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Carneades' Role in Cicero's Conceptualisation of Justice

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Resumen

Mucha investigación se ha dedicado a reconstruir y analizar los discursos a favor y en contra de la justicia de Lelio y Filo que aparecen en el libro III de *De re republica* de Cicerón. Sin embargo, aún no ha habido una discusión sistemática sobre el papel que Carnéades, el método que lleva su nombre y la *divisio Carneadea* desempeñan no solo en este intercambio sino también en la conceptualización de la justicia de Cicerón en su conjunto. El objetivo de este artículo es mostrar, a través del examen del estilo de composición y argumentación de Cicerón, que la referencia de Cicerón a Carnéades como la figura tras los argumentos de Filo a favor de la injusticia no es una coincidencia ni tiene un efecto puramente retórico, sino un movimiento crucial y estratégico por parte de Cicerón que lo ayuda a dar forma a su propio argumento de justicia a lo largo de sus obras.

Palabras clave: Cicerón; Carnéades*; divisio Carneadea;* justicia vs. injusticia; escepticismo.

Abstract

Much research has gone into reconstructing and analysing Laelius' and Philus' speeches for and against justice as featuring in Cicero's *De re publica* book III. However, there has not yet been a systematic discussion of the significance which Carneades, the Carneadean method and the *divisio Carneadea* play not only in this exchange but also in Cicero's conceptualisation of justice as a whole. By examining Cicero's style of composition and argumentation, the aim of this article is to show that Cicero's reference to Carneades as the figure behind Philus' arguments in favour of injustice is neither coincidental nor purely for

the purpose of rhetorical effect, but a crucial and strategic move on Cicero's part which helps him shape his own argument of justice throughout his works.

Keywords: Cicero; Carneades; *divisio Carneadea*; justice vs. injustice; scepticism.

At the beginning of his earliest work *De Inventione*, presumed to have been published around 87 B.C. and composed when he was probably still studying, Cicero states the following:

> *Ac me quidem diu cogitantem ratio ipsa in hanc potissimum sententiam ducit, ut existimem sapientiam sine eloquentia parum prodesse civitatibus, eloquentiam vero sine sapientia minimum obesse plerumque, prodesse numquam. Quare si quis omissis rectissimis atque honestissimis studiis rationis et offici consumit omnem operam in exercitatione dicendi, is inutilis sibi, perniciosus patriae civis alitur; qui vero ita sese armat eloquentia, ut non oppugnare commoda patriae, sed pro his propugnare possit, is mihi vir et suis et publicis rationibus utilissimus atque amicissimus civis fore videtur* (Cic. *inv*. 1.1).
>
> For my own part, after long thought, I have been led by reason itself to hold this opinion first and foremost, that wisdom without eloquence does too little for the good of states, but that eloquence without wisdom is generally highly disadvantageous and is never helpful. Therefore if anyone neglects the study of philosophy and moral conduct, which is the highest and most honourable of pursuits, and devotes his whole energy to the practice of oratory, his civic life is nurtured into something useless to himself and harmful to his country; but the man who equips himself with the weapons of eloquence, not to be able to attack the welfare of his country but to defend it, he, I think, will be a citizen most helpful and most devoted both to his own interests and those of his community (transl. after Hubbell: 1960).

Despite the fact that at *de orat*. 1.5[1], Cicero in 55 B.C. —almost 30 years later— qualifies this work as unfinished and crude, and as no longer being worth of his present time of life and experience, it is remarkable that his attitude towards

1. Cic. *de orat*. 1.5: *Vis enim, ut mihi saepe dixisti, quoniam quae pueris aut adolescentulis nobis ex commentariolis nostris inchoata ac rudia exciderunt, vix hac aetate digna, et hoc usu, quem ex causis, quas diximus, tot tantisque consecuti sumus, aliquid eisdem de rebus politius a nobis perfectiusque proferri: solesque nonnunquam hac de re a me in disputationibus nostris dissentire, quod ego prudentissimorum hominum artibus eloquentiam contineri statuam; tu autem illam ab elegantia doctrinae segregandam putes, et in quodam ingenii atque exercitationis genere ponendam*. «For it is your wish, as you [Quintus] have often told me, that – since the unfinisehd and crude essays, which slipped out of

philosophy and eloquence has not changed but that he instead reiterates the same fundamental idea expressed at *inv*. 1.1, namely that eloquence without philosophy and philosophy without eloquence are worthless, even damaging to the state. Already as a youth, Cicero in this passage thus mentions concepts on which he elaborates in his later works, making the *De inventione*, as Schwameis (2014) has aptly shown, a programmatic piece of his later works and actions. In terms of the latter, throughout his life, Cicero consistently embodied the most helpful and most devoted citizen he describes in this passage. By combining philosophy and eloquence when being active in the spheres of law and politics, Cicero put his skills of an educated man in the public service and devoted his entire life to the Roman state. This is not least visible in the fact that during his active career, the topics of his works often coincided with events which occurred in his political life; and after the end of his political career, he continued to serve the Roman state, maybe not as an active lawyer in the sense of being an orator and patronus, but, just as importantly, as a scholar who took pains to compile a body of work which would serve as guidelines to current and future generations in their devotion to the state. In terms of the works to come, this passage already features the notions of study (*cf. studia*), duty (*cf. officia*), private and public interest, use and usefulness (*cf. sibi*, *suis*, *publicis*, *utilissimus*), civic life (*cf. patria civis*) and friendship (*cf. amicissimus*), all of which receive due attention, not least in connection with Cicero's concept of justice, throughout his later works.

What is, on a general level, being enounced here is that philosophy and eloquence form an intimate, albeit asymmetrical, unit with the former outranking the latter in importance[2]. Thereby, study and duties, the highest and most honourable of pursuits according to Cicero, are paired with eloquence in such a way that the latter —in Cicero's distinctly militaristic use of language which even today is prevalent in the domains of law, justice and debate more generally— metaphorically forms the weapon with which the state is defended, yet never attacked. At the same time, as Cicero's numerous considerations regarding terminology highlight throughout his works, eloquence is also indispensable for the form and forming of philosophical

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the notebooks of my boyhood, or rather of my youth, are hardly worthy of my present time of life and of my experience gained from numerous and grave causes in which I have been engaged – I should publish something more polished and complete on these same topics; and generally you disagree with me, in our occasional discussion of this subject, because I hold that eloquence is dependent upon the trained skill of highly educated men, while you consider that it must be separated from the refinements of learning and made to depend on a sort of natural talent and on practice» (transl. after Sutton and Rackham 1959).

2. See also *e.g. de orat*. 3.71, 80. This is not least because for Sceptical Academics like Cicero, as Wilkerson (1988: 131-132) puts it, rhetorical concepts served in the interest of sceptical epistemology.

argument, especially since philosophical schools at the time were in constant dialogue, or even dispute, with each other regarding a specific set of topics. As the head of the sceptical New Academy, Carneades of Cyrene (214/213-129/128 B.C.)[3] was one of these dialogue partners who, according to the passages in which he features throughout Cicero's works, chiefly engaged in discussions about assent, approval and the suspension of judgement[4]; the sorites arguments regarding the existence of gods in *De natura deorum*[5]; fate and the Epicurean swerve in *De fato*[6]; and not least justice[7]. On all of these topics, as portrayed by Cicero, Carneades either supplied the other position —mostly when arguing with the Stoics— or he argued both sides of an argument himself to produce a discussion *in utramque partem*. In so doing, he covered all possible bases of an argument and showed that his interlocutors' views may not be as watertight as they believe them to be[8]. Since within philosophical discussions, this manner of proceeding generated equally good arguments on both sides of a case, it led to an impasse (*epochē*), which, as Cicero states at *nat. deor*. 1.4, had the effect of stimulating further conversation in the pursuit of truth[9].

