

RHYTHMICAL CLAUSULAE IN THE *CODEX THEODOSIANUS* AND THE *LEGES NOVELLAE AD THEODOSIANUM PERTINENTES*

In two recent studies we have examined the prose rhythms in the clausulae of late imperial Latin authors. We found two clausular systems to be prevalent, the *cursus* and the *cursus mixtus*.¹ The *cursus* involves the use of accentual rhythms and consists of three basic cadences: *planus*, *tardus*, and *velox*.² The *cursus mixtus* has been defined by modern scholars as a type of prose rhythm in which the clausula is structured along both accentual and metrical lines,³ that is by the combination of one of the three forms of the *cursus* with one of the standard metrical forms derived from Cicero's system – cretic-spondee, dicretic, cretic-tribrach, or ditrochee.⁴ A major feature of the

¹ We studied the *cursus* in 'A new statistical analysis of accentual prose rhythms in imperial Latin authors', *CP* 79 (1984), 114 ff., and the *cursus mixtus* in 'Meter in accentual clausulae of late imperial Latin prose', forthcoming in the June 1985 issue of *CP*.

² A detailed discussion of the forms of the three cadences of the *cursus* (for examples, see Table below) can be found in G. Lindholm, *Studien zum mittellateinischen Prosarhythmus: Seine Entwicklung und sein Abklingen in der Briefliteratur Italiens* (Stockholm, 1963), 39 ff. There are other forms of the *cursus*, notably the *trispondaicus* and the *dispondaicus*; these will be listed in the Table below, but we will not discuss them at present, because they are rare in occurrence and should be regarded as irregular clausulae: see Oberhelman and Hall, *CP* 79 (1984), n. 6.

See also T. Janson, *Prose Rhythm in Medieval Latin from the 9th to the 13th Century* (Stockholm, 1975), 128 ff., for bibliography on the *cursus*.

³ The following is a brief bibliography on the *cursus mixtus*: H. Hagendahl, 'La prose métrique d'Arnobé. Contributions à la connaissance de la prose littéraire de l'Empire', *Göteborgs Högskola Årsskrift* 42 (1937), 1–215; M. G. Nicolau, *L'origine du 'cursus' rythmique et les débuts de l'accent d'intensité en latin* (Paris, 1930), 42 and 128 ff.; A. M. Harmon, *The Clausulae in Ammianus Marcellinus* (New Haven, Conn., 1910), 197 ff.; H. B. Dewing, 'The origin of accentual prose rhythm in Greek', *AJP* 31 (1910), 314 ff.; M. Novotný, *État actuel des études sur le rythme de la prose latine*, *Eos*, Supplementa, 5 (Lwów, 1929), 74 f.; A. C. Clark, *The cursus in medieval and vulgar Latin* (Oxford, 1910), 10 ff.; S. H. Ballou, 'The Clausula and higher criticism', *TAPA* 46 (1915), 151 ff.; R. Badalí, 'Premessa ad uno studio sulla natura delle clausole simmachiane', *RCCM* 8 (1966), 16 f.; W. Shewring, 'Prose rhythm and the comparative method', *CQ* 24 (1930), 172 f. and 25 (1931), 16 f., and 'Prose rhythm in the Passio S. Perpetuae', *JTS* 30 (1928/29), 56 f.; W. Shewring and K. Dover, 'Prose Rhythm', *OCD*², 889; and J. Guillén, 'Origen y constitución del census rítmico', *Helmantica* 8 (1962), 309 ff.

It should be pointed out that even in a *cursus mixtus* text clausulae may be structured solely from an accentual perspective and, at other times, solely from a metrical one; for examples of this in the prose of Arnobius see Hagendahl, op. cit. 74 ff.

⁴ Actually the cretic-tribrach was not a preferred clausula in Cicero: we found only 21 instances in a sample of 908 clausulae from his speeches. It does become, however, a desired clausula in the prose of imperial Latin; in fact, it is the third most frequent metrical form in some of the *Panegyrici latini*. This increase in popularity can be attributed to the coincidence of the metrical scheme and the accentual pattern (*cursus tardus*). Moreover, the cretic-tribrach was viewed as a resolution of the cretic-spondee of Cicero. Cicero, of course, had a much more varied system of prose rhythm and did not limit himself strictly to cretic and trochaic rhythms. Later writers, however, concentrated almost exclusively on these patterns and in effect canonised them: see L. P. Wilkinson, *Golden Latin Artistry* (Cambridge, 1970), 157 ff. and 162 f. For Cicero's rhythms see H. Aili, *The Prose Rhythm of Sallust and Livy* (Stockholm, 1979), 51 ff., and A. Primmer, *Cicero Numerosus: Studien zum antiken Prosarhythmus* (Wien, 1968).

cursus mixtus is the high coincidence of ictus and accent and the exact correspondence of the number of syllables required for both the metrical and the accentual form.⁵

While the *cursus mixtus* was surmised by a number of scholars to be present in the writings of certain late imperial authors, our statistical methodology shows it to have been the dominant rhythmical system of the period. The *cursus mixtus* appears first, with certainty,⁶ in Minucius Felix' *Octavius*, datable to the first half of the third century, and subsequently in works by Minucius' fellow Africans, Cyprian and Arnobius. Similarly, the *cursus mixtus* is found in the eleven *Panegyrici latini*, Gallic in origin and datable from the late third to the late fourth centuries, as well as in Ausonius' *Gratiarum actio* and Symmachus' letters and speeches. The *cursus mixtus* is detectable also in certain works by Lactantius, Ambrose, Jerome, and Augustine, but there is more rhythmical diversity in these authors. Finally, we can demonstrate the presence of the *cursus mixtus* in the writings of the late fifth-century figure Ennodius.

