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Quintilian, born in Spain about A.D. 35, became a widely known and highly successful teacher of rhetoric in Rome. *The Orator's Education (Institutio Oratoria)*, a comprehensive training program in twelve books, draws on his own rich experience. It is a work of enduring importance, not only for its insights on oratory, but for the picture it gives of education and social attitudes in the Roman world.

Quintilian offers both general and specific advice. He supplies guidelines for proper schooling (beginning with the young boy); analyzes the structure of speeches; recommends devices that will engage listeners and appeal to their emotions; reviews a wide range of Greek and Latin authors of use to the orator; and counsels on memory, delivery, and gestures.

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Donald A. Russell is Emeritus Professor of Classical Literature, University of Oxford, and Emeritus Fellow of St. John's College, Oxford.

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# QUINTILIAN

## THE ORATOR'S EDUCATION

BOOKS 3-5

EDITED AND TRANSLATED BY  
DONALD A. RUSSELL



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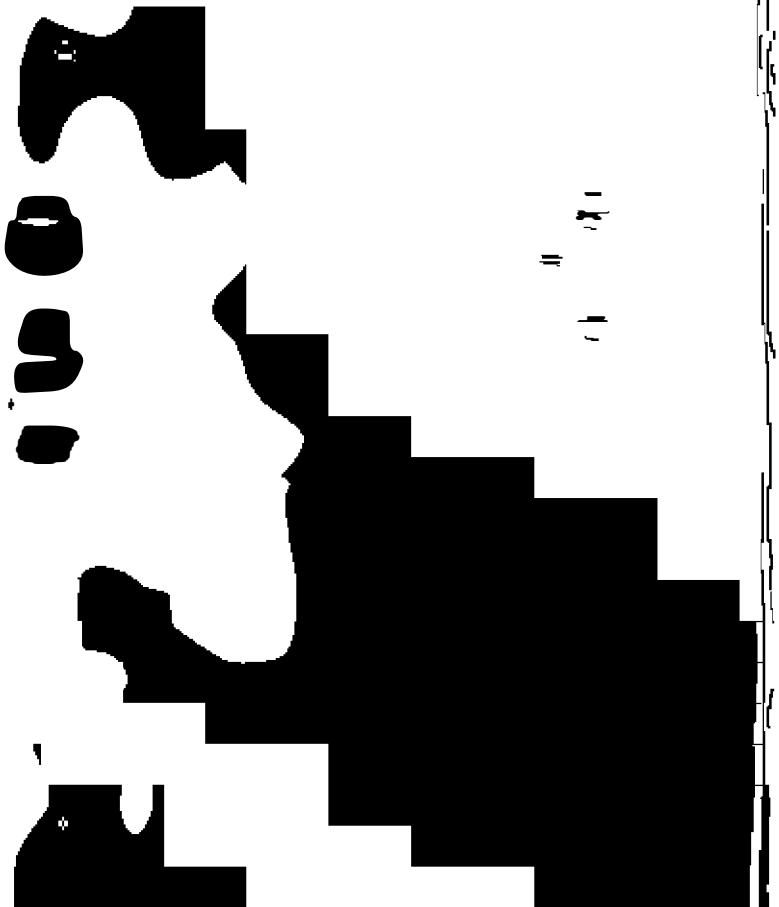
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1800



INSTITUTIO ORATORIA  
THE ORATOR'S EDUCATION

the 1990s, the number of people with a disability has increased in all countries.

There are a number of reasons for this increase. One of the main reasons is the increase in the life expectancy of people with a disability. This is due to the fact that people with a disability are now living longer than ever before.

Another reason for the increase is the increase in the number of people with a disability who are living in poverty. This is due to the fact that people with a disability are often unable to work and therefore have a low income.

There are also a number of other reasons for the increase, such as the increase in the number of people with a disability who are living in rural areas and the increase in the number of people with a disability who are living in urban areas.

The increase in the number of people with a disability is a global phenomenon. It is a result of a number of factors, including the increase in life expectancy, the increase in poverty, and the increase in the number of people with a disability living in rural and urban areas.

The increase in the number of people with a disability is a challenge for governments and society. It is a challenge because it requires a number of resources to care for people with a disability and to ensure that they have access to the same opportunities as people without a disability.

There are a number of ways in which governments and society can address this challenge. One way is to provide more resources for the care of people with a disability. Another way is to ensure that people with a disability have access to the same opportunities as people without a disability.

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## ABBREVIATIONS

A general Bibliography is in Volume One. Abbreviations used for journals are generally those given in the Oxford Classical Dictionary.

- Anon. Seg. Anonymus Seguierianus, ed. M. Dilts and G. A. Kennedy, in *Two Rhetorical Treatises from the Roman Empire*. Leiden, 1997.
- ANRW *Aufstieg und Niedergang der römischen Welt*, ed. W. Haase and H. Temporini. Berlin, 1974–.
- AP G. A. Kennedy, *The Art of Persuasion in Greece*. London, 1963.
- ARRW G. A. Kennedy, *Art of Rhetoric in the Roman World*. Princeton, 1972.
- AS *Artium Scriptores*, ed. L. Radermacher. Vienna, 1951.
- CA D. A. Russell, *Criticism in Antiquity*. London, 1981 (ed. 2, 1995).
- CHLC *The Cambridge History of Literary Criticism*, vol. 1, *Classical Criticism*, ed. G. A. Kennedy. Cambridge, 1989.
- CRHP *Handbook of Classical Rhetoric in the Hellenistic Period 330 BC–AD 400*, ed. S. E. Porter. Leiden, 1997.
- F Gr Hist F. Jacoby, *Fragmente der griechischen Historiker*.

ABBREVIATIONS AND SIGLA

- FOR H. Meyer, *Oratorum Romanorum Fragmenta*, ed. 2. 1842.
- FPL *Fragmenta Poetarum Latinorum*, ed. W. Morel. Leipzig, 1927 (1963).
- GD D. A. Russell, *Greek Declamation*. Cambridge, 1983.
- GL *Grammatici Latini*, ed. H. Keil, 7 vols. Leipzig, 1855–1880.
- HRR *Historicorum Romanorum Reliquiae*, ed. H. Peter. Leipzig, 1906.
- Lampe G. W. H. Lampe, *A Patristic Greek Lexicon*. Oxford, 1961.
- Lausberg H. Lausberg, *Handbook of Literary Rhetoric*, ed. and trans. D. E. Orton and R. Dean Anderson. Leiden, 1998.
- LCL Loeb Classical Library.
- L–H–S Leumann–Hofmann–Szantyr, *Lateinische Grammatik (Handbuch der Altertumswissenschaft 2.2.2)*. Munich, 1965.
- OCD<sup>3</sup> *Oxford Classical Dictionary*, ed. 3, edd. S. Hornblower and A. Spawforth. Oxford, 1996.
- OLD *Oxford Latin Dictionary*, ed. P. G. W. Glare. Oxford, 1968–1982.
- ORF *Oratorum Romanorum Fragmenta liberae rei publicae*, ed. H. Malcovati. Ed. 2, Turin, 1955.
- PMG *Poetae Melici Graeci*, ed. D. L. Page, Oxford, 1962.
- QHAR *Quintiliano: historia y actualidad de la retórica*, edd. T. Abaladejo, E. del Rio, J. A. Caballero. Calahorra, 1998.

## ABBREVIATIONS AND SIGLA

- RAC *Reallexikon für Antike und Christentum*. Stuttgart, 1941–.
- RD S. F. Bonner, *Roman Declamation*. Liverpool, 1949.
- RE G. Wissowa, etc., *Paulys Realenzyklopädie der klassischen Altertumswissenschaft*. 1893–1980.
- RLM *Rhetores Latini Minores*, ed. C. Halm. Leipzig, 1863.
- ROL *Remains of Old Latin*, ed. E. H. Warmington, 4 vols. LCL, 1935–1940.
- RP R. Syme, *Roman Papers*, 7 vols. Oxford, 1979–1988.
- Spengel *Rhetores Graeci*, ed. L. Spengel, 3 vols. Leipzig, 1853–1856.
- Spengel–Hammer *Rhetores Graeci* 1.2, ed. L. Spengel and C. Hammer. 1894.
- SVF *Stoicorum Veterum Fragmenta*, ed. H. von Arnim. 1905 (reprint Stuttgart, 1964).
- VPH [Plutarch] *De vita et poesi Homeri*, ed. J. F. Kindstrand. 1990. Commentary: M. Hillgruber, 1994–1999.
- Walz *Rhetores Graeci*, ed. C. Walz. 1832–1836 (reprint Osnabruck, 1968).

## SIGLA

- A Ambrosianus E 153 sup.  
*a* Its contemporary corrections  
 B Bernensis 351  
 Bg The older part of Bambergensis M.4.14

## ABBREVIATIONS AND SIGLA

<i>b</i>	Its corrections
<i>G</i>	The later part of Bambergensis M.4.14
<i>N</i>	Parisinus lat. 18527
<i>J</i>	Cantabrigiensis Ioannensis 91
<i>E</i>	Parisinus lat. 14146 (Breviarium of Stephen of Rouen)
<i>D</i>	Parisinus lat. 7719
<i>K</i>	Parisinus lat. 7720 (corrected by Petrarch)
<i>H</i>	Harleianus 2664
<i>T</i>	Turicensis 288 (corrected (= <i>t</i> ) by Ekkehard IV of St. Gall, c. 1050)
<i>X</i>	Parisinus lat. 7696
<i>Y</i>	Parisinus lat. 7231
<i>recc.</i>	One or more of the later MSS listed in Winterbottom (1970), v–vii
<i>edd.</i>	One or more of the editions listed under (a) in the Bibliography, in Volume I
Regius	R. Regius, in ed. Ven. 1493, or in <i>Ducenta problemata in totidem Institutionis Oratoriae Quintiliani depravationes</i> (1492)
D.A.R.	Suggestions by the present editor
M.W.	Suggestions made in discussion with the editor by M. Winterbottom. See also <i>More Problems in Quintilian</i> , <i>BICS</i> 44 (2000) 167–177

## BOOK THREE



## INTRODUCTION

There is a detailed commentary on this book by J. Adamietz (1966). Quintilian begins with a recapitulation (3.1.1–7) and a historical account of the development of rhetoric from Corax and Tisias down to his own day (3.1.8–21). In more general terms (3.2) the origin of rhetoric is seen in the gift of speech which Nature has given mankind; Quintilian takes issue with Cicero (3.2.4) by pointing out that nomadic peoples, who do not live in cities, also possess rhetorical skills. Much of the parallel material to all this is in Radermacher, AS pp. 1–27.

Various classifications of the subject occupy 3.4.3–3.4.5. First come the Five Parts (nowadays sometimes called Canons) of rhetoric: Invention, Disposition, Elocution, Memory, Delivery (see Caplan on *Ad Herennium* 1.3; Lausberg § 255). Quintilian here dismisses the view that they are not “parts” but “functions” (ἔργα) of the orator. Bringing his “art-artist-work” division into play, he shows that Invention and the others belong to the “art,” while the functions that correspond to them belong to the orator. These questions seem arid; Quintilian (3.3.14) characteristically observes that scholars have been influenced by the desire to have different words for the divisions produced by various classifications.

Of these other classifications, the most important is that

## INTRODUCTION

discussed in 3.4, the three Aristotelian “kinds of causes”: Forensic (or Judicial), Deliberative, and Epideictic (Lausberg §§ 59–65; Kennedy in *CRHP* 44–49). This chapter again is largely doxographical, but Quintilian (3.4.11) accepts the orthodox view, discusses the implications of the Greek terms Epideictic, Encomiastic, and Panegyric, and notes the common ground (justice, expediency, honour) which all three “kinds” share.

Chapter 5 touches briefly on some other traditional distinctions:

5.1. “Content and words”; “nature, art, practice, imitation.”

5.2. The three *officia* of “instructing, moving emotions, and giving pleasure.”

5.3. Things needing proof and things not needing proof.

5.4. “Legal” and “Rational” Questions, i.e. questions of law and questions of fact.

5.5–15. “Indefinite” and “Definite” Questions, i.e. *thesis* and *hypothesis*; Quintilian argues for the value of “indefinite” or general Questions in all kinds of cases, because there is usually a general principle behind any individual problem (Lausberg §§ 68–78).

5.16. “Absolute” and “Relative” Questions.

Finally (5.17–18) he gives various definitions of a “Cause.”

He has now introduced most of the concepts required for his next subject, which is the very complex Theory of Issues (*status*). This is the heart of theoretical forensic rhetoric, and will occupy him both here and in Book Seven. Basic ancient texts include *Ad Herennium* 1.18–27, 2.2–26; Cicero, *De inventione* 1.10–19, 2.12–end; *Topica* 93–96. On the Greek side, the theory (though it had its origins in the sophistic period and, as Quintilian sees, is

## INTRODUCTION

based on Aristotelian logic) was mainly developed by Hermagoras, for whose views Quintilian is an important source. After Quintilian's time, the number of distinct Issues was considerably enlarged; many writers held that there were thirteen, and this is the scheme found in Hermogenes of Tarsus, who was particularly influential, and in most later rhetoricians. Among modern accounts, note Heath (1995), esp. 70ff.; *GD* 40–73; Heath in *CRHP* 100–103; Calboli Montefusco (1986). Lausberg §§ 79–254 is exhaustive, mainly depending on Quintilian. An unusually clear exposition (with diagrams) is given by B. Schouler, *La tradition hellénique chez Libanios* (1984) 1. 170–185; this does, of course, relate to a period much later than Quintilian.

Chapter 6 is thus unusually long and difficult, but its structure is fairly simple:

- 6.1. *Status* belongs to all three “kinds” of Cause.
- 6.2. Various names for it.
- 6.3. Early history.
- 6.4–22. Rival definitions and ways of identifying the Issue.
- 6.23–28. The basic elements are derived from or correspond with Aristotle's Categories.
- 6.29–55. How many types of Issue are there? (one, 29–30; two, 31–43; three, 44–46; four, 47–50; five or more, 51–55).
- 6.55–62. Theories which distinguish Rational and Legal Issues.
- 6.63–90. Quintilian's own views, past and present.
- 6.91–103. Cases involving more than one Issue, including (96–103) a detailed study of the Case of the Three Sons.

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6.104. Related matters (Motive, Point to Decide, Core (Basic Argument)) will be considered later.

Chapter 7 deals, fairly briefly, with the oratory of praise and blame, i.e. Epideictic. Basic ancient texts here include: Aristotle, *Rhetoric* 1.9; Cicero, *De inventione* 2.177–178, *De oratore* 2.43–47, 341–349 (very close to Quintilian); *Partitiones oratoriae* 70–82; Theon, *Progymnasmata* 109–112 Spengel; Menander Rhetor (with Russell and Wilson's Introduction, xi–xxxiv). Modern works include Burgess (1902), Buchheit (1960); Pernot (1993); the handbooks all include discussions, e.g. Martin 177–210, Lausberg §§ 239–254.

After some introductory remarks (3.7.1–6), Quintilian proceeds to praise of gods (6–9) and men (10–18), and then to invective (19–22). There follows a section on the relation of the encomiast to his audience (23–25), and then the main scheme resumes with “praise of cities and places” (26–28).

Chapter 8 is a similar treatment of Deliberative Oratory. The essential parallel material is to be found in Aristotle, *Rhetoric* 1.4–8; *Rhetorica ad Alexandrum* 29–34; Cicero, *De inventione* 2.157–176, *De oratore* 2.333–340, *Partitiones oratoriae* 83–97. Outline in Martin 167–176, Lausberg §§ 224–238. Quintilian's discussion falls into two main parts: (a) Introductory (3.8.1–15): here it is explained that the aim of Deliberative Oratory is dignity rather than expediency (1–3); that it may however involve Conjecture, Definition, and Legal Issues as well as Quality (4–6); and that it has its own rules for Prooemium, Narrative, and Emotional Appeal (6–13); (b) a more detailed discussion of (i) the nature of the proposal (16–35), (ii) the character

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of the audience (35–47), (iii) the character of the speaker (48). There follow remarks on *Prosopopoeia* (49–54) and finally (55–70) some comments on various types of school exercises (*suasoriae*).

In 9, Quintilian returns to the Forensic Speech, with a preliminary discussion of the Parts of the Speech—from Prooemium to Epilogue—which he will take up in detail in Book Four. His theme for the moment is the practical question of the order in which these elements of a speech are to be planned. This division—usually into five parts: Prooemium, Narrative, Arguments, Refutations, Epilogue—is central to rhetorical teaching at all periods (see Caplan on *Ad Herennium* 1.4ff.) and gives the basic structure of many treatises (e.g. *Rhetorica ad Alexandrum*, Anonymus Seguerianus, Apsines). Lausberg § 261 summarizes the doctrine, and gives a table showing various schemes in later Latin rhetoricians.

Chapter 10 gives a classification of Causes according to their complexity: they are either Simple, Compound, or Comparative. Cicero (*De inventione* 1. 17) has this distinction, which is also found in later rhetors (Fortunatianus, 86–91 Halm). It is discussed briefly by Lausberg, § 67.

Chapter 11 discusses Questions, Lines of Defence, Points for Decision and *continens* or *συνέχου* (I translate this as “Core”; “Basic Argument” would also convey the idea). This all provides a procedure for deciding what the problem to be addressed really is. It is based on Hermagoras, though Quintilian does not always use his terminology, is not uncritical of him, and is generally impatient with subtleties which have, he very reasonably thinks, little practical value. Parallel material in *De inventione* and *Ad Herennium* (see Caplan) enables us to reconstruct the

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basic process as Hermagoras saw it. It involved (1) the accuser's *intentio*, (2) the defendant's *depulsio*: from these emerged the *quaestio* (*Ad Herennium* 1.18). Next (3) the defendant produced his *ratio*, and (4) the accuser tried to refute it (*Ad Herennium* calls this stage *firmamentum*, a term mentioned also by Quintilian, 3.11.1). From (3) and (4) derived the Point for Decision (τὸ κρινόμενον). The example in *De inventione* 2.78, the charge against Horatius for killing his sister, illustrates this clearly. (1) "You killed your sister without justification"; (2) "I was justified"; the Question is "Was he justified?"; (3) "She was distressed at our victory, and grieved by the enemy's death"; (4) "But she ought not to have been killed by her brother without trial." Point for Decision: "Given all the circumstances, should he have killed her without trial?"

Quintilian deals first (11.1–3) with the definition of the "principal Question"; then with Line of Defence (*ratio*) and Point for Decision (11.4–8), with a discussion of terminology and illustration from the stock case of Orestes; next comes "Core" (11.9); he then proceeds to discuss various problems, illustrating them again from stock cases (11.10–17). Inconsistencies in Cicero come in for criticism (11.18–20); but Quintilian is mainly concerned (11.21–26) with simplifying the subject and reducing it to what the student really needs to know. His impatience with the pedantry and vanity of the scholars is clear, and characteristic. His own account is, it must be said, not at all clear: see M. Heath in *Classical Quarterly* 44 (1994) 122–123.

## LIBER TERTIUS

### 1

- 1 Quoniam in libro secundo quaesitum est quid esset rhetorice et quis finis eius, artem quoque esse eam et utilem et virtutem, ut vires nostrae tulerunt, ostendimus, materiamque ei res omnes de quibus dicere oporteret subiecimus: iam hinc unde coeperit, quibus constet, quo quaeque in ea modo invenienda atque tractanda sint exequar: intra quem modum plerique scriptores artium constiterunt, adeo ut Apollodorus contentus solis iudicialibus fuerit.
- 2 Nec sum ignarus hoc a me praecipue quod hic liber inchoat opus studiosos eius desiderasse, ut inquisitione opinionum, quae diversissimae fuerunt, longe difficillimum, ita nescio an minimae legentibus futurum voluptati, quippe quod prope nudam praeceptorum traditionem desideret. In ceteris enim admiscere temptavimus aliquid
- 3 nitoris, non iactandi ingenii gratia (namque in id eligi materia poterat uberior), sed ut hoc ipso adliceremus magis iuventutem ad cognitionem eorum quae necessaria studiis arbitrabamur, si ducti iucunditate aliqua lectionis libentius

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<sup>1</sup> 2.15, 16, 17, 20, 21.

<sup>2</sup> See 2.11.2, 3.1.17; Kennedy, *ARRW* 338–340.

# BOOK THREE

## CHAPTER 1

### *Introduction: history of the subject*

In Book Two, I discussed what rhetoric was and what was its end; I showed, to the best of my ability, that it was an art, that it was useful, and that it was a virtue, and I defined its material as every subject on which it was obliged to speak.<sup>1</sup> I shall now expound its origins, its component elements, and how we should discover and handle each constituent. Most authors of textbooks have kept within these limits; indeed Apollodorus<sup>2</sup> was content to confine himself exclusively to forensic cases.

I am fully aware that students of rhetoric have particularly wanted me to provide that part of the subject which this book now commences. It is both by far the most difficult part, because of the need to investigate a very great diversity of opinions, and also, I suspect, likely to be the least pleasurable to the reader, because it demands little else than a bare exposition of rules. Elsewhere, I have tried to add some touch of elegance, not to show off my talents (I could have chosen a richer field for that!) but to lure young people by this into learning what I regarded as necessary for their studies, in the hope that they might be attracted by some pleasure in reading, and so become readier to



## QUINTILIAN

discerent ea quorum ne ieiuna atque arida traditio averteret animos et aures praesertim tam delicatas raderet  
4 verebatur. Qua ratione se Lucretius dicit praecepta philosophiae carmine esse complexum; namque hac, ut est notum, similitudine utitur:

ac veluti pueris absinthia taetra medentes  
cum dare conantur, prius oras pocula circum  
adspirant<sup>1</sup> mellis dulci flavoque liquore

5 et quae secuntur. Sed nos veremur ne parum hic liber mellis et absinthii multum habere videatur, sitque salubrior studiis quam dulcior. Quin etiam hoc timeo, ne ex eo minorem gratiam ineat, quod pleraque non inventa per me sed ab aliis tradita continebit, habeat etiam quosdam qui contra sentiant et adversentur, propterea quod plurimi auctores, quamvis eodem tenderent, diversas tamen vias  
6 munierunt atque in suam quisque induxit sequentes. Illi autem probant quaecumque ingressi sunt iter, nec facile inculcatas pueris persuasiones mutaveris, quia nemo non  
7 didicisse mavult quam discere. Est autem, ut procedente libro patebit, infinita dissensio auctorum, primo ad ea quae rudia atque imperfecta adhuc erant adicientibus quod invenissent scriptoribus, mox, ut aliquid sui viderentur adferre, etiam recta mutantibus.

8 Nam primus post eos quos poetae tradiderunt movisse

---

<sup>1</sup> inspirant A: contingunt *Lucretius* 1.938 = 4.13

<sup>3</sup> *Lucretius* 1.936–938 = 4.11–13.

## BOOK 3.1

learn things which, if baldly and drily taught, would, I feared, disgust their minds and offend their ears, especially as they are now so very fastidious. This is the reason Lucretius gives for writing philosophy in verse: as we all know, he uses this simile:

As when the doctors try to give to children  
some bitter wormwood, first they smear the rim  
with honey, sweet and yellow,<sup>3</sup>

and so on. But I fear this book may appear to have too little honey and too much wormwood, and be more healthy for the student than agreeable. I fear too that it will find even less favour, because its contents will be for the most part not discoveries of mine but the doctrines of others, and at the same time encounter hostile criticism, because so many writers, though all moving towards the same goal, have constructed different roads to it, and have each made their disciples follow their special route. Those disciples, moreover, become committed to whatever road they entered on first, and it is very difficult to change boys' opinions once they have been impressed upon them. Everybody prefers to have learned rather than to learn! But there is, as will appear in the course of this book, an infinite diversity of opinion among the authorities, because writers first added their own discoveries to what was previously still rough and imperfect, and then went on to change even what had been right, so as to appear to be contributing something of their own.

### *Previous writers on rhetoric*

The first writer, after those of whom the poets tell us,

## QUINTILIAN

aliqua circa rhetoricen Empedocles dicitur. Artium autem  
 scriptores antiquissimi Corax et Tisias Siculi, quos insecu-  
 tus est vir eiusdem insulae Gorgias Leontinus, Empedo-  
 9 clis, ut traditur, discipulus. Is beneficio longissimae aetatis  
 (nam centum et novem vixit annos) cum multis simul  
 floruit, ideoque et illorum de quibus supra dixi fuit aemu-  
 10 lus et ultra Socraten usque duravit: Thrasymachus Calche-  
 donius cum hoc et Prodicus Cius<sup>2</sup> et Abderites Protagoras,  
 a quo decem milibus denariorum didicisse artem quam  
 edidit Euathlus dicitur, et Hippias Elius, et, quem Palame-  
 11 den Plato appellat, Alcidas Elaites, Antiphon quoque,  
 <qui><sup>3</sup> et orationem primus omnium scripsit et nibilo mi-  
 nus artem [et]<sup>4</sup> ipse composuit et pro se dixisse optime est  
 creditus; etiam Polycrates, a quo scriptam in Socraten  
 diximus orationem, et Theodorus Byzantius, ex iis et ipse  
 12 quos Plato appellat logodaedalos. Horum primi communis

<sup>2</sup> *edd.*: Chius AB

<sup>3</sup> *odd.* Claussen

<sup>4</sup> *del.* Claussen

<sup>4</sup> Aristotle claimed Empedocles as the originator of rhetoric (Diogenes Laertius 8.57). Q.'s reference to "poets" alludes to the supposed knowledge of rhetoric shown by characters in Homer: see 2.17.8, 12.10.64. <sup>5</sup> See on 2.17.7. <sup>6</sup> He died c. 380 BC. See Radermacher, *AS* 42–66; Kennedy, *AP* 61–68.

<sup>7</sup> See Kennedy, *AP* 68–70. <sup>8</sup> This sophist had a special interest in the correct use of words. Guthrie, *HGP* 3. 274–280.

<sup>9</sup> Guthrie, *HGP* 3. 262–269. <sup>10</sup> Ridiculed by Aristophanes, *Acharnians* 710. <sup>11</sup> Famous for the versatility of his knowledge and skills: Guthrie, *HGP* 3. 280–285.

<sup>12</sup> Texts in Radermacher, *AS* 132–147. See Kennedy, *AP* 172–173, N. O'Sullivan, *Alcidas, Aristophanes and the Beginnings of Greek Stylistic Theory* (1992) ch. 2.

<sup>13</sup> Palamedes, a Greek hero of the Trojan War, was a very inge-

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who made any progress in rhetoric is said to have been Empedocles.<sup>4</sup> The oldest writers of textbooks are the Sicilians Corax and Tisias,<sup>5</sup> who were followed by another native of their island, Gorgias of Leontini, said to have been a pupil of Empedocles. Thanks to an exceptionally long life (he lived to 109),<sup>6</sup> he had many contemporaries; he was the rival of those I have just mentioned, and yet he went on to outlive Socrates. His contemporaries include Thrasy-machus of Calchedon,<sup>7</sup> Prodicus of Ceos,<sup>8</sup> Protagoras of Abdera<sup>9</sup> (for whose teaching Euathlus<sup>10</sup> is supposed to have paid 10,000 *denarii*, and subsequently to have published it), Hippias of Elis<sup>11</sup> and Alcidas of Elea,<sup>12</sup> whom Plato<sup>13</sup> calls Palamedes. There was also Antiphon,<sup>14</sup> who was the first to write speeches, but none the less composed a textbook himself and is said to have spoken very well in his own defence; and Polycrates, who (as I said) wrote a speech against Socrates,<sup>15</sup> and Theodorus of Byzantium,<sup>16</sup> another of those whom Plato calls “master

nious person (he invented the game of draughts as a pastime for the bored troops), who was falsely accused of treason. Gorgias wrote a fictitious “Defence” for him. However, Q.’s interpretation of Plato is wrong: the “Eleatic Palamedes” of *Phaedrus* 261D is the eristic philosopher Zeno of Elea, not Alcidas of Elea (see G. J. de Vries, *A Commentary on the Phaedrus of Plato* (Amsterdam, 1969) 204–205).

<sup>14</sup> Radermacher, *AS* 81–102, Kennedy, *AP* 129–133; trans. in *LCL Minor Attic Orators* vol. I. Cicero (*Brutus* 47) reports (from Thucydides 8.68) the excellence of his self-defence (411 BC).

<sup>15</sup> See on 2.17.4. Q. almost certainly means that Antiphon was the first *logographos*, i.e. the first who wrote speeches for litigants: see [Plutarch], *Lives of the Ten Orators* 832C.

<sup>16</sup> Plato, *Phaedrus* 266–267 (and Cicero, *Orator* 39, probably Q.’s source). Radermacher, *AS* 106–111.

locos tractasse dicuntur Protagoras, Gorgias, adfectus Prodicus, Hippias et idem Protagoras et Thrasymachus. Cicero in Bruto negat ante Periclea scriptum quicquam quod ornatum oratorium habeat: eius aliqua ferri. Equidem non reperio quicquam tanta eloquentiae fama dignum, ideoque minus miror esse qui nihil ab eo scriptum putent, haec autem quae feruntur ab aliis esse composita.

- 13 His successere multi, sed clarissimus Gorgiae auditor  
Isocrates, quamquam de praeceptore eius inter auctores  
14 non convenit: nos tamen Aristoteli credimus. Hinc velut  
diversae secari coeperunt viae. Nam et Isocratis praestantissimi discipuli fuerunt in omni studiorum genere, eoque iam seniore (octavum enim et nonagesimum implevit annum) postmeridianis scholis Aristoteles praecipere artem oratoriam coepit, noto quidem illo, ut traditur, versu ex Philocteta frequenter usus: 'turpe esse tacere et Isocraten pati dicere.' Ars est utriusque, sed pluribus eam libris Aristoteles complexus est. Eodem tempore Theodectes fuit,  
15 de cuius opere supra dictum est. Theophrastus quoque, Aristotelis discipulus, de rhetorice diligenter scripsit, atque hinc vel studiosius philosophi quam rhetores prae-

<sup>17</sup> See Aristotle, *Rhetoric* 3.1, 1404a14.

<sup>18</sup> 27; see also 12.10.49.

<sup>19</sup> Fr. 139 Rose. Gorgias is often cited as one of Isocrates' teachers (e.g. Dionysius of Halicarnassus, *Isocrates* 1).

<sup>20</sup> Probably from Cicero, *De oratore* 3.141. Original source not known. The Euripidean line parodied is fr. 796 Nauck, where βαρβάρους replaces Ἴσοκράτην: "It is shameful to be silent in defence of the entire Greek army, and let barbarians speak."

<sup>21</sup> I.e. not only in the *Rhetoric* we possess, but in some lost

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wordsmiths.” Of these, Protagoras and Gorgias are said to have been the first to treat commonplaces, and Prodicus, Hippias, Protagoras, and Thrasymachus, the emotions.<sup>17</sup> Cicero in the *Brutus*<sup>18</sup> says that nothing possessing any rhetorical finish was written before Pericles, and that some of Pericles’ speeches were in circulation. I have been unable to discover anything worthy of his great reputation for eloquence, and therefore am not surprised that some think that he wrote nothing and that what circulates as his was composed by others.

These men had many successors. The most famous of Gorgias’ pupils was Isocrates, though the authorities are not agreed as to his teacher: I follow Aristotle.<sup>19</sup> From this point, the roads diverge. Isocrates’ pupils distinguished themselves in every branch of study, and when he was an old man (and he lived to be 98), Aristotle began teaching rhetoric in afternoon lectures, often parodying (we are told) the well-known line in the *Philoctetes*:

Shame to keep quiet, and let Isocrates speak.<sup>20</sup>

Both wrote “Arts” of rhetoric, but Aristotle covered the subject in several books.<sup>21</sup> Theodectes, whose work I mentioned above,<sup>22</sup> belongs to the same period. Theophrastus,<sup>23</sup> Aristotle’s pupil, also wrote scholarly works on rhetoric, and from this time forward it was the philosophers,

works: *Gryllus* (see 2.17.14) and the *Collection of Technai* (frs. 136–141 Rose).

<sup>22</sup> 1.4.18, 2.15.10.

<sup>23</sup> Aristotle’s successor, very influential in the development of rhetorical theory. Evidence in Fortenbaugh (1992) 2. 508–559. Sketch in Kennedy, *AP* 273–284, and in *CHLC* 194ff.

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- 16 cinueque Stoicorum ac Peripateticorum principes. Fecit deinde velut propriam Hermagoras viam, quam plurimi sunt secuti. Cui maxime par atque aemulus videtur Athenaeus fuisse. Multa post Apollonius Molon, multa Areus,
- 17 multa Caecilius et Halicarnasseus Dionysius. Praecipue tamen in se converterunt studia Apollodorus Pergameus, qui praeceptor Apolloniae Caesaris Augusti fuit, et Theodorus Gadareus, qui se dici maluit Rhodium: quem studiose audisse cum in eam insulam secessisset dicitur
- 18 Tiberius Caesar. Hi diversas opiniones tradiderunt appellatique inde Apollodorei ac Theodorei ad morem certas in philosophia sectas sequendi. Sed Apollodori praecepta magis ex discipulis cognoscas, quorum diligentissimus in tradendo fuit Latine C. Valgius, Graece Atticus. Nam ipse sola videtur ars edita ad Matium, quia ceteras missa ad Domitium epistula non agnoscit. Plura scripsit Theodorus, cuius auditorem Hermagoran sunt qui viderint.

<sup>24</sup> Cleanthes and Chrysippus among the Stoics (Kennedy, *AP* 290–299), Demetrius of Phalerum among the Peripatetics (*ibid.* 284–286). <sup>25</sup> See 2.15.23.

<sup>26</sup> Taught Cicero (*Brutus* 307, 312, 316) and was reputed an effective speaker. Kennedy, *AP* 326–327.

<sup>27</sup> See on 2.15.36.

<sup>28</sup> Fragments ed. Ofenloch (1907). Kennedy, *ARRW* 364–369.

<sup>29</sup> Critical works (but not fragments of *De imitatione*, much used by Q. in 10.1) ed. S. Usher (LCL).

<sup>30</sup> What Q. tells us about these two “sects” (see on 2.11.2) is important; but they do not represent fundamentally different literary attitudes, as has sometimes been thought, but only somewhat different approaches to the relation between rules and practice in oratory.

