allow us to draw on our subjective experience, they give us pleasure, and they allow us to do things with them, employing an associative and suggestive cognitive process. There were also an important part of the training of advocates for many centuries, and thus a highly successful technique of animating the past.

IIB. The medieval memory arts

The striking and dramatic character of images in the memory arts also offers us a neat way into the medieval, monastic memory arts, described so brilliantly in the work of Mary Carruthers.[50] This is a tradition that, as M. Carruthers notes, developed in its own way, with limited direct influence by the Ancient Greek and Roman memory arts. Its specific setting is the medieval monastery, and in particular the task of recollecting Christian religious texts, but also more generally, of Christian ethical teaching. In this tradition, one composed memory palaces in which one placed images – complex and striking images – that were vehicles for invention, e.g., for one's own personal meditation as a monk, and thus also one's own personal ethical development, or for teaching purposes, if one was engaged in composing and delivering sermons.

As M. Carruthers illustrates in detail, especially in her *The Craft of Thought*, medieval memory is no passive receptacle of stagnant relics of the past. It is no museum of lifeless things, as if frozen in time. It is, instead, a truly remarkable and very much alive network, personalised in the imagination of any particular monk, of images with which to think creatively (for instance, about otherwise difficult to understand abstract virtues, such as courage, prudence, temperance, or justice). Monastic meditation, as M. Carruthers notes, "is the craft of making thoughts about God", and one which "recognises the essential roles of emotion, imagination, and cogitation within the activity of recollection."[51]

Key to M. Carruthers' account is that the medieval arts of memory are deeply linked to invention. To practice that art is not to passively bring back to mind something

[47] Yates, *The Art of Memory*, 27.

[48] *Ibid*., 29.

[49] Some of the images in the memory arts, as we shall see in a moment, are also very violent – some thus tap into the comic register, and some into the tragic one. A good example of the tragic register is the image associated with the very invention of the memory arts: of Simonides, leaving a banquet just before the building collapses and kills everyone inside (mangling the bodies so badly that they are unrecognisable), with him being able to recall who they are (for the benefit of the grieving families, who would like to bury their relatives) by remembering where they were sitting. This is a meta-image that conveys the utility of having personalised places (memory palaces) for the art of memory.

[50] Carruthers, *The Book of Memory*; Carruthers, *The Craft of Thought*.

[51] Carruthers, *The Craft of Thought*, 2.

complete or something accurately and faithfully representing the past as it truly was. As M. Carruthers says:

> Thus the orator's "art of memory", was not an art of recitation and reiteration but an art of invention, an art that made it possible for a person to act competently within the "arena of debate" […] to respond to interruptions and questions, or to dilate upon the ideas that momentarily occurred to him, without becoming hopelessly distracted, or losing his place in the scheme of his basic speech.[52]

To make memory – by making images which one places in a certain architectural space, thereby also relating them to each other – is to make a dynamic resource for future, to some extent improvised, reasoning. It is "to give an orator the means and wherewithal to invent his material… on the spot."[53] The art of memory is a kind of "compositional art" – it is "an art of thinking", though also of a particular sort, for it helps an orator, via its network of images, to combine and synthesise, analogise and associate, connect and relate, as well as to emote (to feel). Indeed, the images of the memory arts are striking and dramatic in part because of the recognition of the intelligence of the emotions and their role in thought. The images are ones that trigger emotional responses – they are not only unrealistic and fantastic, which the imagination thrives on – but they are also affective.[54] They thereby combine the imagination and the emotions, as part of the process of inventive, creative reasoning. If anything, the medieval arts carried to new heights imagery that was deeply affective – sometimes even traumatically so. They are also often narratives, or are images that would, by the persons in that culture, be associated with certain narratives (e.g., fables, myths).

The images in question, then, are imaginatively- and affectively-rich carriers of a kind of concrete, narrative knowing of what might otherwise be quite abstract concepts (e.g., precisely the Christian virtues) that are difficult to understand, and also difficult to express in the actions and interactions of one's daily life. They are, to use another language important in this, but also later periods, engines of thought: the images of the memory arts feed the "ingenuity" of the mind.[55] They are engines of active memory, or knowledge; they are engines of animating the past. Recollecting, on this view, or the exercise of memory, is by no means separate to active, creative cogitation, reasoning and knowledge; on the contrary, recollecting is a means by which we can think, re-making what we had originally made into new constellations. To make memory in this tradition is, in that sense, to provide the resources for making and re-making in the future.