While the purely accentual *cursus* had been detected in Ammianus,⁷ our own investigation of Jerome and Ambrose finds that rhythmical system in a number of their works.⁸ It would seem therefore that the *cursus* began to emerge as an acceptable alternative to the *cursus mixtus* by the end of the fourth century.⁹

Our studies have revealed that no late imperial author after A.D. 250 failed to take accent into consideration in the formation of clausulae. Our survey was limited to literary texts, wherein the elements of style are dictated by the predilections of the authors. As for what prompted the general acceptance of the accentual forms, however, no certain answer seemed ready at hand. Because of the dearth of extant literature in the period A.D. 150–250, during which accentual rhythms probably arose, there is difficulty in drawing conclusions about their origin and dissemination. We conjectured that accentual forms had been occasioned by the speech habits of provincials, who were more sensitive to accentual stress than to the metrical rhythms imposed on Latin clausulae from Greek models;¹⁰ further, that the provincial schools began to accommodate their constituents' speech habits by structuring clausulae accentually but still in such a way that the standard metrical forms could be preserved so long as they were desired. Thus, linguistic considerations together with educational innovation would have been the vehicle by which the accentual patterns made their way into the mainstream of Latin literature.

Short of having abundant documentation from the schools, by which we might test our assumptions,¹¹ we do possess from the fourth and fifth centuries extensive writings

⁵ We use the term ictus here simply to denote the first syllable of each metrical unit in a prose clausula. The issue of an ictus in metrical prose is, to say the least, complicated and unresolved. See Nicolau, op. cit. 44 ff. and 'Quelques considérations sur l'ictus et les rapports avec l'accent', *REL* 7 (1929), 148 ff.; Wilkinson, op. cit. 142 ff.; and W. S. Allen, *Accent and Rhythm: Prosodic Features of Latin and Greek: A Study in Theory and Reconstruction* (Cambridge, 1973), 341 f. with notes.

⁶ We did detect the *cursus mixtus* in the *De Platone* and the *De mundo*, works ascribed to Apuleius; however, given the lack of consensus on their authenticity, it is safest to exclude them from consideration here.

⁷ See e.g. Harmon, op. cit.

⁸ Of the seven works of Jerome we have examined so far, four (*Vitae Paul. et Hil.*, *Adversus Ruf.*, *Adversus Pelag.*, and *Comment. in Isaiam*) display the *cursus*; of twelve works of Ambrose examined, the *cursus* was found in eight (*De par.*, *De myst.*, *In Psal. 118 exp.*, *Hexaem.*, *De bono mort.*, *Epist.*, *De sacr.*, and *De lapsu virg.*).

⁹ Our demonstration of purely accentual rhythms in the pseudo-Apuleian *Περὶ ἐρμηνείας* and the *Asclepius* may support a later date for their composition.

¹⁰ See Oberhelman and Hall, *CP* 79 (1984), 130.

¹¹ We have only the brief *De structuris* of Sacerdos (*GL* 6:492–5); see Nicolau, op. cit. 101 ff., for the importance of this treatise for the history of accentual forms. Cf. *OCD*², 889.

whose style must surely reflect the rhetorical schools of the period. These writings are the *Codex Theodosianus* and the *Novellae* of Theodosius II, Valentinian III, Majorian, Marcian, and Anthemius.¹² The constitutions contained in the *Codex* and the *Novellae* date from A.D. 313 to 468,¹³ when the *cursus mixtus* was at its zenith and the purely accentual *cursus* was gradually being accepted in the literary texts. The constitutions should therefore render a useful comparison with the practices of published authors.

Accordingly, we selected at random 978 clausulae in the *Codex* and 511 in the *Novellae*.¹⁴ Each clausula before periods or semicolons on every fourth page of the texts was scanned for both its accentual and metrical scheme.¹⁵ This allowed the simultaneous determination of the presence of a *cursus* form, of a metrical scheme falling under the accentual cadence (that is, the *cursus mixtus*), and of the coincidence of ictus and accent. The results are given in full in the Table of clausular forms.

The data clearly indicate that the texts are structured along accentual lines. About 90% of the clausulae in the legal codes conform to one of the three forms of the *cursus*. This frequency is far beyond what should be expected in unrhythmical prose: we have determined elsewhere¹⁶ that a text void of conscious rhythmical tendencies will display fortuitous forms of the *cursus* in 53–63% of its clausulae.¹⁷ The incidence of accentual forms in the legal texts is also quite high in comparison with the frequencies for contemporary literary works: in fact, only the prose of Symmachus and Ammianus shows equal or greater tendencies to accentual clausulae.¹⁸ Moreover, the legal writers have restricted themselves to a few typological patterns;¹⁹ about 85% of the clausulae conform to three strict typologies — óo/oóo (*planus*), óo/oóoo (*tardus*), and óoo/oóoo (*velox*). We have found nowhere else in imperial Latin prose, except in the later Ennodius, such adherence to the three main typologies of the *cursus*. Interestingly,

¹² The texts we used were Th. Mommsen, *Theodosiani libri XVI cum constitutionibus sirmondianis* (Berlin, 1905, reprinted 1954) and P. Meyer and Th. Mommsen, *Leges novellae ad theodosianum pertinentes* (Berlin, 1905, reprinted 1954).

¹³ Even though the Theodosian codifiers were charged with clarifying the language and making other changes in earlier constitutions (*CTh* 1.1.5 ad Senatum 429), we presume the changes would not have been so great as to alter significantly earlier clausulae; moreover, the large size of our sample (see below) allows us a representative examination.

¹⁴ Inductive statistics tell us that the margin of error of a sample of almost 1,500 items drawn at random is plus or minus 3.0% at the 99% confidence level. Thus, for example, if we should find that 75.0% of the clausulae in our sample are accentual, the probability is 99 out of 100 that the true value lies somewhere in the range of 72.0%–78.0%. This margin of error is quite low enough for any statistical survey.