<sup>31</sup> Probably C. Valgius Rufus, suffect consul 12 BC, poet

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especially the leading Stoics and Peripatetics,<sup>24</sup> who showed even more interest in the subject than the rhetors. Later, Hermagoras struck out on a path of his own, which many have followed; his closest equal and rival seems to have been Athenaeus.<sup>25</sup> Apollonius Molon,<sup>26</sup> Areus,<sup>27</sup> Caecilius,<sup>28</sup> and Dionysius of Halicarnassus<sup>29</sup> all made major contributions; but the rhetoricians who particularly attracted a following were Apollodorus of Pergamum,<sup>30</sup> the teacher of Augustus at Apollonia, and Theodorus of Gadara, who preferred to be called a Rhodian, and of whom Tiberius is said to have been a keen pupil during his years of retirement in Rhodes. These two taught very different systems; hence their followers are called Apollodoreans and Theodoreans, on the analogy of the adherents of distinct philosophical schools. Apollodorus' doctrines are best learned from his pupils; the most scholarly exponent of them in Latin was Gaius Valgius,<sup>31</sup> in Greek Atticus.<sup>32</sup> The only published textbook of his own is the one addressed to Matus,<sup>33</sup> for the letter to Domitius<sup>34</sup> acknowledges no other. Theodorus wrote more: some still living have seen his pupil Hermagoras.<sup>35</sup>

(Courtney (1993) 287–290), and the addressee of Horace, *Carmina* 2.9. <sup>32</sup> Probably the Dionysius Atticus of Pergamum mentioned by Strabo (625c).

<sup>33</sup> Probably C. Matus, a literary man and friend of Augustus, and son of one of Caesar's most loyal supporters.

<sup>34</sup> Perhaps (as Spalding thought) the poet Domitius Marsus (Courtney (1993) 300–304), for whom see 6.3.102–111.

<sup>35</sup> This Hermagoras (there were at least two rhetors of the name besides the famous one from Temnos) may be the person quoted several times by the elder Seneca (so Matthes (1962) 56–59).



- 19 Romanorum primus, quantum ego quidem sciam, condidit aliqua in hanc materiam M. Cato, post M. Antonius [ille censorius]<sup>5</sup> inchoavit: nam hoc solum opus eius atque id ipsum imperfectum manet. Secuti minus celebres, quorum memoriam, si quo loco res poscet, non omittam.
- 20 Praecipuum vero lumen sicut eloquentiae, ita praeceptis quoque eius dedit unicum apud nos specimen orandi docendique oratorias artes M. Tullius, post quem tacere modestissimum foret, nisi et rhetoricos suos ipse adulescenti sibi elapsos diceret, et in oratoriis haec minora, quae plerumque desiderantur, sciens omisisset. Scripsit de eadem materia non pauca Cornificius, aliqua Stertinius, non nihil pater Gallio, accuratius vero priores Gallione Celsus et Laenas et aetatis nostrae Verginius Plinius Tutilius. Sunt et hodie clari eiusdem operis auctores, qui si omnia complexi forent, consulissent labori meo. Sed parco nominibus
- 21

<sup>5</sup> del. Radermacher

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<sup>36</sup> Perhaps the work addressed to his son in which the often quoted *vir bonus dicendi peritus* ("good man skilled in speaking") came: see 12.1.1.

<sup>37</sup> This great orator never published his speeches. Cicero (*De oratore* 1.98, see also 1.208) makes him (he is a character in the dialogue) refer to his "little book," which was based not on theory but on practice. See 2.15.7, 3.6.44. Texts in *ORF*, pp. 221–237.

<sup>38</sup> I.e. *De inventione*. See *De oratore* 1.5 for Cicero's own judgement on this early work. By "oratorical" books, Q. means especially *De oratore*, *Orator*, and *Brutus*, all of which are works of literary art, and not just meant as comprehensive textbooks.

<sup>39</sup> See General Introduction, vol. I.

<sup>40</sup> Not known.

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The first Roman (to my knowledge at any rate) who wrote anything on this subject was Marcus Cato;<sup>36</sup> after him, Marcus Antonius<sup>37</sup> made a beginning—this indeed is the only work of his to survive, and it is incomplete. His successors were less famous; but I shall not fail to mention them as occasion demands. But it was Cicero, the unique model both of oratory and of the teaching of oratory, who shed the greatest light on the theory as well as on the practice of eloquence. After him, the most modest course would be to keep silent, had he not himself said that his “rhetorical” books<sup>38</sup> were an indiscretion of his youth, and had he not deliberately omitted, in his “oratorical” books, the details whose absence we often regret. Cornificius<sup>39</sup> wrote extensively, and Stertinius<sup>40</sup> less extensively, on the same subject; the elder Gallio<sup>41</sup> also contributed, but there is more exact scholarship to be found in Gallio’s predecessors Celsus and Laenas,<sup>42</sup> and, in our own lifetime, Verginius,<sup>43</sup> Pliny,<sup>44</sup> and Tutilius.<sup>45</sup> There are distinguished writers on these matters even today, and if they had covered everything, they would have made my work easier.

<sup>41</sup> See 9.2.91; Seneca, *Controversiae* 10 *prae*f. 13, Tacitus, *Dialogus* 26.1, *Annales* 6.3.

<sup>42</sup> See also 10.7.32, 11.3.183; this Popilius Laenas (not identified with any known bearer of the name) wrote on practical aspects of composition and delivery.

<sup>43</sup> See also 4.1.23, 7.4.40, 11.3.126: teacher of the poet Persius; exiled by Nero (Tacitus, *Annales* 15.71); admired by Q.

<sup>44</sup> The elder Pliny’s *Studiosus* (mentioned by his nephew, *Epistulae* 3.5.5) must have covered much of Q.’s ground, though more briefly. Q. is critical of him in 11.3.143, 148.

<sup>45</sup> Unknown; conceivably the rhetor mentioned by Martial (5.56) in AD 89.

viventium; veniet eorum laudi suum tempus: ad posteros enim virtus durabit, non perveniet invidia.

- 22 Non tamen post tot ac tantos auctores pigebit meam quibusdam locis posuisse sententiam. Neque enim me cuiusquam sectae velut quadam superstitione inbutus addixi, et electuris quae volent facienda copia fuit, sicut ipse plurimum in unum confero inventa, ubicumque ingenio non erit locus curae testimonium meruisse contentus.

2

- 1 Nec diu nos moretur quaestio quae rhetorices origo sit. Nam cui dubium est quin sermonem ab ipsa rerum natura geniti protinus homines acceperint (quod certe principium est eius rei), huic studium et incrementum
- 2 dederit utilitas, summam ratio et exercitatio? Nec video quare curam dicendi putent quidam inde coepisse, quod ii qui in discrimen aliquod vocabantur accuratius loqui defendendi sui gratia instituerint. Haec enim ut honestior causa, ita non utique prior est, cum praesertim accusatio praecedat defensionem, nisi quis dicet etiam gladium fabricatum ab eo prius qui ferrum in tutelam sui quam qui in perniciem alterius comparavit.
- 3 Initium ergo dicendi dedit natura, initium artis observatio. Homines enim sicut in medicina, cum viderent alia salubria alia insalubria, ex observatione eorum effecerunt

## BOOK 3.2

But I will spare the names of the living. Their praise will have its day. Their merits will survive to later ages, which malice will not reach.

All the same, despite all these great authorities, I shall not feel it wrong to give my own views on some subjects. I have not bound myself superstitiously (as it were) to any sect. My object has been to give my readers an opportunity to choose as they will, just as I myself bring together the discoveries of many, and am content with a reputation for accuracy wherever there is no scope for originality.

## CHAPTER 2

### *The origin of rhetoric*

The question of the origin of rhetoric need not delay us long. For who can doubt that humanity, in the beginning, received from Nature herself the gift of speech (this is surely the start of the whole thing), that practical need led to study and progress, and that finally method and exercise completed the work? I cannot see why some believe that the deliberate cultivation of speech came from the fact that those who were called to face some danger started speaking more carefully in order to defend themselves. Self-defence is indeed the more honourable cause; but it does not follow that it is the prior one, especially as accusation comes before defence. You might as well say that the sword was invented by the first man to acquire one for his own protection rather than for the destruction of others!

Nature thus gave us the beginnings of speech, observation the beginnings of art. Just as in medicine, when men saw that some things were healthy and others not, they de-

artem, ita cum in dicendo alia utilia alia inutilia deprenderent, notarunt ea ad imitandum vitandumque, et quaedam secundum rationem eorum adiecerunt ipsi quoque: haec confirmata sunt usu. Tum quae sciebat quisque docuit.

- 4 Cicero quidem initium orandi conditoribus urbium ac legum latoribus dedit, in quibus fuisse vim dicendi necesse est: cur tamen hanc primam originem putet non video, cum sint adhuc quaedam vagae et sine urbibus ac sine legibus gentes, et tamen qui sunt in iis nati et legationibus fungantur et accusent aliqua atque defendant et denique alium alio melius loqui credant.

3

- 1 Omnis autem orandi ratio, ut plurimi maximique auctores tradiderunt, quinque partibus constat: inventione dispositione elocutione memoria pronuntiatione sive actione (utroque enim modo dicitur). Omnis vero sermo, quo quidem voluntas aliqua enuntiatur, habeat necesse est rem et  
 2 verba. Ac si est brevis et una conclusione finitus, nihil fortasse ultra desideret: at oratio longior plura exigit. Non enim tantum refert quid et quo modo dicamus, sed etiam quo loco: opus ergo est et dispositione. Sed neque omnia quae res postulat dicere neque suo quaeque loco poterimus nisi adiuvante memoria, quapropter ea quoque pars  
 3 quarta erit. Verum haec cuncta corrumpit ac propemodum

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<sup>46</sup> *De inventione* 1.2. <sup>1</sup> The first three were already distinguished in *Rhetorica ad Alexandrum*; Aristotle and Theophrastus were interested in Delivery; the incorporation of Memory into the scheme is a later addition, though the teaching of *memoria technica* is traditionally older: see 11.2.11–16.

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veloped the art by observing these things, so also in speaking, when they found that some things were useful and some not, they marked them down for imitation or avoidance, and added other points, by analogy, on their own initiative. These observations were confirmed by experience. At the next stage, they each taught what they knew.

Cicero,<sup>46</sup> it is true, attributed the origin of oratory to founders of cities and legislators, who must indeed have possessed the power of speech. But I do not see why he makes this the actual origin, because there are nomadic peoples even today who have no cities or laws, and yet people born among them act as ambassadors, prosecute and defend, and, indeed, think that some people are better speakers than others.

## CHAPTER 3

### *The five divisions of rhetoric*

The system of oratory, as a whole, according to most authorities, and the best of them, consists of five parts:<sup>1</sup> Invention, Disposition, Elocution, Memory, and Delivery or Performance (both terms are in use). Every utterance, at any rate every one by which some meaning is expressed, must have both content and words. If it is brief and limited to a single sentence, it may need nothing else; but longer speeches do require more. For it is not only what we say and how we say it that matters, but also in what sequence: Disposition is therefore essential. Now we shall not be able to say all that the subject demands, nor put everything in its proper place, without the help of Memory: so this will be the fourth part. But a Delivery which is unbecoming,

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perdit indecora vel voce vel gestu pronuntiatio: huic quoque igitur tribuendus est necessario quintus locus.

- 4 Nec audiendi quidam, quorum est Albucius, qui tris modo primas esse partis volunt, quoniam memoria atque actio natura non arte contingant: quarum nos praecepta suo loco dabimus; licet Thrasy-machus quoque idem de actione crediderit. His adiecerunt quidam sextam partem, 5 ita ut inventioni iudicium subnecterent, quia primum esset invenire, deinde iudicare. Ego porro ne invenisse quidem credo eum qui non iudicavit;<sup>1</sup> neque enim contraria communia stulta invenisse dicitur quisquam, sed non vitasse. Et Cicero quidem in rhetoricis iudicium subiecit 6 inventioni: mihi autem adeo tribus primis partibus videtur esse permixtum (nam neque dispositio sine eo neque elocutio fuerit) ut pronuntiationem quoque vel plurimum ex 7 eo mutuari putem. Quod hoc audacius dixerim quod in Partitionibus Oratoriis ad easdem de quibus supra dictum est quinque pervenit partes. Nam cum dupliciter primum divisisset in inventionem atque elocutionem, res ac dispositionem inventioni, verba et pronuntiationem elocutioni dedit, quintamque constituit communem ac velut custodem omnium memoriam; idem in Oratore quinque rebus

<sup>1</sup> *Spalding*: iudicabit A: iudicavit B

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<sup>2</sup> See 2.15.36.

<sup>3</sup> So Aristotle, *Rhetoric* 1404a15. For Thrasy-machus, see Radermacher, *AS* p. 76.

<sup>4</sup> So [Augustine], *Ars rhetorica* 138 Halm: "Next, pass judgement on what has been 'discovered', reject inappropriate ideas, and then give a definite order to what one has weighed in the judgement." Q. returns to this subject in 6.5.1, making the reason-

### BOOK 3.3

either in voice or in gesture, spoils the whole thing and virtually destroys it. So the fifth place has to be given to Delivery.

We need not listen to those (of whom Albu<sup>2</sup> is one) who claim that there are only the first three parts, on the ground that Memory and Delivery come not from nature, but from art. I shall give instructions in due course on both of these, despite the fact that Thrasymachus held that same view about Delivery.<sup>3</sup> Some have added a sixth division, making Judgement come after Invention,<sup>4</sup> because one has to “invent” first and then “judge.” For my part, I cannot believe that a person who has not made a judgement has performed the act of “invention” either; we do not say that a speaker has “invented” inconsistent, ambivalent, or foolish arguments, but only that he has “failed to avoid” them. Cicero in his *Rhetoric* does indeed put “judgement” under “Invention”;<sup>5</sup> but it seems to me that it is so inextricably involved in all the first three parts (neither Disposition nor Elocution could exist without it) that I think Delivery also borrows a great deal from it. I say this with more confidence because Cicero in the *Partitiones oratoriae*<sup>6</sup> arrives at the five parts of which I have spoken. For, having first made a division into two—Invention and Elocution—he assigned Content and Disposition to Invention, and Words and Delivery to Elocution, setting up Memory in the fifth place, as the common guardian, as it were, of them all. In the *Orator*<sup>7</sup> also, he says that elo-

able point that *iudicium* belongs to all functions, and is not a matter of “art.”

<sup>5</sup> Not *De inventione* here, but *Partitiones oratoriae* 8; see also *Orator* 44, 48.

<sup>6</sup> 3.      <sup>7</sup> 43, 54–55.

4



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constare eloquentiam dicit: in quibus postea scriptis certior eius sententia est.

- 8 Non minus mihi cupidi novitatis alicuius videntur fuisse qui adiecerunt ordinem cum dispositionem dixissent, quasi aliud sit dispositio quam rerum ordine quam optimo conlocatio.

Dion inventionem modo et dispositionem tradidit, sed utramque duplicem rerum et verborum, ut sit elocutio inventionis, pronuntiatio dispositionis, his quinta pars memoriae accedat.

Theodori fere inventionem duplicem rerum atque elocutionis, deinde tris ceteras partes.

- 9 Hermagoras iudicium partitionem ordinem quaeque sunt elocutionis subicit oeconomiae, quae Graece appellata ex cura rerum domesticarum et hic per abusionem posita nomine Latino caret.

- 10 Est et circa hoc quaestio, quod memoriam in ordine partium quidam inventioni, quidam dispositioni subiunxerunt: nobis quartus eius locus maxime placet. Non enim tantum inventa tenere ut disponamus, nec disposita ut eloquamur, sed etiam verbis formata memoriae mandare debemus; hac enim omnia quaecumque in orationem conlata sunt continentur.

- 11 Fuerunt etiam in hac opinione non pauci, ut has non rhetorices partis esse existimarent, sed opera oratoris: eius

<sup>8</sup> Unknown.

<sup>9</sup> Fr. 1 Matthes. The term *οἰκονομία* was widely used: note the definition in *Prolegomenon Sylloge* 299.24 Rabe: *ἐντεχνος ἐπίκρισις τῶν εὑρεθέντων*, "technical review of what has been discovered." Lausberg §§ 443–452; W. Wuellner in *CRHP* 51–83.

### BOOK 3.3

quence consists of five elements; and in this later work his opinion is more definite.

Equally anxious for some novelty, as it seems to me, are those who have added "Order," having already mentioned "Disposition," as though Disposition was anything other than the arrangement of the material in the best possible order.

Dion<sup>8</sup> gave only Invention and Disposition, but made each of them double, involving both words and things, so that Elocution came under Invention, and Delivery under Disposition, Memory being the fifth department.

The Theodoreans generally divide Invention into two—one part concerned with content, the other with Elocution—and then add the remaining three departments.

Hermagoras<sup>9</sup> puts Judgement, Division, Order and the various elements of Elocution all under *oeconomia*, a Greek word meaning the management of the household, and here used catachrestically; there is no Latin equivalent.

Another question arises here, because in the list of the five main parts some put Memory next to Invention, and others put it next to Disposition. I think it is best in fourth place. For we have not only to retain our "inventions" so as to "dispose" them, and our "disposed" material so as to put it into words, but also to commit to memory the words we have now formed. Memory in fact embraces everything which has been brought together to contribute to a speech.

A number of teachers have also been of the opinion that these are not parts of rhetoric but functions of the orator,

Hermagoras' inclusion of *elocutio* under this head is eccentric, and did not prevail.

- 12 enim esse invenire disponere eloqui et cetera. Quod si accipimus, nihil arti relinquemus. Nam bene dicere est oratoris, rhetorice tamen erit bene dicendi scientia: vel (ut alii putant) artificis est persuadere, vis autem persuadendi artis. Ita invenire quidem et disponere oratoris, inventio autem et dispositio rhetorices propria videri potest.
- 13 In eo plures dissenserunt, utrumne hae partes essent rhetorices an eiusdem opera an, ut Athenaeus credit, elementa, quae vocant *στοιχεῖα*. Sed neque elementa recte quis dixerit: alioqui tantum initia erunt, ut mundi vel umor vel ignis vel materia vel corpora insecabilia; nec operum recte nomen accipient quae non ab aliis perficiuntur sed
- 14 aliud ipsa perficiunt; partes igitur. Nam cum sit ex his rhetorice, fieri non potest ut, cum totum ex partibus constet, non sint partes totius ex quibus constat. Videntur autem mihi qui haec opera dixerunt eo quoque moti, quod in alia rursus divisione nollent in idem nomen incidere; partes enim rhetorices esse dicebant laudativam deliberativam iudiciale. Quae si partes sunt, materiae sunt potius quam
- 15 artis. Namque in his singulis rhetorice tota est, quia et inventionem et dispositionem et elocutionem et memoriam et pronuntiationem quaecumque earum desiderat. Itaque quidam genera tria rhetorices dicere maluerunt, optime autem ii quos secutus est Cicero, genera causarum.

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<sup>10</sup> E.g. *De inventione* 1.7, 1.12; *Partitiones oratoriae* 70.

### BOOK 3.3

on the ground that it is his business to invent, dispose, put into words, and so on. But if we accept this view, we shall leave nothing to the art. To speak well is indeed the orator's business, but the science of speaking well will still be rhetoric; or, as others hold, it is the artist's business to persuade, but the power of persuasion belongs to the art. Thus it is the orator's business to "invent" and "dispose," but Invention and Disposition belong properly to rhetoric.

There has been much difference of opinion as to whether these are parts or works of rhetoric, or, as Athenaeus thinks, its "elements," which the Greeks call *stoicheia*. However, one cannot rightly call them "elements," or they will simply be the basic principles, as water, fire, matter, or atoms are of the universe. Nor can they well be called "works," because they are not produced by others, but themselves produce something else. So they can only be "parts." For since rhetoric is composed of them, and since a whole consists of parts, the things of which the whole is composed cannot help being parts of it. Those who have called them "works" seem to me to have been influenced by their desire not to use the same name again in another classification of the subject; for they said that Encomium, Deliberative Oratory, and Forensic Oratory were "parts" of rhetoric. But if these are parts, they are parts of the material rather than of the art. For rhetoric is present as a whole in each of these, because each of them requires Invention, Disposition, Elocution, Memory, and Delivery. Some have therefore chosen to speak of three "kinds" of rhetoric; but the best solution is that of those whom Cicero<sup>10</sup> follows, to call them "kinds of Causes."

1 Sed tria an plura sint ambigitur. Nec dubie prope omnes  
 utique summae apud antiquos auctoritatis scriptores Aris-  
 2 totelen secuti, qui nomine tantum alio contionalem pro  
 deliberativa appellat, hac partitione contenti fuerunt. Ve-  
 rum et tum leviter est temptatum, cum apud Graecos  
 quosdam tum apud Ciceronem in libris de Oratore, et  
 nunc maximo temporum nostrorum auctore prope inpul-  
 sum, ut non modo plura haec genera sed paene innumera-  
 3 bilia videantur. Nam si laudandi ac vituperandi officium in  
 parte tertia ponimus, in quo genere versari videbimur cum  
 querimus consolamur mitigamus concitamus terremus  
 confirmamus praecipimus, obscure dicta interpretamur,  
 narramus deprecamur, gratias agimus, gratulamur obiur-  
 gamus maledicimus describimus mandamus renuntiamus  
 4 optamus opinamur, plurima alia? Ut mihi in illa vetere  
 persuasione permanenti velut petenda sit venia, quaeren-  
 dumque quo moti priores rem tam late fusam tam breviter  
 adstrinxerint. Quos qui errasse putant, hoc secutos arbi-  
 trantur, quod in his fere versari tum oratores videbant;  
 5 nam et laudes ac vituperationes scribebantur, et ἐπιταφί-  
 ουσ dicere erat moris, et plurimum in consiliis ac iudiciis  
 insumebatur operae, ut scriptores artium pro solis com-  
 6 prenderint frequentissima. Qui vero defendunt, tria faci-

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<sup>1</sup> "Speaking to the people": Aristotle, *Rhetoric* I. 1354b23, and frequently in *Rhetoric*. <sup>2</sup> 2.43-71. <sup>3</sup> Presumably someone still living; otherwise Q. would have named him.

<sup>4</sup> Q. thinks especially of the series of orations on the Athenian war-dead, beginning with Pericles' speech reported by Thucydides (2.34-46).

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### CHAPTER 4

#### *The "Kinds of Causes"*

Whether there are three or more of these is disputed. Of course, almost all the writers who are most authoritative among the ancients followed Aristotle, who merely changes one name and says "demegoric"<sup>1</sup> instead of "deliberative," and were happy with this division. However, even in those days some slight attempt was made among certain Greeks (and also in Cicero's *De oratore*<sup>2</sup>), and an almost overwhelming argument has been advanced by the greatest authority of our own day,<sup>3</sup> to prove that there are not only more than three such kinds, but that they are almost innumerable. Indeed, if we place the function of praise and blame in the third part, on what "kind" are we to think ourselves engaged when we complain, console, pacify, excite, frighten, encourage, instruct, explain obscurities, narrate, plead for mercy, give thanks, congratulate, reproach, abuse, describe, command, renounce, wish, opine, and so on and so forth? Adhering to the old view as I do, I have therefore to ask for indulgence, and inquire what motive can have induced earlier writers to confine such a broad field within such narrow bounds. Those who think they were wrong believe that the reason was that these were the areas in which they saw orators active in those days: encomia and denunciations were being written, it was the custom to pronounce funeral orations,<sup>4</sup> and most effort was being lavished on deliberative and forensic themes, so that the textbook writers covered the commonest kinds as if they were the only ones. On the other hand, the defenders of the old view make three classes of audi-

unt genera auditorum: unum quod ad delectationem conveniat, alterum quod consilium accipiat, tertium quod de causis iudicet. Mihi cuncta rimanti et talis quaedam ratio succurrit, quod omne orationis officium aut in iudiciis est  
 7 aut extra iudicia. Eorum de quibus iudicio quaeritur manifestum est genus: ea quae ad iudicem non veniunt aut praeteritum habent tempus aut futurum: praeterita laudamus  
 8 aut vituperamus, de futuris deliberamus. Item omnia de quibus dicendum est aut certa sint necesse est aut dubia. Certa ut cuique est animus laudat aut culpatur; ex dubiis partim nobis ipsis ad electionem sunt libera: de his deliberatur; partim aliorum sententiae commissa: de his lite contenditur.

9 Anaximenes iudicalem et<sup>1</sup> contionalem generalis partes esse voluit, septem autem species: hortandi dehortandi laudandi vituperandi accusandi defendendi exquirendi (quod ἐξεταστικόν dicit): quarum duae primae deliberativi, duae sequentes demonstrativi, tres ultimae iudicialis generis sunt partes.

<sup>1</sup> *om. B*: iudicalem contionalem <demonstrativam> *Victorius*

<sup>5</sup> Aristotle, *Rhetoric* 1.1358a36ff., Cicero, *Partitiones oratoriae* 10.

<sup>6</sup> This passage is crucial to the attribution of *Rhetorica ad Alexandrum* to Anaximenes. That treatise begins (1421b 8–11): τρία γένη τῶν πολιτικῶν εἰσὶ λόγων, τὸ μὲν δημηγορικόν, τὸ δὲ ἐπιδεικτικόν, τὸ δὲ δικανικόν· εἶδη δὲ τούτων ἑπτὰ· προτρεπτικόν, ἀποτρεπτικόν, ἐγκωμαστικόν, ψεκτικόν, κατηγορικόν, ἀπολογικὸν καὶ ἐξεταστικόν: “There are three types of oratorical speech, Demegoric, Epideictic, and Dicanic (i.e. “judicial”); of these, there are seven species: protreptic, apotreptic,

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ence: one meeting for pleasure, one to receive advice, and one to judge Causes.<sup>5</sup> Thinking it all through, another principle also occurs to me, namely that the whole task of oratory must be either in court or not in court. The “kind” of the questions which arise in court is obvious; those which do not come before a judge must relate either to the past or to the future. We praise and denounce the past, we deliberate about the future. Again, everything on which we have to speak must be either certain or uncertain. We praise or blame what is certain, according to our individual inclinations; as to the uncertain, it is either a matter of our own free choice, and this is a subject for deliberation, or else it is something left to others to decide, and then it forms the subject of litigation.

Anaximenes<sup>6</sup> took forensic and “demegoric” oratory as the two general types, but held that there were seven species: Exhortation, Dissuasion, Praise, Denunciation, Prosecution, Defence, Inquiry (which he called “exetastic”). But the first two of these are parts of the deliberative class, the next two of Epideictic, and the last three of forensic oratory.

encomiastic, invective, accusatory, defensive, and examinatory.” The seven species correspond with Q.’s list (as was observed by P. Victorius in the sixteenth century). Spengel and others have held that the text has been tampered with to fit Aristotle’s system of three “types”; they would change *τρία* (three) to *δύο* (two), and delete *τὸ ἐπιδεικτικόν* (Epideictic). For discussion, see V. Buchheit, *Das Genos Epideiktikon* (1960) 191–197; see also Kennedy, *AP* 114–124. B’s omission of *et* in our passage (see text note) raises the possibility (also seen by Victorius) that Q. gave *three* “general species,” a list in asyndeton: we would then have to supply *laudativam* or *demonstrativam* as the third.



10 Protagoran transeo, qui interrogandi respondendi mandandi precandi (quod *εὐχολήν* dixit) partes solas putat.

Plato in *Sophiste* iudiciali et contionali tertiam adiecit *προσομιλητικήν*, quam sane permittamus nobis dicere sermocinatricem: quae a forensi ratione diiungitur et est accommodata privatis disputationibus. Cuius vis eadem profecto est quae dialecticae.

11 Isocrates in omni genere inesse laudem ac vituperationem existimavit.

Nobis et tutissimum est auctores plurimos sequi et ita videtur ratio dictare. Est igitur, ut dixi, unum genus, quo laus ac vituperatio continetur, sed est appellatum a parte meliore laudativum. (Idem alii demonstrativum vocant. Utrumque nomen ex Graeco creditur fluxisse; nam  
12 *ἐγκωμιαστικόν* aut *ἐπιδεικτικόν* dicunt. Sed mihi *ἐπιδεικτικόν* non tam demonstrationis vim habere quam ostentationis videtur et multum ab illo *ἐγκωμιαστικῶ* differre; nam ut continet laudativum in se genus, ita non intra  
13 hoc solum consistit. An quisquam negaverit panegyricos *ἐπιδεικτικούς* esse? Atqui formam suadendi habent et plerumque de utilitatibus Graeciae locuntur: ut causarum quidem genera tria sint, sed ea tum in negotiis, tum in ostentatione posita. Nisi forte non ex Graeco mutantes

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<sup>7</sup> Protagoras was not classifying speeches, but types of sentences, "bases (*πυθμένες*) of speech" (Diogenes Laertius 9.54, *Vorsokratiker* 80A1 Diels-Kranz, Guthrie, *HGP* 3. 220).

<sup>8</sup> 222C. <sup>9</sup> Because *διαλεκτική* (*τέχνη*) is properly "skill in conversation."

<sup>10</sup> See *Antidosis* (*Or.* 15) 45ff.; Radermacher, *AS* pp. 162, 180.

<sup>11</sup> For the history of these terms and their connotations, see

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I pass over Protagoras,<sup>7</sup> who held that the only parts were: question, answer, command, and entreaty (which he calls *euchōlē*).

Plato in the *Sophist*,<sup>8</sup> in addition to demegoric and forensic oratory, adds, as a third kind, the “prosomiletic,” which we may allow ourselves to translate as “conversational.” This is distinct from the forensic, and suits private discussion; in fact it means much the same as dialectic.<sup>9</sup>

Isocrates<sup>10</sup> held that praise and blame are present in every kind of oratory.

The safest course for us is to follow the majority; besides, reason seems to point the same way. There is then, as I have said, one kind concerned with praise and blame, but it is called “laudative” after its better side. (Others call it “demonstrative.” Both names are thought to come from the Greek, where the words used are *enkōmiastikon* and *epideiktikon*.<sup>11</sup> The latter term however seems to me to connote display rather than demonstration, and to be very different from “encomiastic,” for, though it includes the oratory of praise, it is not confined to this. Can anyone deny that “panegyrics” are epideictic? Yet they have the form of advice, and often discuss the interests of Greece.<sup>12</sup> So there are indeed three “Kinds of Causes,” but they are sometimes concerned with practical issues, and sometimes with display. It may be, however, that those who use

Menander Rhetor, ed. D. A. Russell and N. G. Wilson, xviii–xxv; also D. A. Russell in M. Whitby (ed.), *The Propaganda of Power* (Leiden, 1998) 17–50. <sup>12</sup> Q. has in mind especially Isocrates’ *Panegyricus*, which is a plea for the unity of Greece (under Athenian hegemony) against the Persians.

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- 15 demonstrativum vocant, verum id secuntur, quod laus ac vituperatio quale sit quidque demonstrat.) Alterum est deliberativum, tertium iudiciale. Ceterae species in haec tria incident genera: nec invenietur ex his ulla in qua non laudare aut vituperare, suadere aut dissuadere, intendere quid vel depellere debeamus. Illa quoque sunt communia, conciliare narrare docere augere minuere, concitandis componendisve adfectibus animos audientium fingere.
- 16 Ne iis quidem accesserim, qui laudativam materiam honestorum, deliberativam utilium, iudicalem iustorum quaestione contineri putant, celeri magis ac rutunda usu distributione quam vera. Stant enim quodam modo mutuis auxiliis omnia; nam et in laude iustitia utilitasque tractatur et in consiliis honestas, et raro iudicalem inveneris causam in cuius non parte aliquid eorum quae supra diximus reperiatur.

### 5

- 1 Omnis autem oratio constat aut ex iis quae significantur aut ex iis<sup>1</sup> quae significant, id est rebus et verbis.  
Facultas orandi consummatur natura arte exercita-

<sup>1</sup> constat [aut] ex iis . . . et ex iis *Kiderlin*

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<sup>13</sup> Compare Aristotle, *Rhetoric* 1.9, 1367b27.

<sup>14</sup> This list follows the natural order of the speech, from the conciliatory Prooemium, through the Narrative, Arguments, and Refutations, to the emotional Epilogue.

<sup>15</sup> Compare Aristotle, *Rhetoric* 1. 1358b20ff.; Cicero, *De inventione* 2.4.

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the term “demonstrative” are not translating from Greek, but responding to the fact that praise and blame “demonstrate” the nature of their several objects.)<sup>13</sup> The second kind is the “deliberative,” the third the “forensic.” All other species will fall under these three kinds: you will not find one which does not require praise or blame, persuasion or dissuasion, accusation or defence. They have other features also in common: conciliation, narrative, instruction, amplification, extenuation, and moulding the minds of the audience by exciting or allaying emotions.<sup>14</sup> I cannot agree either with those who hold that the subject matter of Encomium is limited to the honourable, that of Deliberation to the expedient, and that of the forensic kind to the just.<sup>15</sup> This division is facile and tidy rather than true. For in a sense they all depend on the help of the others. Justice and expediency come up for treatment in Encomia, honour in Deliberations, and one rarely finds a judicial case in part of which something of the themes just mentioned cannot be found.

## CHAPTER 5

### *Some other distinctions within the field of Rhetoric*

Every speech consists either of what is signified or of what signifies, that is to say, of content or of words.<sup>1</sup>

The faculty of speech is brought to perfection by Na-

<sup>1</sup> Kiderlin’s suggestion (“of what is signified *and* of what signifies”) makes plainer sense; but Q. may mean that a speech can be seen *either* as a construct of things *or* as a construct of words.

tione, cui partem quartam adiciunt quidam imitationis, quam nos arti subicimus.

2 Tria sunt item quae praestare debeat orator, ut doceat moveat delectet. Haec enim clarior divisio quam eorum qui totum opus in res et in adfectus partiuntur. Non semper autem omnia in eam quae tractabitur materiam cadent. Erunt enim quaedam remotae ab adfectibus, qui ut non ubique habent locum, ita quocumque intruperunt plurimum valent. Praestantissimis auctoribus placet alia in  
3 rhetorice esse quae probationem desiderent, alia quae non desiderent, cum quibus ipse consentio. Quidam vero, ut Celsus, de nulla re dicturum oratorem nisi de qua quaeratur existimant: cui cum maxima pars scriptorum repugnat, tum etiam ipsa partitio, nisi forte laudare quae constet esse honesta et vituperare quae ex confesso sint turpia non est oratoris officium.