Given the importance Cicero attaches to philosophy and eloquence as a unit, it is interesting that modern scholars have focused on discussing predominantly the content of Cicero's works and less so the interplay between content and form. Yet it is precisely this synergy of philosophy and eloquence which I believe can give us further insight into Cicero's conceptualisation of justice in which, as I argue here, Carneades plays a decisive role. Therefore, rather than presenting detailed examinations of the content of individual passages in which Carneades is mentioned, as other scholars have done, this paper adopts an approach in which the focus lies on the overall structure of Cicero's manner of conceptualising justice throughout his works. While this helicopter view precludes in-depth discussions of the individual points raised in past and present scholarship, it offers a new perspective to and complements on-going arguments in that it highlights that without Carneades the eloquent

3. See Fleischer (2019), who in his reconstruction of fragments from Philodemus' *History of the Academy* (*Index Academicorum*) shows that there is no doubt that there only ever was one single Carneades and not two, as scholars since 1869 have believed.

4. For detailed discussions see *e.g*. Lévy 1980, Striker 1981 and 1997, Bett 1989 and 1990, Obdrzalek 2002 and 2006, Schofield 2005: 334-351, Lévy 2010: 52-58, Thorsurd 2010: 70-78, Skvirsky 2019, Reinhardt 2023, Grundmann (n.d.).

5. For details see *e.g*. Vick 1902, Long 1990, Ioppolo 2016, Lévy 2017: 572-585.

6. For detailed discussions see *e.g*. Sharples 1993, Schallenberg 2008 and Lévy 2017: 593-607.

7. For general summaries of Carneades' main arguments see *e.g.* Minar 1949, Lévy 2017: 32-48, Allen 2020.

8. See *e.g.* Lévy 1980: 45, Lévy 1990: 302, Thorsurd 2010: 70.

9. See also *Luc*. §§7, 60, 66, 76; *nat. deor.* 1.11.

philosopher, Carneades' arguments and Carneades' manner of arguing, Cicero would not have been able to construct his concept of justice in the way he did.

Even though Carneades did not leave any writings[10], numerous passages in Cicero give us an idea of the type of person he was, the methodology he used when arguing his cases and the types of arguments he put forward in the process. As I am showing elsewhere[11], Cicero displays a predominantly positive attitude towards Carneades. This is not surprising given that Cicero affiliates himself with the New Academy and that, as a consequence, he adopts Carneades method of arguing *in utramque partem*[12]. This manner of proceeding is particularly visible in his philosophical works where he argues for and against points of views and schools, often leaving readers in a state of *epochē*[13] and allowing for varying interpretations of his works. One such work is the *De finibus* consisting of three dialogues in a total of five books. The first dialogue spans books I and II, where Cicero first expounds the ethics of Epicurus and then refutes them from a Stoic point of view; the second dialogue features in books III and IV, where Cicero first describes Stoic ethics with the help of the figure of Cato before criticising them from the standpoint of Antiochus, an Academic. The final, somewhat enigmatic dialogue, is situated much earlier in time and has Piso defend the position of the Old Academy of Antiochus which in a mere few paragraphs Cicero attempts to criticise from the Stoic point of view before giving the final word to Piso[14]. Within this final book of *De finibius*, Cicero also expounds Carneades' division of views regarding the *telos*[15]. The following table summarises this division as presented by Cicero at *fin*. 5.16-23[16]:

10. See *Tusc*. 4.5 and Diogenes Laërtius, *Lives of eminent philosophers* 4.65.
11. See Kotarcic 2024.
12. See also Brittain (2015), who argues that Cicero is a Carneadean Sceptic.
13. See *e.g*. Gill 2015: 244.
14. Much research has been carried out on the *De finibus* and the question as to which position Cicero himself ultimately takes. Given that the focus of this article lies on the *divisio Carneadea* as a philosophical-structural framework, this question will not be addressed here. For details see *e.g.* Brittain 2015, Graver 2015, Bénatouïl 2015, Gill 2015.
15. For detailed discussions see *e.g.* Algra 1997 and Annas 2007.
16. For other summaries and visual representations of the *divisio Carneadea* see *e.g.* Croissant (1939), Algra (1997), Eisele (2004: 6) and Lévy (2017: 353-360, 387-394), where, however, it is not indicated which views fall under the category of *honestum* and which under *utilitas*.

Type	*Telos*	Defender
simple	*pursuit* of pleasure	no defender
simple	*pursuit* of freedom from pain	no defender
simple	***pursuit* of the primary natural objects in the right way**	**the Stoics**
simple	*obtainment* of pleasure	Aristippus
simple	*obtainment* of freedom from pain	Hieronymus
simple	***obtainment* of primary natural objects**	**Carneades *disserendi causa***
composite	*honestum* + pleasure	Calliphon and Dinomachus
composite	*honestum* + freedom from pain	Diodorus
composite	***honestum* + primary natural objects**	***antiqui***

Table 1 The *divisio Carneadea* according to Cicero at *fin*. 5.16-23

Before commenting on the *divisio Carneadea* itself, it is worth noting that *fin*. 5.16-23 is not the only place where Cicero presents Carneades' division. He does it also at *Luc*. §§130-131, *fin*. 2.34-35, 3.30-31 and *Tusc*. 5.84[17]. As Algra (1997) aptly shows[18], each of these passages represents a different version of the same content with *fin*. 5.16-23 featuring a more complete outline of the division. A close look at this division shows that the system itself is, in fact, also a variation on a theme[19] covering not the positions which were actually held but rather all possible positions which *could* be held on the *telos*. Important to note is that while the *divisio Carneadea* outlines all possible positions, it is nonetheless vague. As such, it represents a general philosophical framework in which discussions were conducted without featuring the precise arguments of each individual position.

As Table 1 shows, the *divisio Carneadea* includes nine positions on the final End of which six are simple and three composite. As such, this division differs from Chrysippus' classification where only the first three positions and the three composite positions are upheld. The key element of a position is one of the three highest goods (*cf*. *summum bonum*): pleasure (*voluptas*), freedom of pain (*depulsio doloris*) or the primary natural objects (*prima secundum naturam*). In the first three positions, depending on which of these goods forms the subject of prudence (*prudentia*), *i.e.* the art of life (*ars vitae*), a different theory of right (*ratio recti*) and morality

17. For detailed discussions of these passages see *e.g*. Döring 1893.

18. See also Annas 2007: 196. Following Algra, I here disagree with Lévy (2017: 357-358 n. 77), who suggests that the different passages stem from different sources, but agree with Lévy (2010) that the *divisio* has been reworked and that *De finibus* presents different stages of the dialectical discussion in the Academy. See also Lévy (2020: 77) that in the *Paradoxa stoicorum*, *Lucullus* and *Tusculanae*, there are modifications in form which do not affect the main train of thought.

19. See also Allen (1997: 228), according to whom Carneades' inquiries are virtuoso variations within a broadly Stoic framework; see also Cappello (2019: 153), who speaks of Cicero as having a «self-conscious adaptability in writing and rewriting the shape of the tradition».

(*honestum*) arises. Accordingly, the *honestum* consists either in the pursuit of pleasure, of freedom of pain or of the primary natural objects. While the last position is held by the Stoics, the first two are not defended by anyone.