¹⁵ In order to avoid subjectivity in determining the nature of the metrical clausulae (a problem that has plagued much of the modern scholarship on Cicero's rhythms), we used the handy tables in Hagendahl, op. cit. 257–60. Hagendahl has devised 128 combinations of any long and/or short syllables on the basis of A. W. De Groot's work in comparative statistics. De Groot is quite right in insisting that the clausula begins where the preceding syllable is indifferent to quantity. For a summary of De Groot's theory see Wilkinson, op. cit. 139 ff. Cf. also A. C. Douglas, 'Clausulae in the *Rhetorica ad Herennium* as evidence for its date', *CQ* 54 (1960), 65 ff. and W. Shewring, 'Prose rhythm and the comparative method', *CQ* 24 (1930), 161 ff.

¹⁶ See Oberhelman and Hall, *CP* 79 (1984), 117 ff.

¹⁷ Inductive statistics tell us that, if the legal texts are in fact non-accentual, then the probability of observing a frequency of 90.0% *cursus* forms is less than 1 in 1 million.

¹⁸ See the table in Oberhelman and Hall, *CP* 79 (1984), 122 ff.

¹⁹ A strict adherence to a few forms was pointed out long ago by P. Collinet, 'Une programme d'étude sur l'emploi du *cursus* rythmique par la chancellerie impériale romaine', *REL* 5 (1927), 256. Collinet's brief survey is the only study known to us which deals with rhythm in the legal texts; he, however, gives no figures and cites from the legal texts only a few examples upon which his conclusions rest.

Table of *Clausular Forms*A. Incidence of *cursus* forms

	Theodosian	Novellae
1. Planus óóóóó		
(a) óó óóó		
radiante splendore	212	130
(b) óóó óó		
cedere debet	4	4
(c) óó ó óó		
esse quod factum	11	5
(d) óóóóó		
conveniatur	12	4
(e) ó óóóó		
se laborasse	0	1
	Total 239	144
2. Tardus óóóóóó		
(a) óó óóóó		
observari conveniet	192	111
(b) óóó óóó		
pretio distrahunt	14	5
(c) óó óóó ó		
officiorum relata sunt	4	4
(d) óó ó óóó		
tradi vel bestiis	16	7
(e) ó óóóóó		
sit necessaria	1	0
(f) óóó óó ó		
legibus nostris sint	1	0
	Total 228	127
3. Velox óóóóóóó		
(a) óóó óóóó		
iniuria vindicasse	361	179
(b) óóó ó óóó		
credimus nec offendi	22	11
(c) óó ó óóóó		
scripta sunt testamento	8	2
(d) ó óóó ó óóó		
non potest a marito ²⁰	1	0
(e) óó ó ó óóó		
functi sunt hoc honore	0	1
	Total 392	193
Total of the three <i>cursus</i> forms	859	464
4. Irregular forms of the <i>cursus</i>		
(a) Trispondaicus óóóóóó		
(1) óó óóóó		
habere valituris	60	22
(2) óóó óóó		
volumus adscriptis	14	8
(3) óó ó óóó		
inminutione mox refundat	0	1
(4) óóóóóó		
deterioratur	1	1
(b) Medius óóóóó		
(1) óó óóó		
tutor valeat	9	1

²⁰ We place an accent on *non* here, although it is usually a proclitic. Cf. Hagendahl, *ibid.* 17.

Table (*cont.*)

	Theodosian	Novellae
(2) ó ó ó ó		
adprobaverit	14	5
(3) ó ó ó ó		
consecuti sunt	7	1
(4) ó ó ó ó		
de peculio	2	0
(5) ó ó ó ó ó		
editionis ordo sit	1	0
(c) Ditrochaicus ó ó ó		
(1) ó ó ó ó		
curari potest	3	3
(d) Rare and questionable forms		
(1) ó ó ó ó ó ó		
publicis inserviant	6	5
(2) aedificationibus	1	0
(3) interpellatione	1	0
Total of irregular and rare forms	119	47
Total of all forms	978	511
Proportion of the three <i>cursus</i> forms	859/978 = 0.878	464/511 = 0.908

B. Incidence of common metrical forms

A. Cretic-spondee - - - - x	242	150
fata terrarum		
B. Ditrochee - - - x	299	134
successionem vocentur		
C. Dicretic - - - - - x	109	43
posse praescribere		
D. Cretic-tribrach - - - - - x	63	49
legis imperio		
E. Dispondee - - - - x	73	50
praecipio custodiri		
F. First paeon-spondee - - - - - x	38	18
sola brevitatis		
G. Fourth paeon-spondee - - - - - x	14	8
volumus adscriptis		
H. Trochee-cretic - - - - x	17	5
dimicare cogeret		
I. Spondee-cretic - - - - x	20	15
innotescere		
J. Dactyl-spondee - - - - x	31	10
concussionibus prohibentis		
K. Spondee-tribrach - - - - x	32	14
observari conveniet		
L. Tribrach-spondee - - - - x	10	6
adhibita videantur		
M. Trochee-fourth paeon - - - - - x	8	2
veritate meruerit		
N. All other forms	22	7
Total	978	511

Table (cont.)

