

Roman Law and Classical Rhetoric

Two Sides of the Same Coin

Tessa Leesen

Tilburg University

<https://orcid.org/0009-0004-6915-6684>

Olga Tellegen-Couperus & Jan Willem Tellegen, *The Regula as a Rhetorical Device in Roman Law*, Boston, Brill, 2025. 205 pp. ISBN 9789004711013.

Scholars of Roman law have traditionally regarded the field as largely immune to the influence of classical rhetoric. They perceived Roman law as a system of legal rules based on logic and largely detached from its historical context. From this perspective, Roman jurists are regarded as a small elite of legal experts who are indifferent to rhetoric. They are clearly distinct from advocates, who are thought to excel in rhetoric but are perceived to have limited legal knowledge. Over the course of their academic careers, Olga Tellegen-Couperus and Jan Willem Tellegen have challenged this dichotomy. They have consistently argued that rhetoric provided Roman jurists with argumentative tools to deliberate on contentious legal issues and support their clients' claims or defenses, and that orators such as Marcus Tullius Cicero also combined the art of persuasion with a solid legal understanding.¹ Their decade-long research has now culminated in the present book, *The Regula as a Rhetorical Device in Roman Law*, which offers additional evidence that classical rhetoric and Roman law are two sides of the same coin, i.e., legal practice. My own research on the school controversies, conducted under the guidance of the authors as my PhD supervisors, supports this same proposition.²

Although contemporary scholars increasingly recognize that Roman law should be studied beyond its internal logic, the legacy of earlier dogmatic approaches

* **Contact:** t.g.leesen@tilburguniversity.edu

¹ O.E. Tellegen-Couperus & J.W. Tellegen, 'Reading a Dead Man's Mind: Hellenistic Philosophy, Rhetoric and Roman Law', in: P. Du Plessis (ed.), *Cicero's Law: Rethinking Roman Law of the Late Republic*, Edinburgh, Edinburgh University Press, 2016, pp. 26–49; J.W. Tellegen & O.E. Tellegen-Couperus, 'Crassus' Plea for Legal Knowledge in Cicero's *De Oratore* I.179', in: *Fundamina* 16, 1 (2010), pp. 435–442; O.E. Tellegen-Couperus (ed.), *Quintilian and the Law. The Art of Persuasion in Law and Politics*, Leuven, Leuven University Press, 2003.

² T.G. Leesen, *Gaius Meets Cicero. Law and Rhetoric in the School Controversies*, Leiden-Boston, Brill, 2010.

persists. Lendon recently observed that the arguments of scholars examining the influence of classical rhetoric on Roman law have never been taken entirely seriously: ‘Scholars of Roman law do not consider such arguments worth more than a polite nod in passing, as they proceed to seek, as they have so long done, the history and evolution of Roman law safely within the logic of Roman law itself’.³ In this context, the argument advanced by Tellegen-Couperus and Tellegen remains highly relevant.

The book opens with a preface and an introduction (Chapter 1). The introduction traces the historical roots of the dogmatic approach to Roman law and advocates a paradigm shift, urging readers to understand Roman law ‘as living in symbiosis with rhetoric’.⁴ The central thesis is that the *regulae* in D. 50.17 should not be understood as established legal principles or general rules of law, as is generally assumed, but as rhetorical devices. Many of these *regulae* are, in fact, arguments, invented for specific legal cases using *topica* and expressed as general statements or *theseis* to maximize their persuasive effect. This thesis draws on Cicero’s *Topica* (44 BC), written for his friend and jurist C. Trebatius Testa to illustrate how *topoi* could be applied in private law. Chapter 2 argues that Cicero’s *Topica* likely served as a practical guide for Trebatius and other jurists, while Chapter 3 shows that the theory of *topica* had also influenced Quintus Mucius Scaevola. In D. 32.29.1, for instance, Scaevola used the topical argument “in maiore minus inest”. The appearance of this same topical argument in D. 50.17 led the authors to propose that the other *regulae* in this title might also be topical arguments, worded as *theseis*.

In the main part of the book (Chapters 4-10), the authors test this hypothesis through the exegesis of twenty texts from D. 50.17. These texts were selected because their original *responsa* are preserved elsewhere in the Digest. This allows the authors to understand each *regula* in its original legal context and examine whether it served as a rhetorical argument in that case. The analyses are organized by the *status* or type of question addressed in the original text and the corresponding *topoi*: the *status coniectura* (“Is it?”) with the *topos a causa* (Chapter 5); the *status definitio* (“What is it?”) with the *topos e contrario*, the *topos e consequentibus* and the *topos a repugnantibus* (Chapters 6-8); the *status qualitatit* (“How is it?”) with the *topos comparatio* and, finally, the *status ambiguitas*, addressing ambiguous written documents. This rhetorical analysis helps the authors clarify the legal disputes that gave rise to these *regulae*. In doing so, they demonstrate their technical expertise in Roman law and their ability to explain complex issues with clarity.

In the preface, Tellegen-Couperus and Tellegen immediately acknowledge the controversial nature of their claim: ‘The title of this book may likely raise a few eyebrows’.⁵ The same applies to their interpretation of the famous *regula Catoniana*,

³ J.E. Lendon, *Tyrant, Persuasion. How Rhetoric Shaped the Roman World*, Princeton University Press: Princeton, 2022, p. 114.

⁴ O.E. Tellegen-Couperus & J.W. Tellegen (2025), *The Regula as Rhetorical Device in Roman Law*, Boston, Brill, 2025, p. 12.

⁵ Ivi, p. VIII.

discussed in Chapter 11. According to this *regula*, a legacy must be valid at the moment the testament was made (Celsus D. 34.7.1). Even if the cause of invalidity was removed before the death of the testator, such a legacy could not be validated. Traditionally, scholars interpret the *regula Catoniana* as a normative rule. This led to considerable confusion among scholars of Roman law, because Roman jurists both applied and rejected it in different cases. Tellegen-Couperus and Tellegen therefore infer that it cannot have been a binding rule of law but was instead employed as a rhetorical argument, formulated in general terms. Such an argument would have been particularly useful to an heir who did not want to transfer a legacy to a legatee, claiming that ‘a legacy which would have been invalid if the testator had died immediately after making his will is invalid whenever he dies’ (Celsus D. 34.7.1.pr.). In other words, like the other *regulae*, the *regula Catoniana* should be understood as a rhetorical or thetical argument invented for a specific case but expressed in general terms. Interpreting it this way renders Paulus’ otherwise enigmatic definition of a *regula* in D. 50.17.1 comprehensible. In D. 50.17.1, which is often connected with the *regula Catoniana*, Paul describes the concept of *regula* as a thetical argument. The book concludes with a chapter summarizing the findings (Chapter 12), followed by a bibliography and index of sources.

This study shows that when we dare to read Roman law through a rhetorical lens, the Digest speaks in new and unexpected ways. One hopes the field will not respond with the polite nod in passing that Lendon warned of, but with the intellectual curiosity that such a groundbreaking study deserves.