4 Illud iam omnes fatentur, esse quaestiones aut in scripto aut in non scripto. In scripto sunt de iure, in non scripto de re: illud legale, hoc rationale<sup>2</sup> genus Hermagoras atque  
5 eum secuti vocant, id est νομικόν et λογικόν. Idem sen-

<sup>2</sup> *recc.*: rationale, hoc legale AB

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<sup>2</sup> For this triad (hinted at in 3.2.1), compare (e.g.) Plato, *Phaedrus* 269D, Isocrates, *Against the Sophists* 16–19, *Antidosis* 187; Cicero, *De inventione* 1.5, *De oratore* 1.79.

<sup>3</sup> Cf. 10.2.1. In *Ad Herennium* 1.3 (see Caplan ad loc.), we have Art, Imitation, and Practice.

<sup>4</sup> See also 8 *proem.* 7, 12.10.59: Cic. *De oratore* 2.115, 121, 128; *Brutus* 185, 276. This classification of duties is associated with the “three styles.” Lausberg §§ 1078–1079.

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ture, Art, and Practice;<sup>2</sup> some add a fourth factor, Imitation,<sup>3</sup> but I include this under Art.

### *The three aims of the orator*

The orator has likewise three aims to fulfil: to instruct, to move, and to delight.<sup>4</sup> This is a clearer division than that made by those who divide the whole thing into Facts and Emotions.<sup>5</sup> But all these aims will not always be present in any particular subject which is to be handled. Some will have no room for emotions, but emotions, though not in place everywhere, are very powerful indeed where they do break in. The best authorities maintain that there are some things in rhetoric which require proof and others which do not. I agree with this. Some, on the other hand, such as Celsus,<sup>6</sup> believe that an orator will never speak about anything unless it involves a Question. Most writers reject this view, and indeed the division of rhetoric is itself against it. One can hardly suppose that it is not an orator's duty to praise what is agreed to be honourable and to denounce what is admittedly disgraceful!

### *“Legal” and “rational” Questions*

There is universal agreement on the next point: Questions are either dependent on a written text or not. Questions of law depend on a written text, Questions of fact do not. Hermagoras and his followers call these respectively “legal” and “rational,” that is to say *nomikon* and *logikon*.<sup>7</sup>

<sup>5</sup> Compare Apsines 297.2 Spengel–Hammer = 192 Dilts–Kennedy.    <sup>6</sup> Fr. 3 Marx.    <sup>7</sup> Hermagoras fr. 12a Matthes.

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tiunt qui omnem quaestionem ponunt in rebus et verbis.

Item convenit quaestiones esse aut infinitas aut finitas. Infinitae sunt quae remotis personis et temporibus et locis ceterisque similibus in utramque partem tractantur, quod Graeci *θέσιν* dicunt, Cicero propositum, alii quaestiones universales civiles, alii quaestiones philosopho convenientis; Athenaeus partem causae appellat. Hoc genus Cicero 6 scientia et actione distinguit, ut sit scientiae ‘an providentia mundus regatur’, actionis ‘an accedendum ad rem publicam administrandam’. Prius trium generum, ‘an sit’, ‘quid sit’, ‘quale sit’: omnia enim haec ignorari possunt; sequens duorum, ‘quo modo adipiscamur’, ‘quo modo utamur’.

7 Finitae autem sunt ex complexu rerum personarum temporum ceterorumque: hae *ὑποθέσεις* a Graecis dicuntur, causae a nostris. In his omnis quaestio videtur circa res 8 personasque consistere. Amplior est semper infinita, inde enim finita descendit. Quod ut exemplo pateat, infinita est ‘an uxor ducenda’, finita ‘an Catoni ducenda’, ideoque esse suasoria potest. Sed etiam remotae a personis propriis ad aliquid referri solent. Est enim simplex ‘an res publica administranda’; refertur ad aliquid ‘an in tyrannide admi-

<sup>8</sup> *Topica* 79.

<sup>9</sup> *Ibid.* 81, *Partitiones oratoriae* 62.

<sup>10</sup> One of the most hackneyed theses in the progymnasmata curriculum: e.g. Aphthonius, *Progymnasmata* 13. D. L. Clark (1957) 206 remarks on the use of arguments from this thesis in Shakespeare, *Sonnets* 1–17.

Those who think that all Questions are concerned with either things or words share the same view.

*“Indefinite” and “Definite” Questions*

It is also agreed that Questions are either Indefinite or Definite. Indefinite Questions are those which may be argued both ways without reference to persons, times, places, and the like. The Greeks call these *theses*, Cicero “propositions,”<sup>8</sup> others “general public Questions,” or “Questions suitable for a philosopher”; Athenaeus calls them “parts of the Cause.”

Cicero divides this type into two, one part concerned with knowledge, the other with action.<sup>9</sup> Thus “Is the world governed by providence?” is a Question of knowledge, while “Should one engage in public life?” is one of action. The first of these involves three points—is it? what is it? what sort of thing is it?—all of which may be unknown. The second involves only two—how should we obtain office, and how should we use our power?

Definite Questions arise from a combination of facts, persons, times, and so on. The Greeks call these *hypotheses*; in Latin we call them *causae*. In these, the entire Question seems to be based on the facts and the persons. An Indefinite Question is always wider, for the Definite Question derives from it. Let me illustrate this by an example. “Should one take a wife?”<sup>10</sup> is indefinite: “Should Cato take a wife?” is definite, and so can form a *suasoria*. Even Questions which have no connection with particular persons are normally given some specific reference. “Ought one to take part in government?” is simple; “Ought one to take part in government under a tyranny?” has a specific refer-



9 nistranda'. Sed hic quoque subest velut latens persona (tyrannus enim geminat quaestionem), subestque et temporis et qualitatis tacita vis: nondum tamen hoc proprie dixeris causam.

- 10 Hae autem quas infinitas voco et generales appellantur: quod si est verum, finitae speciales erunt. In omni autem speciali utique inest generalis, ut quae sit prior. Ac nescio an in causis quoque quidquid in quaestionem venit qualitatis generale sit. Milo Clodium occidit, iure occidit insidiatorem: nonne hoc quaeritur, an sit ius insidiatorem occidendi? Quid in coniecturis? non illa generalia: 'an causa sceleris odium, cupiditas', 'an tormentis credendum', 'testibus an argumentis maior fides habenda'? Nam finitione quidem comprehendi nihil non in universum certum erit.
- 11 Quidam putant etiam eas *θέσεις* posse aliquando nominari quae personis causisque contineantur, aliter tantummodo positas, ut causa sit cum Orestes accusatur, thesis an Orestes recte sit absolutus: cuius generis est: 'an Cato recte Marciam Hortensio tradiderit'. Hi *θέσις* a causa sic distingunt ut illa sit spectativae partis, haec activae: illic enim veritatis tantum gratia disputari, hic negotium agi.
- 12 Quamquam inutiles quidam oratori<sup>3</sup> putant universales quaestiones, quia nihil prosit quod constet ducendam esse

<sup>3</sup> *Regius*: orationi AB

11 Compare Cicero, *De inventione* 1.18–19.

12 Cato divorced his wife Marcia to let her marry Hortensius, who had previously wanted Cato's daughter Porcia to divorce her own husband, Bibulus, and marry him. Marcia returned to Cato after Hortensius' death. Plutarch, *Cato Minor* 25; Lucan 2.326–349. See on 10.5.13.

ence. In this case, there is also as it were a hidden person, since the mention of the tyrant makes the Question a double one, and there is an implied consideration both of time and of quality; but it is still not properly speaking a "Cause."

What I call "Indefinite Questions" are also called "general"; if this is right, "Definite" Questions should be "special." But in every "special" Question, a "general" one is implicit, because it is prior. And perhaps in Causes also, any consideration of Quality which comes into question must be general. "Milo killed Clodius; he was justified in killing an ambusher." Does not this raise the question whether there is a right to kill an ambusher? And take Conjectural cases: surely they involve general Questions like "is the crime caused by hatred, or by greed?" or "should one trust evidence given under torture?" or "are witnesses or arguments more to be believed?" As for Definitions, everything they contain will undoubtedly be of universal application. Some think that Questions which are based on persons and Causes can also sometimes be called Theses, if they are only put somewhat differently: on this view "Orestes is accused" is a Cause,<sup>11</sup> "Was Orestes rightly acquitted?" is a Thesis. "Was Cato right in passing Marcia on to Hortensius?"<sup>12</sup> is the same sort of thing. These writers distinguish a Thesis from a Cause by saying that a Thesis is theoretical and a Cause practical, since in the former we argue simply with a view to truth, while in the latter there is business to be done.

However, some think that universal Questions are useless to an orator, because there is no advantage in proving

uxorem vel administrandam rem publicam si quis vel aetate vel valetudine impediatur. Sed non omnibus eius modi quaestionibus sic occurri potest, ut illis: 'sitne virtus finis',  
 13 'regaturne providentia mundus'. Quin etiam in iis quae ad personam referuntur, ut non est satis generalem tractasse quaestionem, ita perveniri ad speciem nisi illa prius excussa non potest. Nam quo modo an sibi uxor ducenda sit deliberabit Cato nisi constiterit uxores esse ducendas? Et quo modo an ducere debeat Marciam quaeretur nisi Catoni  
 14 ducenda uxor est? Sunt tamen inscripti nomine Hermagorae libri qui confirment illam opinionem, sive falsus est titulus sive alius hic Hermagoras fuit. Nam eiusdem esse quo modo possunt, qui de hac arte mirabiliter multa composuit, cum, sicut ex Ciceronis quoque Rhetorico primo manifestum est, materiam rhetorices in thesin et causas dividerit? Quod reprehendit Cicero ac thesin nihil ad oratorum pertinere contendit totumque hoc genus quaestionis  
 15 ad philosophos refert. Sed me liberavit respondendi verecundia et quod ipse hos libros improbat, et quod in Oratore atque iis quos de Oratore scripsit et Topicis praecipit ut a propriis personis atque temporibus avocemus controversiam quia latius dicere liceat de genere quam de specie, et quod in universo probatum sit in parte probatum esse necesse sit.

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<sup>13</sup> Fr. 6b Matthes. Q. presumably thinks that the author meant is neither the great Hermagoras of Temnos nor the pupil of Theodorus mentioned at 3.1.18. The "view under discussion" is that universal Questions have no practical use.

<sup>14</sup> *De inventione* 1.8.

<sup>15</sup> *De oratore* 1.5.

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that one ought to take a wife or go into government if one is prevented by age or ill health. But not all Questions of this kind can be objected to in this way: for example "Is virtue an end in itself?" or "Is the world governed by providence?" Moreover, in Questions relating to a particular person, although it is not enough to handle the general Question, we cannot get to the special one unless we have dealt with the other first. For how is Cato to deliberate whether to marry unless it is agreed that men should marry? And how can the question whether he ought to marry Marcia be discussed, unless we have proved that Cato ought to marry? There are however books ascribed to Hermagoras<sup>13</sup> which support the view under discussion; but either the attribution is wrong or the author was some other Hermagoras. For how can they possibly be by the Hermagoras who wrote so much so admirably about Rhetoric, since (as is clear also from the first book of Cicero's *Rhetoric*)<sup>14</sup> he divided the subject matter of Rhetoric into Theses and Causes? Cicero there objects to this, and contends that Theses have nothing to do with the orator, and refers all such Questions to the philosophers. But he has relieved me from the embarrassment of answering this by expressing his disapproval of his own book,<sup>15</sup> and by teaching us, in *Orator*, *De oratore*, and *Topica*,<sup>16</sup> to separate our problem from particular persons and occasions, on the ground that we can speak more fully on general matters than on special, and because what has been proved of the whole has necessarily been proved of the part.

<sup>16</sup> *Orator* 45, *De oratore* 2.133, 3.120; *Topica* 79ff.

16 Status autem in hoc omne genus materiae idem qui in causas cadunt. Adhuc adicitur alias esse quaestiones in rebus ipsis, alias quae ad aliquid referantur, illud: 'an uxor ducenda', hoc: 'an seni ducenda'; illud: 'an fortis', hoc: 'an fortior', et similia.

17 Causam finit Apollodorus, ut interpretatione Valgi discipuli eius utar, ita: 'causa est negotium omnibus suis partibus spectans ad quaestionem', aut: 'causa est negotium cuius finis est controversia.' Ipsum deinde negotium sic finit: 'negotium est congregatio personarum locorum temporum causarum modorum casuum factorum instrumentorum sermonum scriptorum et non scriptorum.' Causam  
18 nunc intellegamus *ὑπόθεσις*, negotium *περίστασις*.

Sed et ipsam causam quidam similiter finierunt ut Apollodorus negotium.

Isocrates autem causam esse ait quaestionem finitam civilem aut rem controversam in personarum finitarum complexu, Cicero his verbis: 'causa certis personis locis temporibus actionibus negotiis cernitur, aut in omnibus aut in plerisque eorum.'

17 So Cicero, *Partitiones oratoriae* 62, and later rhetoricians generally.

18 Fr. 3 Granatelli.

19 See 3.1.17-18.

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The Issues which apply to Causes apply also to all this type of material.<sup>17</sup> A further distinction is made between Questions based on things in themselves, and those which are relative to particular circumstances: “Should one take a wife?” contrasted with “Should an old man do so?” or “Is he brave?” contrasted with “Is he braver than someone else?” and so on.

Apollodorus<sup>18</sup> defines a Cause (if I may use the translation of his pupil Valgius)<sup>19</sup> as follows: “A Cause is an affair which in all its parts relates to a Question,” or “A Cause is an affair the end of which is a Controversy.” He then defines “affair” as follows: “An affair is a combination of persons, places, times, motives, means, incidents, acts, instruments, speeches, and written and unwritten evidence.” Let us now understand “Cause” as *hypothesis*, and “affair” as *peristasis*.<sup>20</sup>

Some have defined “Cause” itself also in much the same terms as Apollodorus defines “affair.”

Isocrates says that a “Cause” is “a Definite Question of a political kind, or a dispute involving definite persons”<sup>21</sup> and Cicero<sup>22</sup> says (I quote): “A Cause is marked out by certain definite persons, places, times, actions, and affairs, and relates to all or most of these.”

<sup>20</sup> Lit. “circumstance.” For a similar definition, see Anonymus Seguerianus 50 (p. 18 Dilts–Kennedy): “Peristasis is an accumulation (*athroisma*) of persons, actions, emotions (*pathōn*, perhaps rather ‘sufferings’), causes, resources, and times.”

<sup>21</sup> See Radermacher, AS p. 163.

<sup>22</sup> *Topica* 80.

- 1 Ergo cum omnis causa contineatur aliquo statu, prius quam dicere adgredior quo modo genus quodque causae sit tractandum, id quod est commune omnibus, quid sit status et unde ducatur et quot et qui sint intuendum puto. Quamquam id nonnulli ad iudiciales tantum pertinere materias putaverunt, quorum inscitiam, cum omnia tria genera fuero executus, res ipsa deprendet. Quod nos statum, id quidam constitutionem vocant, alii quaestionem, alii quod ex quaestione appareat, Theodorus caput [id est κεφάλαιον γενικώτατον]<sup>1</sup> ad quod referantur omnia, quorum diversa appellatio, vis eadem est, nec interest discentium quibus quidque nominibus appelletur dum res ipsa manifesta sit.
- 2
- 3 Statum Graeci *στάσις* vocant, quod nomen non primum ab Hermagora traditum putant, sed alii a Naucratis Isocratis discipulo, alii a Zopyro Clazomenio; quamquam videtur Aeschines quoque in oratione contra Ctesiphontem uti hoc verbo, cum a iudicibus petit ne Demostheni permittant evagari sed eum dicere de ipso causae statu
- 4 cogant. Quae appellatio dicitur ducta vel ex eo quod ibi sit

<sup>1</sup> *del. Radermacher*

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<sup>1</sup> See Cicero, *Orator* 172, *De oratore* 3.173; Radermacher, *AS* p. 194. <sup>2</sup> A rhetor Zopyrus, early third century BC, is mentioned by Diogenes Laertius 9.114; more to the point, Syrianus (2.47.18 Rabe) cites "Zopyrus" as an authority for the statement that Plato (*Phaedrus* 263A *στασιωτικῶς* [*στασιαστικῶς* Syrianus]) regarded *stasis* (in the sense of "quarrel") as the essence of rhetoric. *Prolegomenon Sylloge* 190 Rabe also has this

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### CHAPTER 6

#### *Issues*

So, since every Cause rests on some Issue (*status*), before I begin to explain how each type of Cause should be treated, I have first to consider a question common to all, namely what is an Issue, how it arises, how many of them there are, and what they are. Some however have held that they are relevant only to forensic subjects: these people's ignorance will be revealed by the facts, when I have discussed all the three kinds. What we call Issue (*status*), is called by some "Constitution," by others "Question," by others "that which the Question reveals." Theodorus calls it "the head [that is, "the most general heading"] to which everything is referred." These names are different, but the meaning is the same; it makes no difference to the learner what names anything is called by, so long as the thing itself is plain.

What we call *status* the Greeks call *stasis*. They believe that this term did not originate with Hermagoras, but (according to some) with Naucrates,<sup>1</sup> a pupil of Isocrates, or (according to others) with Zopyrus of Clazomenae.<sup>2</sup> Yet Aeschines seems to use the term in his speech against Ctesiphon,<sup>3</sup> when he asks the jury not to allow Demosthenes to wander from the point but compel him to speak about the actual Issue of the Cause. The name is said to have come either from the fact that the first engagement of

Zopyrus as a "restorer" of rhetoric. Q. clearly thinks Aeschines an earlier authority than any of these.

<sup>3</sup> 206. But the word here has no technical sense, but is used metaphorically as "stance" (like a boxer's "stance").



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primus causae congressus, vel quod in hoc causa consistat.

Et nominis quidem haec origo: nunc quid sit. Statum quidam dixerunt primam causarum conflictionem: quos  
5 recte sensisse, parum elocutos puto. Non enim est status prima conflictio: 'fecisti', 'non feci', sed quod ex prima conflictione nascitur, id est genus quaestionis: 'fecisti', 'non feci', 'an fecerit': 'hoc fecisti', 'non hoc feci', 'quid fecerit'. Quia ex his apparet illud coniectura, hoc finitione quaerendum atque in eo pars utraque insistit, erit quaestio coniecturalis vel finitivi status. Quid si enim dicat quis: 'sonus est duorum inter se corporum conflictio'? Erret, ut opinor; non enim sonus est conflictio, sed ex conflictione.

Et hoc levius (intellegitur enim utcumque dictum): inde vero ingens male interpretantibus innatus est error, qui, quia primam conflictionem legerant, crediderunt statum semper ex prima quaestione ducendum, quod est vitiosissimum. Nam quaestio nulla non habet utique statum  
7 (constat enim ex intentione et depulsione), sed aliae sunt propriae causarum de quibus ferenda sententia est, aliae adductae extrinsecus, aliquid tamen ad summam causae conferentes velut auxilia quaedam: quo fit ut in controversia una plures quaestiones esse dicantur. Harum porro plerumque levissima quaeque primo loco fungitur. Namque  
8 et illud frequens est, ut ea quibus minus confidimus, cum

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<sup>4</sup> E.g. Cicero, *De inventione* 1.10.

<sup>5</sup> The definition is perhaps imagined by Q., but note the Stoic definition of thunder as "clash of clouds" (Diels, *Doxographi Graeci* 369a29, b29). It exemplifies, according to Q., the same error as the definition of Issue as "conflict of Causes."

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the Cause occurs here, or because the Cause rests upon it.

So much for the origins of the name: now for what the thing is. Some have defined Issue as the “first conflict of the Causes”;<sup>4</sup> they have the right idea, I think, but have not expressed it properly. The Issue is not the first conflict—“You did it,” “I didn’t”—but what arises out of the first conflict, in other words, the type of Question. With “‘You did it’, ‘I didn’t’,” the Question is whether *he* did it. With “‘That is what you did’, ‘I didn’t do that’,” the Question is *what* he did. Since it is obvious from this that the first point has to be considered by Conjecture and the second by Definition, and both parties rest their case on this, the Question will be one either of a Conjectural or of a Definitional Issue. Suppose someone were to say “Sound is the conflict between two bodies.”<sup>5</sup> He would, in my opinion, be wrong, because the sound is not the conflict, but arises out of the conflict.

This is not a very serious matter (because the fact is understood however it is expressed), but from it has arisen a very great mistake in the minds of those who interpreted the words wrongly, and, because they had read the words “first conflict,” came to believe that the Issue must always be derived from the first Question, which is very wrong. For every Question necessarily has an Issue, because it consists of an attack and a response; but some Questions are proper to the Causes which are to be decided, whereas others are brought in from outside, though they contribute something to the total argument, as auxiliaries as it were; hence there are said to be more Questions than one in a single dispute. Of these, moreover, the least important often takes the first place; indeed it often happens that we abandon the points in which we have less confidence once

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tractata sunt, omittamus, interim sponte nostra velut donantes, interim ad ea quae sunt potentiora gradum ex iis fecisse contenti.

- 9 Simplex autem causa, etiamsi varie defenditur, non potest habere plus uno de quo pronuntietur, atque inde erit status causae, quod et orator praecipue sibi optinendum et iudex spectandum maxime intellegit; in hoc enim causa
- 10 consistet. Ceterum quaestionum possunt esse diversi. Quod ut brevissimo pateat exemplo, cum dicit reus: 'etiam si feci, recte feci', qualitatis utitur statu; cum adicit: 'sed non feci', coniecturam movet. Semper autem firmiter est non fecisse, ideoque in eo statum esse iudicabo quod dicere si mihi plus quam unum dicere non liceret.
- 11 Recte igitur est appellata causarum prima conflictio, non quaestionum. Nam et pro Rabirio Postumo Cicero primam partem orationis in hoc intendit, ut actionem competere in equitem Romanum neget, secunda nullam ad eum pecuniam pervenisse confirmat: statum tamen in
- 12 eo dicam fuisse quod est potentius. Nec in causa Milonis circa primas quaestiones [quae sunt ante prohoemium positae]<sup>2</sup> iudicabo conflixisse causam, sed ubi totis viribus insidiator Clodius ideoque iure interfectus ostenditur. Et

<sup>2</sup> *del. Halm* (prohoemium AB: narrationem *recc.*)

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<sup>6</sup> Cicero argues (12–19) that Rabirius is not liable under the *lex Iulia de repetundis*; the argument appeals to the jury of *equites*.

<sup>7</sup> In fact, the Questions come before the Narrative (see 4.2.25), and "have the effect of a Prooemium." So unless we emend to *narrationem*, Q. has made a bad mistake about a very familiar text. Halm's deletion is best.

<sup>8</sup> *Pro Milone* 32ff.

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they have been dealt with, sometimes as it were making our opponent a present of them voluntarily, and sometimes content to use them as stepping stones to more powerful arguments.

A simple Cause, even if it is defended by various means, cannot have more than one Issue on which judgement is to be given, and the Issue of the Cause will be found in the point which the speaker most wishes to gain and the judge understands to be most worthy of his attention. This is what the Cause will rest upon. On the other hand, there may be different Issues of Questions. To show this by a brief example: when a defendant says "Even if I did it, I was right to do it," he is using the Issue of Quality; but when he adds "But in fact I didn't do it," he introduces Conjecture. But it is always a stronger defence to say "I didn't do it," and my view therefore will be that the Issue lies in the position which I should take up if I were not allowed to have more than one position.

It was right therefore to speak of a "first conflict" of Causes, not of Questions. In the first part of *Pro Rabirio Postumo*, Cicero directs his argument to the point that the action cannot lie against a Roman *eques*;<sup>6</sup> in the second part, he proves that no money reached Rabirius. The Issue, I would argue, lies in the more powerful argument. Likewise, in Milo's case, it is not in the context of the first Questions [which are placed before the Prooemium]<sup>7</sup> that I should judge the conflict of the Cause to arise, but when all Cicero's powers are used to show that Clodius was the ambusher and was therefore justifiably killed.<sup>8</sup> Here we

hoc est quod ante omnia constituere in animo suo debeat orator, etiam si pro causa plura dicturus est: quid maxime liquere iudici velit. Quod tamen ut primum cogitandum, ita non utique primum dicendum erit.

- 13 Alii statum crediderunt primam eius cum quo ageretur deprecationem. Quam sententiam his verbis Cicero complectitur: 'in quo primum insistit quasi ad repugnandum congressa defensio'. Unde rursus alia quaestio, an eum semper is faciat qui respondet. Cui rei praecipue repugnat Cornelius Celsus, dicens non a depulsione sumi, sed ab eo qui propositionem suam confirmet, ut, si hominem occisum reus negat, status ab accusatore nascatur, quia is velit probare; si iure occisum reus dicit, tralata probationis
- 14 necessitate idem a reo fiat et sit eius intentio. Cui non accedo equidem. Nam est vero propius quod contra dicitur, nullam esse litem si is cum quo agatur nihil respondeat, ideoque fieri statum a respondente.
- 15 Mea tamen sententia varium id est et accidit pro conditione causarum, quia et videri potest propositio aliquando statum facere, ut in coniecturalibus causis (utitur enim coniectura magis qui agit, quo moti quidam eundem a reo infitiam esse dixerunt) et in syllogismo tota ratiocinatio
- 16 ab eo est qui intendit. Sed quia videtur illic<sup>3</sup> quoque necessitatem hos status exequendi facere qui negat (is enim si

<sup>3</sup> *Regius*: illis *B*: illi *A*

<sup>9</sup> So *Ad Herennium* 1.18.

<sup>10</sup> *Topica* 93.

<sup>11</sup> Fr. 4 Marx.

<sup>12</sup> Cicero, *Topica* 92.

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see the point which the orator must address above all else, even if in pleading his Cause he is to say much more: this must be what he most wants to become clear to the judge. This is the first thing to be considered, but, not necessarily the first thing to be said.

Others held that the Issue lies in the first rebuttal made by the defence.<sup>9</sup> Cicero<sup>10</sup> expresses this view as follows: “that on which the defence first stands when it engages, as it were, to repel attack.” From this arises another question, whether it is always the respondent who creates the Issue. Cornelius Celsus<sup>11</sup> particularly objects to this view, saying that the Issue derives not from the repulse of the charge, but from the party who seeks to confirm his initial position: hence, if a defendant denies that a man has been killed, the Issue originates with the accuser, because he will want to prove the fact; whereas if the defendant claims that the man was justifiably killed, the burden of proof is shifted, the Issue comes from the defendant, and the first move is his. I do not agree with this at all. The contrary view is in fact nearer the truth—namely that there is no dispute if the defendant fails to reply, and so the Issue originates with the defendant.

In my view, however, the situation varies, and depends on the circumstances of the Cause, since the initial statement can sometimes seem to produce the Issue, as in Conjectural Causes (because the prosecutor is the main user of Conjecture, which is why some rhetors have called Issues originating with the defendant “Issues of Denial”),<sup>12</sup> while in Inferences the whole chain of reasoning comes from the initiator of the case. But as it seems that even in these circumstances it is the party who denies who makes it necessary to pursue these Issues (because if he says “I didn’t do

dicat: 'non feci', coget adversarium coniectura uti, et si dicat: 'non habes legem', syllogismo), concedamus ex depulsione nasci statum. Nihilominus enim res eo revertetur ut modo is qui agit, modo is cum quo agitur statum faciat.

- 17 Sit enim accusatoris intentio: 'hominem occidisti'; si negat reus, faciat statum qui negat. Quid si confitetur, sed iure a se adulterum dicit occisum (nempe legem esse certum est quae permittat)? Nisi aliquid accusator respondet, nulla lis est. 'Non fuit' inquit 'adulter': ergo depulsio incipit esse actoris, ille statum faciet. Ita erit quidem status ex prima depulsione, sed ea fiet ab accusatore, non a reo. Quid quod eadem quaestio potest eundem vel accusatorem facere vel reum? 'Qui artem ludicram exercuerit, in quattuordecim primis ordinibus ne sedeat: qui se praetori in hortis ostenderat neque erat productus, sedit in quattuor-
- 18 decim ordinibus.' Nempe intentio est: 'artem ludicram exercuisti', depulsio: 'non exercui artem ludicram', quaestio: 'quid sit artem ludicram exercere'. Si accusabitur theatri lege, depulsio erit rei; si excitatus fuerit de spectaculis
- 19 et aget iniuriarum, depulsio erit accusatoris. Frequentius tamen illud accidet quod est a plurimis traditum.
- 20

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<sup>13</sup> A common assumption in declamation, valid for classical Athens, if not for Rome in Q.'s time (the *lex Iulia de adulteriis* allowed only slave adulterers to be killed): Bonner (1949) 120; *GD* 33–35; LCL *Seneca Rhetor*, General Index s.v. "adultery."

<sup>14</sup> The *Lex Roscia* (67 BC) gave the *equites* rights to the first fourteen rows in the theatre behind the senate; this law and similar legislation were rigorously enforced by Domitian as censor, and Q.'s reference is therefore topical. The "law" against *equites* acting on the stage is based on a *senatus consultum* of Augustus' time (22 BC; Suetonius, *Augustus* 43, Dio Cassius 54.2); the prohibition was maintained by Vitellius (Tacitus, *Historiae* 2.62).

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it” he will force his adversary to use Conjecture, whereas if he says “You have no case in law” it has to be Inference), we may concede that the Issue originates with the defence. Even so, it will all come back to the fact that the Issue will sometimes be determined by the initiator of the action and sometimes by the respondent.

Let us suppose the charge made by the accuser is “You killed the man.” If the defendant denies it, it is he who produces the Issue. But suppose he admits the fact, but says the adulterer was justifiably killed by him. (It is of course established that there is a law permitting this.)<sup>13</sup> Unless the accuser makes some reply, there is no dispute. If he says, “He was not an adulterer,” then the rebuttal of the charge is now the prosecutor’s business, and he will produce the Issue. So the Issue comes from the first rebuttal, and this will originate with the accuser, not with the defendant. Again: the same Question can make the same person either an accuser or a defendant. “No person who has exercised the profession of actor shall sit in the first fourteen rows.<sup>14</sup> A man who had performed before the praetor in his private garden, but had never appeared on the public stage, took a seat in the first fourteen front rows.” The accusation is: “You exercised the profession of actor.” The rebuttal is: “No, I did not.” The Question is: “What is meant by ‘exercising the profession of actor’?” If he is accused under the theatre law, the rebuttal will come from the defendant; if he has been thrown out of the theatre and brings an action for injuries, the rebuttal will come from the accuser. However, the common view<sup>15</sup> will suit most situations.

<sup>15</sup> I.e. that the Issue is determined by the defendant.



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21 Effugerunt has quaestiones qui dixerunt statum esse id quod appareat ex intentione et depulsione, ut: 'fecisti'; 'non feci' aut 'recte feci.' Viderimus tamen utrum id sit status an in eo status. Hermagoras statum vocat per quem subiecta res intellegatur et ad quem probationes etiam partium referantur. Nostra opinio semper haec fuit, cum essent frequenter in causa diversi quaestionum status, in eo credere statum causae quod esset in ea potentissimum et in quo maxime res verteretur. Id si quis generalem quaestionem vel caput generale dicere malet, cum hoc mihi non erit pugna, non magis quam si aliud adhuc quo idem intellegatur eius rei nomen invenerit, quamquam tota volumina in hanc disputationem inpendisse multos sciam: nobis statum dici placet.

22 Sed cum in aliis omnibus inter scriptores summa dissensio est, tum in hoc praecipue videtur mihi studium quoque diversa tradendi fuisse: adeo nec qui sit numerus nec quae nomina nec qui generales quive speciales sint status convenit.

23 Ac primum Aristoteles elementa decem constituit, circa quae versari videatur omnis quaestio: *οὐσίαν*, quam Plautus essentiam vocat (neque sane aliud est eius nomen Latinum), sed ea quaeritur 'an sit': qualitatem, cuius aper-

<sup>16</sup> Fr. 10a Matthes: *καθ' ἣν ἀντιλαμβανόμεθα τοῦ ὑποκειμένου πράγματος*, "in accordance with which we grasp the matter which is the subject of the case."

<sup>17</sup> *Categories* 1b25–2a4.

<sup>18</sup> See on 2.14.2; see also 7.3.33, 10.1.124.

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These problems are avoided by those who say that the Issue is “that which emerges from attack and defence”; for example “You did it,” answered by either “I did not” or “I was right to do it.” But we have to ask whether the Issue actually *is* this, or is merely *in* it. Hermagoras<sup>16</sup> defines the Issue as that through which the matter under consideration is understood, and to which the proofs of the parties are referred. My view, bearing in mind that the Issues of the Questions within a Cause are often different, was always to regard the Issue of the Cause as lying in the most powerful point in it, the one on which the matter mainly turned. If anyone prefers to call this a General Question or a General Heading, I shall have no quarrel with him, any more than if he were to invent any other name to signify the same thing, though I know many people have devoted whole volumes to this debate. I am happy to have it called “Issue.”

There are of course great differences of opinion between writers on all other subjects, but here in particular there seems to me to have been a real passion for teaching something different: so far are we from agreement as to either the number of Issues or their names, or as to which are “general” and which are “special.”

### *Basic elements of Issues*

To begin with Aristotle.<sup>17</sup> He drew up a list of ten elements on which every Question seems to turn. These are:

- (1) *Ousia* (substance) which Plautus<sup>18</sup> calls *essentia*, and indeed there is no other Latin word for it; the Question it asks is whether something exists.
- (2) Quality, which is easy to understand.

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- tus intellectus est: quantitatem, quae dupliciter a posterioribus divisa est, quam magnum et quam multum sit: ad aliquid, unde ductae tralatio et comparatio: post haec ubi et quando: deinde facere pati habere (quod est quasi armatum esse, vestitum esse): novissime κείσθαι, quod est compositum esse quodam modo, ut iacere stare [irasci].<sup>4</sup> Sed ex his omnibus prima quattuor ad status pertinere, cetera ad quosdam locos argumentorum videntur.
- 25 Alii novem elementa posuerunt: personam, in qua de animo, corpore, extra positus quaeratur, quod pertinere ad coniecturae et qualitatis instrumenta video: tempus, quod χρόνον vocant, ex quo quaestio an is quem dum addicta est mater peperit servus sit natus: locum, unde controversia videtur an fas fuerit tyrannum in templo occidere, an exulaverit qui domi latuit: tempus iterum, quod καιρόν appellant—hanc autem videri volunt speciem illius temporis, ut aestatem vel hiemem; huic subicitur ille in pestilentia comisator: actum, id est πράξις, quod eo referunt, sciens commiserit an insciens, necessitate an casu, et talia: numerum, qui cadit in speciem quantitatis, an Thrasybulo
- 26

<sup>4</sup> del. Spalding: sedere ("to be seated") Murgia

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<sup>19</sup> See 3.6.52, 7.4.12.      <sup>20</sup> Habere represents Greek ἔχειν in the sense of "being in a certain condition."