The next three positions shift the focus from the pursuit to the actual obtainment of one of these three ends and thus from morality to action with Aristippus defending the obtainment of pleasure, Hieronymus of freedom from pain and Carneades of the primary natural objects[20]. Important to note is that at *fin*. 2.42, Cicero makes clear that Carneades does not actually believe in this view, but holds it for argument's sake, which Cicero expresses with the same militaristic imagery he used at the beginning of *De inventione* when describing the position as a weapon in his [Carneades'] battle with the Stoics (*quod is non tam, ut probaret, protulit, quam ut Stoicis, quibuscum bellum gerebat, opponeret*)[21]. In the final three positions, pursuit and obtainment are combined to form a composite *telos* whereby *honestum* is rated higher than any of the other primary goods and thus imposes restrictions on the latter, as Cicero implies at *fin*. 5.50 and explicitly states at *inv*. 2.158. Consequently, the word *plus* and the plus signs in the *divisio* should always be read with the implication that *honestum* outranks the second element. Unlike the other triads of positions, each of them is defended either by Calliphon and Dinomachus in the case of *honestum* and pleasure, Diodorus for *honestum* and freedom of pain or the *antiqui*, as Cicero calls the Academics (incl. the sceptical New Academics)[22] and Peripatetics, when it comes to *honestum* and the primary natural objects.

Three positions, highlighted in bold, are of particular interest here: (1) the Stoics' defence of the *pursuit* of the primary natural objects, (2) Carneades' defence for argument's sake of the *obtainment* of the primary natural objects and (3) the Academics and Peripatetics' composite position that the *honestum* and the primary natural objects form the *telos*. Carneades here defends the obtainment of the primary natural objects to show the Stoics what would happen if one really were to reach their *telos* by the pursuit of preferable indifferents. The composite position then appears as a resolution to the dilemma in that *honestum*, the morality arising from the pursuit of the primary natural objects, and the obtainment of the primary natural objects are combined. Thereby, *honestum* forms the framework which keeps the primary natural objects in check. As I argue in the following, these three positions together with Cicero's application of the Carneadean method of arguing *in utramque partem* are vital for the understanding of Cicero's conceptualisation of justice.

20. For a discussion of the Stoic *telos* and Carneades' engagement with it see *e.g*. Long 1967.

21. See also *Tusc*. 5.84, where Cicero reiterates that this is the way «Carneades used to argue against the Stoics» (*ut Carneades contra Stoicos disserebat*).

22. See *e.g. Ac.* 1.46, where Cicero says that to him, the Old and New Academy seem to be the same.

The most prominent and most discussed place where justice features in Cicero's works is the third book of the *De re publica*. There, Cicero depicts a discussion on justice which is carried out *in utramquem partem* by the two consuls Lucius Furius Philus and Gaius Laelius. As scholars have pointed out, remarkable about the setup of this discussion is the fact that unlike in his philosophical works where Cicero first presents the pro and then the con side of an argument and where he claims to emulate Aristotle's manner of writing when composing his dialogues[23], Philus' speech against justice is presented first, before Laelius replies with a speech in favour of justice. One reason which has often been cited as justification for this reversal in the order of positions is the fact that simply by virtue of being last, the second of two speeches, although equal in strength of argumentation, is better remembered and thus wins the case. Cicero is then often said to have inverted the order of speeches to make sure that justice prevails in the end. While I agree with this assessment, a close examination of the two speeches reveals that the case is more intricate with Cicero interweaving several levels of argumentation and composition to construct his concept of justice.

To begin with, the variation on the theme of arguing *in utramque partem* by interchanging the pro and the con sides is nothing unusual for Cicero. He often uses this inverted technique in his speeches where the prosecution features first before the defence is presented[24]. Given that the topic of discussion in the *De re publica* is political, Cicero appears to change the eloquence with which he argues his cases. While he presents the pro side first and then the con side when outlining the views of the different schools throughout the works in which philosophical matters are discussed, he here switches to the type of eloquence used in law courts by first presenting the prosecution —the con side— and then the pro side —the defence. As such, Philus' speech can be regarded as the prosecution of justice and Laelius' as the defence of justice; and equally Philus can be regarded as the attacker and Laelius as the defender of justice.

Framed this way, parallels to Cicero's above-cited beginning of *De inventione* and his description of Carneades' position against the Stoics at *fin*. 2.42 emerge, where Cicero uses the same militaristic vocabulary[25]: orators who equip themselves

23. See *e.g*. Ferrary 1974: 749. In his dialogue form too, Cicero does not strictly follow Aristotle, but introduces variation in that he, as the author, does not, as Sutton and Rackham (1959: xii) observe, take part in every one of his dialogues, but instead uses mouthpieces to express his views (*e.g*. in *de orat*., where Crassus expresses his views).

24. See *e.g*. Neuhausen 2008: 63-69.

25. See also *Luc*. §88, where Cicero claims that *de quo queri solent Stoici, dum studiose omnia conquisierit contra sensus et perspicuitatem contraque omnem consuetudinem contraque rationem, ipsum*

with weapons of eloquence should not attack but defend the welfare of their country. Accordingly, this simple inversion of positions on Cicero's part already signals that the speeches are used with a particular aim, in this case the defence of justice which by the end of the discussion must emerge as the prevailing view[26]. This setup not only puts Philus into a precarious position of attacker of the welfare of the country but also introduces an imbalance between the prosecution and defence which is further exacerbated in the two speeches themselves.

The discussion begins at *rep*. 3.8, where, having been prompted by Laelius, Philus very hesitatingly agrees to argue against justice[27]. Before doing so, however, Philus claims that by speaking against justice and thus saying things which Carneades does[28] —*a Greek* (*Graecus homo*) who customarily expresses whatever seems useful (*cf. conuetus, quod commodum esset, verbis*)—, he will be defending wickedness (*cf. improbatis patrocinium*) and covering himself deliberately with filth (*cf. me oblinam sciens*). In his objection, Philus displays a distinctly negative attitude towards Carneades, which is likely to be related to the aftertaste which a historical event must have left in the Roman society.

This event is the embassy of three philosophers —the Academic Carneades of Cyrene, the Peripatetic Critolaus of Phaselis and the Stoic Diogenes of Babylon[29]— which the Athenians sent to Rome in 155 B.C. with the aim of convincing the Roman Senate to absolve them of a fine Athens had incurred for unlawful actions against Oropos[30]. During that visit, Carneades is said to have delivered (public) lectures[31], including two speeches on justice on two consecutive days: the first arguing in favour of justice, the second against it. Thereupon, as Pliny the Elder (*nat*. 7.122) and Plutarch (*Cat. Ma.* 22-23) claim, Cato, displeased with the content and effect

sibi respondentem inferiorem fuisse, itaque ab eo armatum esse Carneadem («While he [Chrysippus] carefully sought out all the facts that told against the senses and their clarity and against the whole of common experience and against reason, when answering himself he got the worst of it, and thus it was he that furnished weapons to Carneades»).

26. See also Zetzel 2022: 267.

27. For detailed discussions of the content of the two justice speeches in *rep*. 3 see *e.g.* Croissant 1939:560-567, Ferrary 1974 and 1978, Zetzel 1996 and 2017b, Hahm 1999, Horn 2007, Lévy 2016, Bénatouïl 2019, Vander Waerdt 2022.

28. The verb *solent* in *quae contra iustitiam dici solent* suggests that Philus is not repeating Carneades' exact arguments to which Cicero may not have had access.

29. See *de orat*. 2.155 and 161; *Tusc*. 4.5.

30. See Paus. 7.11.4-5.

31. On the question whether or not Carneades' lectures on justice took place and whether or not they are likely to have been public, in the Senate or private see *e.g.* Wilkerson 1988:134-136, Powell 2013 and Vander Waerdt 2022: 287.