	Theodosian	Novellae
C. Distribution of the four metrical forms under the accentual patterns		
1. Planus óóóóó		
(a) Cretic-spondee -ó--x		
(1) remaneret auctorum	190	115
(2) fructibus reddant	5	3
(3) esse quod factum	7	4
(4) se laborasse	0	1
Total	202	123
(b) Ditrochee -ó-x		
(1) successionem vocentur	8	7
(2) restinguenda	1	3
Total	9	10
Total under the planus	211	133
2. Tardus óóóóóó		
(a) Dicretic -ó--ó-x		
(1) audere cognoscimus	78	38
(2) alienare compulsus est	8	2
(3) facultatibus defeat	1	0
(4) universa res publica	12	2
(5) sit necessaria	1	0
Total	100	42
(b) Cretic-tribrach -ó--ó-ó-x		
(1) legis imperio	57	44
(2) iure non potuit	3	3
(3) saeculis generans	2	2
Total	62	49
Total under the tardus	162	91
3. Velox óóóóóóó		
(a) Ditrochee -ó-x		
(1) veteribus comparandi	255	103
(2) licentiam non negamus	15	8
(3) votorum est consulator	4	2
(4) non potest a marito	1	0
(5) functi sunt hoc honore	0	3
Total	275	116
(b) Cretic-spondee -ó--x		
(1) provinciae peroretur	33	18
(2) credimus nec offendi	2	1
Total	35	19
Total under the velox	310	135
Proportion of the three accentual clausulae with exact coincidence of accent and ictus	639/859 = 0.744	330/464 = 0.711
Proportion of the three accentual clausulae with the four metrical forms falling under them, irrespective of coincidence of accent and ictus	683/859 = 0.795	359/464 = 0.774

the papal chancelleries used almost exclusively these same three forms.²¹ It would appear that there came to be a narrowing of acceptable accentual forms, much in the same way that a narrow canon of metrical forms developed in the first and second centuries A.D.

As the evidence in the Table demonstrates, the clausulae in the legal texts display metrical as well as accentual forms and are therefore to be classified as *cursus mixtus*. Fully 73% of the clausulae in the *Codex* and 74% in the *Novellae* contain the four standard metrical patterns of the *cursus mixtus*: cretic-spondee, dicretic, cretic-tribrach, and ditrochee. These frequencies are over twice what we should observe in non-metrical prose (36%) and are significantly higher than the expected occurrences of these forms in an accentual text void of metrical influences.²²

As can be seen in Section C of the Table, the authors of the legal texts have striven for a coincidence of accentual and metrical patterns. In the *Codex*, 74.4% of the metrical forms have an exact coincidence with the accentual patterns, and this value increases to 79.5% when the ditrochee under the *cursus planus* and the cretic-spondee under the *cursus velox* are included. A similar tendency is apparent in the *Novellae*, wherein 71.1% of the clausulae, out of a total of 77.4% displaying the *cursus mixtus*, have an exact agreement of accent and ictus.²³

As previously noted, some clausulae in a *cursus mixtus* system will show only metrical properties; others, only accentual. For example, the following clausulae make no sense metrically: *subscrībēre nēquēāt*, *cāpēre vōlūmūs*, and *vēndēre līcēāt*; they are, however, excellent accentual forms (*cursus tardus*). On the other hand, the clausulae *ād priōrēm rēdīt* and *suggēstīōnēm sūām* are both dicretics, but accentually can be taken only as the very rare and irregular form *cursus dispondaicus*. Also the clausulae *regendāe-rēt pūblicāe*, *patriām sūām dīligāt*, and *aspexit diēs tristīōr*, which reveal only the rare *cursus medius*, are actually dicretics. In fact, a general rule for the *cursus mixtus* system suggests itself: irregular forms of the *cursus* generally yield good metrical patterns, while the three main types of the *cursus* (especially the *tardus*) do so somewhat less consistently.²⁴ These are the exceptions, however, since over 70% of all the clausulae in the legal texts conform perfectly to the *cursus mixtus*.

Now that we have established with certainty the nature of the clausular forms in the legal texts, we can derive therefrom some direct, practical benefits: (1) an elucidation of certain philological phenomena; (2) a better understanding of word-order, style, and hiatus and elision; (3) a determination of the effect on rhythmical cadences in the revision of the constitutions by Justinian's commission; (4) emendations of the text; and finally, (5) a clearer assessment of the status and role of the *cursus mixtus* in late imperial Latin prose.

²¹ For the practices of the early papal chancelleries see R. L. Poole, *Lectures on the History of the Papal Chancery Down to the Time of Innocent III* (Cambridge, 1915), esp. pp. 3, 93, and 99; K. Brazzel, *The Clausulae in the Works of St Gregory the Great* (Washington, D. C., 1939), 28 ff and 57 ff.; and F. Di Capua, *Il ritmo prosaico nelle lettere dei papi e nei documenti della cancelleria Romana dal IV al XIV secolo* (Roma, 1934), xxvii. See also the tables of accentual clausulae in the letters of the popes of the medieval period in Janson, op. cit. 109 ff. and Lindholm, op. cit. 165 ff.

²² Again, inductive statistics tell us that the probability is less than 1 in 1 million that we should observe such frequencies of metrical clausulae in a purely accentual text unless there was a deliberate attempt to accommodate them.

²³ For the coincidence of ictus and accent in Arnobius, see Hagendahl, op. cit. 74 ff. Cf. *OCD*², 889.

²⁴ Of the *planus* forms in the *Codex*, 88.2% contain the cretic-spondee or ditrochee; 79.1% of the *velox*, the ditrochee or cretic-spondee; and 70.7% of the *tardus*, the dicretic or cretic-tribrach.

(1) Our study of the clausulae reveals that a loss of quantity has occurred in certain vowels, and a lengthening in others. In particular, final *-o* has lost its quantity in some situations. It does remain long in the dative and ablative singular of the second declension. Moreover, third declension *-io* nouns retain a long *-o* in the nominative singular, as in *inprēssīō sūstūlīt*, *excusātiō rēlīnquātūr*, *petitiō rēpellātūr*, and *dispositiōquē māiōrūm*. On the other hand, the nominative singular *-o* has become short in other classes of third declension nouns: *celsitūdō mōnstrāvīt*, *ōrdō prāecīpūts*, *indāgō prāebēbītūr*, and *nēmō prōpōnāt*. This is a phenomenon that occurs not infrequently in poetry of the Classical period,²⁵ but is the rule in the legal codes and contemporary writings.