<sup>21</sup> Compare 5.10.60, 7.3.26; a person in servitude for debt does not lose his personal rights.

<sup>22</sup> A killer of a tyrant is accused of impiety for doing the deed where the tyrant had taken sanctuary: *Rhetores Graeci* 8.405.3 Walz.      <sup>23</sup> This theme—a drunken reveller accused (of "offences against the state"?) for enjoying himself in time of plague—seems not to be attested elsewhere.

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- (3) Quantity, which was divided by later thinkers into two, namely size and number.
- (4) Relation; from this come the Issues of Transference and Comparison.<sup>19</sup>
- (5) Place.
- (6) Time.
- (7)–(9) To do, to suffer, and to have<sup>20</sup> (for example, “to be armed” or “to be clothed”).
- (10) *Keisthai*, which means to be in a certain position, for example, to lie down or to stand.

The first four of these seem relevant to Issues, the remainder to various topics of Argument.

Others have listed nine elements:

- (1) Person, involving questions about mind, body, and external factors: I can see that this is instrumental in Conjecture and Quality.
- (2) Time (what the Greeks call *chronos*), from which, for example, comes the question whether a man whose mother was in bond for debt when she gave birth to him was born a slave.<sup>21</sup>
- (3) Place, which seems the basis of declamation themes like “whether it was right to murder the tyrant in the temple”<sup>22</sup> or “whether a man who hid himself away at home has served a sentence of exile.”
- (4) Time in a second sense (what the Greeks call *kairos*): it is thought of as a special case of time in the first sense, for example “summer” or “winter.” “The reveler in the plague”<sup>23</sup> comes under this head.
- (5) Act (*praxis*), to which they refer the Questions “Did he commit the act knowingly or unknowingly, by necessity or by chance?” and so on.
- (6) Number, which falls under the species of Quality:

- 27 triginta praemia debeantur, qui tot tyrannos sustulerit: causam, cui plurimae subiacent lites, quotiens factum non negatur, sed quia iusta ratione sit factum defenditur: *τρόπον*, cum id, quod alio modo fieri licet, alio dicitur factum; hinc est adulter loris caesus vel fame necatus: occasionem factorum, quod est apertius quam ut vel interpretandum vel exemplo sit demonstrandum; tamen *ἀφορμὰς ἔργων* vocant.
- 28 Hi quoque nullam quaestionem extra haec putant. Quidam detrahunt duas partis, numerum et occasionem, et pro illo quem dixi actu subiciunt res, id est *πράγματα*. Quae ne praeterisse viderer, satis habui attingere. Ceterum his nec status satis ostendi nec omnis contineri locos credo, quod apparebit diligentius legentibus quae de utraque re dicam; erunt enim plura multo quam quae his elementis comprehenduntur.
- 29 Apud plures auctores legi placuisse quibusdam unum omnino statum esse coniecturalem, sed quibus placuerit neque illi tradiderunt neque ego usquam reperire potui. Rationem tamen hanc secuti dicuntur, quod res omnis signis colligeretur. Quo modo licet qualitatis quoque solum

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<sup>24</sup> This refers to the Athenian revolution of 404/403 BC against the oligarchic regime of the Thirty: compare 7.4.4, and *Rhetores Graeci* 5.342 Walz (Maximus Planudes). Polycrates (Aristotle, *Rhetoric* 2. 1401a34) may have developed the same topic.

<sup>25</sup> Instead of being killed outright with the sword, as the supposed law allowed.

<sup>26</sup> "Starting points of actions."

<sup>27</sup> Discussed below, and also in 5.10.20–118.

<sup>28</sup> See Cicero, *Orator* 45.

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“Is Thrasybulus owed thirty rewards because he disposed of thirty tyrants?”<sup>24</sup>

- (7) Cause, under which fall very many disputes, whenever the fact is not denied but defended on the ground that it was done for a just reason.
- (8) *Tropos* (“manner”), when something is said to have been done in a different manner from that which is allowed: for example, the adulterer beaten to death with straps or starved.<sup>25</sup>
- (9) Opportunity for action. This is too obvious to need explanation or exemplification; the Greeks call it *aphormai ergōn*.<sup>26</sup>

These authorities too believe that there is no Question that does not come under one or other of these heads. Some omit two of them—namely Number and Opportunity—and substitute Facts (*pragmata*) for what I called “acts.” I touch on these points briefly, so as not to be thought to have left them out. But I do not myself think either that Issues are sufficiently defined by these headings, or that all possible Topics are covered by them. This will become clear to any careful reader of what I shall be saying on both these subjects.<sup>27</sup> There will indeed be many Topics not covered by these “elements.”

### *One-Issue Theories*

I have read in many authors that some scholars thought that there was only one Issue, namely that of Conjecture. They have not revealed who held this view, and I have been unable to find it anywhere. However, they are supposed to have based their view on the consideration that every fact was inferred from Signs.<sup>28</sup> On this principle, we

statum faciant, quia ubique qualis sit cuiusque rei natura  
 30 quaeri potest. Sed utroque modo sequetur summa  
 confusio. Neque interest unum quis statum faciat an nul-  
 lum, si omnes causae sunt condicionis eiusdem.

Coniectura dicta est a coniectu, id est dereductione qua-  
 dam rationis ad veritatem, unde etiam somniorum atque  
 ominum interpretes coniectores vocantur. Appellatum  
 tamen est hoc genus varie, sicut sequentibus apparebit.

31 Fuerunt qui duos status facerent: Archedemus coniec-  
 turalem et finitivum exclusa qualitate, quia sic de ea quaeri  
 existimabat: 'quid esset inicium', 'quid iniustum', 'quid dic-  
 to audientem non esse'. Quod vocat de eodem et alio.

32 Huic diversa sententia eorum fuit qui duos quidem  
 status esse voluerunt, sed unum infitiale, alterum iuridi-  
 cale. Infitialis est quem dicimus coniecturalem, cui ab  
 infitiando nomen alii in totum dederunt, alii in partem, qui  
 accusatorem coniectura, reum infitiatione uti putaverunt.

33 Iuridicalis est qui Graece dicitur *δικαιολογικός*. Sed quem  
 ad modum ab Archedemo qualitas exclusa est, sic ab his  
 repudiata finitio. Nam subiciunt eam iuridicali, quaeren-  
 dumque arbitrantur iustumne sit sacrilegium appellari  
 34 quod obiciatur vel furtum vel amentiam. Qua in opinione

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<sup>29</sup> So also the Greek equivalent, *stochasmos*, is a metaphor from taking aim at a target. <sup>30</sup> The Stoic Archedemus of Tarsus seems to have written on rhetorical as well as logical subjects. He was choice reading for the pupils of Epictetus (e.g. 2.4.11). *SVF* 3, p. 263.

<sup>31</sup> In Hermagoras (Cicero, *De inventione* 1.12) this name was attached to one type of Issue of Quality. In the theorists Q. reports here, it is evidently equivalent to Quality in general (as in *Ad Herennium* 1.14), since their peculiarity is to deny separate status to Definition.

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could also make Quality the one and only Issue, because we can always ask what the nature of anything is. But on either of these two views, utter confusion will ensue. There is no difference between believing in a single type of Issue and believing in none, if all Causes belong to the same class.

“Conjecture” is so called from *coniectus*,<sup>29</sup> that is to say *targeting* the reason on truth; hence interpreters of dreams and omens are called *coniectores*. However, as will appear from what follows, this type has been given various names.

### *Two-Issue Theories*

Some have made out two types of Issue. Archedemus<sup>30</sup> gives Conjectural and Definitional, leaving out Quality, because he thought that questions of Quality took the form “what is meant by unfair?” (or “unjust” or “disobedient”) and he calls these “questions of same and other.”

Distinct from this is the opinion of those who fixed again on two types of Issue, but called them “of Denial” and “Juridical.” “Issue of Denial” is what we call “Conjectural,” some giving this name to the whole procedure, because of the denial which it contains, others only to part of it, holding that the accuser uses Conjecture and the defendant Denial. “Juridical” is what in Greek is called *dikaiologikos*.<sup>31</sup> But, just as Archedemus ruled out Quality, so do these scholars exclude Definition. They subordinate it in fact to the Juridical, and think one has to ask whether it is just for the alleged offence to be called sacrilege or theft



Pamphilus fuit, sed qualitatem in plura partitus est.

- Plurimi deinceps, mutatis tantum nominibus, in rem de qua non constat et in rem de qua constat. Nam est verum nec aliter fieri potest quam ut aut certum sit factum esse quid aut non sit; si non est certum, coniectura sit, si certum est, reliqui status. Nam idem dicit Apollodorus, cum quaestionem aut in rebus extra positis, quibus coniectura explicatur, aut in nostris opinionibus existimat positam, quorum illud *πραγματικόν*, hoc *περὶ ἐννοίας* vocat: idem, qui *ἀπρόλημπτον* et *προλημπτικόν* dicunt, id est dubium et praesumptum, quo significatur de quo liquet.
- 36 Idem Theodorus, qui de eo an sit et de accidentibus ei quod esse constat, id est *περὶ οὐσίας καὶ συμβεβηκότων*, existimat quaeri. Nam in his omnibus prius genus coniecturam habet, sequens reliqua. Sed haec reliqua Apollodorus duo vult esse, qualitatem et de nomine, id est finitivam: Theodorus, quid, quale, quantum, ad aliquid.
- 37 Sunt et qui de eodem et de alio modo qualitatem esse, modo finitionem velint.

In duo et Posidonius dividit, vocem et res. In voce quaeri putat an significet, quid, quam multa, quo modo:

<sup>32</sup> Identification uncertain: post-Aristotelian, so not the man mentioned in *Rhetoric* 2. 1400a4.

<sup>33</sup> Fr. 5 Granatelli.

<sup>34</sup> So Cicero, *Topica* 85, whose examples are the difference between friend and flatterer or king and tyrant: *ibid.* 87 (and *Partitiones oratoriae* 65) relates this topic to Definition.

<sup>35</sup> Fr. 189 Edelstein-Kidd = 450 Theiler. As a Stoic, Posidonius treated rhetoric as a branch of logic, and his use of the *φωνή/πράγματα* (verbal expression/things) distinction to classify the

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or madness. Pamphilus<sup>32</sup> was of the same opinion, but he divided Quality into several parts.

Many later writers, simply changing the names, spoke of “things that are not agreed” and “things that are agreed.” For it is true (and it cannot be otherwise) that a fact must be either agreed or not. If it is not agreed, we have Conjecture. If it is agreed, we have the other types of Issue. Apollodorus<sup>33</sup> means the same when he thinks that a Question must lie either in things outside us (which give scope to Conjecture) or in our opinions; he calls the first category *pragmatic*, the second *peri ennoias* (“concerning the idea”). Those who use the terms *aprolēpton* and *prolēptikon*—that is to say, “doubtful” and “presumed” (in other words, “quite clear”)—are saying the same thing, as indeed is Theodorus, who thinks that the questions asked concern (a) whether a thing exists, (b) the accidents of something whose existence is agreed (that is to say, *peri ousias kai symbebēkotōn*). In all these classifications, the first class contains Conjecture, and the second all the rest. These others Apollodorus wishes to make two in number, namely Quality and “concerning the name,” that is to say Definition; Theodorus gives “what,” “of what sort,” “how great,” and “relation.” Some would place “same and other” sometimes under Quality and sometimes under Definition.<sup>34</sup>

Posidonius<sup>35</sup> also has a twofold classification: verbal expression and things. Under “verbal expression” he sets the questions whether the word means anything, what it means, how many things it means, and in what way: under

Issues reflects this. His theory may be a response to Hermagoras. See Kidd ad loc., (*Posidonius* 2.686–689).

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rebus coniecturam, quod *κατ' αἰσθησιον* vocat, et qualitatem et finitionem, cui nomen dat *κατ' ἔννοιαν*, et ad aliquid. Unde et illa divisio est, alia esse scripta, alia inscripta.

38 Celsus Cornelius duos et ipse fecit status generales: an sit, quale sit. Priori subiecit finitionem, quia aequè quaeratur an sit sacrilegus qui nihil se sustulisse de templo dicit et qui privatam pecuniam confitetur sustulisse. Qualitatem in rem et scriptum dividit. Scripto quattuor partes legales exclusa translatione, quantitatem et mentis quaestionem coniecturae subiecit.

39 Est etiam illa in duos dividendi status ratio, quae docet aut de substantia controversiam esse aut de qualitate, ipsam porro qualitatem aut in summo genere consistere aut  
40 in succedentibus. De substantia est coniectura; quaestio enim tractatur rei, an facta sit, an fiat, an futura sit, interdum etiam mentis: idque melius quam quod iis placuit qui  
41 statum eundem facti nominaverunt, tamquam de praeterito tantum et tantum de facto quaereretur. Pars qualitatis quae est de summo genere raro in iudicium venit, quale est 'idne sit honestum quod vulgo laudatur'. Succedentium autem aliae de communi appellatione, ut 'sitne sacrilegus qui pecuniam privatam ex templo furatus est', aut<sup>5</sup> de re denominata, ubi et factum esse certum est nec dubitatur quid sit quod factum est. Cui subiacent omnes de honestis

<sup>5</sup> *Perhaps aliae D.A.R.*

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<sup>36</sup> Fr. 5 Marx.      <sup>37</sup> Compare Aristotle, *Rhetoric* 1. 1374a4; Cicero, *De inventione* 1.11; Q. 6.3.41, 7.3.9–10.

<sup>38</sup> I.e. Letter and Spirit (or Intention), Conflict of Laws, Ambiguity, and Inference: below, § 46.

<sup>39</sup> See 7.4.1.

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“things” come Conjecture (he calls it *kat’ aisthēsin*, “by perception”), Quality, Definition (which he calls *kat’ ennoian*, “by idea”), and Relation.

From this principle also comes the division into “written” and “unwritten” types of Issue.

Cornelius Celsus<sup>36</sup> also gives us two General Issues: whether something exists, and what sort of thing it is. He subordinates Definition to the first of these, because one can ask equally well about the man who denies taking money from the temple and about the other man who admits taking private money from the temple, whether either of them is guilty of sacrilege.<sup>37</sup> He divides Quality into Fact and Written Text. Under Written Text he put the four legal Issues<sup>38</sup> but not Transference: “Quantity” and “Intention” he put under Conjecture.

There is yet another theory of dividing Issues into two classes. This teaches that a dispute is either about Substance or about Quality, and that Quality is a matter either of Generality or of Incidentals.<sup>39</sup> Substance is dealt with by Conjecture; for the Question is one of Fact—did it happen, is it happening, will it happen?—and sometimes also of Intention. (This is an improvement on the doctrine of those who call the Issue of Conjecture “Issue of Fact,” as though the Question related only to the past and only to the thing done.) Quality, in its most general form, rarely comes into court: “Is what is commonly praised necessarily honourable?” is an example. Quality of Incidentals refers either to an ambivalent term—“Is the man who stole the private funds from the temple guilty of sacrilege?”—or to a clearly named fact, where it is certain that the deed has been done, and there is no doubt about what it is that has been done. They put all questions concerning the honour-

- 42 iustis utilibus quaestiones. His etiam ceteri status contineri dicuntur, quia et quantitas modo ad coniecturam refertur, ut 'maiorne sol quam terra', modo ad qualitatem: 'quanta poena quempiam quantove praemio sit adfici iustum', et tralatio versetur circa qualitatem, et definitio pars
- 43 sit tralationis; quin et contrariae leges et ratiocinativus status, id est syllogismos, et plerumque scripti et voluntatis aequo nitantur, nisi quod hic tertius aliquando coniecturam accipit: 'quid senserit legis constitutor', ambiguitatem vero semper coniectura explicari necesse sit, quia, cum sit manifestum verborum intellectum esse duplicem, de sola quaeritur voluntate.
- 44 A plurimis tres sunt facti generales status, quibus et Cicero in Oratore utitur et omnia quae aut in controversiam aut in contentionem veniant contineri putat: sitne, quid sit, quale sit. Quorum nomina apertiora sunt quam ut dicenda sint. Idem Iatrocles<sup>6</sup> sentit.
- 45 Tres fecit et M. Antonius his quidem verbis: 'paucae res sunt quibus ex rebus omnes orationes nascuntur, factum non factum, ius iniuria, bonum malum.' Sed quoniam quod iure dicimur fecisse non hunc solum intellectum habet, ut lege, sed illum quoque, ut iuste fecisse videamur, secuti Antonium apertius voluerunt eosdem status distinguere, itaque dixerunt coniecturalem, legalem, iuridicalem:
- 46 qui et Verginio placent. Horum deinde fecerunt species, ita ut legali subicerent finitionem et alios qui

<sup>6</sup> Patrocles A

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<sup>40</sup> 45.    <sup>41</sup> ORF p. 237.    <sup>42</sup> See Caplan on *Ad Herennium* 1.18–25 (especially p. 32, n. c).    <sup>43</sup> See on 3.1.21.

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able, the just, and the expedient under this head. It is said that all the other Issues also are included in these, because (a) Quantity can sometimes be referred to Conjecture—for example, “Is the sun bigger than the earth?”—and sometimes to Quality—“What amount of punishment or reward is appropriate for a certain person?” (b) Transference is concerned with Quality; (c) Definition is a part of Transference; (d) Conflict of Laws, (e) Inference (Syllogism), and (f) most cases of Letter and Spirit, all rely on Equity, though the last named may also involve Conjecture—what did the legislator in fact intend?—and (g) Ambiguity always has to be developed as Conjecture because, as it is clear that the words have two meanings, it is the intention alone which is in question.

### *Three-Issue Theories*

Most writers offer us three General Issues. Cicero adopts these in the *Orator*,<sup>40</sup> and thinks they embrace everything which comes into dispute or contention. They are: Does it exist? What is it? What sort of thing is it? The names of these three types are too obvious to need stating. Iatrocles has the same view.

Marcus Antonius also gives three types. I quote: “There are only a few things which give birth to all speeches: fact or not; right or wrong; good or bad.”<sup>41</sup> But as, when we are said to have done something rightly (*iure*), this does not only mean legally, but also justly, Antonius’ followers chose to distinguish these Issues more clearly, and therefore spoke of Conjectural, Legal, and Juridical Issues.<sup>42</sup> Verginius<sup>43</sup> concurs. They then created species of these, subordinating to the Legal Issue both Definition and other Issues

ex scripto ducuntur, legum contrariarum, quae antinomia dicitur, et scripti et sententiae vel voluntatis, id est *κατὰ ῥητὸν καὶ διάνοιαν*, et *μετάλημψιν*, quam nos varie tralativam, transumptivam, transpositivam vocamus, *συλλογισμόν*, quem accipimus ratiocinativum vel collectivum, ambiguitatis, quae *ἀμφιβολία* nominatur: quos posui quia et ipsi a plerisque status appellantur, cum quibusdam legales potius quaestiones eas dici placuerit.

- 47 Quattuor fecit Athenaeus, *προτρεπτικὴν στάσιν* vel *παρορμητικὴν*, id est exhortativum, qui suasoriae est proprius, *συντελικὴν*, qua coniecturam significari magis ex his quae secuntur quam ex ipso nomine apparet, *ὑπαλλακτικὴν* (ea finitio est, mutatione enim nominis constat), iuridicalem, eadem appellatione Graeca qua ceteri usus.
- 48 Nam est, ut dixi, multa in nominibus differentia. Sunt qui *ὑπαλλακτικὴν* tralationem esse existiment, secuti hanc mutationis significationem.

Fecerunt alii totidem status, sed alios, an sit, quid sit, quale sit, quantum sit, ut Caecilius et Theon.

44 "Transference": Lausberg §§ 131–133.

45 See 2.15.23.

46 Not otherwise attested in this sense; the word sometimes means "contributory," but is used by grammarians of the aorist, as denoting "completed" action; so perhaps here "concerned with completed fact."

47 Lit. "concerned with exchange."

48 *Dikaiologikos*, as in 3.6.33.

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deriving from a written text, namely (a) Conflict of Laws (*antinomia* as it is called), (b) Letter and Spirit or Intention (*kata rhēton kai dianoian*), (c) *metalepsis*,<sup>44</sup> which we call variously “translative,” “transumptive,” or “transpositive,” (d) Inference (syllogism, which we call “ratiocinative” or “collective”), and (e) Ambiguity, *amphibolia*. I mention these because they too are called Issues by many writers, though some prefer to regard them as Legal Questions.

### *Four-Issue Theories*

Four Issues are found in Athenaeus.<sup>45</sup> They are:

- (1) *protreptikē* or *parormētikē stasis*, that is to say “hortatory,” an Issue peculiar to the deliberative speech;
- (2) *syntelikē*,<sup>46</sup> which the context reveals as equivalent to “conjectural,” though the name does not make this clear;
- (3) *hypallaktikē*,<sup>47</sup> Definition (because this results from a *change* of name);
- (4) juridical, for which he uses the same Greek term<sup>48</sup> as the others.

As I said, there is a lot of variety in nomenclature. Some think *hypallaktikē* is equivalent to Transference, as involving the sense of “change.”

Others give this same number of Issues, but different ones: Does it exist? What is it? What is it like? How big is it? (so Caecilius<sup>49</sup> and Theon<sup>50</sup>).

<sup>49</sup> Fr. 6 Ofenloch.

<sup>50</sup> See 9.3.76. It is not certain that this “Stoic” is the Aelius Theon of Alexandria whose *Progymnasmata* survive, and who is credited with other works on rhetoric.



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- 49 Aristoteles in rhetoricis<sup>7</sup> an sit, quale, quantum et quam multum sit quaerendum putat. Quodam tamen loco finitionis quoque vim intellegit, quo dicit quaedam sic defendi: 'sustuli, sed non furtum feci', 'percussi, sed non iniuriam feci'.
- 50 Posuerat et Cicero in libris rhetoricis facti, nominis, generis, actionis, ut in facto coniectura, in nomine finitio, in genere qualitas, in actione ius intellegeretur: iuri subiecerat translationem. Verum hic legales quoque quaestiones alio loco tractat ut species actionis.
- 51 Fuerunt qui facerent quinque: coniecturam, finitionem, qualitatem, quantitatem, ad aliquid. Theodorus quoque, ut dixi, isdem generalibus capitibus utitur: an sit, quid sit, quale sit, quantum sit, <an><sup>8</sup> ad aliquid. Hoc ultimum maxime in comparativo genere versari putat, quoniam melius ac peius, maius et minus nisi alio relata non intelleguntur; sed in illas quoque translationes, ut supra significavi,
- 52 quaestiones incidit: 'an huic ius agendi sit' vel 'facere aliquid conveniat', 'an contra hunc', 'an hoc tempore', 'an sic'. Omnia enim ista referri ad aliquid necesse est.

<sup>7</sup> A here adds a gloss, detected and deleted by Capperonnier: etiam sic (si Buttman) omne opus dividit in veritatem et petenda ac fugienda, quod est suasoriae, et de eodem atque alio, partiendo tamen ad haec pervenit ("even if [?] he divides the whole work into questions of truth, questions of things to be sought and avoided (which belong to deliberative oratory), and questions of 'same and other' [i.e. definition], nevertheless in his partition he arrives at this") <sup>8</sup> add. D.A.R.

51 3. 1416a6-9, 1417b21-27.

52 1. 1373b38ff.

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Aristotle in the *Rhetoric*<sup>51</sup> thinks that the questions to be asked are: Does it exist? What is it like? How big? How much? But in one passage<sup>52</sup> he recognizes the notion of Definition also, when he speaks of defences such as "I took it, but I did not commit theft" or "I struck him, but I did not commit an assault."

Cicero again in his *Rhetorica*<sup>53</sup> had assumed four Issues: of Fact, of Name, of Kind, and of Legal Process. By Fact is meant Conjecture; by Name, Definition; by Kind, Quality; and by Legal Process, Law. He had put Transference under Law. In another passage,<sup>54</sup> however, he treats Legal Questions also as a branch of Process.

### *Theories of five or more Issues*

Some writers made out five: Conjecture, Definition, Quality, Quantity, Relation. Theodorus also, as I said,<sup>55</sup> adopts the same general headings: Does it exist? What is it? What is it like? How big is it? Is it relative to something? This last he considers to be mainly concerned with Comparison, since "better," "worse," "greater," and "less" are only understood by reference to something else. But, as I have already indicated, it also enters into Questions of Transference: Does this man have a right of action? Is it right for him to do a certain thing? Against this man? At this time? In this way? All these points must involve reference to something else.

<sup>53</sup> *De inventione* 1.10.      <sup>54</sup> Cicero discusses Legal Issues in *Partitiones oratoriae* 107–108, 132–138; but there is nothing here which quite answers to Q.'s point.

<sup>55</sup> § 36. See Theodorus fr. 6 Granatelli.

53 Alii sex status putant: coniecturam, quam *γένεσιω* vocant, et qualitatem et proprietatem, id est *ιδιότητα*, quo verbo finitio ostenditur, et quantitatem, quam *ἀξίαν* dicunt, et comparisonem et tralationem, cuius adhuc novum nomen inventum est *μετάστασις*, novum tamquam in statu, alioqui ab Hermagora inter species iuridicalis usitatum.

54 Aliis septem esse placuit, a quibus nec tralatio nec quantitas nec comparatio recepta est, sed in horum trium locum subditae quattuor legales adiectaeque tribus illis rationalibus.

55 Alii pervenerunt usque ad octo tralatione ad septem superiores adiecta.

A quibusdam deinde divisa ratio est, ut status rationales appellarent, quaestiones, quem ad modum supra dixi, legales, in illis de re, in his de scripto quaereretur. Quidam in diversum hos status esse, illas quaestiones maluerunt.

56 Sed alii rationales tres putaverunt, an sit, quid sit, quale sit, Hermagoras solus quattuor, coniecturam, proprietatem,

<sup>56</sup> We have no other evidence for this usage; but Conjecture asks the question *εἰ γέγονεν* ("has it happened?"), so that the term is intelligible.

<sup>57</sup> Occasionally used in this sense: *Rhetores Graeci* 7. 184, 31 Walz.

<sup>58</sup> Lit. "value": not attested elsewhere in this technical sense.

<sup>59</sup> Hermagoras fr. 16a Matthes. Latin *translatio* is used (1) for the Issue *metalēpsis*, in which the validity of the proceedings is questioned (Lausberg § 197); (2) for *metastasis*, in which the charge is fixed on someone other than the defendant (*remotio*

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Others think there are six Issues: Conjecture (which they call *genesis*),<sup>56</sup> Quality, Peculiarity (*idiōtēs*,<sup>57</sup> by which they mean Definition), Quantity (which they call *axia*),<sup>58</sup> Comparison, and Transference, for which there has now been found a new name, *metastasis*—new, that is, as the name of an Issue, but otherwise used by Hermagoras for a type of juridical Question.<sup>59</sup>

Others have preferred to have seven types.<sup>60</sup> They do not admit Transference, Quantity, or Comparison, but in place of these they introduce the four Legal Issues,<sup>61</sup> added to the three Rational Issues just mentioned.

Others bring the number up to eight, by adding Transference to the above seven.

### *Rational and Legal Issues*

Some, too, have introduced a division in which they speak of Rational *Issues* but, as I said,<sup>62</sup> Legal *Questions*, the former involving facts, the latter a written text. Others, on the contrary, prefer to call the latter class *Issues*, and the former *Questions*.

Others have held that there are three Rational Issues—Does it exist? What is it? What sort of thing is it?—and only Hermagoras<sup>63</sup> gives four, namely Conjecture, Peculiarity,

*criminis*, Lausberg § 183). Q. here complains that *metastasis* is being used now as a synonym for *metalēpsis*.

<sup>60</sup> Compare Julius Victor 376–380 Halm (= 6–8 Giomini–Celentano), who includes *translatio* as a fourth *status rationalis*, but also allows it as a *status legalis* alongside the usual four.

<sup>61</sup> See below, § 61.      <sup>62</sup> § 46.

<sup>63</sup> Fr. 13b Matthes.

tem, tralationem, qualitatem, quam per accidentia,<sup>9</sup> id est κατὰ συμβεβηκός, vocat hac interpretatione: ‘an illi accidat viro bono esse vel malo’. Hanc ita dividit: de adpetendis et fugiendis, quae est pars deliberativa; de persona (ea ostenditur laudativa); negotialem (πραγματικὴν vocat), in qua de rebus ipsis quaeritur remoto personarum complexu, ut ‘sitne liber qui est in adsertione’, ‘an divitiae superbiam pariant’, ‘an iustum quid, an bonum sit’: iuridicalem, in qua fere eadem, sed certis destinatisque personis quaerantur: ‘an ille iuste hoc fecerit vel bene’.

57  
58 Nec me fallit in primo Ciceronis rhetorico aliam esse loci negotialis interpretationem, cum ita scriptum sit: ‘negotialis est in qua quid iuris ex civili more et aequitate sit consideratur: cui diligentiae praeesse apud nos iure  
59 consulti existimantur.’ Sed quod ipsius de his libris iudicium fuerit supra dixi. Sunt enim velut regestae in hos commentarios quos adulescens deduxerat scholae, et si qua est in his culpa, tradentis est, sive eum movit quod Hermagoras prima in hoc loco posuit exempla ex quaestionibus iuris, sive quod Graeci πραγματικούς vocant iuris  
60 interpretes. Sed Cicero quidem his pulcherrimos illos de oratore substituit, ideoque culpari tamquam falsa praecipiat non potest.

Nos ad Hermagoran. Tralationem hic primus omnium tradidit, quamquam semina eius quaedam citra nomen ip-

<sup>9</sup> accidens *Kiderlin*

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<sup>64</sup> *De inventione* 1.14.      <sup>65</sup> This term was used in the sense of “legal expert” at least from Cicero’s time: *De oratore* 1.198, 253. See 12.3.4; Crook (1995) 150.      <sup>66</sup> So Cicero, *De inventione* 1.16; Hermagoras fr.13a Matthes.

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Transference, and Quality, which he calls “accidental” (*kata symbebēkos*), explaining this as meaning “whether someone *happens to be* a good man or a bad man.” He divides Quality as follows: (1) things to aim at or avoid (this is the Deliberative part of oratory); (2) relating to persons (by this is meant the oratory of praise); (3) relating to affairs (he calls this “pragmatic”), in which the inquiry concerns things themselves, without reference to persons: for example, whether a man is free who is being claimed as a slave, whether wealth produces pride, whether some action is just or good; (4) the “juridical” species, under which roughly the same questions arise, but in relation to certain definite persons: did *that man* do this justly or well?

I am aware that there is a different interpretation of the “pragmatic” species in the first book of Cicero’s *Rhetoric*, where it is written:<sup>64</sup> “The pragmatic species is that in which we consider what is right according to civil usage and equity; in our society, the control of this study is held to be in the hands of the lawyers.” But I have already mentioned what Cicero’s own opinion about these books was. They were school lectures brought together, as it were, to form the treatises which he had composed as a young man; if there is anything wrong with them, it is the fault of his instructor, who may have been influenced either by the fact that, in this context, Hermagoras put examples from Legal Questions first, or else by the consideration that the Greeks call interpreters of law *pragmatikoi*.<sup>65</sup> However, Cicero replaced these books by his splendid *De oratore*, and so cannot be blamed for imparting false doctrine.

To return to Hermagoras. He was the first person to teach the Issue of Transference,<sup>66</sup> although the seeds of

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- 61 sum apud Aristotelen reperiuntur. Legales autem quaestiones has fecit: scripti et voluntatis (quam ipse vocat *κατὰ ῥητὸν καὶ ὑπεξαίρεσιν*, id est dictum et exceptionem: quorum prius ei cum omnibus commune est, exceptionis nomen minus usitatum), ratiocinativum, ambiguitatis, legum contrariarum.
- 62 Albucius eadem divisione usus detrahit tralationem, subiciens eam iuridicali. In legalibus quoque quaestionibus nullum putat esse qui dicatur ratiocinativus.
- Scio plura inventuros adhuc qui legere antiquos studiosius volent, sed ne haec quoque excesserint modum vereor.
- 63 Ipse me paulum in alia quam prius habuerim opinione nunc esse confiteor. Et fortasse tutissimum erat famae modo studenti nihil ex eo mutare quod multis annis non
- 64 sensissem modo verum etiam adprobassem. Sed non sustineo esse conscius mihi dissimulati, in eo praesertim opere quod ad bonorum iuvenum aliquam utilitatem componimus, in ulla parte iudicii mei. Nam et Hippocrates clarus arte medicinae videtur honestissime fecisse quod quosdam errores suos, ne posteri errarent, confessus est, et M. Tullius non dubitavit aliquos iam editos libros aliis postea scriptis ipse damnare, sicut Catulum atque Lucillum et

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<sup>67</sup> Perhaps *Rhetoric* 3.1416a28–34, on the case of Euripides and Hygiainon, in which Euripides complains that it is wrong to take a line of one of his plays (“the tongue has sworn, but the heart’s not bound by oath”) and judge it in a court of law instead of in the theatre.

<sup>68</sup> Normally replaced by *dianoian*, “intention.”

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this idea, without the name, are to be found in Aristotle.<sup>67</sup> The Legal Questions, according to him, are as follows: (1) Letter and Intention (he calls it *kata rhēton kai hyp-exairesin*, that is “Letter and Exception,” the first term being common to all writers, the second<sup>68</sup> less in use); (2) Inference; (3) Ambiguity; (4) Conflict of Laws.

Albucius<sup>69</sup> uses the same division, but removes Transference, which he subordinates to the Juridical Issue. He holds also that there is no Inferential Issue in Legal Questions.

Careful students of the old writers will, I know, find still more variation; but I fear that even this is too much.

### *Quintilian's own views*

I have to admit that I now hold a somewhat different opinion from that which I held in the past. If I were to think only of my reputation, it might be safest to change nothing of the views which I both held and indeed approved for many years; but I cannot bear to feel that I have kept anything back, especially in a work which I am writing to be of some service to our worthy students. The famous doctor Hippocrates seems to me to have acted very honourably in confessing some of his errors, so that his successors should not go wrong.<sup>70</sup> Marcus Tullius too did not hesitate to condemn some of his previously published works himself in his subsequent writings—the *Catulus*

<sup>69</sup> See 3.3.4.

<sup>70</sup> Hippocrates, *Epidemics* 5.27 (and Celsus, *De medicina* 8.4.3): Hippocrates confesses failing to diagnose a head wound correctly.