Carneades had on the Roman audience and keen for the embassy to leave Rome at the earliest possible moment, expedited the business in the Senate[32]. Even though much uncertainty surrounds this embassy, experts on the topic agree that such an embassy did take place, that Carneades was part of it and that while the fine was not lifted, it was considerably reduced, though never paid by Athens[33]. What remains controversial about the embassy is the question whether Carneades indeed held speeches for and against justice and if so, which arguments exactly he put forward to defend the two positions[34]. The controversy mostly arises from the fact that the only sources on the speeches on justice stem from Quintilian (*inst*. 12.1.35) and Lactantius (*inst.* 5.14 and 3-5 as well as *epit*. 55.5-8)[35] with vague references to it featuring in this very passage in the *De re publica*, our earliest source on the matter[36], where it is precisely this event which is supposed to serve as the basis for Philus' speech. Philus' somewhat derogatory qualification of Carneades as a Greek is thus also a reference to Cicero's statements at *Tusc*. 4.5 that philosophy only arrived in Rome with the advent of the Athenian embassy in 155 B.C.

The fact that Carneades is accused of arguing whatever is advantageous not only foreshadows the content of Philus' speech but also relegates Carneades to one single position, namely that according to which the *telos* consists in obtaining the primary natural objects, as outlined in the *divisio Carneadea*. The reduction of Carneades —the great eloquent philosopher[37]— to this one single position, assumed for

32. As Powell (2013: 231-234) has noted, it is interesting that both Pliny and Plutarch confine Carneades' speeches to the Senate and that Cato's reaction is only reported in these two sources, *i.e*. that there are in fact no ancient sources on this matter. Neuhausen (2008: 78) in his compilation and discussion of fragments in which Cato's dealings with Carneades are mentioned argues that Cicero himself had already discussed the dealings of Cato and Carneades in the *Academica*.

33. See *e.g.* Büchner 1984:281, Wilkerson 1988: 132, Géraud 2016, Mas 2020, Federov 2021.

34. For discussions of this question see *e.g.* Büchner 1984: 282, Wilkerson 1988.

35. Quintilian, Lactantius and other later scholars often cited, remodelled and reused Cicero's material, and some, as Drecoll (2004: 87) observes, are likely to have exaggerated their representations of Carneades, as did for instance Plutarch. Cicero's presentation of Carneades and Carneades more generally have been influential beyond antiquity and were discussed by eminent thinkers like Kant or Grotius. For discussions of Carneades as featuring in authors from Virgil to Hobbes see Straumann 2017; in Kant see *e.g.* Küper 1999; in Grotius see *e.g.* Straumann 2015; for Carneades' and Descartes' concepts of doubt see *e.g.* Couissin 1937. Carneades' plank as a prime example of a moral conundrum has particularly gained popularity over the centuries. Not only has it featured in numerous discussions like Aichele (2003) and Müller (2022), but it is also used by law students in case studies. For the use of Carneades and his argumentative strategies in the world of artificial intelligence see Gordon and Douglas 2017 and Gordon 2017.

36. For details see *e.g.* Mas 2020: 365.

37. See Kotarcic 2024.

argument's sake to counter the Stoics, would explain why Nonius 263M fr. describes Carneades as mocking the noblest causes through his vicious cleverness (*cf*. *qui saepe optimas causas ingenii calumnia ludificari solet*). Cicero's positive qualification of Carneades as an honest man who chooses a different manner of putting the argument without employing trickery at *Luc*. §108, *Tusc*. 5.120 and *fat*. 32 is thus overturned and replaced by a distinctly negative image of him misusing his intellect for objectionable purposes.

Given this negative reframing of Carneades in a context in which one of the two speeches must prevail, it is not surprising that Philus adamantly distances himself from Carneades and his position for fear that others will think he believes the consequences of Carneades' arguments, namely that there is no objective justice. To ensure that this does not happen, Philus appears to introduce a subframe. By claiming that just as those looking for gold do not object to covering themselves in filth he too will not object to it in the search of justice, Philus constructs an analogy to the Academics' method of arguing both sides of a case in the search for truth. This protects him from being misunderstood as attacking the welfare of the state while fulfilling the set task.

The fragmentary state in which the remainder of Philus' —and Laelius' for that matter— speech has survived[38] suggests that, if we can rely on Lactantius' above-cited passages[39], Philus does not, as he was tasked to do, simply present arguments against justice but that before doing so, he discusses arguments in favour of justice, namely those presented by Plato, Aristotle and Chrysippus. As a consequence, scholars have often regarded this sequence as a preamble to Philus' speech against justice. Here, I want to suggest that Philus' summary of other schools' views at the beginning of his own speech fulfils, despite its brevity, a much more important role than that of a simple preamble. What the structure and content of Philus' speech suggest is that despite being presented by a single speaker and despite serving as the prosecution of justice, the speech actually consists of two parts: the first, shorter part, here termed Philus I, arguing for justice, the second, main part, Philus II, arguing against justice. This setup in which the pro side features first and is followed by the con side is familiar from philosophical discussions *in utramque partem*. Structurally, Philus' speech (Philus I + Philus II) by itself covers the event of 155 B.C. in which Carneades first argued for and then against justice[40].

38. According to Zetzel (2017b: 302), only 11 out of 90 folia have survived. Of these eleven, ten cover Philus' speech and one the last paragraph of the debate in Laelius' speech.

39. For details on Lactantius as source of Philus' and Laelius' speeches see *e.g*. Zetzel 2017b.

40. See *e.g.* Büchner (1984: 278) and Ferrary (1978: 134), who point out that Philus summarises the views of those who put forward theories on justice before subsequently countering them.

Thematically, Philus I, appears to have treated the views of Plato, Aristotle and Chrysippus collectively and not to have refuted each of them one by one[41], which —together with the fact that these thinkers' views on justice will have been widely known to Cicero's audience and do thus not require extensive expounding— would also explain the brevity of Philus I. The collective treatment of these thinkers is not surprising given that, as Ferrary (1978: 151) and Lévy (2010: 60) have pointed out, Cicero often accuses the Stoics of expressing substantially the same view as Plato and Aristotle but with a different terminology[42]. One place where Cicero does this is *off*. 3.11, where he claims the following:

> *Quam ob rem de iudicio Panaeti dubitari non potest; rectene autem hanc tertiam partem ad exquirendum officium adiunxerit an secus, de eo fortasse disputari potest. Nam, sive honestum solum bonum est, ut Stoicis placet, sive quod honestum est, id ita summum bonum est, quemadmodum Peripateticis vestris videtur, ut omnia ex altera parte conlocata vix minimi momenti instar habeant, dubitandum non est quin numquam possit utilitas cum honestate contendere. Itaque accepimus Socratem exsecrari solitum eos qui primum haec natura cohaerentia opinione distraxissent. Cui quidem ita sunt Stoici adsensi ut et quidquid honestum esset, id utile esse censerent, nec utile quicquam quod non honestum* (Cic. *off*. 3.11).
>
> So there can be no doubt about Panaetius' attitude to this matter, though there can perhaps be debate on whether he was right or wrong in his researches on obligation to append this third consideration. For whether, as the Stoics maintain, the honourable is the only good, or whether the honourable is the highest good as you Peripatetics argue, since both views lead to the conclusion that all else when put on the opposing scale would scarcely register the slightest weight, there can be no doubt that the useful can never conflict with the honourable. This is why Socrates, so we are told, used to curse those whose views first prised apart these concepts which nature joins together. The Stoics agreed with him, arguing that whatever is honourable is useful, and that nothing is useful which is not honourable (transl. after Walsh 2000).