An early example of just how dramatic – including how violent and traumatic – some of the images in this tradition could be is a poem by Prudentius, *Psychomachia* (literally "soul-struggle"). Dated to 405 CE, the poem involves a series of battles between virtues and vices, with those virtues and voices personified in the form of distinct warrior-figures. It offers a network of scenes of contrasting abstract concepts brought to life. It is a kind of animated pedagogy of virtue, designed to be taught in schools so as to educate

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[52] *Ibid*., 8.

[53] *Ibid*., 9.

[54] For more on the rich and multi-faceted role of the emotions in the history of rhetoric, see Copeland, *Emotion and the History of Rhetoric*, and Robinson, *Passion's Fictions*. For an attempt to discuss the relevance of these histories for legal theory, see Del Mar, "The confluence of rhetoric and emotion".

[55] See Marr *et al*., *Logodeadeus*.

boys (it was primarily aimed at boys) in the Christian virtues. Its images are – even to our sensibilities, used to so much violence in contemporary media – shocking. For instance, in a scene involving the virtue Sobrietas (sobriety) encountering the vice Luxuria (luxury), Sobrietas, seeing Luxuria "making her drunken way to the war" in a chariot, frightens the horses by putting a wooden Cross in front of their faces; the horses panic, and Luxuria is thrown over the chariot, and under the axle, where "her mangled body is the break that slows the chariot down."[56] Having come to a halt, Sobrietas takes the opportunity to finish her off, hurling a rock at her, which:

> […] smash[es] the breath-passage in the midst of the face and beat[s] the lips into the arched mouth. The teeth within are loosened, the throat cut, and the mangled tongue fills [the mouth] with bloody fragments. Her gorge rises at the strange meal; gulping down the pulped bones she spews up again the lumps she swallowed. "Drink up now your own blood, after your many cups", says the indignant virgin [Sobrietas].[57]

This may be an extreme example, but the point is that the extremity is deliberately and carefully crafted and designed to get even the most dormant imaginations and emotions of the reader going. The scenes offer little narratives that model the process of practical reason, e.g., whether to drink some more, or to hold back. They are also an intensely embodied form of virtuous pedagogy, eliciting us to simulate the gestures, postures, and movements of these figures, as well as their sensory worlds – living through, as it were, the trauma of practical reason, understood as a battle of virtue and vice. Taken together and involving other battles – such as Faith v. Worship of False Gods, Chastity v. Lust, Patience v. Wrath, Humility v. Pride, Good Works v. Greed, and Concord v. Discord – this work offers, as M. Carruthers puts it, "intricate chains of stories, woven together in the activities of memory."[58]

The reader of such a work is no passive scanner of some static and abstract prescriptions for how to act and how to live, and nor are they given rules to memorise in the sense of recite mindlessly before the rest of the class. Rather, the reader lives through the text, and the images in it are inscribed on his memory in such a way that, later, on a future occasion, he may return to them "as an inventory of synaesthetic [note the heavily sensory imagery above, involving, for instance, the taste of blood], syncretic memory cues, to be drawn upon, drawn out from, and used for constructing new work."[59] This is not, then, solely, or even mainly, about persuading boys to be virtuous; it is about offering memorable resources within which to meditate about the soul, and its processes of deliberating and decision-making, allowing also for reflection on the pairing of virtues and vices, as well as on how the various vices and virtues relate to each other (for instance, there are scenes in which some virtues help each other, and other scenes in which vices collaborate).

Of course, not all of the images of medieval, monastic, meditational practices are this violent. Even when they are not, however, their effect is to animate what may otherwise be difficult to grasp normative concepts. Thus, to give just one more example, in Peter of Celle's treatise *On Conscience* (c. 1170 CE), the slippery and complex concept of

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[56] Prudent., *Psychomachia*, lines 415–6.
[57] *Ibid.*, lines 418–21; Carruthers, *The Craft of Memory*, 143–4.
[58] *Ibid*., 147.
[59] *Ibid*., 148.

conscience is figured as a beautiful, alluring woman, who dramatically enters a certain scene at a certain carefully (theatrically) staged moment. The author does not hide his intentions: "Concerning conscience's habit so that I may make an exemplum for you, not by way of idolatrous error but by way of making abstract doctrine evident [to the eye of your mind], form in your mind something that at the same time may prick your pious mind to devotion and raise your soul from visible form to invisible contemplation."[60]