The shortening of final *-o* applies to adverbs as well: *omnīnō nōn hābēāt*, *omnīnō lāedātūr*, *aliquāndō lūmīnībūs*, and *vērō nōn līcēāt*. Moreover, ablative gerunds display a short *-o*, as they do occasionally in poets like Seneca and Juvenal.²⁶ In our random sampling of the legal texts we found four such forms: *experiēndō cōgnōvīmūs* (Valent. 7.2.1);²⁷ *dissimulāndō cōncēssērīt* (CTh 16.5.65);²⁸ *nesciēndō cōnfūdēt* (CTh 16.2.25); and *regēndō nōn viōlāt* (CTh 16.5.6). In each case the final *-o* is clearly short. Our study has detected the same phenomenon in a number of contemporary texts.²⁹

We have observed in both Augustine and Arnobius two personal endings in the future perfect active indicative and the perfect active subjunctive which show a variance in quantity from the normal Classical usage: the first person plural (*-erimus*) and the second person plural (*-eritis*) have the penultimate *-i-* as long and, consequently, receive the stress.³⁰ In our random survey of the legal texts, we found only forms with *-erimus*, each of which displayed a long penultimate *-i-*.³¹

Finally, the verb *do/dare* has acquired a long *-a-* thematic vowel in its occurrences in the primary tenses and in the perfect participle. This change could possibly be ascribed to the analogy of *sto/stare*, but is more likely attributable to the frequent appearance of *do/dare* as a disyllable, in which case the *-a-* became long because of the stress of the penultimate word-accent. To cite a few examples: *dātā sūnt nōmīnā* (CTh 8.11.8); *licēntiām dāmūs* (CTh 15.1.11); *dārē rēspōnsūm* (Valent. 32.7); *dārē nōn diffērāt* (Maorian. 7 interpretatio); *speciālītēr dātāe* (CTh 13.10.8); and *dārē nōn dēbēāt* (Severi 1 interpretatio).

(2) Word-order in the legal texts easily demonstrates that the writers structured their

²⁵ See F. Crusius, *Römische Metrik: eine Einführung* (München, 1967), 27, and Aili, op. cit. 49. For examples in Catullus see C. J. Fordyce, *Catullus* (Oxford, 1961), 121. M. D. Reeve has pointed out to us that hexameter poets may have to shorten or lengthen the final *-o* (particularly *-tio* nouns and *-io* verbs) because of metrical considerations. In the legal texts, however, the issue is certain: final *-o* is short, unless it is preceded by *-i-*.

²⁶ See E. Courtney, *A Commentary on the Satires of Juvenal* (London, 1980), 185.

²⁷ The *Novellae* will be cited by the emperor, followed by the edict and section number in Meyer and Mommsen's text.

²⁸ The *Codex* will be cited in accordance with the numerical system in Mommsen's text.

²⁹ Our work with contemporary literary texts, e.g. Symmachus and the panegyrists, has detected a duality in the final *-o* in verbal forms: the *-o* in future imperatives is short, as in *esto*; the final *-o* is also short in the first person singular forms, as is not uncommon in poetry (see Fordyce, loc. cit.; Crusius, loc. cit.; and Aili, loc. cit.); third conjugation *-io* verbs prove the exception, however, by retaining a long *-o*. In our survey of the clausulae of the legal texts, we found no example of first person singular forms with the ending in *-o*.

³⁰ For Arnobius see Hagendahl, op. cit. 103 ff. See Augustine's discussion of the form *feceritis* in his *De doctr. christ.* 4.20.41 and the commentary on this passage in T. Sullivan, *S. Aurelii Augustini De doctrina christiana liber quartus* (Washington, D.C., 1930), 138 f. See also Fordyce, op. cit. 107 and Aili, loc. cit.

³¹ *Noverīmūs accīdērē* (Valent. 14.1); *fābricām iūssērīmūs* (CTh 15.1.14); *arbitrio sūmpsērīmūs* (16.1.2); and *intūito iūssērīmūs* (CTh 9.40.13).

clausulae with a view toward the *cursus mixtus*. Word-order is quite often designed to effect a desired cadence,³² and the normal tendency to position the verb last is ignored in the interest of rhythm. Rearrangement in word-order and the placement of the verb had been a stylistic device advocated by previous handbooks on rhythm with regard to metrical clausulae.³³

At Theod. 15.2.1 the sequence of the final words is transposed to effect a *cursus tardus* with a cretic-tribrach: *contumeliosum sui posset amplificārē prōpōsītū*. Likewise, the verb is placed next to last in *frustra dēbēt optārē* (Valent. 2.2.2), where a *cursus planus* with a cretic-spondee is clearly intended. In both passages the authors could have retained the standard word-order of *optārē dēbēt* and *amplificārē pōssēt* and thereby achieved the standard ditrochee; at worst, they could have written the clausulae completely careless of rhythm. They have, however, consciously elected to take into account the accentual scheme in order to effect the coincidence of accentual and metrical patterns.³⁴ Again, in the clausula *nullum defuncti posterius extābīt ārbītrīū* (Valent. 21.1.2) word-order has been strained in order to effect a *cursus mixtus* pattern (*cursus tardus* with cretic-tribrach): there is no other arrangement of these words which would yield a *cursus mixtus*, although several strictly *cursus* patterns could be effected.³⁵

The issue of hiatus and elision in Latin at first appears to be complex. Elision was the usual practice in poetry and everyday speech, but it is questionable whether or not it was common in prose. We detected numerous examples of hiatus in the legal texts, but the question is whether elision is intended. Our study of contemporary works has taught this simple rule: once the specific rhythmical tendencies of a text have been determined, then either hiatus or elision is allowed so as to obtain the desired clausula. In the legal writings it is clear that the *cursus mixtus* is the rhythm intended by the authors, and with this in mind it becomes an easy matter to deal with the question of hiatus and elision.