In this passage, Cicero —just as in the *divisio Carneadea*— talks about different highest goods and concludes that no matter whether one agrees with the Stoics that *honestum* is the only good or with the Peripatetics that *honestum* is the highest good, ultimately both views yield the same result, namely that whatever is

41. See *e.g.* Bénatouïl 2019: 187-192.
42. See *e.g. fin*. 3.41; 4.3, 19-23, 29-31, 56-61, 78, 5.73-74; *Tusc*. 5.120; *off*. 3.11, 19-20, 33, 35, 101.

honourable is useful and that nothing is useful which is not honourable. This being naturally the case, Cicero makes a second fundamental point in this passage, namely that Socrates cursed those who first separated *utilitas* from *honestum* and that the Stoics agreed with him. A similar claim is made at *leg*. 1.33 with the difference that Socrates there curses the separation of utility (*utilitas*) from justice (*ius*). The parallel structures and claims suggest that *honestum* and *ius* have overlapping meanings, as is also visible in the fact that both at *inv*. 2.157-176 and in *off*. book I, justice is treated as integral part of the *honestum*. This cursed move separating *honestum* and *utilitas* is visible between Philus I and Philus II, where Philus shifts the debate to a position in which *utilitas* is suddenly separated from *honestum*. This move not only paves the way to Philus' arguments in Philus II, but it also establishes a direct parallel both between Philus I and Philus II and the *De officiis*, and between Philus I and Philus II and the *divisio Carneadea*.

As mentioned above, the *divisio Carneadea* does not represent all positions which were actually held but all positions which *could* be held. In this scheme, Carneades —for argument's sake— advocates the *obtainment* of the primary natural objects in direct response to the Stoics' view that *telos* can be reached by *pursuing* primary natural objects in the right way. In so doing, he frames an argument around a matter which the Stoics regard as indifferent given that they advocate for *honestum* as the only good while the *antiqui* acknowledge that obtaining primary natural objects is important, just not as important as *honestum*. In other words, what Carneades appears to be doing in the *divisio Carneadea* is to extract the preferred indifferent from the Stoic position and make it into its own final good, *i.e.* he separates *utilitas* from *honestum*. Reading this in connection with Philus I and II as well as Cicero's repeated statements that Carneades chiefly argued against the Stoics, the arguments presented in Philus II, as Vander Waerdt (2022: 297) and Lévy (2016: 419) have already suggested, can be taken chiefly to argue against the Stoics in Philus I.

While textual evidence on Philus I is completely lost, the surviving fragments on Philus II indicate that Philus' main argument consists in defending three main positions[43]: (1) there is no such thing as justice (*rep*. 3.13-18), as highlighted by different laws, customs, institutions and behaviours; (2) if there were, it would be tantamount to stupidity (*rep.* 3.23-21b) given that justice is altruistic and altruism is stupid, as it means that the Romans would have to return their conquests and go back to living in huts; (3) justice is motivationally inert, meaning that people behave justly only if there is punishment awaiting them (*rep*. 3.25-32a). The latter point receives particular attention with Philus citing numerous examples to defend it: a man who

43. For a good summary of Philus' arguments see also Zetzel 2022: 270.

is hiding information about an unhealthy slave or defective house he wishes to sell (*rep*. 3.29); two shipwrecked men fighting for the same plank (*rep*. 3.30); a good man being held for the wicked man and vice versa (*rep*. 3.27); states which would prefer to rule justly than to be ruled unjustly (*rep*. 3.28).

Importantly, many of the examples Philus mentions in Philus II also feature in *De officiis* book III, where Cicero explicitly treats them as cases of *utilitas* which apparently clash with *honestum*. Thus, deceits regarding selling a house feature at *off*. 3.54-57 and 66-68; Carneades' plank is discussed at *off*. 3.89-90; and the topic of doing injustice without anyone noticing at *off*. 3.38 and 78 with the help of Gyges and his ring. Further examples are listed in the remainder of *De officiis* book III which together with the discussion on *utilitas* in *De officiis* book II highlight that Carneades' separation of *honestum* and *utilitas*, while ultimately resolved, pervades Cicero's philosophical and political works.

In *De re publica* book III, this resolution only arrives with Laelius whose arguments are subsequently taken up and escalated by Scipio; for both simple positions, *i.e.* the Stoic and the Carneadean, highlighted in bold in Table 1, are covered by Philus and, as is customary when arguing *in utramque partem*, create an impasse (*epochē*) of the kind which is prevalent in philosophical discussions. Philus —operating in the philosophical subframe he introduced with the analogy of searching for gold— does therefore not have to commit to either of the positions he expounds given that *epochē* here serves to animate the discussion in the search for truth, or in this case justice, by highlighting the difficulties of the philosophers' theories on justice[44]. However, in Philus' and Laelius' discussion of political matters, the final part remains more present with the audience and thus leaves them —despite Philus' attempt not to pass judgement— with an attack on justice brought about by an argument in which obtaining the primary natural objects stands in direct opposition to justice in that it leads to its destruction.

In other words, despite the fact that Philus' view that justice harms the state should in the end yield a solution which helps the state, by the end of Philus' speech, the weapon eloquence paired with philosophy is seen to have been used to attack the proposition that justice is necessary for the welfare of the state[45], which as Cicero

44. See also Allen 1997: 217.

45. See also Ferrary (1978: 132, 149), who points out that the ultimate goal of Philus' speech is to show that the state can only harm itself by practicing justice and that the individual is only examined to the extent that it helps reach this conclusion (on this point see also Horn 2007:53-55). As he, Straumann (2017: 337) and Zetzel (2022: 268) point out, the introduction of the state as the main topic of attack differs from the Platonic, and presumably also the Carneadean, model and is thus likely another Ciceronian variation on the theme of the speeches against justice presented by his two predecessors. See also

states in the *De inventione* passage cited above is not to be done. Instead, eloquence and philosophy should only be used to defend the country just as Laelius does in his reply to Philus[46]. In his speech, Laelius opts to defend justice on a different plane by moving away from motivational to ontological and epistemic issues[47]. He does this by making the following fundamental claim:

> *Est quidem vera lex recta ratio naturae congruens, diffusa in omnes, constans, sempiterna, quae vocet ad officium iubendo, vetando a fraude deterreat; quae tamen neque probos frustra iubet aut vetat, nec improbos iubendo aut vetando movet. Huic legi nec obrogari fas est neque derogari aliquid ex hac licet, neque tota abrogari potest. Nec vero aut per senatum aut per populum solvi hac lege possumus, neque est quaerendus explanator aut interpres Sextus Aelius; nec erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et omnes gentes et omni tempore una lex et sempiterna et immutabilis continebit, unusque erit communis quasi magister et imperator omnium deus; ille legis huius inventor, disceptator, lator, cui qui non parebit ipse se fugiet, ac naturam hominis aspernatus hoc ipso luet maximas poenas, etiamsi cetera supplicia quae putantur effugerit* (Cic. *rep*. 3.33).
>
> True law is right reason, consonant with nature, spread through all people. It is constant and eternal; it summons to duty by its orders, it deters from crime by its prohibitions. Its orders and prohibitions to good people are never given in

Zetzel (1996: 304), who states that «it was Cicero who chose to emphasize imperial morality in general and the morality of Rome in particular». On imperialism in the two justice speeches see also Schofield 2021:125-135.

46. See also Hahm (1999: 181), according to whom Philus' speech is a transplantation in which «Philus himself is to play the role of interpreter, translating the attack on justice into Latin and presenting it in a format in which Roman defenders can effectively engage it and from which they can rescue it and elevate it in the Roman world».