The scene involves a luscious banquet (with details appealing to our senses, including cups filled with honey and music made by the cithara and lyre), with the king and his companions all sighing and longing for the queen, and thus with Conscience (as the queen) making her entry into a room for men hungry for beauty, her body being described in detail – "emerald eyes", and even her "nose […] like the tower of Lebanon which faces Damascus."[61] To some extent, this obviously highly gendered imagery (as is almost all imagery of the virtues and vices, directed at male readers), is about working up a desire for conscience, making it as alluring as possible. But it also offers subtle resources for reflecting upon what conscience might be, e.g., the nose like a tower offers a kind of defence, referring to a passage in the *Song of Songs*, and suggesting a kind of embodied sense of conscience as a form of protection against certain temptations that may attack us. The inclusion of pleasure and desire in the imagery is not an obstacle to thought: quite the contrary, it spurs the audience – again, understood to be male, and appealing to certain historically situated norms of masculinity – to keep reflecting on the characteristics of conscience, also positioning it as something of central importance in a life of virtue. It animates virtue – the inherited teaching of ethics in that culture – for the audience, but by inviting them to re-enact it, enabling them to improvise and transform their own understanding of it in the present.

Conclusion

The aim of this paper has been to show how certain practices of history-making and memory-making have animated the past. I have pursued this aim by examining certain attitudes to the past along with certain techniques.

We have seen how Ancient Greek sophistic history-making, as exemplified in the techniques (i.e., antithesis and parataxis) deployed by Gorgias in his paradoxical encomium of Helen (itself an argument in defence of Helen), animates the past, encouraging the audience to become involved in the active and self-reflexive process of judgement – in this case, with normative implications, for it might lead to the exoneration of Helen and the overturning of an otherwise static and frozen collective custom (i.e., that Helen is guilty). We have also seen how sophistic attitudes to the past were revived in Renaissance humanism, which animated the past via the form of the dialogue – a form that, importantly, also encourages active audience participation. Animating the past in both of these contexts is connected to the value of democracy, and of an active, vigilant citizenry.

[60] *Ibid*., 206.
[61] *Ibid*., 207.

Similarly, and yet in a different way, we have seen how the Ancient Greek and Roman, as well as the medieval, memory arts also animate the past. They do so via the deployment of compositive generative imagery, assisting an orator when making a speech or a monk when meditating or a student in a class on virtue, to draw on the past, but in an active and creative way. Memory, in these practices, is not about passive recall of some static and frozen past, but is instead about knowing the past dynamically – precisely in networks of composite generative images – so as to be able to improvise and reason more creatively with the past. The images deployed in the memory arts are often witty and surprising; they involve the emotions in all kinds of ways; they are often intensively embodied, sometimes in violent ways; and they enable a cognitive process that works closely with particulars, reasoning from particular to particular, in the process of either making an argument (for instance, in defence of someone accused of murdering the testator) or exploring the significance of some virtue (or relations between virtues), figuring out what taking it seriously might entail for present and future conduct.

Is all of this a world away from legal history and the history of legal reasoning? I would suggest not: in fact, we have seen how these history-making and memory-making practices intersect with the practice of advocacy and judgement in all kinds of ways. Legal communities also need to be able to keep the legal past alive: the legal past for advocates and judges, as well as for citizens, needs to be alive in order to continue to be both meaningful and useful. The legal past, when animated, is a communal resource: advocates and citizens draw on it to make arguments in cases, while judges draw on it in order to justify decisions and project legal futures. Put another way, the animated legal past is a vital technology for making and re-making democratic communities, and thus also for keeping the law democratically meaningful.

It would be interesting, in future work, to relate these history-making and memory-practices, as found in the history of rhetoric, to legal history and the history of legal reasoning more explicitly. Are not techniques, like antithesis and parataxis, or the employment of compositive generative images, also of importance to the practice of legal reasoning? How are the genres of writing the history of the legal past related to these practices? How do both legal historians and legal practitioners keep the legal past alive – debating it, returning to it and transforming it, knowing it via forms that do not freeze it but instead crack open its potential?

One interesting avenue for future research would be to examine the link between the history of rhetoric, as above, and the history of common law reasoning. How is writing common law cases akin to sophistic history making or the ancient and medieval memory arts? Case writing does seem to lend itself to precisely an animation of the past: to know law in the form of cases is perhaps precisely to know it via networks of composite generative images, which are made and re-made, interactively and communally, in new circumstances, case by case. But perhaps we need not restrict ourselves to the common law: is not knowing cases of importance to many legal systems and traditions? How are cases known – and written about – in canon law and civil law? Or in Talmudic or Islamic law? There is room here for a project on the comparative history of legal reasoning that investigates its connection to the history-making and memory-making practices of the rhetorical tradition. I end, then, with an open invitation for a collective inquiry on the dynamic relations between history-making, memory-making, and law-making.

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