Since a *cursus mixtus* form is produced, hiatus is observed in the following selected clausulae: *variq̄ē exītītēr̄nt*; *sāltēm̄ offīcīd̄*; *fāctūm̄ ēst lēgē*; *fōrtē āccēssēr̄t*; *defundēndā ēst īnplēātūr*; *necēssē ēst ādplīcārī*; and *actiōnūm̄ īgnārī*.

Elision occurs in the *Novellae* almost exclusively at the end of the sentence and involves the monosyllable *est*. Final *est* is elided in all cases, as in *ēssē nōn dūbītūm̄ (e)st* and *amputāndā trīstītūā (e)st*; although, as can be seen in the examples from the preceding paragraph, *est* is not always elided at other positions in the clausula. Also in the *Novellae* we found only two instances of elision in places other than the final position: *oportē(e) a se cōnvēnīrē* and *praecipū(e) in hīs tēnēndā (e)st*. The *Codex*, on the other hand, freely elides as the rhythm dictates. The general avoidance of elision in the *Novellae*, written later than the *Codex*, may perhaps anticipate the trend in later and medieval Latin to allow hiatus in nearly every instance.³⁶

³² Sometimes the word-order has been unduly strained, as in *profutura civitati augēbitur mūltitūdō* (Valent. 5.1), *urget inimitis execūtiō militārīs* (Valent. 1.3.2), *hereditario poterit iūrē trāsmītērē* (CTh 14.24.1) and *qua nullum carere dēbēt orācūlūm* (Valent. 19).

³³ See Wilkinson, op. cit. 156 f., for the *Rhetorica ad Herennium* and Cicero's *Orator*. See also Augustine, *De doct. christ.* 4.20.40–1.

³⁴ The word-order *optārē dēbēmūs* is retained in Theod. 4.2 in order to secure a *cursus mixtus* clausula.

³⁵ Sometimes the change is done solely to produce an exact agreement between accent and ictus and not merely a *cursus mixtus* clausula. E.g. in *ita ab invitis iūbēmūs arcērī* (Maorian. 11) and *relaxāmūs obnoxīūs* (Maorian. 2.1) there is exact agreement; if more usual word-order had been used, i.e. *arcērī iūbēmūs* and *obnoxīūs rēlāxāmūs*, *cursus mixtus* forms would have been realised, but without exact correspondence of accent and ictus. ³⁶ Cf. Janson, op. cit. 32.

Rhythm would seem to dictate the choice of grammatical forms and stylistic devices. For example, syncopated perfects are used to effect *cursus mixtus* clausulae, as in *fidei vindicārt* (CTh 15.7.9) and *sacramēntā prōpērārūnt* (CTh 20.7.1). A similar effect is achieved by the use of the alternative third person plural perfect ending *-ere*: *fuērē pērmīssā* (CTh 13.6.3) and *incubuerē cōrpōribūs* (CTh 14.4.5). *Nil* can be used instead of *nihil* to effect a rhythmical form, as in *aúsibus nīl licērē* (Valent. 7.7.9). Finally, the conjunctions *et*, *atque*, and *-que* seem to be interchanged freely to achieve rhythmical clausulae. *Atque* and *-que* are especially useful in forming *cursus mixtus* rhythms, inasmuch as the former is itself a trochee and the other frequently creates a trochee in the word to which it is affixed, while both forms can help establish the first two syllables of the *planus* and *tardus* cadences up to the caesura. For example, the clausulae *adaerationem translationēmquē dēpōscērē* (Theod. 26.5) and *amore pudicitiae castitatisquē suggēssīt* (Theod. 18) are rendered forms of the *cursus mixtus* with the use of *-que*; similarly *atque* makes *consilio ātquē trāctātū* (Valent. 15) and *ostendat ātquē cōnvēnīt* (Maiorian. 7.14) *cursus mixtus* rhythms.

(3) It is not difficult to determine the effect of alterations of the legal texts made by Justinian's commission. When a word or phrase is introduced by Justinian's commissioners into a sentence-closing in the *Novellae*, the immediate result, in almost all cases, is a change from a rhythmical clausula into an unrhythmical one.³⁷ It becomes obvious that Justinian's commissioners had little or no interest in whether additions or intrusions into the text adversely affect the clausular rhythm.

At Theod. 19.1, the original text reads *praescriptiōnē blāndīrī*, which clausula is a *cursus planus* with a cretic-spondee, the most common form of the *cursus mixtus* in the *Novellae*. Justinian's writers have inserted before *blandiri* the qualifying phrase *excepto vetustatis auxilio*. The clausula has been altered and now reads *auxiliō blāndīrī*, which is a *cursus trispondaicus* (with the caesura after the third syllable) with a dispondee falling under it. Our survey has revealed no other instance of such a clausula in the *Novellae*. In short, an excellent clausula has been transformed into an unrhythmical form by the revision.

For the sake of brevity we list as follows some other examples of rewritings or additions by the commission of Justinian, which have adversely affected the rhythms in the *Novellae*.

- (a) *centenariōsvē dēcērnīmūs* (Theod. 21.1)
centenariosve fierī dēcērnīmūs

The change is from a *cursus tardus* with cretic to a non-accentual form with spondee-cretic.