- 65 hos ipsos de quibus modo sum locutus artis rhetoricae. Etenim supervacuum foret in studiis longior labor si nihil liceret melius invenire praeteritis. Neque tamen quicquam ex iis quae tum praecepi supervacuum fuit; ad easdem enim particulas haec quoque quae nunc praecipiam revertentur. Ita neminem didicisse paeniteat: colligere tantum eadem ac disponere paulo significantius conor. Omnibus autem satis factum volo non me hoc serius demonstrare aliis quam mihi ipse persuaserim.
- 66 Secundum plurimos auctores servabam tris rationales status, coniecturam qualitatem finitionem, unum legalem. Hi mihi status generales erant. Legalem in quinque species partiebar: scripti et voluntatis, legum contrariarum,
- 67 collectivum, ambiguitatis, tralationis. Nunc quartum ex generalibus intellego posse removeri; sufficit enim prima divisio qua diximus alios rationales alios legales esse: ita non erit status, sed quaestionum genus; alioqui et rationalis status esset. Ex iis etiam quos speciales vocabam removi
- 68 tralationem, frequenter quidem (sicut omnes qui me secuti sunt meminisse possunt) testatus, et in ipsis etiam illis sermonibus me nolente vulgatis hoc tamen complexus, vix in ulla controversia tralationis statum posse reperiri ut non et alius in eadem recte dici videretur, ideoque a quibus-
- 69 dam eum exclusum. Neque ignoro multa transferri, cum in omnibus fere causis in quibus cecidisse quis formula dici-

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<sup>71</sup> Cicero's *Academica*, of which these dialogues are parts, had a complex development: extant are *Lucullus*, from the first version, and the first book of the second version.

<sup>72</sup> I.e. Conjecture, Quality, and Definition would have to be treated as species of the genus Logical Issue, like the five species of the parallel genus, Legal Issue. <sup>73</sup> See I *prooem.* 7.

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and *Lucullus*,<sup>71</sup> for example, and the books on the Art of Rhetoric of which I have just spoken. Prolonged study would indeed be a waste of time, if one was forbidden to improve on one's past opinions. Yet nothing of what I taught in those days was in fact a waste of time, for what I am going to recommend now will go back to the same elementary principles. I want no one to repent of having been taught by me; I am only trying to collect and organize the same ideas in a somewhat more meaningful way. I want everyone to feel satisfied that I am not letting time elapse between persuading myself and explaining to others.

Following most authorities, I kept three Logical Issues—Conjecture, Quality, and Definition—and one Legal Issue. These were my General Issues. I divided the Legal Issue into five species: Letter and Spirit, Conflict of Laws, Inference (the "collective" Issue), Ambiguity, and Transference. Now I realize that the fourth of my General Issues can be dispensed with. The first division—between Logical and Legal Issues—is sufficient. This fourth item therefore will not be an Issue, but a kind of Question; otherwise, there would have to be a corresponding "Logical Issue."<sup>72</sup> Moreover, I have removed Transference from what I called Special Issues, having (as all my pupils can remember) often borne witness, and indeed made the point in the lectures which were published against my wishes,<sup>73</sup> that the Issue of Transference hardly ever occurs in any dispute in such a way that another Issue cannot rightly be said to be present as well, and that this is why some people rule it out. I am quite aware that Transference is common, because, in almost every case in which a

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tur hae sint quaestiones: 'an huic, an cum hoc, an hac lege,  
 an apud hunc, an hoc tempore liceat agere', et si qua sunt  
 70 talia. Sed personae tempora actiones ceteraque propter  
 aliquam causam transferuntur: ita non est in tralatione  
 quaestio sed in eo propter quod transferuntur. 'Non debes  
 apud praetorem petere fidei commissum, sed apud consu-  
 les: maior enim praetoria cognitione summa est.' Quaeri-  
 71 tur an maior summa sit: facti controversia est. 'Non licet  
 tibi agere mecum: cognitor enim fieri non potuisti': iudica-  
 tio an potuerit. 'Non debuisti interdicere, sed petere': an  
 recte interdictum sit ambigitur. Quae omnia succidunt  
 72 legitimis quaestionibus. An non praescriptiones etiam, in  
 quibus maxime videtur manifesta tralatio, easdem omnes  
 species habent quas eae leges quibus agitur, ut aut de no-  
 mine aut scripto et sententia vel ratiocinatione quaeratur?  
 Deinde status ex quaestione oritur: tralatio non habet  
 quaestionem de qua contendit orator, sed propter quam  
 73 contendit. Hoc apertius: 'occidisti hominem': 'non occidi':  
 quaestio an occiderit, status coniectura. Non est tale 'ha-  
 beo ius actionis': 'non habes', ut sit quaestio an habeat, et  
 inde status. Accipiat enim actionem necne ad eventum

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<sup>74</sup> I.e. when the *formula* originally given by the praetor has, for some reason, not been followed in the subsequent proceedings.

<sup>75</sup> Persons who suffered deprivation of rights for disreputable conduct (*ignominia, infamia*) lost various civic capacities, such as that of appearing for others. This was regulated largely by the praetor's edict; criminal convictions, breach of trust, or engaging in a disreputable occupation (actors, gladiators) might disqualify (*Digest* 3.2: *OCD*<sup>3</sup> s.v. *infamia*). The concept is common in declamations, and Greek *atimia* roughly corresponds to it.

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litigant is said to have made a procedural error,<sup>74</sup> the Questions which arise are: "Could *he* bring the action? Against this man? Under this law? In this court? At this time?" and the like. But (1) Transference in respect of persons, times, legal actions, and so on depends on some particular cause; the Question therefore lies not in the Transference but in the circumstance which causes the Transference. "You ought not to demand the return of the deposit in the praetor's court, but in the consul's, because the sum is too large for the praetor's competence." The Question here is whether the sum *is* too large: so it is a dispute of fact. "You cannot bring an action against me, because you could not have represented the other party."<sup>75</sup> The point for decision is whether he could legally have done so. "You should not have proceeded by interdict, but by plea for possession."<sup>76</sup> The point in doubt is whether the interdict was correct. All these come under Legal Questions. Do not Demurrers also, in which Transference seems most evident, admit all the different species of argument available under the laws under which the action takes place—Name applicable to the alleged act, Letter and Spirit, Inference? (2) Secondly, the Issue arises out of the Question, and Transference involves no Question on which the orator is arguing, but only that on account of which he is arguing. To put it more plainly, take: "You killed the man," "I did not." The Question is whether he killed him, the Issue is Conjecture. Contrast "I have a right to an action," "You do not." Here the Question is whether he does have such a right, and the Issue depends on this. For whether he is allowed an action

<sup>76</sup> The interdict would involve an order for restitution, the other procedure, a plea of rightful possession.

- 74 pertinet, non ad causam, et ad id quod pronuntiat iudex, non id propter quod pronuntiat. Hoc illi simile est 'puniendus es': 'non sum': videbit iudex an puniendus sit, sed non hic erit quaestio nec hic status. Ubi ergo? 'Puniendus es, hominem occidisti': 'non occidi': an occiderit. 'Honorandus sum': 'non es' num statum habet? Non, ut puto. 'Honorandus sum quia tyrannum occidi': 'non occidisti': quaestio et status. Similiter 'non recte agis': 'recte ago' non habet statum. Ubi est ergo? 'Non recte agis ignominiosus.' Quaeritur an ignominiosus sit, aut an agere ignominioso liceat: quaestiones et status. Ergo tralativum genus causae, ut comparativum et mutuae accusationis.
- 75
- 76 At enim simile est illi 'habeo ius': 'non habes' <hoc><sup>10</sup> 'occidisti': 'recte occidi'. Non nego, sed nec haec res statum facit; non enim sunt hae propositiones (alioqui causa non explicabitur), sed cum suis rationibus. 'Scelus commisit Horatius, sororem enim occidit': 'non commisit, debuit enim occidere eam quae hostis morte maerebat': quaestio an haec iusta causa; ita qualitas. Ac similiter in tralatione: 'non habes ius abdicandi, quia ignominioso non est actio':
- 77

<sup>10</sup> *add. Gertz*

<sup>77</sup> Livy 1.26; Cicero, *De inventione* 2.78–79.

<sup>78</sup> Roman *abdicatio* and Greek *apokēryxis* were common elements in declamation themes; crises in father-son relationships seem to have been attractive subjects in the schools. See 5.10.107, 7.1.42, 7.4.11, 9.2.98; Bonner (1949) 109; *GD* 31.

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relates to the outcome, not to the Cause, and to the decision of the judge, not to the reason which makes him give the decision. Compare: "You deserve to be punished," "No, I don't." Here the judge will decide whether he deserves to be punished or not. There is no Question here, and no Issue. So where is it? "You deserve to be punished, for you killed a man"; "I did not kill him." The Question is whether he did kill him. Again: "I deserve to be honoured," "You do not." Is there an Issue here? In my opinion, no. "I deserve to be honoured because I killed the tyrant," "You didn't kill him." Here there is both a Question and an Issue. Likewise: "You are not right to bring this action," "I am" has no Issue. So where is the Issue? "You are not right to bring the action because you have been deprived of your rights." The Question now is whether he has been so deprived, or whether a person so deprived is capable of bringing an action. Here there are Questions and Issues. Thus there is a type of Cause which is "transfere[n]tial," as there is a "comparative" type and a type of "mutual accusation."

But (it may be said) "You killed him," "I did so justifiably" is just like "I have the right," "No, you don't." I do not deny this, but neither does this produce an Issue. For these are not Propositions (without which the Cause will not be able to be developed) unless their reasons are added. "Horatius<sup>77</sup> committed a crime, because he killed his sister." "He did not commit a crime, because it was his duty to kill a woman who was mourning for the death of an enemy." The Question here is whether the cause was just; so the Issue is Quality. Similarly in Transference: "You do not have the right to disown,<sup>78</sup> because a man deprived of citizen rights has no right of action"; "I do have the right to

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'habeo ius, quia abdicatio actio non est': quaeritur quid sit actio; finiemus. †Non licet abdicare syllogismo.†<sup>11</sup> Item cetera per omnes et rationales et legales status.

- 78 Nec ignoro fuisse quosdam qui translationem in rationali quoque genere ponerent hoc modo: 'hominem occidi ius-sus ab imperatore': 'dona templi cogenti tyranno dedi': 'deserui tempestatibus, fluminibus, valetudine impeditus',
- 79 id est, non per me stetit, sed per illud. A quibus etiam liberius dissentio; non enim actio transfertur, sed causa facti, quod accidit paene in omni defensione. Deinde is qui tali utitur patrocínio non recedit a forma qualitatis; dicit enim se culpa vacare, ut magis qualitatis duplex ratio facienda sit, altera qua et factum defenditur, altera qua tantum reus.
- 80 Credendum est igitur iis quorum auctoritatem secutus est Cicero, tria esse quae in omni disputatione quaerantur: an sit, quid sit, quale sit; quod ipsa nobis etiam natura praescribit; nam primum oportet subesse aliquid de quo ambigitur, quod quid sit et quale sit certe non potest aestimari nisi prius esse constiterit; ideoque ea prima quaestio.
- 81 Sed non statim, quod esse manifestum est, etiam quid

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<sup>11</sup> non . . . syllogismo (syllogismos B) *del. Winterbottom: suppl., e.g., non licet <ignominioso testamentum facere, itaque non licet> abdicare: syllogismos D.A.R.*

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<sup>79</sup> Unless this corrupt sentence is an interpolation, Q. must be trying to reduce a Transference case to one of Inference, as he has already reduced one to Definition: I therefore suggest (see text note) adding something to show that an inference may be made from other disabilities of the *infamis* (e.g. incapacity to make a will) to his inability to disown a child.

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disown, because this is not an action." The Question is, "What is an action?" We shall use Definition. "It is not lawful to disown": we argue by Inference.<sup>79</sup> And so on with the other Issues, both Logical and Legal.

I am aware that some people have included Transference among the Logical Issues also, in the following way: "I killed a man, under orders from the general"; "I gave temple gifts to the tyrant because he forced me";<sup>80</sup> "I deserted because I was prevented from rejoining the army by storms, floods, illness."<sup>81</sup> That is to say, it was not due to me, but to these circumstances. I disagree with this even more frankly. It is not the legal action which is "transferred," but the motive of the act performed, and this happens in almost every defence. And secondly, a speaker who uses this form of defence is not abandoning the principle of Quality; for as he says he is blameless, we have to think rather in terms of a double Quality, one by which the defence covers both the deed and the accused, and one by which it covers only the accused.

We must therefore accept the view of those whose authority Cicero follows, namely that there are three things which are subjects of enquiry in all disputes—Does it exist? What is it? What kind of thing is it?—for this is what nature herself imposes upon us. First, there must be something which is the subject of doubt; what it is and of what sort it is cannot be established unless its existence is first established, and that is why this is the first Question. But when it is clear that a thing exists, it is not immediately

<sup>80</sup> Compare Seneca, *Controversiae* 9.4.10.

<sup>81</sup> Compare 7.4.14; *Ad Herennium* 1.24.



82 sit apparet. Hoc quoque constituto novissima qualitas superest, neque his exploratis aliud est ultra. His infinitae quaestiones, his finitae continentur; horum aliqua in demonstrativa deliberativa iudiciali materia utique tractantur;<sup>12</sup> haec rursus iudicialis causas et rationali parte et legali continent: neque enim ulla iuris disceptatio nisi finitione qualitate coniectura potest explicari.

83 Sed instituentibus rudes non erit inutilis latius primo fusa ratio, et, si non statim rectissima linea tensa, facilior tamen et apertior via. Discant igitur ante omnia quadripartitam in omnibus causis esse rationem, quam primam intueri debeat qui acturus est. Nam ut a defensore potissimum incipiam, longe fortissima tuendi se ratio est si quod obicitur negari potest: proxima, si non id quod obicitur factum esse dicitur: tertia honestissima, qua recte factum defenditur. Quibus si deficiamus, ultima quidem, sed iam sola superest salus aliquo iuris adiutorio elabendi ex crimine quod neque negari neque defendi potest, ut non  
84 videatur iure actio intendi: hinc illae quaestiones sive actionis sive tralationis. Sunt enim quaedam non laudabilia natura, sed iure concessa, ut in duodecim tabulis debitoris corpus inter creditores dividi licuit, quam legem mos publicus repudiavit: et aliquid aecum sed prohibitum iure,  
85 ut libertas testamentorum. Accusatori nihilo plura intuen-

<sup>12</sup> *b*: tractatur AB

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<sup>82</sup> See LCL *Remains of Old Latin* vol. 3. 436-438: *tertiis nundinis partis secanto; si plus minusve secuerunt, se fraude esto*; "At the third *nundinae*, they shall cut the parts; if they cut too much or too little, it shall be held without wrong." Q. clearly regards this old law as allowing the debtor his "pound of flesh."

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obvious what it is. When this too has been decided, there remains the last point, Quality; and when all these have been gone into, there is nothing further. Both Indefinite and Definite Questions are covered by these points; and some at least of them are involved in Epideictic, Deliberative, and Forensic themes alike. The same points cover judicial Causes both on the Logical and on the Legal side, for no discussion of law can be developed except in terms of Definition, Quality, or Conjecture.

Teachers of beginners, however, will find it useful at first to employ the broader principle, and a method which, if not absolutely straightforward from the start, is at least easier and plainer. Let them therefore learn first of all that there are four possibilities which the intending speaker has to consider first in every case. For—to begin for preference with the defendant—by far the strongest method of defending oneself is, when possible, by denying the charge; second best is if it can be said that what was done is not what is alleged in the charge; the third, and most honourable, is by defending the act as justifiable. If all these fail us, the last (and now the only) hope of safety lies in escaping by some helpful device of law from a charge which can neither be denied nor defended, in such a way as to make it seem that the legal action is not justifiable. This is where those Questions of legal action or Transference arise. For there are some things allowed by law but not naturally praiseworthy (for example, in the Twelve Tables<sup>82</sup> it was lawful for creditors to divide their debtor's body up amongst themselves, a law which public moral sentiment rejected), and again some things which are equitable but prohibited by law, such as absolute discretion in testamen-

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da sunt, ut probet factum esse, hoc esse factum, non recte factum, iure se intendere. Ita circa species easdem lis omnis versabitur, tralatis tantum aliquando partibus, ut in causis quibus de praemio agitur recte factum petitor probat.

- 86 Haec quattuor velut proposita formaeque actionis, quae tum generales status vocabam, in duo, ut ostendi, genera discedunt, rationale et legale. Rationale simplicius est, quia ipsius tantum naturae contemplatione constat: itaque in eo satis est ostendisse coniecturam finitionem
- 87 qualitatem. Legalium plures sint species necesse est, propterea quod multae sunt leges et varias habent formas. Alia est cuius verbis nitimur, alia cuius voluntate: alias nobis, cum ipsi nullam habeamus, adiungimus, alias inter se
- 88 comparamus, alias in diversum interpretamur. Sic nascuntur haec velut simulacra ex illis tribus, interim simplicia, interim et mixta, propriam tamen faciem ostendentia, ut scripti et voluntatis, quae sine dubio aut qualitate aut coniectura continentur, et *συλλογισμός*, qui est maxime qualitatis, et leges contrariae, quae isdem quibus scriptum et voluntas constant, et *ἀμφιβολία*, quae semper coniec-
- 89 tura explicatur. Finitio quoque utrique generi, quodque rerum quodque scripti contemplatione constat, communis est. Haec omnia, etiamsi in illos tres status veniunt, tamen, quia, ut dixi, habent aliquid velut proprium, videntur de-

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<sup>83</sup> Discretion was limited for various classes of people by various enactments; close relatives could challenge a will which did not benefit them as *testamentum inofficiosum*, and the Lex Falcidia required at least a third of the estate to be left to the actual heir (Crook (1967) 118–132).

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tary dispositions.<sup>83</sup> The accuser too has just the same number of things to consider; he has to prove that the deed was done, that it is what he alleges, that it was not justifiable, and that he has a right to prosecute. Thus every case will turn on the same elements, though the two sides will sometimes be reversed; in cases involving rewards, for example, it is the petitioner who has to prove that the act was rightly done.

These four schemes or forms of action, as it were, which I then called General Issues, fall, as I have shown, into two main classes, the Logical and the Legal. The Logical is the simpler, as it involves merely observation of nature herself. Here therefore it is enough to point to Conjecture, Definition, and Quality. Of Legal Issues there are inevitably more varieties, because there are many laws and they have various forms. We rely on the letter of one, on the intention of another; others we harness to our cause, though we have no law really on our side; sometimes we compare one law with another, sometimes we give different interpretations. So from those three basic Issues there arise these shadows of them, as it were, sometimes simple, sometimes complex, but with their own peculiar features. Such are Letter and Spirit, which is unquestionably based either on Quality or on Conjecture; Inference, which generally depends on Quality; Conflict of Laws, which has the same structure as Letter and Spirit; and *amphibolia* (Ambiguity), which is always a matter of Conjecture. Definition also belongs to both classes—the class concerned with the consideration of facts and that concerned with that of written law. All these variations, even if they fall under the three basic Issues, have (as I have said) some peculiarities of their own, and should therefore be ex-

monstranda discentibus, et permittendum ea dicere vel status legales vel quaestiones vel capita quaedam minora, dum sciant nihil ne in his quidem praeter tria quae praediximus quaeri. At quantum et quam multum et ad aliquid et, ut nonnulli putarunt, comparativus non eandem rationem habent: sunt enim haec non ad varietatem iuris, sed ad solam rationem referenda. Ideoque semper in parte aut coniecturae aut qualitatis ponenda sunt, ut 'qua mente?' et 'quo tempore?' et 'quo loco?' Sed de singulis dicemus quaestionibus cum tractare praecepta divisionis coeperimus.

Hoc inter omnes convenit, in causis simplicibus singulos status esse causarum, quaestionum autem, quae velut subiacent his et ad illud quo iudicium continetur referuntur, saepe in unam cadere plures posse; (etiam credo aliquando dubitari quo statu sit utendum cum adversus unam intentionem plura opponuntur, et sicut in colore dicitur narrationis eum esse optimum quem actor optime tueatur, ita hic quoque posse dici eum statum esse faciendum in quo tuendo plurimum adhibere virium possit orator; ideoque pro Milone aliud Ciceroni agenti placuit, aliud Bruto cum exercitationis gratia componeret orationem, cum ille iure tamquam insidiatorem occisum et tamen non Milonis consilio dixerit, ille etiam gloriatus sit

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<sup>84</sup> In Book Seven.

<sup>85</sup> I.e. the gloss, slant, or "spin" put on a Narrative to make it sound good for our case.

<sup>86</sup> See 10.1.23; Asconius, *In Milonianam* p. 41 Clark; *ORF* p. 464.

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plained to learners, who may be allowed to call them Legal Issues or Questions or Minor Headings, so long as they realize that there is no Question raised in any of them apart from the three I have mentioned. With Quantity, Number, Relation, and (as some have thought) Comparison, the situation is different; they relate not to the variety of the law but exclusively to reason. They should therefore always be regarded as coming under Conjecture or Quality, for example when we ask questions about intention or time or place. However, I shall be discussing individual Questions when I come to the rules of Division.<sup>84</sup>

### *Causes with more than one issue*

It is universally agreed (1) that in simple Causes the Cause has a single Issue, but as regards the Questions which underlie this, and which relate to the point requiring decision, there may often be a number of Issues in any one Question. (I believe also that there is sometimes a doubt as to which Issue should be used, when a number of objections are made to a single charge. As we say about the Colour<sup>85</sup> of a Narrative, that the best one is the one the speaker can maintain best, so here, one can say that the best Issue to adopt is the one in developing which the orator can deploy his greatest powers. This is why Cicero chose one way of defending Milo, and Brutus, when he composed his speech as an exercise,<sup>86</sup> another. Cicero said that Clodius was justifiably killed as an ambusher, but not by Milo's design; whereas Brutus positively boasted of the killing of a bad citizen.) It is also agreed (2) that, in com-

94 occiso malo cive): in coniunctis vero posse duos et tris  
 inveniri, vel diversos, ut si quis aliud se non fecisse, aliud  
 recte fecisse defendat, vel generis eiusdem, ut si quis duo  
 95 crimina vel plura<sup>13</sup> neget. Quod accidit etiam si de una re  
 quaeratur aliqua, sed eam plures petant, vel eodem iure, ut  
 proximitatis, vel diverso, ut cum hic testamento, ille proxi-  
 mitate nitetur.

Quotiens autem aliud alii petitori opponitur, dissimilis  
 96 esse status necesse est, ut in illa controversia: 'Testamenta  
 legibus facta rata sint: intestatorum parentium liberi here-  
 des sint: abdicatus ne quid de bonis patris capiat: nothus  
 ante legitimum natus legitimus filius sit, post legitimum  
 natus tantum civis: in adoptionem dare liceat: in adoptio-  
 nem dato redire in familiam liceat si pater naturalis sine  
 97 liberis decesserit. Qui ex duobus legitimis alterum in  
 adoptionem dederat, alterum abdicaverat, sustulit no-  
 thum: instituto herede abdicato decessit. Tres omnes de  
 bonis contendunt.' (Nothum qui non sit legitimus Graeci  
 vocant, Latinum rei nomen, ut Cato quoque in oratione  
 quadam testatus est, non habemus, ideoque utimur pere-  
 grino; sed ad propositum.)

<sup>13</sup> *Shackleton Bailey*: omnia B: vel omnia om. A

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<sup>87</sup> To specify six "laws" in setting the problem produces a quite exceptional degree of complexity; the *controversia* (not attested elsewhere) is a *tour de force*.

<sup>88</sup> *Spurius* in this sense is first found after Q., in Apuleius and the jurist Gaius; but *Spurius* is also an ancient praenomen. See *ORF* p. 95.

plex Causes, two or three Issues may be found—either of different types, as when a man denies having performed one action and claims that another was justifiable, or of the same type, as when a man denies two or more distinct charges. This happens also if there is a question about a single property which is nevertheless claimed by several people, either by the same right (nearness of kin, for example), or by different rights (for example, one relying on the will, the other on being next of kin).

*The three sons and their inheritance*

Whenever different objections are made to different claimants, there must be different Issues. Consider the following *controversia*. “(a) Wills legally made shall be valid. (b) When the parents are intestate, the children shall be the heirs. (c) A disowned son shall not receive any of his father’s property. (d) A bastard (*nothus*) born before a legitimate son shall be treated as legitimate; a bastard born after a legitimate son shall only have rights as a citizen. (e) It shall be lawful to give a son in adoption. (f) It shall be lawful for a son so adopted to return to the family if his natural father dies childless.<sup>87</sup> A father who had given one of his two legitimate children in adoption, and had disowned the other, brought up a bastard son. After making his disowned son his heir, he died. All three sons lay claim to the property.” (*Nothus* is the Greek word for a child who is not legitimate; as Cato testifies in one of his speeches, we have no Latin word for this, and therefore use the foreign word.<sup>88</sup> But let us return to the point.)

The son who was named heir by the will is barred by the



98 Heredi scripto opponitur lex: 'abdicatus ne quid de bonis patris capiat'; fit status scripti et voluntatis, an ullo modo capere possit, an ex voluntate patris, an heres scriptus. Notho duplex fit quaestio, quod post legitimos natus sit et quod non sit ante legitimum natus. Prior *συλλογισμόν* habet, an pro non natis sint habendi qui a familia sunt alienati; altera scripti et voluntatis: non esse enim hunc natum ante legitimum convenit, sed voluntate legis se tuebitur, quam dicet talem fuisse ut legitimus esset nothus tum

99 natus cum alius legitimus in domo non esset. Scriptum quoque legis excludet, dicens non utique si postea legitimus natus non sit notho nocere, uteturque hoc argumento: 'Finge solum natum nothum, cuius condicionis erit? Tantum civis? Atqui non erit post legitimum natus. An filius? Atqui non erit ante legitimum natus. Quare si verbis legis

100 stari non potest, voluntate standum est.' Nec quemquam turbet quod ex una lege duo status fiant: duplex est, ita vim duarum habet.

Redire in familiam volenti dicitur ab altero primum: 'ut tibi redire liceat, heres sum.' Idem status qui in petitione abdicati: quaeretur enim an possit esse heres abdicatus.

102 Adicitur communiter a duobus: 'redire tibi in familiam non licet; non enim pater sine liberis decessit.' Sed in hoc pro-

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law "A disowned son shall not receive any of his father's property." The Issue is Letter and Spirit: can he receive it under any circumstances? Because of his father's wish? Because he was made heir in the will? The bastard has a double problem, because he was born after the legitimate sons, and was not born before any legitimate son. The first problem involves Inference: are persons alienated from the family to be regarded as not having been born? The second is Letter and Spirit. It is agreed that he was not born before any legitimate son, but he will defend himself by the Spirit of the Law, which he will say implies that a bastard born when there was no other legitimate son in the house should be regarded as legitimate. He will also reject the letter of the law by saying that it does not in any case damage the bastard if no legitimate son is subsequently born. He will argue as follows: "Suppose the bastard is the only son born, what is his status to be? Only that of a citizen? But he will not have been born after a legitimate son. That of a son? But he will not have been born before any legitimate children. So if we cannot stand by the letter of the law, we must stand by its spirit." It need disturb no one that there should be two Issues arising out of one law; the law has two clauses, so it has the effect of two laws.

To the son who wishes to return to the family, the disowned son says first: "Even if it is lawful for you to return, I am still the heir." The Issue is the same as in the claim made by the disowned son: the Question will be whether a disowned child can be heir. The other two will make the same objection: "You are not entitled to return to the family, because our father did not die childless." But in this each will rely on a Question peculiar to himself. (1) The

pria quisque eorum quaestione nitetur. Alter enim dicit abdicatum quoque inter liberos esse, et argumentum ducet ex ipsa qua repellitur lege; supervacuum enim fuisse prohiberi patris bonis abdicatum si esset numero alienorum: nunc, quia filii iure futurus fuerit intestati heres, oppositam esse legem, quae tamen non id efficiat ne filius sit, sed ne heres sit. Status finitivus: quid sit filius. Rursus nothus eisdem colligit argumentis non sine liberis patrem decessisse quibus in petitione usus est ut probaret esse se filium, nisi forte et hic finitionem movet: an liberi sint etiam non legitimi.

103 Cadent ergo in unam controversiam vel specialiter duo legitimi status, scripti et voluntatis et syllogismos, et praeterea finitio, vel tres illi qui natura soli sunt, coniectura in scripto et voluntate, qualitas in syllogismo et, quae per se est aperta, finitio.

104 Causa quoque et iudicatio et continens est in omni genere causarum. Nihil enim dicitur cui non insit ratio et quo iudicium referatur et quod rem maxime contineat. Sed quia magis haec variantur in litibus et fere tradita sunt ab iis qui de iudicialibus causis aliqua composuerunt, in illam partem differantur. Nunc, quia in tria genera causas divisi, ordinem sequar.

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one will say that a disowned son also counts as a child, and will draw an argument from the law which opposes his own claim; it was unnecessary (he will say) for a disowned son to be debarred from his father's property if he was reckoned as one outside the family; but now, as he would have been the heir of his intestate father in virtue of his rights as a son, the law is quoted against him, though it does not stop him from being a son, but only from being the heir. The Issue is Definition: What is a son? (2) The bastard in turn infers that his father did not die childless, with the same arguments that he used in his claim to prove that he was a son, unless he too turns to Definition: are non-legitimate children children?

Thus, in this one *controversia*, we shall have *either* two special Legal Issues (Letter and Spirit, and Inference) together with Definition *or* the only three which have a basis in nature, namely Conjecture (in Letter and Spirit), Quality (in Inference), and (obviously) Definition.

In every type of Cause there is a Motive, a Point to Decide, and a Core. Nothing can be said in which there is not some reason, something to which judgement is directed, and something which contains the essence of the matter. But as these vary more in actual court cases and are usually taught by writers on Judicial Causes, they may be postponed to that part of my work. For the moment, having divided Causes into their three classes, I shall take these in order.

- 1 Ac potissimum incipiam ab ea quae constat laude ac vituperatione. Quod genus videtur Aristoteles atque eum secutus Theophrastus a parte negotiali, hoc est *πραγματικῆ*, removisse totamque ad solos auditores relegasse; et id eius nominis quod ab ostentatione ducitur proprium
- 2 est. Sed mos Romanus etiam negotiis hoc munus inseruit. Nam et funebres laudationes pendent frequenter ex aliquo publico officio atque ex senatus consulto magistratibus saepe mandantur, et laudare testem vel contra pertinet ad momentum iudiciorum, et ipsis etiam reis dare laudatores licet, et editi in competitores, in L. Pisonem, in Clodium et Curionem libri vituperationem continent et tamen in
- 3 senatu loco sunt habiti sententiae. Neque infitias eo quasdam esse ex hoc genere materias ad solam compositas ostentationem, ut laudes deorum virorumque quos priora tempora tulerunt. Quo solvitur quaestio supra tractata manifestumque est errare eos qui numquam oratorem dic-
- 4 turum nisi de re dubia putaverunt. An laudes Capitolini Iovis, perpetua sacri certaminis materia, vel dubiae sunt vel non oratorio genere tractantur?

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<sup>1</sup> Aristotle, *Rhetoric* 1. 1358b2; Theophrastus fr. 671 Fortenbaugh.    <sup>2</sup> I.e. *demonstrativum*, ἐπιδεικτικόν.

<sup>3</sup> Thus Tacitus delivered a eulogy on Verginius Rufus in 97 (Pliny, *Epistulae* 2.1.6).

<sup>4</sup> *In Pisonem* is extant (ed. R. G. M. Nisbet, 1961); for fragments of *In toga candida* and the speeches against Clodius and Curio see Schoell (1917) 425–433, 439–451, and Crawford (1994) 159–200, 227–264. Q. quotes from all of these except *In toga candida*.    <sup>5</sup> 3.5.3.

<sup>6</sup> With particular reference to the *agōn Capitolinus* instituted

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### CHAPTER 7

#### *The oratory of praise and blame; Epideictic*

I shall begin for preference with the Cause which consists of Praise and Blame. Aristotle and, following him, Theophrastus<sup>1</sup> seem to have separated this class completely from the practical—that is the “pragmatic”—type, and made the audience the sole consideration in the whole affair; this indeed is in keeping with its name,<sup>2</sup> which is derived from the notion of display. Roman custom, on the other hand, has found a place for this function in practical business. Funeral laudations are frequently attached to some public office and are often entrusted to magistrates by order of the Senate;<sup>3</sup> to praise or discredit a witness is important in court; it is a permitted practice to let defendants have people to praise their character; and finally, the published speeches against Cicero’s fellow candidates, against Lucius Piso, and against Clodius and Curio, contain invective, and yet were spoken as formal voting statements in the Senate.<sup>4</sup> I do not deny that some themes of this kind are composed solely for display, for example panegyrics of the gods and great men of past ages. This solves a problem raised above,<sup>5</sup> and makes it clear that those who held that an orator would never speak except on matters which were in doubt were quite wrong. Must the praise of Jupiter Capitolinus, the invariable theme of the sacred contest, involve doubt, or else not be an oratorical subject at all?<sup>6</sup>

by Domitian in 86, which included competitions in sport, music, and Greek and Latin oratory and poetry, and was held every four years. See also 2.8.7.

## QUINTILIAN

Ut desiderat autem laus quae negotiis adhibetur probationem, sic etiam illa quae ostentationi componitur habet  
5 interim aliquam speciem probationis, ut qui Romulum Martis filium educatumque a lupa dicat in argumentum caelestis ortus utatur his, quod abiectus in profluentem non potuerit extinguere, quod omnia sic egerit ut genitum praeside bellorum deo incredibile non esset, quod ipsum  
6 quoque caelo receptum temporis eius homines non dubitaverint. Quaedam vero etiam in defensionis speciem cadent, ut si in laude Herculis permutatum cum regina Lydiae habitum et imperata, ut traditur, pensa orator excuset. Sed proprium laudis est res amplificare et ornare.

Quae materia praecipue quidem in deos et homines cadit, est tamen et aliorum animalium, et etiam carentium  
7 anima. Verum in deis generaliter primum maiestatem ipsius eorum naturae venerabimur, deinde proprie vim cuiusque et inventa quae utile aliquid hominibus attulerint. Vis ostenditur,<sup>1</sup> ut in Iove regendorum omnium, in Marte belli, in Neptuno maris: inventa, ut artium in Minerva, Mercurio litterarum, medicinae Apolline, Cerere

<sup>1</sup> ostenditur B

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<sup>7</sup> See 2.4.19.      <sup>8</sup> For the story of Hercules and Omphale see, e.g., Ovid, *Fasti* 2.318ff., Seneca, *Hercules Furens* 465ff.