47. As Schofield (2021: 132) has pointed out, Laelius chiefly addresses Philus' line of imperialism. See also *e.g*. Zetzel 1996: 305 and Vander Waerdt 2022: 292. For a similar proceeding see also Cicero's *Pro Roscio Amerino*, where, as Zetzel (2013: 425) has observed, «the prosecution and defense cases [have] remarkably little to do with one another». The same work also displays a further parallel to Philus' speech in that there, Cicero also moves from the private or individual to the public realm. Both Pohlenz (1931) and Capelle (1932) argue that Laelius' speech is modelled on Panaitius (Pohlenz in fact claims that the entire *De re publica* is modelled on Panaitius). However, the results of this study suggest that this is highly unlikely, as Ferrary (1974) has already pointed out. At *off*. 3.19-20, Cicero explicitly states that given Panaitius' neglect to resolve the conflict between *honestum* and *utilitas*, he will establish a rule of judicial proceedings (*formula*) by himself. Book III of *De officiis* is thus Cicero's own composition. This, together with the parallel structure and content between the *De officiis* and the two justice speeches in the *De re publica*, strongly implies, as Vander Waerdt (2022: 307) argues, that Laelius' speech too stems from Cicero himself.

> vain; but it does not move the wicked by these orders to prohibitions. It is wrong to pass laws obviating this law; it is not permitted to abrogate any part of it; it cannot be repealed as a whole. We cannot be released from this law by the senate or the people, and it needs no exegete or interpreter like Sextus Aelius. There will not be one law at Rome and another at Athens, one now and another later; but all nations at all times will be bound by this one eternal and unchangeable law, and the god will be the one common master and general (so to speak) of all people. He is the author, expounder, and mover of this law; and the person who does not obey it will be in exile from himself. In so far as he scorns his nature as a human being, by this very fact he will pay the greatest penalty, even if he escapes all the other things that are generally recognised as punishments (transl. after Zetzel 2017a).

Here, Laelius introduces the idea that justice is natural. In so doing, he moves punishment and reward from the worldly into the cosmic realm by demonstrating that moral standards are universal not civil and by relating them to the immortality of the soul[48]. At the same time, he also claims at *rep*. 3.35a that wars are only considered just if they are announced, declared and involve the recovery of property (*cf. de repetitis rebus*). Similarly, at *fin*. 2.59, Cicero highlights that he already discussed in Laelius' speech that no good man would be found anywhere if fair-dealing, honesty and justice had not their source in nature and if *all* things were only valuable for their utility (*cf. perspicuum est enim, nisi aequitas, fides, iustitia proficiscantur a natura, et si omnia haec ad utilitatem referantur, virum bonum non posse reperiri*). Useful things, especially property, are thus never abandoned, simply relegated to a subordinate position, just as they are in the third book of *De officiis*. At this point, Cicero thus unravels the alleged rivalry between *honestum* and the obtainment of primary natural objects by showing that both are required for justice.

This is thus a decisive moment in the *De re publica*: it marks the point at which justice is established as the *sine qua non* for the formation and preservation of the best form of government. As such, the justice debate not only introduces the main criterion for the best government, but it also marks the turning point in the discussion as a whole; for Scipio, who in the first two books mostly engaged in empirically evaluating the best form of government, at *rep*. 3.42a wholeheartedly (*cf. gaudio elatus*) embraces Laelius' argument on justice[49]. Not only does he reformulate his initial definition of the state at *rep*. 1.39a into a much stronger statement at *rep*. 3.43, but he

48. For a good summary of Laelius' arguments see *e.g.* Zetzel 2022: 274-275.

49. For detailed discussions of the connection between Laelius' speech and Scipio's Dream see *e.g.* Zetzel 1996: 311, Atkins 2011, Atkins 2013: 47-79 and Lévy 2016.

also begins to outline an increasingly idealistic vision of the best form of government which comes to an end with the Platonic idea that after death the immortal soul will be released from the body and will be judged in the afterlife. The body, in this vision, is clearly dominated by the soul, a thought Cicero repeatedly expresses throughout his works, including in the *honestum —utilitas* division at *inv*. 2.157-176.

There, Cicero outlines a scheme of *honestum*, *utilitas* and *honestum* plus *utilitas* and introduces a gradation in terms of necessity: the greatest necessity is doing what is honourable, then comes security which lies outside the body and finally things that are inside the body. The explicit separation between *honestum*, *utilitas* and *honestum* plus *utilitas* suggests that Cicero here operates in the same framework as the *divisio Carneadea* whereby he clearly subordinates useful things, or the obtainment of primary natural objects, to those which belong to the *honestum*. The gradation shows that while not as important as *honestum*, useful things are still regarded as significant. The Platonic development and ending of the *De re publica* paired with this gradation in *De inventione* highlights that Cicero shows an inclination towards the composite position held by the Academy, namely that both the *honestum* and the obtainment of primary natural objects are important, but that the latter are clearly less important than the former[50].

A slightly different yet similar picture arises in the *De officiis*. There, Cicero at *off*. 1.6 explicitly states that in this work he chiefly follows the Stoics, drawing from them as much as and in whatever way his judgement and inclination dictate it, while simultaneously staying loyal to the methods of the New Academy[51]. Accordingly, he presents matters pertaining to *honestum*, *utilitas* and *honestum* plus *utilitas*

50. See also Ferrary (1974: 745), according to whom, unlike Philus' speech which is modelled on Carneades, there does not appear to be an equivalent model for Laelius' speech. Ferrary (see also Ferrary 1978: 152) thus concludes that Laelius' speech is essentially platonic with Aristotelian elements (with the exception that neither of them applies standards of justice to the *poleis* from the outside).

51. This apparently clear statement is, however, expressed in such an ambivalent manner that one could just as easily think that he follows the *antiqui*. For instance, when introducing his discussion on the *honestum* and *utilitas* at *off*. 3.20, Cicero defends his following the Stoics by claiming that his affiliation to the Academy gives him the freedom to defend whichever position he thinks most probable. At the same time, the reason he indicates for following the Stoics is based on the fact that they discussed the matter more splendidly (*splendidius disserentur*). In other words, here too, Cicero grants the Stoics the position of being innovative only in so far as they used other, in this case clearer, terminology for the same substance. See also *e.g*. Erren 1987: 192-193. Kries (2009) rightly highlights that the *De officiis* appears to serve two main purposes: (1) as a handbook on duties to aspiring republican statesmen and (2) as a serious criticism of Stoicism by claiming that «[...] Cicero points to a morality that seems more adequate to himself, the morality of the Peripatetics which, while holding moral virtue to be the highest good for man, recognizes the exigencies of political life that render man a problem or tension to himself».

much more clearly in that he discusses the *honestum* in book I, *utilitas* in book II and the composite of *honestum* plus *utilitas* in book III. Already at the outset, the work thus displays a tripartite structure which, on close inspection, reveals the same configuration as the two speeches on justice in *De re publica*. The first two books are said to be modelled on a work on duties by the Stoic Panaitius who first presents *officia* arising from the *honestum*, *i.e.* from the simple Stoic position that the *telos* consists in pursuing the primary natural objects in the right way, before discussing *officia* resulting from *utilias*, *i.e.* the obtainment of the primary natural objects. While the *De officiis* is situated in a different context and Cicero does not focus on the individual philosophical positions so much as the duties arising from them, it is still notable that in the third book an apparent clash between duties arising from *honestum* treated in the first and those arising from *utilitas* treated in the second book is thematised and ultimately resolved. While Panaitius was certainly not arguing *in utramque partem*, Cicero faulted him for not discussing cases of apparent conflict between *honestum* and *utilitas*, and set out to tackle this himself in *De officiis* book III. In so doing, Cicero —just as he does in the justice debate in *De re publica* book III— sets out to formulate an answer on the political level to a discussion which on the philosophical level he regards as having led to *epochē*.