- (b) *indīxīt īnmīnūft* (Theod. 26.1)
indixit non īnmīnū dēcērnīmūs

The change is from a *cursus tardus* with cretic-tribrach to a non-accentual pattern with spondee-cretic.

- (c) *praebērē iūbēāntūr* (Marcian. 3.1)
praebērē iūbēmūs

The change is from a *cursus trispondaicus* with first paeon-spondee coincidence (= the Ciceronian *esse videatur*) to a *cursus planus* with a dactyl-spondee, a combination not found elsewhere in the *Novellae*.

- (d) *maiestātīs āerārīō* (Theod. 19.2)
mansuetūdīnīs āerārīō

³⁷ Justinian's compilers were not interested in prose rhythms of any sort. We could detect no trace of purposeful metrical or accentual rhythms in a sample of 700 clausulae.

The change is from a *cursus tardus* with dicretic to a non-accentual form with choriamb-cretic.

(e) *cápite pūniēndūm* (Theod. 19.2)

capite puniēndūm cēnsēmūs

The change is from a *cursus velox* with ditrochee to a *cursus planus* with dispondee.

(f) *rationīs ārcéntēs* (Theod. 3.3)

rationis arcéntēs prācēpīmūs

The change is from a *cursus planus* with cretic-spondee to a *cursus tardus* with spondee-tribrach.

(4) Any scholarly edition of a prose text should be drawn up with careful consideration of prose rhythm, provided that conscious concern for rhythm on the author's part can be demonstrated. Because many ancients used clausular rhythms as a type of punctuation, particularly in noting the ends of sentences, modern editors should pay close attention to clausular forms in marking the punctuation of the text.

It is in the area of textual criticism, however, that the greatest benefit of studying prose rhythm lies. When an author's rhythmical tendencies are known, then three rules should apply in the textual criticism: emendations which substitute an unrhythmical form for a rhythmical one may be freely rejected; often, rhythmical tendencies can determine a preferred form among manuscript variants; rarely may such tendencies be used in supporting a new emendation.³⁸ The second rule is applicable in most cases: the choice between manuscript readings for which there is equal authority and which make equally good sense may be decided by considering rhythmical preferences.

No editor of the *Codex* or the *Novellae* has used rhythms in establishing the text. Meyer and Mommsen's text of the *Novellae* contains numerous instances where an equally acceptable manuscript variant should be preferred to the reading in the text, because the variant renders a desired *cursus mixtus* clausula as opposed to the existing unrhythmical form. Six such passages are adduced here:

(a) *Aequalis enim in utroque aequitas est vel promulgare, quae iusta sunt, vel antiquare, quae gravia sunt.*

(Marcian. 5)

sunt om. O

The reading of *O* should be accepted. This codex, which is one of the most important witnesses and is one of three codices that contain virtually all of the *Novellae*, gives here a good *cursus mixtus* clausula: *antiquārē quāe grāviā* (*cursus tardus* with cretic-tribrach).³⁹ This rhythm echoes the preceding clausula, a *cursus tardus* with dicretic: *promulgārē quāe iūstā sūnt*. The existing reading, on the other hand, with the clausula *grāviā sūnt* produces a rhythm which appears nowhere else in the *Novellae*.

(b) *Cui si masculini sexus prolem seu propinquos esse contigerit, qui utique curiae necessitatibus obsequantur, mox medietatem omnium facultatum eis tradere non*

³⁸ L. Laurand, *Etudes sur le style des discours de Cicéron, avec une esquisse de l'histoire du 'cursus'*² (Paris, 1926), ii. 217, and W. Shewring, 'Prose rhythm and the comparative method', *CQ* 25 (1931), 20 f.

³⁹ MS *O* in several other passages preserves readings of a rhythmical nature that other codices do not: e.g. Marcian. 1.4 has *antiquitus statuta sunt* (no accentual form with the infrequent trochee-cretic), but *O* preserves *antiquitus sūnt stātūtū* (*cursus velox* with ditrochee); at Valent. 12.3, *O* has *infortunia sūnt ēxpřessā* (*cursus velox* with dispondee), while *I* and *Δ* read *infortunia ēxpřessā sūnt* (no accentual scheme with choriamb-cretic, assuming the presence of hiatus); also, at Maiorian. 1.3, the text reads *unusquīsquē vēstrūm* (ditrochee with no accentual scheme), while *O* has *unusquīsquē vēstrōrūm* (*cursus planus* with cretic-spondee).

desistat sibi ad usumfructum sex residuas uncias *retentaturus*; si defuerit sexus virilis, eadem in filiabus sine dubio servaturus, si tamen curialium conubiis copulentur.

(Maorian. 7.7)

retentaturus *HEC* retenturus *NXK* retinemus *reliqui*

On rhythmical grounds the reading *retenturus* should be accepted. The manuscript tradition does not help here, since both X and C have good authority and HNK are reliable. Moreover, both readings make sense and fit the context.⁴⁰ Rhythmically, *retenturus* is to be preferred: it yields a *cursus velox* with a cretic-spondee (*únciās rētētúrŭs*), which is a desired clausula in the *Novellae*. The present reading, *retentaturus*, can be taken only as a one-word *cursus planus* (if we assume a secondary accent on *re-*, which is debatable) and a dispondee; no other type of this *cursus mixtus* clausula appeared in our survey of the *Novellae*.

(c) Unde inlustris et praecelsa magnitudo tua pragmatici nostri tenore conperto sciat secundum saluberrimam suggestionem suam, quae ex magnifici viri parentis patriciique nostri Aeti dispositione processit, patronis corporis suariorum intuitu sacrae urbis Romae in primis hoc beneficium *praestari debere*...