<sup>9</sup> Aristotle, *Rhetoric* 1. 1368a26, Cicero, *Partitiones oratoriae* 71.

<sup>10</sup> Apart from the rules given by Menander Rhetor (3. 333–345 Spengel) and Alexander Numenius (3. 4–6 Spengel), the best illustrations of this are Aelius Aristides' prose hymns (background in J. Amann, *Die Zeusrede des Aelios Aristides* (1931) 1–13; see also Russell (1990) 199–219). Encomia of the gods are in fact

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However, just as Encomium employed on practical occasions needs proofs, so even the kind which is composed for display sometimes contains some semblance of proof. A speaker who tells how Romulus was the son of Mars and was reared by the she-wolf<sup>7</sup> might offer as proofs of his divine origin (1) that, when thrown into the running river, he could not drown; (2) that his actions were all such as to make it credible that he was the son of the god of war; and (3) that his contemporaries had no doubt that he was himself in person taken up to heaven. Some arguments will even come into the sphere of defence; for example, if the orator, in praising Hercules, excuses him for having changed clothes with the Queen of Lydia and (as the story goes) spun the wool that she ordered him to spin.<sup>8</sup> But the proper function of Encomium is to amplify and to embellish.<sup>9</sup>

### *Praise of gods*

The material is of course mainly to do with gods and men, but it can also be other animals and even inanimate objects. With gods, in general, the first thing will be to show veneration of the majesty of their nature; next, to expound the power of each and discoveries of his which have benefited humanity.<sup>10</sup> "Power" will be displayed: for example, in Jupiter, the power of universal rule; in Mars, the power of war; and in Neptune, control of the sea. Inventions will be shown too: the arts for Minerva, letters for Mercury, medicine for Apollo, crops for Ceres, wine

"hymns," and the themes of the poetical tradition are naturally reproduced in prose Epideictic.



frugum, Libero vini. Tum si qua ab iis acta vetustas tradidit, commemoranda. Addunt etiam dis honorem parentes, ut si quis sit filius Iovis, addit antiquitas, ut iis qui sunt ex Chao, progenies quoque, ut Apollo ac Diana Latonae.

9 Laudandum in quibusdam quod geniti immortales, quibusdam quod immortalitatem virtute sint consecuti: quod pietas principis nostri praesentium quoque temporum decus fecit.

10 Magis est varia laus hominum. Nam primum dividitur in tempora, quodque ante eos fuit quoque ipsi vixerunt, in iis autem qui fato sunt functi etiam quod est insecutum. Ante hominem patria ac parentes maioresque erunt, quorum duplex tractatus est: aut enim respondisse nobilitati  
 11 pulchrum erit aut humiliter genus inlustrasse factis. Illa quoque interim ex eo quod ante ipsum fuit tempore trahentur quae responsis vel auguriis futuram claritatem promiserint, ut eum qui ex Thetide natus esset maiorem patre  
 12 suo futurum cecinisse dicuntur oracula. Ipsius vero laus hominis ex animo et corpore et extra positae peti debet. Et corporis quidem fortuitorumque cum levior, tum non uno modo tractanda est. Nam et pulchritudinem interim roburque prosequimur honore verborum, ut Homerus in Agamemnone atque Achille, interim confert admirationi multum etiam infirmitas, ut cum idem Tydea parvum sed

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<sup>11</sup> For Q.'s praises of Domitian, see 4 *prooem.* 2–5, 10.1.91–92.

<sup>12</sup> A prophecy attributed to Prometheus (Aeschylus, *Prometheus Vinc-tus* 908ff.), Themis (Apollonius Rhodius 4.800), or Proteus (Ovid, *Metamorphoses* 11.217ff.): when Zeus heard it, he passed Thetis over to a mortal husband, Peleus, by whom she had Achilles.

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for Bacchus. Next we must mention any exploits of theirs known to history. Even gods derive honour from parents—a son of Jupiter for example—and from age—for example, those descended from Chaos—and also from their offspring: Apollo and Diana do credit to Latona. Some should be praised because they were born immortal, others because they earned immortality by virtue, a theme which the piety of our emperor has made the glory of the present age too.<sup>11</sup>

### *Praise of men*

Praise of men is more varied. First, there is a chronological division, into times before they were born, their own lifetimes, and (with those who have already passed away) the time after their death. (1) Before the man's life will come country, parents, and ancestors. These may be handled in two ways: there will be credit either in living up to noble birth or in lending distinction to a humble origin by achievement. Other topics which will sometimes be taken from the time before birth are prophecies or omens promising future fame, such as the oracles which are said to have foretold that the child born of Thetis would be greater than his father.<sup>12</sup> (2) The praise of the man himself must be based on mind, body, and external circumstances. Praise of the body and of accidental circumstances is comparatively trivial, but needs to be handled in a variety of ways. Sometimes we lavish verbal honours on beauty and physical strength, as Homer does for Agamemnon and Achilles; sometimes even weakness can contribute largely to admiration, as when Homer says that Tydeus was "a

- 13 bellatorem dicit fuisse. Fortuna vero tum dignitatem adfert, ut in regibus principibusque (namque est haec materia ostendendae virtutis uberior), tum quo minores opes fuerunt, maiorem benefactis gloriam parit. Sed omnia quae extra nos bona sunt quaeque hominibus forte optigerunt non ideo laudantur quod habuerit quis ea, sed quod
- 14 iis honeste sit usus. Nam divitiae et potentia et gratia, cum plurimum virium dent in utramque partem, certissimum faciunt morum experimentum: aut enim meliores propter
- 15 haec aut peiores sumus. Animi semper vera laus, sed non una per hoc opus via ducitur. Namque alias aetatis gradus gestarumque rerum ordinem sequi speciosius fuit, ut in primis annis laudaretur indoles, tum disciplinae, post hoc operum (id est factorum dictorumque) contextus, alias in species virtutum dividere laudem, fortitudinis iustitiae continentiae ceterarumque, ac singulis adsignare quae secundum quamque earum gesta erunt. Utra sit autem harum via utilior cum materia deliberabimus, dum sciamus gratiora esse audientibus quae solus quis aut primus aut certe cum paucis fecisse dicetur, si quid praeterea supra spem aut expectationem, praecipue quod aliena potius
- 17 causa quam sua. Tempus quod finem hominis insequitur non semper tractare contingit: non solum quod viventes aliquando laudamus, sed quod rara haec occasio est, ut re-

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<sup>13</sup> *Iliad* 5.801.

<sup>14</sup> This scheme is used already in Agathon's encomium of Eros in Plato's *Symposium* 194E-197E. See Menander Rhetor 3. 373-376 Spengel; Pernot (1993) 165-176.

<sup>15</sup> See, e.g., Aristotle, *Rhetoric* 1. 1368a10, Cicero, *De oratore* 2.346-347, Theon 2.110, 15 Spengel.

<sup>16</sup> Q. seems to be thinking primarily of encomia practised in

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little man, but a fighter.”<sup>13</sup> Fortune too sometimes confers dignity, as with kings and princes (for they have a richer soil to display their virtue), but sometimes also lets the slightness of a man’s resources enhance the glory of his good deeds. All external goods, and all things that come to men by chance, are praised not because a man has them, but because he has made honourable use of them. Wealth, power, and influence, because they give such strength for good or ill, are the surest test of character: for we are either better or worse because of them. Praise of the mind is always real praise, but there is more than one way of handling it. In some cases, the more attractive course has proved to be to follow the successive stages of a man’s life and the order of his actions; thus under his first years would come praise of his natural abilities, then of his education, then of the whole series of his works, that is to say his deeds and sayings. In other cases, it has seemed better to split up the encomium into the various virtues—courage, justice, self-control and so on—and assign to each the acts performed in accordance with each.<sup>14</sup> Which is the better way of the two is a matter for consideration in the light of the subject, always bearing in mind that what is particularly agreeable to an audience is anything that a man can be said to have been the first, or among the very few, to have done; anything that exceeds hope or expectation; and especially anything done for altruistic motives.<sup>15</sup> (3) The time subsequent to our subject’s death is not always a possible topic, not only because we sometimes praise the living,<sup>16</sup> but because it is a rare circumstance if

the schools, where the subjects would most often be historical characters.

- ferri possint divini honores et decreta et publice statuæ  
 18 constitutæ. Inter quæ numeraverim ingeniorum monu-  
 menta quæ sæculis probarentur; nam quidam sicut Me-  
 nander iustiora posteriorum quam suæ ætatis iudicia  
 sunt consecuti. Adferunt laudem liberi parentibus, urbes  
 conditoribus, leges latoribus, artes inventoribus, nec non  
 instituta quoque auctoribus, ut a Numa traditum deos  
 colere, a Publicola fasces populo summittere.
- 19 Qui omnis etiam in vituperatione ordo constabit, tan-  
 tum in diversum. Nam et turpitudine generis opprobrio  
 multis fuit et quosdam claritas ipsa notiores circa vitia et  
 invisos magis fecit, et in quibusdam, ut in Paride traditur,  
 est prædicta perniciēs, et corporis ac fortunæ quibusdam  
 mala contemptum, sicut Thersitæ atque Iro,<sup>2</sup> quibusdam  
 bona vitii corrupta odium attulerunt, ut Nirea inbellem,  
 20 Plisthenen inpudicum a poetis accepimus, et animi toti-  
 dem vitia quot virtutes sunt, nec minus quam in laudibus  
 duplici ratione tractantur; et post mortem adiecta quibus-  
 dam ignominia est, ut Maelio, cuius domus solo æquata,  
 Marcoque Manlio, cuius prænomen e familia in posterum

<sup>2</sup> atque Iro *Obrecht*: at vero B: *acquisiere a*

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<sup>17</sup> Contemporaries preferred Philemon: 10.1.72, Apuleius, *Florida* 16.

<sup>18</sup> See, e.g., Livy 2.7.7, Plutarch, *Publicola* 5.

<sup>19</sup> His mother Hecuba, when pregnant with him, dreamed that she was giving birth to a burning torch with serpents emerging from it; the dream-interpreters advised that the child should be killed. Hyginus, *Fabulae* 91; Vergil, *Aeneid* 7.320.

<sup>20</sup> *Iliad* 2.212ff.      <sup>21</sup> *Odyssey* 18.1–107.

<sup>22</sup> Second only to Achilles in beauty, *Iliad* 2.671ff.

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we can report divine honours, decrees, and statues erected at public expense. Among such themes, I would reckon monuments of genius approved by later ages. For some, like Menander, have had a fairer deal from posterity than from their own age.<sup>17</sup> Children bring fame to their parents, cities to their founders, laws to their proposers, arts to their inventors, and institutions to those who initiated them; for example, from Numa came our tradition of worshipping the gods, and from Publicola the practice of lowering the *fascēs* before the people.<sup>18</sup>

### *Invective*

This whole scheme will hold also for invective, but in reverse. Lowness of origin has been a reproach to many, while noble birth has itself made some more notorious for their vices and more hated. With some, as we are told of Paris, there have been predictions of ruin.<sup>19</sup> Defects of person or fortune have brought contempt upon some, such as Thersites<sup>20</sup> and Irus;<sup>21</sup> while advantages ruined by vice have made others hated, like the cowardly Nireus<sup>22</sup> or the debauched Plisthenes<sup>23</sup> of whom the poets tell. The mind has as many vices as it has virtues, and (just as in praise) there are two ways of handling these. After death too some have been reduced to ignominy, like Maelius, whose house was levelled with the ground, and Marcus Manlius, whose

<sup>23</sup> Son of Pelops, Atreus, or Thyestes, according to various traditions; father of Agamemnon and Menelaus in some versions of the legend, and said to have died young. See Fraenkel on Aeschylus, *Agamemnon* 740. Q.'s reference to his *impudicitia* seems to be unique.

- 21 exemptum est. Et parentes malorum odimus. Et est conditoribus urbium infame contraxisse aliquam perniciosam ceteris gentem, qualis est primus Iudaicae superstitionis auctor. Et Gracchorum leges invisae, et si quod est exemplum deforme posteris traditum, quale libidinis vir Perses
- 22 in muliere Samia instituere ausus dicitur primus. Sed in viventibus quoque iudicia hominum velut argumenta sunt morum, et honos aut ignominia veram esse laudem vel vituperationem probat.
- 23 Interesse tamen Aristoteles putat ubi quidque laudetur aut vituperetur. Nam plurimum refert qui sint audientium mores, quae publice recepta persuasio, ut illa maxime quae probant esse in eo qui laudabitur credant, aut in eo contra quem dicemus ea quae oderunt; ita non dubium
- 24 erit iudicium quod orationem praecesserit. Ipsorum etiam permiscenda laus semper (nam id benivolos facit), quotiens autem fieri poterit cum materiae utilitate iungenda. Minus Lacedaemone studia litterarum quam Athenis honoris merebuntur, plus patientia ac fortitudo. Rapto vivere quibusdam honestum, aliis cura legum. Frugalitas apud Sybaritas forsitan odio foret, veteribus Romanis summum
- 25 luxuria crimen. Eadem in singulis differentia. Maxime favet iudex qui sibi dicentem adsentari putat. Idem praecipit

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<sup>24</sup> Two stock examples, also given in 5.9.13. Spurius Maelius was killed, as aspiring to tyranny, by Ahala in 439 BC (Livy 4.12–16); Marcus Manlius was put to death for similar reasons in 385 or 384 (Livy 6.20).

<sup>25</sup> Moses: compare Tacitus, *Historiae* 5.2.

<sup>26</sup> We do not know what sexual practice is meant.

<sup>27</sup> *Rhetoric* 1. 1367b7, 3. 1415b28.

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*praenomen* was never used in his family thereafter.<sup>24</sup> We also hate the parents of evil men, and it is a disgrace to founders of cities to gather together a race pernicious to everybody else, as did the originator of the Jewish superstition.<sup>25</sup> The laws of the Gracchi are an object of hatred. So is any abominable precedent passed on to posterity, like the form of lust which the Persian man is supposed to have been the first to dare to practise on the woman of Samos.<sup>26</sup> In the living too, the judgement of men is a test of character, and honour and ignominy confirm the truth of the Encomium or the Invective.

### *Importance of the audience*

Aristotle however thinks that the place where praise or blame is given makes a difference.<sup>27</sup> For much depends on the character of the audience and the generally prevailing opinion, if people are to believe that characteristics of which they especially approve are present in the person to be praised, and those which they hate in the person to be denounced. In this way, there will be no doubt about their judgement, because it will have preceded the speech. One should also always put in some praise of the audience itself, for this makes them well disposed; and whenever possible, this should be combined with serving the interests of the case. Literary learning will earn less honour at Sparta than at Athens, endurance and courage more. Among some peoples, it is honourable to live by plunder, in others to respect the laws. Frugality might seem repulsive to the Sybarites, luxury the worst crime in the eyes of the Romans of old. Similar differences occur between individuals. A judge who thinks the speaker agrees with him is most



illud quoque, quod mox Cornelius Celsus prope supra modum invasit, quia sit quaedam virtutibus ac vitiis vicinitas, utendum proxima derivatione verborum, ut pro temerario fortem, prodigo liberalem, avaro parcum vocemus: quae eadem etiam contra valent. Quod quidem orator, id est vir bonus, numquam faciet, nisi forte communi utilitate ducetur.

26 Laudantur autem urbes similiter atque homines. Nam pro parente est conditor, et multum auctoritatis adfert vetustas, ut iis qui terra dicuntur orti, et virtutes ac vitia circa res gestas eadem quae in singulis: illa propria quae ex loci positione ac munitione sunt. Cives illis ut hominibus liberi sunt decori.

27 Est laus et operum, in quibus honor utilitas pulchritudo auctor spectari solet: honor ut in templis, utilitas ut in muris, pulchritudo vel auctor utriusque. Est et locorum, qualis Siciliae apud Ciceronem: in quibus similiter speciem et utilitatem intuemur, speciem maritimis planis amoenis, utilitatem salubribus fertilibus.

28 Erit et dictorum honestorum factorumque laus generalis, erit et rerum omnis modi. Nam et somni et mortis scriptae laudes et quorundam a medicis ciborum.

<sup>28</sup> Ibid. 1. 1367a32.      <sup>29</sup> Fr. 7 Marx.      <sup>30</sup> See 2.12.4.

<sup>31</sup> See Menander Rhetor 346–365 Spengel; Pernot (1993) 178–215.      <sup>32</sup> “Born of the earth,” as the Athenians were supposed to be: see e.g. Thucydides 1.2.5, Aristophanes, *Wasps* 1076, Euripides, *Ion* 589–590, Menander Rhetor 354 Spengel.

<sup>33</sup> *In Verrem* 2.2ff.; see also *Orator* 210.

<sup>34</sup> For such paradoxical Encomia, see Isocrates, *Helen* 12, Menander Rhetor 332, 26 and 346, 18 Spengel; Cicero, *Tusculanae Disputationes* 1.116; Pliny, *Nat. Hist.* 20.91 (cabbage). In

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likely to be favourable. Aristotle<sup>28</sup> makes another point, which Cornelius Celsus<sup>29</sup> later stressed almost too much, namely that, as virtues and vices are, in a way, next door to each other, we should be prepared to replace words by their nearest neighbours, calling a foolhardy man brave, a prodigal generous, a miser thrifty.<sup>30</sup> The procedure also works the other way. It is true that the real orator, the good man, will never do this, unless led into it by the public interest.

### *Praise of cities, public works, places, etc.*

Cities are praised on similar lines to men.<sup>31</sup> The founder stands for the father, age gives authority (as with peoples said to be autochthonous),<sup>32</sup> and the virtues and vices seen in actions are the same as with individuals, the only special features being those which come from the site and the fortifications. Citizens are a credit to cities as children are to parents.

Public works also can be praised; here magnificence, use, beauty, and the builder are usually considered; magnificence, for example, in temples, use in walls, beauty or the builder in both. There are also Encomia of places, like that of Sicily in Cicero,<sup>33</sup> in which we have an eye both to beauty and to use: beauty in the coasts, in level plains and pleasant scenery; use in healthy or fertile localities.

There can also be general praise of noble sayings and deeds, and indeed of all sorts of things. Encomia of Sleep and Death have been written, and by physicians of some kinds of food.<sup>34</sup>

general, see A. S. Pease, "Things without Honour," *CP* 21 (1926) 27–42; Pernot (1993) 525–546.

Itaque, ut non consensi hoc laudativum genus circa solam versari honesti quaestionem, sic qualitate maxime contineri puto, quamquam tres status omnes cadere in hoc opus possint, iisque usum C. Caesarem in vituperando Catone notaverit Cicero. Totum autem habet aliquid simile suasorii, quia plerumque eadem illic suaderi, hic laudari solent.

8

- 1 Deliberativas quoque miror a quibusdam sola utilitate finitas. Ac si quid in his unum sequi oporteret, potior fuisset apud me Ciceronis sententia, qui hoc materiae genus dignitate maxime contineri putat. Nec dubito quin ii qui sunt in illa priore sententia secundum opinionem pulcherrimam ne utile quidem nisi quod honestum esset existimarent. Et est haec ratio verissima, si consilium contingat semper bonorum atque sapientium. Verum apud imperitos, apud quos frequenter dicenda sententia est, populumque praecipue, qui ex pluribus constat indoctis, discernenda sunt haec et secundum communes magis intellectus loquendum. Sunt enim multi qui etiam quae credunt honesta non tamen satis eadem utilia quoque existiment, quae turpia esse dubitare non possunt utilitatis

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<sup>35</sup> Cicero, *Topica* 94.

<sup>36</sup> Cicero, *De oratore* 2.333.

<sup>1</sup> *De oratore* 2.334.

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While therefore I do not agree that this encomiastic type of oratory is exclusively concerned with what is honourable, I do agree that it is generally within the Issue of Quality, although all three basic Issues may occur in it, and Cicero observed that Caesar used them all in his invective against Cato.<sup>35</sup> But the whole thing has some similarities to deliberative oratory, because its subjects of praise are often the same as the subjects of advice in that type of speech.<sup>36</sup>

### CHAPTER 8

#### *Deliberative oratory*

I am surprised that Deliberative speeches also have been thought by some to be concerned with only one question, namely that of expediency. If one had to find a single object for them, I should have preferred Cicero's view that the essential feature of this type of theme is dignity.<sup>1</sup> Not that I doubt that those who hold the former opinion also held the idealistic view that nothing that is not honourable can be expedient either. And this principle is perfectly sound, if we are fortunate enough always to be addressing a council of the good and wise. With the inexperienced however (to whom one often has to give advice) and especially with the people, which contains an uneducated majority, we have to keep the two things separate and conform more to ordinary understandings. For there are many who think that even what they believe to be honourable is not also sufficiently expedient, and who can be tempted to approve on grounds of expediency things that they must know to be

specie ducti probent, ut foedus Numantinum iugumque Caudinum.

- 4 Ne qualitatis quidem statu, in quo et honestorum et utilium quaestio est, complecti eas satis est. Nam frequenter in his etiam coniecturae locus est: nonnumquam tractatur aliqua finitio, aliquando etiam legales possunt incidere tractatus, in privata maxime consilia, si quando ambigetur
- 5 an liceat. De coniectura paulo post pluribus. Interim est finitio apud Demosthenen ‘det Halonnesum Philippus an reddat’, apud Ciceronem in Philippicis ‘quid sit tumultus’. Quid? non illa similis iudicialium quaestio de statua Servi Sulpici, ‘an iis demum ponenda sit qui in legatione ferro
- 6 sunt interempti’? Ergo pars deliberativa, quae eadem suasoria dicitur, de tempore futuro consultat,<sup>1</sup> quaerit etiam de praeterito. Officiis constat duobus suadendi ac dissuadendi.

Prohoemio quale est in iudicialibus non ubique eget, quia conciliatus est ei quisque quem consulit. Initium ta-

<sup>1</sup> consultans B

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<sup>2</sup> I.e. the treaty forced on C. Hostilius Mancinus in 137 BC (see 7.4.12, Cicero, *De officiis* 3.109); Mancinus was subsequently surrendered to the Numantines, though they refused to accept him.

<sup>3</sup> The consuls of 321 BC, ambushed by the Samnites at the Caudine Forks, negotiated a surrender: Livy 9.2–6, Cicero, loc. cit. in note 2. <sup>4</sup> Below, § 16. <sup>5</sup> Or: 7 (*On Halonnesus*). Q., unlike some ancient scholars (see Libanius’ *Hypothesis* to this speech), believed this piece to be by Demosthenes. Aeschines (*Against Ctesiphon* 83) criticizes Demosthenes’ “syllable quibbles” on this point.

<sup>6</sup> *Philippics* 8.2: the point is the difference between a formal war (*bellum*) and a “disturbance” (*tumultus*).

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disgraceful, like the Numantine treaty<sup>2</sup> or the Caudine surrender.<sup>3</sup>

### *Issues in Deliberative Speeches*

Nor is it enough to confine Deliberative to the Issue of Quality, which includes questions of honour and expediency. For there is often scope here also for Conjecture, a Definition is sometimes relevant, and Legal Issues also occasionally arise, especially in private consultations, if there is some doubt as to whether something is legal. I shall discuss Conjecture at greater length shortly.<sup>4</sup> Staying for the moment with Definition, we find it in Demosthenes—“Is Philip giving up Halonnesus or giving it back?”<sup>5</sup>—and in Cicero’s *Philippics*—“What is a ‘disturbance’?”<sup>6</sup> Again, in the Question regarding the statue of Servius Sulpicius,<sup>7</sup> namely whether a statue should be erected only if the ambassador has been struck down by the sword, is surely like a judicial Question. Thus Deliberative—also called the *suasoria*—debates the future, but also asks questions about the past. It has two functions: to persuade and to dissuade.

### *Prooemium, Narrative, and other elements in Deliberative and Epideictic*

A Prooemium, such as is found in forensic speeches, is not always necessary, because anyone who asks another for advice is already well disposed to him.<sup>8</sup> Any beginning,

<sup>7</sup> This distinguished jurist died on a mission to Antony: Cicero’s *Ninth Philippic* (Feb. 43 BC) advocates this honour for him.

<sup>8</sup> So Cicero, *Partitiones oratoriae* 13.

- men quodcumque debet habere aliquam prohoemii speciem; neque enim abrupte nec unde libuit incipiendum,
- 7 quia est aliquid in omni materia naturaliter primum. In senatu et utique in contionibus eadem ratio quae apud iudices adquirendae sibi plerumque eorum apud quos dicendum sit benivolentiae. Nec mirum, cum etiam in panegyricis petatur audientium favor, ubi emolumentum
- 8 non utilitate aliqua, sed in sola laude consistit. Aristoteles quidem, nec sine causa, putat et a nostra et ab eius qui dissentiet persona duci frequenter in consiliis exordium, quasi mutantibus hoc nobis a iudicali genere, nonnumquam etiam ut minor res maiorve videatur: in demonstrativis
- 9 vero prohoemia esse maxime libera existimat: nam et longe a materia duci, ut in Helenae laude Isocrates fecerit, et ex aliqua rei vicinia, ut idem in Panegyrico, cum queritur plus honoris corporum quam animorum virtutibus dari, et Gorgias in Olympico laudans eos qui primi tales instituerint conventus. Quos secutus videlicet C. Sallustius in bello Iugurthino et Catilinae nihil ad historiam pertinentibus principiis orsus est.
- 10 Sed nunc ad suasoriam: in qua, etiam cum prohoemio utemur, brevior tamen et velut quodam capite tantum et initio debemus esse contenti. Narrationem vero num-

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<sup>9</sup> *Rhetoric* 3. 1415b33ff.      <sup>10</sup> *Helen* 1-15 deals with the teaching of oratory as practised by Isocrates' contemporaries and by himself.      <sup>11</sup> Aristotle (*Rhetoric* 1415b21ff.) cites Isocrates' *Helen* and Gorgias' *Olympicus* in this connection, but not the *Panegyricus*. Gorgias spoke at Olympia (408 BC?) on the theme of Hellenic unity. Q.'s reference is to *Panegyricus* 1-2.      <sup>12</sup> Q.'s judgement on this point has often been questioned, and the relevance of Sallust's generalizing reflections to his narrative de-

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however, must have some features of a Prooemium; it must not start abruptly or wherever we fancy, because in every subject there is something which naturally comes first. In the senate, and certainly in popular assemblies, the same principle of generally winning the goodwill of our audience applies as in the courts. And no wonder, since we seek to win the favour of our hearers even in Panegyrics, where the reward consists not in any actual advantage but solely in praise. Aristotle,<sup>9</sup> it is true, holds, and not without reason, that the Prooemium in Deliberative is often based on our own personality or on our opponent's (as though we were borrowing this feature from the forensic speech), and also that it is sometimes intended to make the subject seem of greater or less importance than it is. In Epideictic, on the other hand, he thinks the Prooemia can be very free, since they can be drawn both from an area remote from the subject (as by Isocrates in his *Encomium of Helen*)<sup>10</sup> and from areas closer to hand (as by Isocrates again in the *Panegyricus*, where he complains that more honour is given to physical than to mental prowess, and by Gorgias in the *Olympicus*,<sup>11</sup> where he praises the founders of such festivals). Sallust seems to have followed these precedents in his *Jugurthine War* and *War of Catiline*, where he begins with Introductions which have no relevance to the history.<sup>12</sup>

But to return to Deliberative. Here, even when we have a Prooemium, we shall have to be content with a short one, just a sort of introductory heading. A Narrative is never

fended: Syme, *Sallust* (1964) 240; G. M. Paul, *Commentary on Bellum Iugurthinum* (1984) 9–11. See also Leeman (1963) 1. 185; D. C. Earl, *The Political Thought of Sallust* (1961) 5.



quam exigit privata deliberatio, eius dumtaxat rei de qua  
 dicenda sententia est, quia nemo ignorat id de quo con-  
 11 sultit: extrinsecus possunt pertinentia ad deliberationem  
 multa narrari. In contionibus saepe est etiam illa quae  
 12 ordinem rei docet necessaria. Adfectus ut quae maxime  
 postulat: nam et concitanda et lenienda frequenter est ira,  
 et ad metum cupiditatem odium conciliationem inpellendi  
 animi. Nonnumquam etiam movenda miseratio, sive ut  
 auxilium obsessis feratur suadere oportebit, sive sociae  
 civitatis eversionem deflebimus. Valet autem in consiliis  
 13 auctoritas plurimum. Nam et prudentissimus esse habe-  
 rique et optimus debet qui sententiae suae de utilibus  
 atque honestis credere omnes velit. In iudiciis enim vulgo  
 fas habetur indulgere aliquid studio suo: consilia nemo est  
 qui neget secundum mores dari.

14 Graecorum quidem plurimi omne hoc officium con-  
 tionale esse iudicaverunt et in sola rei publicae adminis-  
 tratione posuerunt; quin et Cicero in hac maxime parte  
 versatur. Ideoque suasuris de pace bello copiis operibus<sup>2</sup>  
 vectigalibus haec duo esse praecipue nota voluit, vires  
 civitatis et mores, ut ex natura cum ipsarum rerum, tum  
 15 audientium ratio suadendi duceretur. Nobis maior in re  
 videtur varietas; nam et consultantium et consiliorum  
 plura sunt genera.

<sup>2</sup> opibus *recc.* ("wealth," cf. Cic. *De oratore* 2.335)

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<sup>13</sup> "Dionysius" (*Ars rhetorica* 10, 14: p. 369.21 Radermacher)  
 extends this to cover deliberation generally.

<sup>14</sup> See Cicero, *De oratore* 2.337.

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needed in private deliberations,<sup>13</sup> at any rate a Narrative of the circumstances on which one is called upon to give an opinion, because everyone knows what it is that he is asking advice about; but many external circumstances relevant to the deliberation may be the subject of a Narrative. In public assemblies a Narrative explaining the order of events is often essential. As for emotional appeals, Deliberative demands these as much as any form of oratory does, because anger must often be aroused or assuaged, and the minds of the audience moved to fear, desire, hatred, or goodwill. Pity too must sometimes be excited, if you have to urge sending relief to the besieged, or to lament the destruction of an allied city. But the most important aspect of giving advice is the speaker's own authority. Anyone who wants everybody to trust his judgement on what is expedient and honourable must be, and be thought to be, both very wise and very good. In the courts, it is commonly thought proper to indulge one's prejudices to some extent; but advice, as no one can deny, reflects the speaker's moral principles.

Most of the Greeks have held that this function is entirely concerned with public assemblies, and have limited it to the administration of the state. Cicero too devotes himself mainly to this, and so proposes that those who mean to give advice about peace and war, troops, public works, or revenue must be familiar with two subjects in particular, the strength of the state and its character, so that their advice may be based both on the realities of the situation and on the nature of the audience.<sup>14</sup> It seems to me that things are more complicated, for there are many types both of people asking advice and of the advice that can be given!

Quare in suadendo ac dissuadendo tria primum spectanda erunt: quid sit de quo deliberetur, qui sint qui deliberent, qui sit qui suadeat.

16 Rem de qua deliberatur aut certum est posse fieri aut incertum. Si incertum, haec erit quaestio sola aut potentissima; saepe enim accidet ut prius dicamus ne si possit quidem fieri esse faciendum, deinde fieri non posse. Cum autem de hoc quaeritur, coniectura est: an Isthmos intercidi, an sicari palus Pomptina, an portus fieri Ostiae possit, an  
17 Alexander terras ultra Oceanum sit inventurus. Sed in iis quoque quae constabit posse fieri coniectura aliquando erit, si quaeretur an utique futurum sit ut Carthaginem superent Romani, ut redeat Hannibal si Scipio exercitum in Africam transtulerit, ut servent fidem Samnites si Romani arma deposuerint. Quaedam et fieri posse et futura esse credibile est, sed aut alio tempore aut alio loco aut alio modo.

18 Ubi coniecturae non erit locus, alia sunt intuenda. Et primum aut propter ipsam rem de qua sententiae rogantur consultabitur, aut propter alias intervenientes extrinsecus causas. Propter ipsam: 'deliberant patres conscripti an stipendium militi constituent'. Haec materia simplex erit.  
19 Accedunt causae aut faciendi (ut 'deliberant patres con-

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<sup>15</sup> The Isthmus of Corinth: a plan considered by Nero (Suetonius, *Nero* 19; Lucian, *Nero* 1–4), but not effected until 1881–1893. <sup>16</sup> Attempted in Republican times and later by Trajan; accomplished under Mussolini (1932–1939).

<sup>17</sup> See 2.21.18. <sup>18</sup> See 7.2.5, 7.4.2; Seneca, *Suasoriae* 1.

<sup>19</sup> See Livy 28.40–45 (speeches of Fabius and Scipio); Silius Italicus, *Punica* 16.604–697. <sup>20</sup> The Caudine Forks again (as in § 3). <sup>21</sup> Based on Livy 4.59 (siege of Veii).

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Whether the object is to persuade or to dissuade, there are therefore three considerations to take into account first: what the proposal is, who are the people discussing it, and who is the adviser.

### *Various kinds of proposal*

As for the proposal, its practicability is either certain or doubtful. If it is doubtful, this becomes the only or at least the most vital question. We shall often find ourselves saying first that a thing ought not to be done even if it could, and secondly that it cannot be done. When the question turns on this, we have Conjecture: can the Isthmus be cut through,<sup>15</sup> can the Pontine Marsh be drained,<sup>16</sup> can a harbour be made at Ostia,<sup>17</sup> will Alexander discover lands beyond the Ocean?<sup>18</sup> But even when it is agreed that the thing is possible, there will sometimes be Conjecture; for example, if the question is whether the Romans will defeat Carthage in any case, whether Hannibal will return home if Scipio takes his army into Africa,<sup>19</sup> or whether the Samnites will keep faith if the Romans lay down their arms.<sup>20</sup> There are some things also which we may believe are both possible and likely to happen, but at some other time or place or in some other way.

When there is no scope for Conjecture, other methods must be considered. First, advice will be sought *either* (1) on account of the actual point on which opinions are asked, *or* (2) on account of other reasons which affect it from outside. An example of the first is: "The senate deliberates whether to introduce payment for soldiers."<sup>21</sup> This is a simple theme. In the second case, reasons are added, either for doing something ("The senate deliberates whether

scripti an Fabios dedant Gallis bellum minitantibus') aut non faciendi: 'deliberat C. Caesar an perseveret in Germaniam ire cum milites passim testamenta facerent.' Hae suasoriae duplices sunt. Nam et illic causa deliberandi est quod bellum Galli minitentur, esse tamen potest quaestio dedendine fuerint etiam citra hanc denuntiationem qui contra fas, cum legati missi essent, proelium inierint, regemque ad quem mandata acceperant trucidarint: et hic nihil Caesar sine dubio deliberaret nisi propter hanc militum perturbationem, est tamen locus quaerendi an citra hunc quoque casum penetrandum in Germaniam fuerit. Semper autem de eo prius loquemur de quo deliberari etiam detractis sequentibus possit.