The first two books attributed to Panaitius then appear as one entity consisting of two parts, here termed Panaitius I and Panaitius II, and implicitly cover the same material as Philus does in his speech (Philus I + Philus II) which in turn emulates Carneades' two discourses for and against justice[52]. If we can take *div*. 1.12, where Quintus, speaking in favour of Stoicism, claims that Carneades and Panaitius pressed for the same question, and *div*. 2.97, where Cicero, when arguing against the Stoics, maintains that he is not using the arguments of Carneades but those of Panaitius, as an indication of their scholarly relation[53], this would support the idea that in the Panaitius books of *De officiis*, Cicero re-examines Carneades' two speeches by presenting yet another variation on a theme. The latter manifests itself in the tone of discussion which in the *De officiis* is not one of debate but one of presentation. By the end of book II of *De officiis*, Cicero is not left with an attack on justice, as was the case with Philus' speech, but with an outline of *officia* arising from *honestum* and *utilitas* respectively[54]. This differentiation is important as it highlights two main points. First, while in Philus II the obtainment of primary natural objects stands in direct opposition

52. See also *e.g.* Croissant 1939: 565 n. 2.

53. See also Martha 1878: 104.

54. See *fin*. 5.19, where in the discussion of the *divisio Carneadea*, Cicero already alludes to the various positions giving rise to *officia* (*cf*. *omne officium*).

to justice in that it leads to its destruction, there is no clash between *honestum* and *utilitas* in Panaitius II. Rather, Cicero here simply discusses *utilitas* arising from the obtainment of primary natural objects. In so doing, he signals that the former is a consequence of the latter, which allows incorporating *utilitas* into the *divisio Carneadea*. Panaitius II can thus be regarded as a mirrored parallel to Philus II in that it attempts positively to portray the benefits of obtaining primary natural objects. As a consequence, Panaitius II also differs from Philus II in that the clash between justice, and by implication *honestum* and *utilitas* does not happen within Panaitius II as it does within Philus II, but in that it is outsourced to book III of *De officiis*.

Nonetheless, given that a discussion *in utramque partem* implies an internal tension —at least to a certain degree— between the arguments presented on either side and leads to *epochē*, the ultimate result of Philus II and Panaitius II is the same, as Cicero's awareness of both the tension and the resulting impasse between *honestum* and *utilitas* throughout the *De officiis*[55] highlights. Cicero, the helpful citizen, thus proceeds to add a third book in which he, just as Laelius does, resolves the impasse between *honestum* and *utilitas* by explicitly stating that nothing which is not done *honeste* can possibly be *utile*. Both the *De re publica* and the *De officiis* thus end with the re-establishment of the natural and necessary connection between *honestum* and *utilitas* which was undone by Carneades and his predecessors who argued that the obtainment of primary natural objects is the final End[56]. Given that Cicero stays true to his Carneadean method and does not clearly indicate whether in his original contribution this natural connection inclines him more towards a Stoic or *antiqui* position, it can be argued that in terms of content ultimately both could be defended[57], though the fact that in *off*. book III Cicero does not employ Stoic vocabulary, that he appears to hold property as an important good for the establishment of justice and that he there presents a solution which is of distinctly Roman legal nature does not favour the former[58].

This is not least visible in his statement at *leg*. 1.39 that these things appear to him to have been neatly arranged and composed (*cf. haec quae satis nobis instructa*

55. See *e.g. off*. 1.9, 10; 2.8; 3.7-20. See also *inv*. 2.173-174.

56. See also Schofield (2023) and *inv*. 2.12 and 156, where Cicero claims that in the deliberative type of speech – as part of which he defines justice –, he prefers the combination of *honestas* and *utilitas* as the end (*cf. finis*) to which a speech should tend.

57. In my book *Cicero on Justice* (working title), I am considering in detail how Cicero's emphasis on the importance of property, both communal and private, contributes to this debate.

58. Given the Roman legal nature, one could even hypothesise whether for Cicero the distinction between Stoics and *antiqui* is exhaustive or whether by combining elements of both and remaining vague on his own position, he might here in fact be offering a further option.

et composita videntur). Interestingly, his claim appears in the context of a brief summary of the different positions outlined in the *divisio Carneadea* and confirms that in *De legibus* too, Carneades, and by extension Arcesilaus and the New Academy, remain relegated to the position they hold in this classification of the different views on the *telos*. Having settled the matter in the *De re publica* and having in this summary eliminated one unlikely position after the other, Cicero has carefully tested the different positions and approved of that which has passed all the tests. In so doing, as I am arguing in more detail elsewhere[59], Cicero has adopted Carneades' fallibilist approach to approval[60] which is also why, as Ferrary (1974: 770) has pointed out already, Cicero in the same passage requests the New Academy of Arcesilaus and Carneades to remain silent, as their involvement at this stage would only cause damage to the system which he so carefully tested and approved throughout the *De re publica*[61]. This manner of proceeding allows Cicero to remain true to the New Academy while requesting it to remain silent at the same time[62].

Consequently, the view that Philus' and Laelius' speeches represent the two speeches which Carneades held at Rome in 155 B.C. just in reverse order, as Lévy (2017: 469) for instance claims, no longer seems to hold. Rather, Carneades' two speeches appear both to be contained in Philus' speech in the Carneadean order and to give way to a tripartite, not binary, setup in which the first two simple positions (first *honestum*, then *utilitas*) are subsumed in Philus' attack on justice and the resolution (*honestum* plus *utilitas*) in Laelius' defence speech. This tripartite structure then also allows Philus I to treat justice as primarily valuable for and in itself, while Philus II regards it as useful and Laelius-Scipio consider justice as both useful and valuable for and in itself. Laelius then already introduces the view which Scipio, the protagonist of the *De re publica*, escalates, first in the remainder of book III and then in the Dream of Scipio in book VI of *De re publica*. As such, the discussion on justice which Cicero presents in *De re publica* structurally follows both the three books of *De officiis* as well as the *divisio Carneadea* and covers the three positions highlighted in bold in Table 1.

59. See also Dyck (2007: 172), who points out that the two perfects *instructa* and *composita* signal Cicero's acknowledgement that his line of reasoning is vulnerable to attack.

60. See *fin*. 5.76; *Luc*. §§7-8, 99, 128; *nat deor*. 1.12; *Tusc*. 1.17; *off*. 2.8. See also Steinmetz 1995: 221, Nicgorski 2016: 18.

61. See also Lévy (2017: 503), who claims that «Cicéron étudie quel est *l'optimus status rei publicae*, et dans une perspective platonicienne celui-ci n'est rien d'autre que la justice à l'intérieur de la cité».

62. See *e.g*. Görler (1995) and (2004: 240-267), Dyck (2007: 172), Nicgorski (2016: 24) and Lévy (2017: 515-516), who – contrary to Glucker 1988 and Steinmetz 1989 – point out that Cicero's request for the New Academy to remain silent does not constitute a change in school-affiliation.