(Valent. 36.1)

praestare debere Γ debere praestari (-re Ξ) $O\Delta\Xi\Xi$

The editors here have accepted the word-order in Γ contrary to the authority of the other four MSS. The clausula in the text is a *cursus planus* with a dispondee, but the reading in the other MSS gives a *cursus planus* with a cretic-spondee, the most commonly found form of the *cursus mixtus*. While rhythmical considerations are important in accepting *debere praestari*, equally important are the high reliability of O and Δ and the correct syntax of their reading, as opposed to the ungrammatical structure in the text and in Γ .

(d) Cogit diversum rerum necessitas et quidem pro utilitate communi, ut suggestio sublimitatis tuae provida nimis pro qualitate temporis esse videatur. Parvo etenim unusquisque contempto sperare debet securitatem futuri. Nec enim grave esse credimus *oneris contemplatione quod deposcitur*.

(Valent. 6.3)

oneris contemplatione quod deposcitur: *Mommsen* quod oneris (honoris O) contemplatione deposcitur $O\Delta$.

This *Novella* is present in only two MSS. Both read *contemplatiōnē dēpōscītŭr* as the clausula. This is an excellent *cursus mixtus* form: *cursus tardus* with a dicretic. But Mommsen, for reasons best described as personal preferences in style, has chosen to rearrange the word-order with a resulting loss of rhythm. The clausula in the text has no accentual pattern, and its metrical scheme is a spondee-tribrach. No loss of meaning ensues if we accept the reading of the MSS, and there seem to be no palaeographic grounds for such a drastic revision.

(e) At si aliqua cessio sine personarum commutatione praecessit vel deinceps facta fuerit, non valeat, ne ad alterum coloni, ad alium possessio exhausta perveniat.

(Valent. 31.4)

valeat Γ solus valebit ΔO et reliqui

Γ alone has the present subjunctive, while the future form is found in the other MSS. In grammar and sense, each variant is acceptable. Rhythmically, however, there is no

⁴⁰ O here has *servaturus*, which is surely picked up from the next line, which also contains *servaturus*.

doubt that *valebit* is the preferable reading. *Fuerit nōn vālēāt* yields no recognised accentual pattern, and its spondee-tribrach metrical form occurs in less than 3% of all metrical configurations (usually with the *cursus tardus*). *Fuerit nōn vālēbīt*, on the other hand, displays a standard *cursus mixtus* form (*cursus velox* with ditrochee). The authority of the manuscript tradition and the rhythm effected by *valebit* suggest the adoption of this variant.⁴¹

(f) Si quis sane ad clericatus obsequium etiam contra legum vetita animi devotione properaverit, si propriae non conpleverit onera civitatis, universa per suffectum *reddere conpellitur*: simili legis observatione facultates, sicut supra scriptum est, aut cum filiis aut cum propinquis aut cum patria divisurus. (Valent. 3.3)

conpellitur *ΓΔ* conpelletur *O Pithoeus*

The variant *conpelletur* should be accepted here. It answers *properaverit* and *conpleverit* in a future more vivid condition, and it would therefore parallel the following sentence: *si... fuerit... coniunctus... cogetur... servaturus*, which has a future perfect form followed by a future. Rhythmically, the phrase in the text, *rēddērē cōnpēllītūr*, is a non-accentual cadence with a choriamb-cretic metrical scheme, which does not appear elsewhere in our survey of the *Novellae*. The variant *rēddere cōnpēllētūr*, however, renders a good clausula: *cursus velox* with a disponde, a form which accounts for 6.0% of the clausulae in the *Novellae*. On the basis of rhythm, grammar, and MS authority (*O* again preserves the rhythmical clausula), *conpelletur* should be accepted.

The next edition of the *Codex* and the *Novellae* should be done with careful attention to the rhythms of the *cursus mixtus*. We suspect, on the basis of the select examples cited above, that a better text and a higher incidence of forms of the *cursus mixtus* would result from a thorough examination of the rhythmical tendencies.

(5) Finally, we may briefly consider the clausular style of the legal texts in the context of other literary works of the era. While there are certain risks in speaking of the style of a body of writings which spans 155 years and includes the contributions of 120 or so quaestors in the chancery, the data presented in the Table above point unmistakably to the conclusion that the clausulae of the *Codex* and the *Novellae* display the *cursus mixtus* at a rather high rate. If we were able to determine that a significant number of quaestors did not employ the *cursus mixtus*, then rates for the other contributors would have to be uncommonly high in order to compensate and produce the high figures which are now observable. We may therefore conclude that most of the contributors preferred the *cursus mixtus*. Accordingly, we may draw two further conclusions. The fact that so many quaestors (not to mention published authors) manipulated with apparent ease an exceedingly complex rhythmical system – and, we might add, a patently artificial one at that – proves the pervasive presence of the *cursus mixtus* in the teachings of the rhetorical schools. And also, those who would make a distinction based on style between, say, a panegyric oration and the legal texts and would regard the latter as sub-literary must now reckon with the reality that the ornamental *cursus mixtus* occurs in various levels of prose composition in the late imperial period.

All too often the prose style of late Latin has been impugned. The legal texts of the fourth and fifth centuries, in fact, confirm for us that the writers of this era were able

⁴¹ *Valebit* is the customary form in the legal texts; e.g. it occurs in the first few chapters of the *Codex* at 1.2.5, 1.2.6, 1.2.8, 1.2.9, and 1.5.3.

to surpass their classical predecessors and their medieval successors in at least one respect – adroitness in the composition of clausulae. If we acknowledge Cicero's structuring of metrical clausulae in Latin prose in accordance with the teaching of the Asiatics and the generalised usage of the *cursus* in the Middle Ages as demonstrations of rhetorical and literary skills, we should certainly bestow the crown of achievement on late antiquity, which perfected the best of both worlds.

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