22 Partes suadendi quidam putaverunt honestum utile necessarium. Ego non inveno huic tertiae locum. Quantalibet enim vis ingruat, aliquid fortasse pati necesse sit, nihil  
23 facere, de faciendo autem deliberatur. Quod si hanc vocant necessitatem in quam homines graviorum metu coguntur, utilitatis erit quaestio, ut si obsessi et inpares et aqua ciboque defecti de facienda ad hostem deditione deliberent et dicatur 'necesse est'; nempe sequitur ut hoc subiciatur: 'alioqui pereundum est': ita propter id ipsum non est necesse, quia perire potius licet; denique non fece-

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<sup>22</sup> Based on Livy 5.36.

<sup>23</sup> See Caesar, *De bello Gallico* 1.39 (but Q.'s theme may come rather from Livy: compare Florus 1.45.12).

## BOOK 3.8

to surrender the Fabii to the Gauls, who are threatening war")<sup>22</sup> or for not doing something ("Caesar deliberates whether to persist in the advance into Germany, when his soldiers are all making their wills").<sup>23</sup> These are double *suasoriae*. In the one case, the reason for deliberating is that the Gauls are threatening war, though there can be a question whether, quite apart from this threat, it would be right to surrender men who, having been sent as ambassadors, so far broke the moral law as to take part in a battle and kill the king to whom they had been sent. In the second case, Caesar would doubtless not have paused to deliberate but for the distress of the soldiers; but there is still scope for asking whether, quite apart from this occurrence, it was wise to go far into Germany. All the same, we shall always first address the point which could be a subject of deliberation even apart from consequences.

Some have held that the main heads of advice are honour, expediency, and necessity. I can see no place for the third of these. However great the force that threatens, though there is a necessity of suffering, there is no necessity to do anything; and deliberation is about doing something. If by "necessity" they mean that into which men are driven for fear of something worse, the question will be one of expediency. For example, if a besieged garrison, outnumbered and short of water and food, discusses surrendering to the enemy, and this is said to be "necessary," it follows of course that one must understand "otherwise we die"; the situation itself does not make surrender "necessary," because it is open to them to die. To clinch the point, the Saguntines<sup>24</sup> did not surrender, nor did the men from

<sup>24</sup> When besieged by Hannibal, 219 BC: Livy 21.14.

- 24 runt Saguntini nec in rate Opitergini<sup>3</sup> circumventi. Igitur in his quoque causis aut de sola utilitate ambigetur aut quaestio inter utile atque honestum consistet. At enim si quis liberos procreare volet, necesse habet ducere uxorem. Quis dubitat? Sed ei qui pater vult fieri liqueat necesse est
- 25 uxorem esse ducendam. Itaque mihi ne consilium quidem videtur ubi necessitas est, non magis quam ubi constat quid fieri non posse: omnis enim deliberatio de dubiis est. Melius igitur qui tertiam partem duxerunt *δυνατόν*, quod nostri 'possibile' nominant: quae ut dura videatur appellatio, tamen sola est.
- 26 Quas partes non omnes in omnem cadere suasoriam manifestius est quam ut docendum sit. Tamen apud ple-rosque earum numerus augetur: a quibus ponuntur ut partes quae superiorum species sunt partium. Nam fas iustum pium aecum, mansuetum quoque (sic enim sunt interpretati τὸ ἡμέρον), et si qua adhuc adicere quis eiusdem generis velit, subici possunt honestati. An sit autem facile,
- 27 magnum, iucundum, sine periculo, ad quaestionem pertinet utilitatis. Qui loci oriuntur ex contradictione: est quidem utile sed difficile parvum iniucundum periculosum.
- 28 Tamen quibusdam videtur esse nonnumquam de iucunditate sola consultatio, ut si de aedificando theatro, instituendis ludis deliberetur. Sed neminem adeo solum luxu puto ut nihil in causa suadendi sequatur praeter

<sup>3</sup> t: Opitergina AB

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<sup>25</sup> An episode of the civil war of 49 BC. A thousand men from Opitergium (Oderzo, in the Veneto) chose to die rather than be captured by the Pompeian army: Lucan 4.462–481, Florus 2.13.33 (from Livy, who again is probably Q.'s source).

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Opitergium<sup>25</sup> who were surrounded on the raft. It follows that in these cases also the question will be either one purely of expediency or a choice between expediency and honour. "But if a man wants to have children, it is necessary for him to take a wife." Of course. But it is necessary for anyone who wants to be a father to understand clearly that he needs to take a wife. So it seems to me that where there is necessity there is no room for deliberation, any more than when it is certain that something is impossible. For all deliberation is about doubtful things. The better view therefore is that of those who call the third main head *dynaton*, which we translate as *possibile*;<sup>26</sup> this may seem a clumsy word, but it is the only one we have.

That these three main heads do not enter into every advisory speech is too obvious to point out. Most writers, however, give a larger number, but the items they add as main heads are really only species of those mentioned. Right, justice, piety, equity, and clemency (they translate *hēmeron* as *mansuetum*) and anything else of the same sort that anyone chooses to add can all be put under honour. On the other hand, whether a proposed action is easy, important, pleasant, or safe comes under expediency. These topics arise out of some antithesis: expedient but "difficult," or "trivial" or "unpleasant" or "dangerous."

Some however believe that deliberation is sometimes concerned only with pleasure, as in discussions about building a theatre or founding games. But I do not think that anyone is sunk so far in luxury as to consider nothing but pleasure in an advisory speech. There must always be

<sup>26</sup> The earliest known occurrence of this word.



## QUINTILIAN

- 29 voluptatem. Praecedat enim semper aliquid necesse est, ut in ludis honor deorum, in theatro non inutilis laborum remissio, deformis et incommoda turbae, si id non sit, conflictatio, et nihilo minus eadem illa religio, cum theatrum
- 30 veluti quoddam illius sacri templum vocabimus. Saepe vero et utilitatem despiciendam esse dicimus ut honesta faciamus (ut cum illis Opiterginis damus consilium ne se hostibus dedant, quamquam perituri sint nisi fecerint) et utilia honestis praeferimus, ut cum suademus ut bello
- 31 Punico servi armentur. Sed tamen neque hic plane concedendum est esse id inhonestum (liberos enim natura omnis et isdem constare elementis, et fortasse antiquis etiam nobiles ortos dici potest), et illic, ubi manifestum periculum est, opponenda alia, ut crudelius etiam perituros adfirmemus si se dediderint, sive hostis non servarit
- 32 fidem, sive Caesar vicerit, quod est vero similius. Haec autem quae tantum<sup>4</sup> inter se pugnant plerumque nominibus deflecti solent. Nam et utilitas ipsa expugnatur ab iis qui dicunt non solum potiora esse honesta quam utilia, sed ne utilia quidem esse quae non sint honesta: et contra, quod nos honestum, illi vanum, ambitiosum, stolidum verbis quam re probabilius vocant.
- 33 Nec tantum inutilibus comparantur utilia, sed inter se quoque ipsa, ut si ex duobus eligamus, in altero quid sit magis, in altero quid sit minus. Crescit hoc adhuc; nam interim triplices etiam suasoriae incidunt, ut cum Pompeius

<sup>4</sup> *del. Marshall, AJP 95 (1974) 81*

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<sup>27</sup> Based on Livy 22.51: Seneca, *Controversiae* 5.7, 9.4.5.

<sup>28</sup> Compare Seneca, *Epistulae* 47.10; Juvenal 14.16; Horace, *Carmina* 2.4.13–16.

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*something* to have precedence over this: with the games, it is the honour of the gods; with the theatre, it is the usefulness of relaxation, and the ugly and undesirable crowd disturbances if it is not built—though religion comes in here also, when we call the theatre a sort of temple of these rites. Often indeed we both say that expediency must be spurned, so that we can act honourably (as for instance when we advise the men of Opitergium not to surrender, though they will die unless they do so); and also give priority to expediency over honour, as when we counsel arming the slaves in the Punic War.<sup>27</sup> But in this case, we must not admit outright that this is dishonourable (for we can argue that all men are free by nature and composed of the same elements, and these were perhaps born of ancient and noble stock),<sup>28</sup> and, in the previous case, where the danger is manifest, we can put forward other arguments, alleging that they would die a yet more cruel death if they surrendered, should the enemy break faith or (which is more likely) Caesar prove victorious. These great conflicts of principles are commonly evaded by using different words. Expediency itself is attacked by those who say not only that honour is to be preferred to expediency, but that nothing is expedient which is not also honourable; others, on the contrary, call what we call honourable vain, pretentious, foolish, and “more fine words than substance.”

Expedient proposals are not always compared with inexpedient, but sometimes expedient with expedient and inexpedient with inexpedient, so that, given a choice between two, we consider, in the one case, which is the greater, and, in the other, which is the less. And it goes on and on. For sometimes there are cases involving three choices, as when Pompey deliberated whether to go to

deliberabat Parthos an Africam an Aegyptum peteret. Ita non tantum utrum melius sed quid sit optimum quaeritur, itemque contra.

34 Nec umquam incidet in hoc genere materiae dubitatio rei quae undique secundum nos sit; nam ubi contradictioni locus non est, quae potest esse causa dubitandi? Ita fere omnis suasoria nihil est aliud quam comparatio, videntumque quid consecuturi simus et per quid, ut aestimari possit plus in eo quod petimus sit commodi, an vero in eo per quod petimus incommodi.

35 Est utilitatis et in tempore quaestio: 'expedit, sed non nunc', et in loco: 'non hic', et in persona: 'non nobis', 'non contra hos', et in genere agendi: 'non sic', et in modo: 'non in tantum'.

36 Sed personam saepius decoris gratia intuemur: quae et in nobis et in iis qui deliberant spectanda est. Itaque quamvis exempla plurimum in consiliis possint, quia facillime ad consentiendum homines ducuntur experimentis, refert tamen quorum auctoritas et quibus adhibeatur: diversi  
37 sunt enim deliberantium animi, duplex condicio. Nam consultant aut plures aut singuli, sed in utrisque differentia, quia et in pluribus multum interest senatus sit an populus, Romani an Fidenates, Graeci an barbari, et in singulis

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<sup>29</sup> Compare Pompey's speech in Lucan 8.262–327.

<sup>30</sup> I.e. rather than from the standpoint of expediency, where the validity of the arguments has less to do with the attitudes of the persons.

<sup>31</sup> As in Horace, *Epistulae* 1.11.8, this ancient Latin town is a paradigm of insignificance.

## BOOK 3.8

Parthia, Africa, or Egypt.<sup>29</sup> Here the question is not which is the better course but which is the best—or again, which is the worst.

Doubt about a proposition which is favourable to us from all points of view will never arise in this type of material. Where there is no scope for objection, what reason can there be for doubting? Thus almost every advisory speech is nothing more than a comparison, and we need to consider what we shall gain, and by what means, so that an estimate can be made as to whether the advantage promised by our aim outweighs the disadvantage involved in the means we adopt to secure it.

Expediency may also include questions of time (“it is expedient, but not now”), place (“not here”), person (“not for us,” “not against these people”), method of action (“not like this”), and scale (“not to this extent”).

### *The audience*

Personality, which requires study with regard both to ourselves and to those who are deliberating, is more often viewed from the point of view of honourable behaviour.<sup>30</sup> Thus, although examples are very effective in giving advice, because people are most easily induced to agree by actual experiences, it makes a difference whose authority is put forward, and to whom. People who are deliberating have various attitudes of mind, and there are two sorts of situation. It is either a group or an individual that asks for advice, and in both cases there are further variations: if it is a group, it makes a lot of difference whether they are the Senate or the people, Romans or citizens of Fidenae,<sup>31</sup> Greeks or barbarians; if an individual, it matters whether

38 Cato ni petendos honores suadeamus an C. Mario, de  
 ratione belli Scipio prior an Fabius deliberet. Proinde  
 intuenda sexus dignitas aetas; sed mores praecipue discrimen dabunt. Et honesta quidem honestis suadere facillimum est; si vero apud turpes recta optinere conabimur, ne  
 39 videamur exprobrare diversam vitae sectam cavendum, et animus deliberantis non ipsa honesti natura, quam ille non respicit, permovendus, sed laude, vulgi opinione, et, si parum proficiet haec vanitas, secutura ex his utilitate, aliquanto vero magis obiciendo aliquos, si diversa fecerint,  
 40 metus. Nam praeter id, quod his levissimi cuiusque animus facillime terretur, nescio an etiam naturaliter apud plurimos plus valeat malorum timor quam spes bonorum, sicut facilior eisdem turpium quam honestorum intellectus est. Aliquando bonis quoque suadentur parum decora,  
 41 dantur parum bonis consilia in quibus ipsorum qui consulunt spectatur utilitas.

Nec me fallit quae statim cogitatio subire possit legentem: hoc ergo praecipis et hoc fas putas? Poterat me liberare Cicero, qui ita scribit ad Brutum, praepositis plurimis quae honeste suaderi Caesari possint: 'Simne bonus vir si haec suadeam? Minime. Suasoris enim finis est utilitas eius cui quisque suadet. At recta sunt: quis negat? Sed non est semper rectis in suadendo locus.' Sed quia est altior quaestio nec tantum ad suasorias pertinet, destinatus est mihi hic locus duodecimo, qui summus futurus est, libro.  
 43 Nec ego quicquam fieri turpiter velim. Verum interim

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<sup>32</sup> Cato is the rigorous moralist, Marius the ambitious opportunist; Scipio is bold, Fabius cautious.

<sup>33</sup> *Fr. epist.* VII.b Watt. "Caesar" here is Octavian.

<sup>34</sup> See 12.12.

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Cato or Marius is to be persuaded to run for office, and whether the elder Scipio or Fabius is discussing strategy.<sup>32</sup> Sex, rank, and age must also be considered, though it is character that will make the biggest difference. It is very easy to commend an honourable course to honourable men; but if we try to ensure the right action from persons of bad character, we must take care not to seem to be criticizing their very different way of life, but must try to affect the hearer's attitude by appealing not to honour in itself, for which he has no regard, but to praise, public opinion, and (if these vanities are ineffectual) the future advantages, or, even more, by pointing out some frightening consequences of taking the opposite course. For, apart from the fact that the minds of the unprincipled are very easily frightened, it is perhaps natural that the fear of evil should weigh more with most people than the hope of good, just as they find it easier to understand the shameful than the honourable. Sometimes improper advice is given to good men too, and bad men are counselled in ways that concentrate on the interests of those who seek advice.

I know what the reader may immediately think when he reads this: "Is this your teaching? Is this what you think right?" Cicero<sup>33</sup> could have helped me out here. He writes to Brutus as follows, after setting out various propositions that could honourably be put to Caesar: "Should I be a good man if I gave him this advice? Not at all. The object of an adviser is the advantage of the person whom he advises. 'But these things are right.' Of course they are; but there is not always scope for the right in giving advice." But this is a deeper question and not relevant only to advisory speeches; so I shall keep it for Book Twelve, which is to be the last.<sup>34</sup> Not that I should like anything disgraceful to be

haec vel ad scholarum exercitationes pertinere credantur: nam et iniquorum ratio noscenda est, ut melius aequa tueamur.

- 44 Interim si quis bono inhonesta suadebit, meminerit non suadere tamquam inhonesta, ut quidam declamatores Sextum Pompeium ad piraticam propter hoc ipsum, quod turpis et crudelis sit, inpellunt, sed dandus illis deformibus color—idque etiam apud malos: neque enim quisquam est
- 45 tam malus ut videri velit. Sic Catilina apud Sallustium loquitur ut rem scelestissimam non malitia sed indignatione videatur audere, sic Atreus apud Varium 'iam fero' inquit 'infandissima, iam facere cogor.' Quanto magis eis quibus cura famae fuit conservandus est hic velut<sup>5</sup> ambitus.
- 46 Quare et cum Ciceroni dabimus consilium ut Antonium roget, vel etiam ut Philippicas, ita vitam pollicente eo, exurat, non cupiditatem lucis adlegabimus (haec enim si valet in animo eius, tacentibus quoque nobis valet), sed ut se rei
- 47 publicae servet hortabimur—hac illi opus est occasione, ne eum talium precum pudeat: et C. Caesari suadentes

<sup>5</sup> *Francius*: vel *AB*

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<sup>35</sup> A civil war theme; for a rhetorical treatment of Sextus Pompeius' piracy, see Florus 2.18 ("how different from his father, who suppressed the Cilician pirates!"), Lucan 6.420–422.

<sup>36</sup> *Catiline* 20.

<sup>37</sup> *Scaen. Rom.* fr. 1. 309 Klotz. L. Varius Rufus' *Thyestes* (29 BC) was one of the few famous tragedies of Augustan times. Atreus, king of Mycenae, wronged by his brother Thyestes (who seduced his wife and wanted the throne), killed Thyestes' children and served them to him at a feast.

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done; but for the time being, let us take it that these considerations are relevant even to school exercises, because, to make a better defence of the right, one needs also to understand the wrong.

Meanwhile, if anyone is going to urge a dishonourable course on a good man, he should remember not to urge it as being dishonourable—as some declaimers urge Sextus Pompeius to take to piracy just because it is so wicked and cruel<sup>35</sup>—but should put a decent gloss on its ugly side, even when speaking to bad men. No one is bad enough to want to seem so! Thus Catiline in Sallust<sup>36</sup> speaks in such a way as to seem to be embarking on his audacious crimes not out of wickedness but in indignation; and Atreus in Varius says:

Unspeakable  
the things I bear, and now am forced to do.<sup>37</sup>

How much more has this façade, as it were, to be kept up by those who have been concerned for their own reputation! Thus when we advise Cicero to plead with Antony or even to burn the *Philippics*<sup>38</sup> (Antony promising him his life on these terms), we shall not stress love of life (if that is important with him, it will be so even if we say nothing) but exhort him to preserve himself for the service of the Republic. “He needs the opportunity for this, he should not be ashamed of making such a plea.” Again, if we are coun-

<sup>38</sup> A foolish declamation theme, according to Seneca, *Suasoriae* 6.14; introduced by Asinius Pollio, and evidently popular: see Juvenal 10.125.



regnum adfirmabimus stare iam rem publicam nisi uno regente non posse. Nam qui de re nefaria deliberat id solum quaerit, quo modo quam minimum peccare videatur.

48 Multum refert etiam quae sit persona suadentis, quia, ante acta vita si inlustris fuit aut clarius genus aut aetas aut fortuna adfert expectationem, providendum est ne quae dicuntur ab eo qui dicit dissentiant. At his contraria summiorem quendam modum postulant. Nam quae in aliis libertas est, in aliis licentia vocatur, et quibusdam sufficit auctoritas, quosdam ratio ipsa aegre tuetur.

49 Ideoque longe mihi difficillimae videntur prosopopoeiae, in quibus ad relicum suasoriae laborem accedit etiam personae difficultas: namque idem illud aliter Caesar, aliter Cicero, aliter Cato suadere debet. Utilissima vero haec exercitatio, vel quod duplicis est operis vel quod poetis quoque aut historiarum futuris scriptoribus plurimum confert: verum et oratoribus necessaria. Nam sunt multae a Graecis Latinisque compositae orationes quibus alii uterentur, ad quorum condicionem vitamque aptanda quae dicebantur fuerunt. An eodem modo cogitavit aut eandem personam induit Cicero cum scriberet Cn. Pom-

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<sup>39</sup> Offered him (Plutarch, *Caesar* 61) at the Lupercalia of 44; whether Caesar wanted it or not, the episode makes a good subject. Q. implies that acceptance would have been criminal. See also 9.3.61.

<sup>40</sup> Here an elementary exercise, in which the speaker plays the part of a specific historical character: Theon 115–118 Spengel. Lausberg § 820. See also 2.1.2.

## BOOK 3.8

selling Caesar to accept the title of King,<sup>39</sup> we shall urge that the Republic cannot stand any longer except under the rule of one man. A man who is deliberating about a criminal act only wants to find a way of making his criminality seem as little as possible.

### *The adviser*

The personality of the adviser also makes a lot of difference. If his illustrious past, his noble family, his age, or his fortune raises expectations, we must take care that what is said is not out of keeping with the man who says it. The opposite situation requires a humbler tone. For what is liberty in some is called licence in others, and, while some need nothing but their personal authority, others can barely protect themselves by sound reasoning.

### *Prosopopoeia*

This is why I regard *prosopopoeia*<sup>40</sup> as far the most difficult exercise, because the difficulty of maintaining a character is added to the other problems of the *suasoria*. Caesar, Cicero, and Cato will all have to be assigned different ways of giving the same advice. However, it is a very useful exercise, whether because it does involve this double effort, or because it is particularly valuable also to future poets and historians. But it is essential for orators too. For there are many speeches composed by Greeks and Romans for others to deliver, in which the words had to be adapted to the position and character of the speakers. Did Cicero think in the same way or assume the same personality when he wrote for Gnaeus Pompeius and Titus Ampius

peio et cum T. Ampio ceterisque, ac non unius cuiusque eorum fortunam, dignitatem, res gestas intuitus omnium quibus vocem dabat etiam imaginem expressit, ut melius  
 51 quidem sed tamen ipsi dicere viderentur? Neque enim minus vitiosa est oratio si ab homine quam si a re cui accommodari debuit dissidet. Ideoque Lysias optime videtur in iis quae scribebat indoctis servasse veritatis fidem. Enimvero praecipue declamatoribus considerandum est quid cuique personae conveniat, qui paucissimas controversias ita dicunt ut advocati: plerumque filii patres divites senes asperi lenes avari, denique superstitiosi timidi derisores  
 52 fiunt, ut vix comoediarum actoribus plures habitus in pronuntiando concipiendi sint quam his in dicendo. Quae omnia possunt videri prosopopoeiae, quam ego suasorii subieci quia nullo alio ab his quam persona distat: quamquam haec aliquando etiam in controversias ducitur quae ex historiis compositae certis agentium nominibus continentur. Neque ignoro plerumque exercitationis gratia poni  
 53 et poeticas et historicas, ut Priami verba apud Achillem aut Sullae dictaturam deponentis in contione. Sed haec in partem cedent trium generum in quae causas divisimus. Nam et rogare, indicare, rationem reddere et alia de quibus supra dictum est varie atque ut res tulit in materia iudiciali

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<sup>41</sup> Nothing is known of the speeches named. As to the "others," Cicero (*Ad Quintum fratrem* 3.6(8).5) says he composed a consolation for Serranus on the death of his son.

<sup>42</sup> See 9.4.17; Dionysius of Halicarnassus, *Lysias* 8–9.

<sup>43</sup> For the range of characters in declamation, see *GD* 87–105.

<sup>44</sup> In begging for Hector's body as in *Iliad* 24. Nicolaus, *Progymnasmata* (3. 489 Spengel) has "what would Achilles say when he saw Priam in his tent?"

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and the others?<sup>41</sup> Did he not consider the fortune, position, and career of each one of them, and produce an image of those to whom he was lending his voice, so that they seemed to speak better than themselves, but still to be themselves? A speech which is out of keeping with the speaker is just as bad as one which is out of keeping with the subject to which it ought to have been adapted. This is why Lysias is thought to have been so successful in faithfully maintaining realism in the speeches he wrote for uneducated clients.<sup>42</sup> Declaimers of course must especially consider what best suits each character; for they rarely deliver their speeches as advocates, but generally as sons, parents, rich men, old men, the bad-tempered, the easy-going, misers, the superstitious, cowards or mockers; comic actors hardly have more roles to sustain in their performance than these men do in their speeches.<sup>43</sup> All this may be regarded as *prosopopoeia*, which I have put under *suasoria*, because the only way in which it differs from this is in the character portrayed. But *prosopopoeia* sometimes intrudes in *controversiae* which are based on history and involve named characters as speakers. I know of course that both poetical and historical themes are often set as exercises: for example, Priam's words to Achilles,<sup>44</sup> or Sulla resigning the dictatorship<sup>45</sup> in the public assembly. But these will come under one or other of the three Types into which we divided Causes. For entreaty, statement, accounting for something, and other such forms mentioned above<sup>46</sup> are frequently introduced in various ways, accord-

<sup>45</sup> A hackneyed theme: Juvenal 1.6 ("we too have counselled Sulla to sleep the deep sleep of a private citizen").

<sup>46</sup> See 3.4.3.

54 deliberativa demonstrativa solemus, frequentissime vero in his utimur ficta personarum quas ipsi substituimus oratione: ut apud Ciceronem pro Caelio Clodium et Caecus Appius et Clodius frater, ille in castigationem, hic in exhortationem vitiorum<sup>6</sup> compositus, adloquitur.

55 Solent in scholis fingi materiae ad deliberandum simili-  
liores controversiis et ex utroque genere commixtae, ut cum apud C. Caesarem consultatio de poena Theodoti ponitur; constat enim accusatione et defensione causa eius,  
56 quod est iudicialium proprium, permixta tamen est et utilitatis ratio: an pro Caesare fuerit occidi Pompeium, an timendum a rege bellum si Theodotus sit occisus, an id minime oportunum hoc tempore et periculosum et certe  
57 longum sit futurum. Quaeritur et de honesto: deceatne Caesarem ultio Pompei, an sit verendum ne peiorem faciat suarum partium causam si Pompeium indignum morte  
58 fateatur. Quod genus accidere etiam veritati potest.

Non simplex autem circa suasorias error in plerisque declamatoribus fuit, qui dicendi genus in his diversum atque in totum illi iudiciali contrarium esse existimaverunt. Nam et principia abrupta et concitatam semper

<sup>6</sup> *edd.*: vicio A: morum B: amorum *Regius* ("love affairs")

<sup>47</sup> See 3.8.6.      <sup>48</sup> 33ff. Compare 11.1.39.

<sup>49</sup> Seneca, *Controversiae* 2.4.8 reports a *suasoria* on this theme by Latro. Pompeius, who fled to Egypt after his defeat at Pharsalus, was killed on the orders of Ptolemy XIV, who was advised to do this by his Greek counsellor Theodotus. Caesar, when he arrived in Egypt, is said to have shown his disgust (Plutarch, *Caesar* 48, *Pompeius* 80). The declamation scenario is a fictitious embellishment.

## BOOK 3.8

ing to the subject, in Forensic, Deliberative, and Epideictic material alike.<sup>47</sup> Indeed we very often employ fictitious speeches of persons whom we set up ourselves, as Cicero in the *Pro Caelio*<sup>48</sup> makes Appius Caecus and Clodius, her brother, address Clodia, the one to rebuke her vices, the other to encourage them.

### *Exercises which combine deliberative and forensic themes*

In the schools, themes for deliberation are often invented which are very like *controversiae*, or are a combination of the two forms, for example “a debate in Gaius Caesar’s presence on the punishment of Theodotus.”<sup>49</sup> This Cause involves both accusation and defence, and this is peculiar to forensic oratory. But it also involves the principle of expediency: was it to Caesar’s advantage that Pompey should be killed, was there a risk of war with the King if Theodotus was killed, and would this war at this time be very inopportune, dangerous, and certainly long? There is also the question of honour: is it fitting for Caesar to avenge Pompey, or is it to be feared that he will damage his own party’s cause if he admits that Pompey did not deserve to die? This sort of debate may even occur in real life.

### *Techniques of deliberative exercises*

Many declaimers have fallen into a complex set of errors regarding *suasoriae*, through thinking that the style required is different and altogether opposed to that of forensic exercises. They have affected abrupt openings, a consistently emotional manner, and (to use their own

orationem et in verbis effusio-rem, ut ipsi vocant, cultum  
 adfectaverunt, et earum breviores utique commentarios  
 59 quam legalis materiae facere elaborarunt. Ego porro ut  
 prohoemio video non utique opus esse suasoriis propter  
 quas dixi supra causas, ita cur initio furiose<sup>7</sup> sit exclaman-  
 dum non intellego, cum proposita consultatione rogatus  
 sententiam, si modo est sanus, non quiritet, sed quam  
 maxime potest civili et humano ingressu mereri adsensum  
 60 deliberantis velit. Cur autem torrens et utique aequaliter  
 concitata sit in ea dicentis oratio cum vel praecipue mode-  
 rationem rationemque consilia desiderent? Neque ego  
 negaverim saepius subsidere in controversiis impetum di-  
 cendi prohoemio narratione argumentis, quae si detrahas  
 id fere supererit quo suasoriae constant, verum id quoque  
 aequalius erit, non tumultuosius atque turbidius.

61 Verborum autem magnificentia non validius est adfec-  
 tanda suasorias declamantibus, sed contingit magis. Nam  
 et personae fere magnae fingentibus placent, regum prin-  
 cipum senatus populi, et res ampliores: ita cum verba re-  
 62 bus aptentur, ipso materiae nitore clarescunt. Alia veri  
 consilii ratio est, ideoque Theophrastus quam maxime re-  
 motum ab omni adfectione in deliberativo genere voluit  
 esse sermonem, secutus in hoc auctoritatem praeceptoris  
 63 sui, quamquam dissentire ab eo non timide solet. Namque

<sup>7</sup> *Regius: furioso AB*

<sup>50</sup> 3.8.6.

<sup>51</sup> Compare "Longinus" 9.13 (ἐξωμαλισμένα τὰ ὑψη), on the consistent level of elevation of the *Iliad*.

phrase) a more generous embellishment of language; they have also striven to have at any rate shorter notes for these exercises than for themes involving law. I see of course that a *suasoria* does not necessarily need a Prooemium, for the reasons I gave above;<sup>50</sup> but I do not understand why one has to shout so furiously at the outset; after all, if a consultation is proposed, the man who is asked his opinion does not, if he is of sound mind, proceed to scream, but tries to win the agreement of the person who is consulting him by as civil and humane an approach as possible. And why should his speech, as he gives his opinion, be such a flood of uniformly high excitement,<sup>51</sup> when it is moderation and reason that advice particularly needs? I admit that, in *controversiae*, the tension is often reduced in the Prooemium, Narrative, and Proofs; and if you take these away, what will be left is what the *suasoriae* usually consist of, but even this residue will be of a more level tone, and not so violent and furious.

As to magnificence of language, declaimers of *suasoriae* do not have to aim too much for this, but it does come their way rather more; this is because those who invent the themes favour important personages—kings, great leaders, senate, people—and a grander subject; and so, since words conform to the subject, they gain brilliance from the very splendour of the theme. In real deliberations the case is different, and that is why Theophrastus<sup>52</sup> decreed that the language in the Deliberative speech should be as far as possible free of affectation. In this he was following the authority of his own teacher, though he is commonly not at all afraid to dissent from him. For

<sup>52</sup> Fr. 694 Fortenbaugh.



## QUINTILIAN

Aristoteles idoneam maxime ad scribendum demonstrativam proximamque ab ea iudicalem putavit, videlicet quoniam prior illa tota esset ostentationis, haec secunda egeret artis vel ad fallendum, si ita poposcisset utilitas, consilia  
 64 fide prudentiaque constarent. Quibus in demonstrativa consentio (nam et omnes alii scriptores idem tradiderunt), in iudiciis autem consiliisque secundum condicionem ipsius quae tractabitur rei accommodandam dicendi credo  
 65 rationem. Nam et Philippicas Demosthenis isdem quibus habitas in iudiciis orationes video eminere virtutibus, et Ciceronis sententiae et contiones non minus clarum quam est in accusationibus ac defensionibus eloquentiae lumen ostendunt. Dicit tamen idem de suasoria hoc modo: ‘tota autem oratio simplex et gravis et sententiis debet ornatiores esse quam verbis.’

66 Usus exemplorum nulli materiae magis convenire merito fere omnes consentiunt, cum plerumque videantur respondere futura praeteritis habeaturque experimentum velut quoddam rationis testimonium.

67 Brevitas quoque aut copia non genere materiae sed modo constat; nam ut in consiliis plerumque simplicior quaestio est, ita saepe in causis minor.

Quae omnia vera esse sciet si quis non orationes modo sed historias etiam (namque in his contiones atque sententiae plerumque suadendi ac dissuadendi funguntur officio) legere maluerit quam in commentariis rhetorum

<sup>53</sup> *Rhetoric* 3.12, 1413b3ff. Aristotle’s “writing style” (γραφικὴ λέξις)—unambiguous and more independent of delivery than other styles—was commonly thought typical of Epideictic: Russell (op. cit. above, p. 35) 36.

<sup>54</sup> *Partitiones oratoriae* 97.

Aristotle<sup>53</sup> held that Epideictic was the most suitable type for writing, and that Forensic came next, presumably because the former was wholly concerned with display, and the latter needed art, to the point even of deceiving the audience if this was what expediency demanded, while Deliberative was based on trust and prudence. I agree with this so far as Epideictic is concerned (indeed all other writers say the same); but I think that methods of speaking in forensic and deliberative oratory must depend on the conditions of the subject which is to be treated. I observe that Demosthenes' *Philippics* are distinguished by the same virtues as his forensic speeches, and that Cicero's statements to the senate and addresses to the people display no less rhetorical brilliance than his prosecution and defence speeches. Yet Cicero<sup>54</sup> himself says of Deliberative: "The whole speech must be simple and dignified, and owe its distinction to its thoughts rather than to its words."

Almost everyone rightly agrees that the use of examples is particularly appropriate to this kind of speech, because the future often seems to reflect the past, and experience can be regarded as evidence supporting theoretical reasoning.

Brevity and greater fullness are determined not by the nature but by the scope of the subject. The Question is generally more straightforward in deliberative, just as it is often of lesser compass in forensic cases.

That all this is true will be plain to anyone who chooses to read not only speeches but history (where the speeches in assemblies and councils commonly fulfil the functions of persuasion and dissuasion), rather than letting himself grow old poring over rhetoricians' textbooks. He will often

## QUINTILIAN

- 68 consenescere; inveniet enim nec in consiliis abrupta initia,  
et concitatus saepe in iudiciis dictum, et verba aptata re-  
bus in utroque genere, et breviores aliquando causarum  
69 orationes quam sententiarum. Ne illa quidem in iis vitia  
deprendet quibus quidam declamatores laborant, quod et  
contra sentientibus inhumane conviciantur et ita plerum-  
que dicunt tamquam ab iis qui deliberat utique dissentiat:  
ideoque obiurgantibus similiores sunt quam suadentibus.
- 70 Haec adulescentes sibi scripta sciant, ne aliter quam  
dicturi sunt exerceri velint et in desuescendis morentur.  
Ceterum cum advocari coeperint in consilia amicorum,  
dicere sententiam in senatu, suadere si quid consulat  
princeps, quod praeceptis fortasse non credant usu doce-  
buntur.