From this, it emerges that Carneades forms a core element of Cicero's conceptualisation of justice, which Cicero confirms by strategically placing the justice debate at the turning point close to the middle of the *De re publica*. Without Carneades' two speeches on justice, Cicero would not have had a position on which to model his own concept of justice. As such, Carneades functions as Cicero's sounding board which allows him to go beyond the arguments customarily spoken (*cf. dici solent* at *rep*. 3.8) for and against justice. The tripartite composition consisting of Philus I + Philus II + Laelius as well as Panaitius I + Panaitius II + Cicero not only presents a variation on the theme of arguing both sides of a case —which Cicero skillfully uses to transform a purely theoretical exercise into a practical tool[63]— but also highlights that the entire construct would not have been possible without the *divisio Carneadea*[64]. In the latter, unlike in Chrysippus' classification, all possible positions are outlined including that which Carneades held for argument's sake. Had Cicero constructed his concept of justice based on Chrysippus' division, he would not have been able to build the concept the way he did given that the Carneadean position would not be available to him. This highlights that as a sceptical Academic, Cicero —already at the time of writing the *De re publica*— was well aware of the *divisio Carneadea* and also operated within this framework[65]. As such, the speeches on justice from the *De re publica* and the three books of *De officiis* can be mapped onto Table 1 to yield a new summary table:

Category	Type	*Telos*	Defender	*rep.*	*off.*
honestum	simple	*pursuit* of pleasure	no defender		
	simple	*pursuit* of freedom from pain	no defender		
	simple	***pursuit* of the primary natural objects in the right way**	**the Stoics**	**Philus I**	**Panaitius I**
utilitas	simple	*obtainment* of pleasure	Aristippus		
	simple	*obtainment* of freedom from pain	Hieronymus		
	simple	***obtainment* of primary natural objects**	**Carneades *d.c.***	**Philus II**	**Panaitius II**
honestum plus *utilitas*	composite	*honestum* + pleasure	Calliphon and Dinomachus		
	composite	*honestum* + freedom from pain	Diodorus		
	composite	***honestum* + primary natural objects**	***antiqui***	**Laelius, Scipio**	**Cicero**

Table 2 Justice and the *divisio Carneadea*

63. Similarly, Zetzel (1996: 308) has already observed that «the presumed Carneadean discussion (following Plato) of personal morality has been transformed into a debate on political and imperial morality». Zetzel does not, however, recognise the fundamentally tripartite structure of the discussion.

64. In *De fato* too, Carneades is a crucial figure as the original point Cicero presents in this work is not defended by anyone else except Carneades.

65. I here agree with Algra (1997: 107), who has already pointed out that the two divisions form part of Cicero's philosophical and rhetorical strategy.

As can be seen, in terms of structure, both variations on the theme of justice analogously move through the *divisio Carneadea*, first outlining the simple Stoic *honestum* position on the pro side, then Carneades' *utilitas* on the con side of the philosophical *in utramque partem* discussion, before the two are contrasted with the composite position of *honestum* plus *utilitas*. Cicero's conceptualisation of justice thus relies on the natural progression in argument within the *divisio Carneadea*, culminating in that position as solution to the problem which Cicero carefully tests and ultimately recommends to his successors. The testing too does not appear to be carried out at random, but diligently follows Carneades' recommendation on the *pithanon*. In conclusion, it can thus be said that while thematically ambivalent[66], Cicero is very clear on the methodology and structure he uses when conceptualising justice: for while he benefits from the *antiqui*, the Stoics and other schools in terms of content, he systematically follows and ultimately surpasses Carneades' method both in terms of arguing *in utramque partem* and using his *divisio* by supplementing a third position.

Given these results, this study contributes to a series of questions raised by modern scholars. The most obvious point emerging from this paper is that a satisfactory reading of the two justice speeches in *De re publica* and understanding of Cicero's concept of justice is only possible if the *De re publica* is read in the context of Cicero's entire body of work and in particular in unison with *De legibus*, *De finibus* and *De officiis*. Despite their differing dates of composition, it can be seen that Cicero's overall attitude towards justice does not change over time. If anything, it becomes more refined in that the *De re publica*, just like his *De inventione*, appears programmatic of his later works which culminate in his *De officiis*. Some details on Philus' and Laelius' speeches can thus be gleaned and fleshed out by consulting the remainder of his body of work.

This is particularly the case when it comes to showing that Philus' and Laelius' speeches are not binary, as most scholars take them to be, but tripartite, just like the three books of *De officiis*. While discussions *in utramque partem* lie at the heart of Cicero's constructions, the two levels on which he presents the discussions highlight that in both cases, there are two expositions *in utramque partem* stacked on top of each other. In both cases, a philosophical discussion *in utramque partem* (Philus I —Philus II/Panaitius I— Panaitius II) is understood to create an impasse to which a satisfactory answer (Laelius/Cicero) needs to be formulated. On the political level,

66. See also *e.g*. Brittain (2015: 12), who in his discussion of Cicero's sceptical methods in the *De finibus* argues that Cicero's «scepticism thus emerges from the dramatization of his own unresolved doubts».

the impasse and the corresponding answer form a second discussion *in utramque partem*. This variation on a theme is then used implicitly to move through the relevant statements of the *divisio Carneadea*. This manner of proceeding also addresses an issue which Lévy (2016:417) has raised, when pointing out that at *de orat*. 3.80, Cicero opposes two dialectical methods: (1) that of Arcesilaus and Carneades which entails a systematic refutation of all the positions advanced by the interlocutors and (2) that of Aristotle which is arguing *in utramque partem*. Accordingly, he concludes that book III of the *De re publica* is closer to Aristotle's methodology than it is to that of Arcesilaus and Carneades. While Cicero does define two methods in the *De oratore*, he does not claim that they are exclusive, *i.e.* that one cannot entail the other or that both cannot be used at the same time. In fact, as we have seen throughout this paper, Cicero —just like Carneades himself when at Rome in 155 B.C.— appears to employ both methods simultaneously.

Similarly, this study shows that Cicero in his conceptualisation of justice combines two ways of using the *divisio Carneadea* and thus extends the argument proposed by Annas (2007: 196) to the *De re publica* and the *De officiis*. These two ways of using the classfication are, according to Annas: (1) the sceptical argument in which no commitment to any one theory is shown and (2) the progressive elimination of positions until that is reached which the user of the argument finds most convincing and to which he is committed. (1) is used in the philosophical subcontext in Philus I and Philus II as well as in Panaitius I and Panaitius II, while (2) is employed in Laelius-Scipio and Cicero respectively. This manner of proceeding also shows that, contrary to what Thorsurd (2010: 7) suggests, there *is* a connection between arguing *in utramque partem* and *epochē*, and that the latter is not at all dispensable for Cicero[67]. Rather, in certain contexts, it seems to be integral part of the fallibilist method to reach the most plausible view.

Finally, this study also touches on the question of whether or not Philus and Laelius' speeches are fact or fiction. As Cicero's letter to Atticus in 45 B.C. indicates, Cicero, when writing his *De re publica*, was not aware of the exact details of Carneades' visit to Rome. It is nonetheless clear that Cicero takes the embassy of 155 B.C. as the historical framework to which to appeal in Philus' attack and Laelius' defence. By remaining within the philosophical mindset of the time and manoeuvering through the *divisio Carneadea*, Cicero thus joins arguments which might have come down to him by oral transmission or even one of Clitomachus books[68] with specifically Roman arguments dealing with Roman imperialism, and incorporates them

67. See also Aubert-Baillot 2021: 422.
68. See *e.g.* Büchner 1984: 282 and Fleuren 2021: 117-118.

into his political agenda. He thus does what he does best: by combining philosophy and eloquence as recommended at the beginning of the *De inventione*, he creates variations on a theme and models the material in such a way that it fits his context. The two speeches can thus be regarded as both fact and fiction[69] and their strategic placement near the middle of *De re publica* highlights that for Cicero's conceptualisation of justice, Carneades is and remains indispensable[70].

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69. See *e.g.* Fleuren 2021 and Vander Waerdt 2022: 289.

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