### 9

- 1 Nunc de iudiciali genere, quod est praecipue multiplex  
sed officii constat duobus, intentionis ac depulsionis.  
Cuius partes, ut plurimis auctoribus placuit, quinque sunt:  
prohoemium narratio probatio refutatio peroratio. His  
adiecerunt quidam partitionem propositionem excessum;  
2 quorum<sup>1</sup> priores duae probationi succidunt. Nam propo-  
nere quidem quae sis probaturus necesse est, sed et con-

<sup>1</sup> quarum *J*

## BOOK 3.9

find an absence of abrupt beginnings in the deliberative pieces, much emotional writing in the forensic, words adapted to the subject in both, and court speeches which are sometimes not as long as opinions given in the Senate. Nor will he find here the faults from which some declaimers suffer, coarse abuse of opponents and a tendency to speak as though the person deliberating was bound to disagree with them, so that it sounds more like reproof than advice.

I should like my young friends to know that this is written for their benefit, so that they should not want to be trained in ways other than those they will need in real speaking, or waste time acquiring habits they will have to unlearn. Anyway, when they begin to be called into consultation by friends or to give their opinion in the Senate or to advise the emperor if he consults them, they will be taught by experience lessons which perhaps they do not believe when they receive them as instruction.

## CHAPTER 9

### *The main parts of a Forensic Speech*

I come now to the forensic form of oratory, which is particularly complicated, but is based on two functions: that of accusation and that of defence.

Most authorities give five "parts" of the speech: Prooemium, Narrative, Proof, Refutation, Epilogue. Some have added Partition, Proposition, and Digression. The first two of these are subdivisions of Proof. For you have to "propose" what you are going to prove—but also to come

cludere: cur igitur, si illa pars causae est, non et haec sit? Partitio vero dispositionis est species, ipsa dispositio pars rhetorices et per omnis materias totumque earum corpus  
 3 aequaliter fusa, sicut inventio elocutio: ideoque eam non orationis totius partem unam esse credendum est, sed quaestionum etiam singularum. Quae est enim quaestio in qua non promittere possit orator quid primo, quid secundo, quid tertio sit loco dicturus? Quod est proprium partitionis. Quam ergo ridiculum est quaestionem quidem speciem esse probationis, partitionem autem, quae sit species  
 4 quaestionis, partem totius orationis vocari! Egressio vero vel, quod usitatius esse coepit, excessus, sive est extra causam, non potest esse pars causae, sive est in causa, adiutorium vel ornamentum partium est earum ex quibus egreditur. Nam si quidquid in causa est pars causae vocabitur, cur non argumentum, similitudo, locus communis, adfectus,  
 5 exempla partes vocentur? Tamen nec iis adsentior qui detrahunt refutationem tamquam probationi subiectam, ut Aristoteles. Haec enim est quae constituat, illa quae destruat. Hoc quoque idem aliquatenus novat, quod prohoemio non narrationem subiungit sed propositionem; verum id facit quia propositio ei genus, narratio species videtur, et hac non semper, illa semper et ubique credit opus esse.

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<sup>1</sup> In the sense discussed in 3.3.

<sup>2</sup> See Lausberg §§ 343–345.

<sup>3</sup> *Rhetoric* 3. 1414a31ff.

to a conclusion; so why, if Proposition is a "part" of the Cause, is not the same true of Conclusion? Partition, on the other hand, is an aspect of Disposition, and Disposition is a Part of Rhetoric<sup>1</sup> and is evenly distributed throughout all themes and their entire organization, just like Invention and Elocution. Partition therefore should be regarded not simply as a part of the speech as a whole, but also as a part of the individual Questions. For what Question is there in which the orator cannot promise what he is going to say first, second, and third? And this is the special function of Partition. How ridiculous it is, therefore, to make a Question an aspect of the Proof, but to call a Partition, which is an aspect of the Question, a "part" of the speech as a whole! As for Digression (*egressio*, or *excessus*, as it has begun to be called more commonly),<sup>2</sup> if it is outside the Cause it cannot be a part of the Cause, and if it is in the Cause it is an auxiliary or embellishment of the parts of the Cause from which it digresses. For if anything that is in the Cause is to be called a "part" of it, why are not Argument, Comparison, Commonplace, Emotional Appeal, and Examples called "parts" also? On the other hand, I disagree with those, like Aristotle,<sup>3</sup> who take away Refutation, on the ground that it is subordinate to Proof; for Proof is meant to establish something, and Refutation to pull something down. Aristotle also makes a slight innovation in making the Proposition, rather than the Narrative, come next to the Prooemium. He does this because he treats Proposition as a genus of which Narrative is a species, and he believes that the latter is not always necessary, while the former is necessary always and everywhere.

- 6 Verum ex his quas constitui partibus non ut quidque primum dicendum ita primum cogitandum est, sed ante omnia intueri oportet quod sit genus causae, quid in ea quaeratur, quae prosint, quae noceant, deinde quid confirmandum sit ac refellendum, tum quo modo narrandum:
- 7 expositio enim probationum est praeparatio nec esse utilis potest nisi prius constituerit quid debeat de probatione promittere. Postremo intuendum quem ad modum iudex sit conciliandus; neque enim nisi totius<sup>2</sup> causae partibus diligenter inspectis scire possumus qualem nobis facere animum cognoscentis expediat, severum an mitem, concitatum an remissum, adversum gratiae an obnoxium.
- 8 Neque ideo tamen eos probaverim qui scribendum quoque prohoemium novissime putant. Nam ut conferri materiam omnem et quid quoque <loco><sup>3</sup> sit opus constare debet antequam dicere aut scribere ordiamur, ita incipiendum ab iis quae prima sunt. Nam nec pingere quisquam aut fingere coepit a pedibus, nec denique ars ulla consummatur ibi unde ordiendum est. Quid fiet alioqui si spatium componendi orationem stilo non fuerit? Nonne nos haec inversa consuetudo deceperit? Inspicienda igitur materia est quo praecepimus ordine, scribenda quo dicimus.

<sup>2</sup> *edd.*: totis AB

<sup>3</sup> *add.* Regius

*Order of planning and order of finished speech*

Of the five parts I have thus established, the one to be spoken first is not the one to be thought out first. The speaker must consider, before anything else, what type of Cause it is, what the Questions in it are, what is advantageous and what disadvantageous, next what is to be established and what refuted, and then again how the Narrative is to be composed; for the statement of facts is a preparation for the proofs, and cannot be of any use unless the speaker has already decided what promises he should make regarding the proofs. The very last point to consider is how to win the judge's goodwill. For we cannot know, until we have carefully considered the parts of the whole Cause, what attitude it is expedient to try to induce in the judge—severe or merciful, tense or relaxed, averse to influence or susceptible.

I cannot however approve those who think the Prooemium should also be *written* last. For, while the material needs to be gathered, and a decision made about the proper place for each item before we can begin to speak or write, we do have to begin with what comes first. Nobody begins a painting or a statue with the feet, nor in general is any work of art finished off at the point where it has to be begun. Anyway, what will happen if we have no time to write out our speech? Will not this reversal of natural habit prove our undoing? We must therefore consider the subject matter in the order I have suggested, but write the speech in the order in which we deliver it.



- 1 Ceterum causa omnis in qua pars altera agentis est, altera recusantis, aut unius rei controversia constat aut plurium: haec simplex dicitur, illa coniuncta. Una controversia est per se furti, per se adulterii. Plures aut eiusdem generis, ut in pecuniis repetundis, aut diversi, ut si quis sacrilegii et homicidii simul accusetur. Quod nunc in publicis iudiciis non accidit, quoniam praetor certa lege sortitur, principum autem et senatus cognitionibus frequens est et populi fuit. Privata quoque iudicia saepe unum iudicem habere
- 2 multis et diversis formulis solent. Nec aliae species erunt etiam si unus a duobus dumtaxat eandem rem atque ex eadem causa petet, aut duo ab uno, aut plures a pluribus (quod accidere in hereditariis litibus interim scimus): quia, quamvis in multis personis, causa tamen una est, nisi si condicio personarum quaestiones variaverit.
- 3 Diversum his tertium genus, quod dicitur comparativum. Cuius rei tractatus in parte causae frequens est, ut cum apud centumviros post alia quaeritur et hoc, uter dignior hereditate sit. Rarum est autem ut in foro iudicia propter id solum constituentur, sicut divinationes, quae

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<sup>1</sup> See 3.6.75.

<sup>2</sup> In Q.'s time, this was the most prestigious field for advocacy (Tacitus, *Dialogus* 38; Pliny, *Epistulae* 4.24, 6.33). The panel (180 in the imperial period) was usually divided into four *consilia*, and dealt with inheritance cases and other important civil disputes: Crook (1967) 79–80, (1995) 184. See 4.1.57, 4.2.5, 11.1.78.

## BOOK 3.10

### CHAPTER 10

#### *Types of Causes*

Every Cause, in which one side is the plaintiff's and the other the defendant's, is based either on a Controversy involving a single matter or on one involving several. The first type is called "simple," the second "compound." A theft taken by itself or an adultery taken by itself forms a single Controversy. Where there are several charges, these may be of the same kind (for example, in extortion cases) or of different kinds (for example, if a man is accused at the same time of sacrilege and homicide). This does not now happen in the public courts, because the praetor allots cases according to the relevant law, but it often happens in hearings before emperors or the senate, as it did once in trials by the people. Private suits also often tend to have a single judge dealing with many different forms of charge. There will be no types other than these, even if one person makes a claim against two persons (so long as his claims are for the same thing and on the same grounds), or two persons claim against one, or a group against a group (as we know happens sometimes in inheritance cases); for, although many persons may be involved, there is only one Cause, unless the circumstances of the parties prove to have altered the Questions.

Distinct from these is a third class, which is called Comparative;<sup>1</sup> such things are frequently handled in part of a Cause, as for example in the centumviral court,<sup>2</sup> where (after other questions) the point is raised which of the two claimants is more deserving of the inheritance. But it is rare for cases to be brought in court solely in this form, as

- fiunt de accusatore constituendo, et nonnumquam inter  
 4 delatores, uter praemium meruerit. Adiecerunt quidam  
 numero mutuam accusationem (*ἀντικατηγορία* vocatur),  
 aliis videlicet succidere hanc quoque comparativo generi  
 existimantibus. Cui similis erit petitionum invicem diver-  
 sarum: quod accidit vel frequentissime. Id si et ipsum vo-  
 cari debet *ἀντικατηγορία* (nam proprio caret nomine),  
 duo genera erunt eius: alterum quo litigatores idem cri-  
 men invicem intentant, alterum quo aliud atque aliud: cui  
 et petitionum condicio par est.
- 5 Cum apparuerit genus causae, tum intuebimur nege-  
 turne factum quod intenditur, an defendatur, an alio no-  
 mine appelletur, an a genere actionis repellatur: unde sunt  
 status.

11

- 1 His inventis intuendum deinceps Hermagorae videtur  
 quid sit quaestio ratio iudicatio continens (vel, ut alii  
 vocant, firmamentum).

- 2 Quaestio latius intellegitur omnis de qua in utramque  
 partem vel in plures dici credibiliter potest. In iudiciali  
 autem materia dupliciter accipienda est: altero modo quo  
 dicimus multas quaestiones habere controversiam, quo  
 etiam minores omnis complectimur, altero quo significa-

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<sup>3</sup> A procedure for determining which of several accusers should conduct a prosecution: Cicero's *In Quintum Caecilium* (70 BC), the preliminary stage in the prosecution of Verres, was a classical example, and is the only extant speech of this kind.

<sup>4</sup> I.e. the Issue may be one of Conjecture, Quality, Definition, or Transference. <sup>1</sup> Fr. 18 Matthes.

## BOOK 3.11

in Divinations<sup>3</sup> (which are concerned with establishing who shall prosecute) and sometimes with informers, when the question is which has deserved the reward. Some add Mutual Accusation (*antikātēgoria*, as it is called) to the list, while others treat this too as falling under the comparative category; very similar is the extremely common case where the two sides make different claims against each other. If this is also to be called *antikātēgoria* (and it has no special name of its own) there will be two classes of it, one in which the litigants bring the same charge against each other, and one in which they bring different charges. So also with claims to property.

As soon as the type of Cause has become clear, we shall have to consider whether the alleged act is denied, defended, differently defined, or excluded from this class of Action.<sup>4</sup> This is where we find the Types of Issue (*status*).

## CHAPTER 11

### *Questions, Lines of Defence, Points for Decision, Core*

Once these points are settled, Hermagoras<sup>1</sup> teaches that the next things to examine are the Question, the Line of Defence, the Point for Decision, and the Core (which others call the Buttress, *firmamentum*).

“Question” is understood in a broad sense as any problem which can be credibly discussed from two or more points of view. In forensic themes, however, it must be taken in two ways: first in the sense in which we say that a Controversy contains many Questions, including all the minor ones; secondly, in the sense of the central Question

mus summam illam in qua causa vertitur. De hac nunc lo-  
 quor, ex qua nascitur status, an factum sit, quid factum sit,  
 3 an recte factum sit. Has Hermagoras et Apollodorus et alii  
 plurimi scriptores proprie quaestiones vocant, Theodorus,  
 ut dixi, capita generalia, sicut illas minores aut ex illis pen-  
 dentes specialia: nam et quaestionem ex quaestione nasci  
 4 et speciem in species dividi convenit. Hanc igitur quaes-  
 tionem veluti principalem vocant ζήτημα.

Ratio autem est qua id quod factum esse constat defen-  
 ditur. Et cur non utamur eodem quo sunt usi omnes fere  
 exemplo? Orestes matrem occidit: hoc constat. Dicit se  
 iuste fecisse: status erit qualitatis, quaestio an iuste fecerit,  
 ratio quod Clytaemestra maritum suum, patrem Orestis,  
 occidit: hoc αἴτιον dicitur, κρινόμενον autem iudicatio an  
 oportuerit vel nocentem matrem a filio occidi.

5 Quidam diviserunt αἴτιον et αἰτίαν, ut esset altera  
 propter quam iudicium constitutum est, ut occisa Clytae-  
 mestra, altera qua factum defenditur, ut occisus Agamem-  
 non. Sed tanta est circa verba dissensio ut alii αἰτίαν  
 causam iudicii, αἴτιον autem facti vocent, alii eadem in  
 contrarium vertant. Latinorum quidam haec initium et  
 rationem vocaverunt, quidam utrumque eodem nomine  
 appellant.

6 Causa quoque ex causa, id est αἴτιον ἐξ αἰτίου, nasci  
 videtur, quale est: occidit Agamemnonem Clytaemestra

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<sup>2</sup> See 2.13.6, 3.6.2, 3.11.27.

on which the Cause turns. It is this—the Question from which the Issue arises—that I mean here: was it done, what was done, was it rightly done? Hermagoras and Apollodorus and most other writers call these things “Questions” in the strict sense of the word; Theodorus, as I said, calls them General Headings,<sup>2</sup> as he calls the minor or dependent Questions “Special Headings.” (It is common ground that one Question may arise out of another and that a species may be divided into other species.) This principal Question, as it were, they then call the *zētēma* (Inquiry).

The Line of Defence is the method by which an admitted act is defended. Why should I not use the same example as almost everyone else? “Orestes killed his mother.” This is agreed. He says he did it justifiably. The Issue will be Quality, the Question “whether he did it justifiably,” the Line of Defence that Clytemnestra killed her husband, who was Orestes’ father. This is called the *aition* (Motive), and the Point for Decision (the *krinomenon*) is whether it was right even for a guilty mother to be killed by her son.

Some have made a distinction between *aition* and *aitia*, making the one mean the reason why the case came to trial, in this instance the killing of Clytemnestra, and the other the cause alleged by the defence, in this instance the killing of Agamemnon. But there is such lack of agreement about the terminology that some call the cause of the trial *aitia* and the cause of the deed *aition*, while others reverse the meanings. As for the Latin writers, some call these things respectively *initium* (“starting point”) and *ratio* (“reason”), others give the same name to both.

One “cause” also is thought to come out of another (*aition ex aitiou*). For example: Clytemnestra killed Aga-

- quia ille filiam communem immolaverat et captivam paelicem adducebat. Idem putant et sub una quaestione esse plures rationes, ut si Orestes et alteram adferat causam matris necatae, quod responsis sit impulsus: quot autem causas faciendi, totidem iudicationes; nam et haec erit
- 7 iudicatio, an responsis parere debuerit. Sed et una causa plures habere quaestiones et iudicationes, ut ego arbitror, potest: ut in eo qui, cum adulteram deprensam occidisset, adulterum qui tum effugerat postea in foro occidit. Causa enim est una: adulter fuit; quaestiones et iudicationes: an
- 8 illo tempore, an illo loco licuerit occidere. Sed sicut, cum sint plures quaestiones omnesque suos status habeant, causae tamen status unus est<sup>1</sup> ad quem referuntur omnia, ita iudicatio maxime propria de qua pronuntiatur.
- 9 *Συνέχου* autem, quod, ut dixi, continens alii, firmiter alii putant, Cicero firmissimam argumentationem defensoris et adpositissimam<sup>2</sup> ad iudicationem, quibusdam id videtur esse post quod nihil quaeritur, quibusdam id quod ad iudicationem firmissimum adfertur.
- 10 Causa facti non in omnis controversias cadit; nam quae fuerit causa faciendi ubi factum negatur? At ubi causa tractetur, negant eodem loco esse iudicationem quo quaestio-

<sup>1</sup> *Gesner*: sit *AB*

<sup>2</sup> *t*: potentissimam *A*: adpotissimam *B*

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<sup>3</sup> The situation is still that of Orestes' trial. The *aition* which he alleges is that Clytemnestra had killed Agamemnon; one stage further back, it can be alleged on *her* behalf (this is *aition ex aitiou*) that Agamemnon had sacrificed Iphigenia and, later, brought the Trojan princess Cassandra home as his mistress.

<sup>4</sup> See 5.10.39 for a case of this kind. Hermogenes (43, 4 Rabe) has a case in which the husband kills his wife subsequently when

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memnon because he had sacrificed their daughter and was bringing a captive home as his mistress.<sup>3</sup> These same scholars think that there may be several Lines of Defence to one Question (for instance, if Orestes adduces a second motive for his having killed his mother, namely that he was driven to it by an oracle) and that there are as many Points for Decision as there are motives for the act, since a Point for Decision will now be whether he ought to have obeyed the oracle. However, in my view, a single motive also may involve several Questions and Points for Decision, as in the case of the man who, having caught his adulterous wife in the act and killed her, subsequently killed the adulterer, who had escaped, in the forum.<sup>4</sup> The motive is a single one: he was an adulterer. But the Questions and Points for Decision are whether it was lawful to kill him at that time and in that place. However, just as, even if there are several Questions each of which has its own Issue, there is a single Issue of the Cause, to which everything is referred, so there is a single proper Point for Decision, on which the judge has to pronounce.

*Synekhon* (which some, as I said, translate *continens* ("Core"), others *firmamentum* ("Buttress"), and Cicero<sup>5</sup> calls "the strongest argument of the defence and that which is most relevant to the judge's decision") is held by some to be "that after which there is no further inquiry," by others "the strongest point for the decision."

"Motive of action" does not arise in every Controversy. What "motive" can there be when the fact is denied? It is held that, where "motive" is discussed, the Point for Deci-

he finds her weeping at the dead adulterer's tomb.

<sup>5</sup> *De inventione* 1.19.



- nem, idque et in Rhetoricis Cicero et in Partitionibus dicit.
- 11 Nam in coniectura est quaestio ex illo: factum, non factum, an factum sit. Ibi ergo iudicatio ubi quaestio, quia in eadem re prima quaestio et extrema disceptatio. At in qualitate: matrem Orestes occidit recte, non recte, an recte occiderit quaestio, nec statim iudicatio. Quando ergo? 'Illa patrem meum occiderat.' 'Sed non ideo tu matrem debuisti occidere.' An debuerit: hic iudicatio. Firmamentum autem verbis ipsius ponam: 'si velit Orestes dicere eius modi animum matris suae fuisse in patrem suum, in se ipsum ac sorores, in regnum, in famam generis et familiae, ut ab ea
- 12 poenas liberi potissimum sui petere debuerint.' Utuntur alii et talibus exemplis: 'qui bona paterna consumpserit, ne contionetur: in opera publica consumpsit': quaestio an quisquis consumpserit prohibendus sit, iudicatio an qui sic. Vel in causa militis Arrunti, qui Lusium tribunum vim sibi inferentem interfecit, quaestio an iure fecerit, ratio quod is vim adferebat, iudicatio an indemnatum, an tribunum a milite occidi oportuerit.
- 13
- 14
- 15 Alterius etiam status quaestionem, alterius iudicationem putant. Quaestio qualitatis, an recte Clodium Milo

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<sup>6</sup> Ibid., and *Partitiones oratoriae* 104.

<sup>7</sup> Compare 7.6.3, Seneca, *Controversiae* 5.6.

<sup>8</sup> A favourite theme associated with Marius' campaign against the Cimbri (101 BC): Cicero, *De inventione* 2.124, *Pro Milone* 9; Valerius Maximus 6.12; [Quintilian], *Declamationes maiores* 2; Calpurnius Flaccus 3. Q. alone calls the victim Arruntius; in Valerius Maximus he is C. Plotius, in Plutarch (*Marius* 14) he is Trebonius.

sion cannot rest in the same point as the Question, and Cicero says as much in his *Rhetoric* and in his *Partitiones*.<sup>6</sup> Now in Conjecture, the Question arising out of “Done, not done” is whether it was done. So the Point for Decision is on the same point as the Question, because the first Question and the final decision relate to the same matter. In Quality, on the other hand—“Orestes killed his mother: justifiably, not justifiably”—the Question is whether he killed her justifiably, but this is not as yet the Point for Decision. So when does that come? “She had killed my father.” “But that does not mean you ought to have killed your mother.” Ought he? That is where the Point for Decision lies. As to the Core, I will quote Cicero himself: “Suppose Orestes chooses to say that his mother’s attitude to his father, himself, his sister, the kingdom, and the reputation of their race and their family is such that it is the overriding duty of the children to exact punishment from her.” Others also use examples like the following: “A man who has exhausted his patrimony is not allowed to address the people. This man has exhausted his patrimony on public works.”<sup>7</sup> Here the Question is whether everyone who exhausts his means is so debarred; the Point for Decision is whether this holds of a man who exhausted his means in this particular way. Or take the case of the soldier Arruntius who killed the tribune Lusius for attempting to abuse him sexually.<sup>8</sup> The Question is whether he acted justifiably. The Line of Defence is that the tribune tried to abuse him. The Point for Decision is whether it was right for a man to be killed uncondemned, or for a tribune to be killed by a soldier.

Some actually think that a Question can involve one Issue, when the Point for Decision involves another.

16 occiderit, iudicatio coniecturalis, an Clodius insidias fece-  
 rit. Ponunt et illud, saepe causam in aliquam rem dimitti  
 quae non sit propria quaestionis, et de ea iudicari. A qui-  
 bus multum dissentio. Nam et illa quaestio ‘an omnes qui  
 paterna bona consumpserint contione sint prohibendi’ ha-  
 beat oportet suam iudicationem. Ergo non alia quaestio,  
 alia iudicatio erit, sed plures quaestiones et plures iudica-  
 17 tiones. Quid? non in causa Milonis ipsa coniectura refertur  
 ad qualitatem? Nam si est insidiatus Clodius, sequitur ut  
 recte sit occisus. Cum vero in aliquam rem missa causa est,  
 recessum est a quaestione quae erat, et hic constituta  
 quaestio ubi iudicatio est.

18 Paulum in his secum etiam Cicero dissentit. Nam in  
 Rhetoricis, quem ad modum supra dixi, Hermagoran est  
 secutus: in Topicis ex statu effectam contentionem κρινό-  
 μενον existimat, idque Trebatio, qui iuris erat consultus,  
 adludens ‘qua de re agitur’ appellat: quibus id contineatur  
 ‘continentia’, ‘quasi firmamenta defensionis, quibus sub-  
 19 latis defensio nulla sit’. At in Partitionibus Oratoriis firma-  
 mentum quod opponitur defensionis, quia continens, quod  
 primum sit, ab accusatore dicatur, ratio a reo, ex rationis et  
 firmamenti quaestione disceptatio sit iudicationum.

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<sup>9</sup> *De inventione* 1.18–19; *Topica* 95.

<sup>10</sup> See 103–104: “For the sake of distinction, let us call *ratio* the proposition which is adduced by the defendant in his denial, in order to repel the charge against him, and without which he would have nothing to defend; and let us call *firmamentum* that which is adduced on the other side, to invalidate the *ratio*, and without which the accusation could not stand. From the conflict and, as it were, encounter of the *ratio* and *firmamentum* arises a Question which I call *disceptatio* (‘debate’).” Q.’s summary of this passage is very obscure.

Whether Milo was justified in killing Clodius is a Question of Quality. The Point for Decision is Conjectural: did Clodius set an ambush? They also maintain that a Cause is often diverted to a subject which does not properly belong to the Question, but which is the subject of decision. I disagree strongly with this. The Question whether everyone who has exhausted his patrimony is to be barred from the assembly must have its own Point for Decision. So we do not have a Question and a Point for Decision which are different, but a number of Questions and a number of Points for Decision. Again, in the case of Milo, does not the Conjecture itself relate to Quality, since, if Clodius set an ambush, it follows that he was killed justifiably? But when a Cause is diverted to some other subject and the original Question is abandoned, even here the Question is to be found where the Point for Decision lies.

On these matters, even Cicero is somewhat inconsistent. In his *Rhetoric* (as I said) he followed Hermagoras, while in the *Topics*<sup>9</sup> he holds that the *krinomenon* is the dispute produced by the Issue and, addressing the lawyer Trebatius, he humorously calls this "the matter before the court"; the factors which hold it together he calls "the Cores" (*continentia*), "the buttresses as it were of the defence, without which there is no defence." Yet in the *Partitiones oratoriae*<sup>10</sup> he calls that which is opposed to the defence the "Buttress," because the Core, since it comes first, is spoken by the prosecutor, the Line of Defence by the accused, while the debate concerning Points for Decision arises from the Questions raised by Line of Defence and Buttress.

20 Verius igitur et brevius qui statum et continens et iudicationem esse voluerunt: continens autem id esse quo sublato lis esse non possit. Hoc mihi videntur utramque causam complexi, et quod Orestes matrem et quod Clytaemestra Agamemnonem occiderit. Idem iudicationem et statum consentire semper existimarunt: neque enim aliud eorum rationi conveniens fuisset.

21 Verum haec adfectata subtilitas circa nomina rerum ambitiose laboret, a nobis in hoc adsumpta solum, ne parum diligenter inquisisse de opere quod adgressi sumus videremur. Simplicius autem instituenti non est necesse per tam minutas rerum particulas rationem docendi concidere. Quo vitio multi quidem laborarunt, praecipue tamen  
 22 Hermagoras, vir alioqui subtilis et in plurimis admirandus, tantum diligentiae nimium sollicitae, ut ipsa eius reprehensio laude aliqua non indigna sit. Haec autem brevior et  
 23 vel ideo lucidior multo via neque discentem per ambages fatigabit, nec corpus orationis in parva momenta diducendo consumet. Nam qui viderit quid sit quod in controversiam veniat, quid in eo et per quae velit efficere pars diversa, quid nostra, quod in primis est intuendum, nihil eorum  
 24 ignorare de quibus supra diximus poterit. Neque est fere quisquam, modo non stultus atque ab omni prorsus usu dicendi remotus, quin sciat et quid litem faciat (quod ab illis causa vel continens dicitur), et quae sit inter litigantes

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<sup>11</sup> I.e. *aition* or *aitia*.

## BOOK 3.11

Thus the more correct, and also shorter, doctrine is that held by those who say that there are three things, Issue, Core, and Point for Decision, and the Core is that without which there can be no dispute. By this they seem to me to cover both motives, Orestes' for killing his mother, and Clytemnestra's for killing Agamemnon. They also hold that the Point for Decision and the Issue are always in agreement; no other view indeed would have fitted their system.

### *How to simplify all this*

But let us leave this pedantic terminological subtlety to its pretentious labours! I have discussed it only to avoid being thought careless in the researches involved in the work I have undertaken. But it is quite unnecessary, if one is giving more modest instruction, to destroy the coherence of one's teaching with such *mirutiae*. Many teachers have suffered from this, especially Hermagoras, a man otherwise of subtle mind and generally admirable, only of such obsessive diligence that the very criticism of him implies a degree of praise. Our shorter and therefore (if for no other reason) much clearer procedure will not weary the student with a maze of detail, nor destroy the coherence of his work by breaking it all down into little bits. For the student who has seen what it is that comes into the case, what the other side wants to effect in it and by what means, and (first of all) what his own side needs cannot fail to understand all the points I have been discussing. There can hardly be anyone, other than some complete fool who has absolutely no experience of speaking, who does not know what makes a dispute (that is to say, what these people call "cause"<sup>11</sup> or Core), what the Question between the litigants is, and

quaestio, et de quo iudicari oporteat: quae omnia idem sunt. Nam et de eo quaestio est quod in controversiam venit, et de eo iudicatur de quo quaestio est.

25 Sed non perpetuo intendimus in haec animum et cupiditate laudis utcumque adquirendae vel dicendi voluptate evagamur, quando uberius semper extra causam materia est, quia in controversia pauca sunt, extra omnia, et hic dicitur de iis quae accepimus, illic de quibus volumus. Nec  
26 tam hoc praecipendum est, ut quaestionem continens iudicationem inveniamus (nam id quidem facile est), quam ut intueamur semper, aut certe, si digressi fuerimus, saltem respiciamus, ne plausum adfectantibus arma excidant.

27 Theodori schola, ut dixi, omnia refert ad capita. His plura intelleguntur, uno modo summa quaestio item ut status, altero ceterae quae ad summam referuntur, tertio propositio cum adfirmatione, ut dicimus 'caput rei est' et apud Menandrum κεφάλαιόν ἐστιν. In universum autem quidquid probandum est erit caput, sed id maius aut minus.

28 Et quoniam quae de his erant a scriptoribus artium tradita verbosius etiam quam necesse erat exposuimus, praeterea quae partes essent iudicialium causarum supra dictum est, proximus liber a prima, id est exordio, incipiet.

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<sup>12</sup> 3.6.2, 3.11.3. Theodorus fr. 2 Granatelli.

<sup>13</sup> Menander, *Georgos* ("The Farmer") 75: κεφάλαιόν ἐστι τοῦτο τοῦ παντὸς λόγου, "This is the head of the whole argument."

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what has to be decided. And these are all the same thing, because the Question concerns whatever comes into dispute, and the Decision is made about whatever the Question is about.

However, we do not always have our mind intent on these things; desire for praise (however it may be acquired) or the mere pleasure of speaking leads us astray, since the material outside the Cause is always richer, because there are only a few matters that come within the Controversy, and outside it is the whole world; here we are limited by our instructions, there we can speak about what we like. Nor is it so important to teach how to detect Question, Core, and Point for Decision (this is easy) as how to keep our eyes constantly on them, or at least look back to them if we digress, so as not to let our weapons fall from our hands while we are striving for applause!

### *A footnote*

The school of Theodorus, as I said,<sup>12</sup> relates everything to “heads.” This term has various meanings: in one sense the “head” is the main Question, that is to say the Issue; in another, it is the other Questions which are referred to the main one; in a third, it is the Proposition combined with the Statement of Proofs. It is like our saying “It is the head of the matter,” Menander’s *kephalaion estin*.<sup>13</sup> Generally speaking, whatever has to be proved will be a “head”; but some “heads” are more important than others.

Since I have now set out what the textbook writers tell us about these things at even greater length than was necessary, and have also explained above what the parts of forensic Causes are, my next book will deal first with the first of these parts, namely the Prooemium.



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## BOOK FOUR



## INTRODUCTION

We now begin the systematic discussion of the Parts of a Speech.

Chapter 1 deals with the Prooemium (*exordium*). Quintilian accepts (4.1.5) the common view that Goodwill, Attentiveness, and Receptiveness are the three aims to be sought. He first (4.1.6–22) examines ways in which the means of securing Goodwill are determined by personal characteristics of pleader, plaintiff, opponents, and judge. Next (4.1.23–33) follows similar consideration of the nature of the Cause. In 4.1.33–39 he passes suddenly (the text is probably lacunose) to consider Attentiveness. Different types of Cause—he lists six—require different sorts of Prooemium (4.1.40–41), and some, in particular, may demand an indirect form, or Insinuation (42–50). After dismissing some opponents' views, Quintilian proceeds (4.1.52ff.) to give practical advice on the style, manner, and length of Prooemia, and (63–70) on the use of Apostrophe. Finally, we are told that Prooemia are not always necessary (71–72), but may occur in various parts of the speech (73–75). The transition from Prooemium to Narrative is a tricky point (76–79).

Parallel material is abundant: *Rhetorica ad Alexandrum* 29, Aristotle, *Rhetoric* 3.1414b19–1416a3; Cicero, *De inventione* 1.19–25, *De oratore* 2.315–325; *Ad Heren-*

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*nium* 1.6–11 (with Caplan); Anonymus Seguerianus 1–39 (2–14 Dilts–Kennedy); Apsines 1 (77–111 Dilts–Kennedy); [Hermogenes] 93–108 Rabe; Julius Victor 421 Halm. Lausberg §§ 263–288.

Chapter 2 proceeds to Narrative, and Quintilian's treatment here too follows conventional lines, but with a strong practical bias. He discusses when a Narrative is essential and when not (4.2.4–23), and where it should be placed (4.2.24–30). Next come the traditional "virtues of Narrative": Lucidity (36–39), Brevity (40–51), Credibility (52–60), to which some additional qualities (Grandeur, Vividness) are added (61–65). Various other topics follow: difficult cases, where the facts could tell against the client (66–82); whether chronological order should always be followed (83–87); false narratives (88–94); "colours" (i.e. "spin") in narrative (94–102). The rest of the chapter is a rather scrappy collection of further precepts, with an emphasis on the importance of Figures and emotion (116–124), and some remarks on Second Narratives (128) and how to begin and end the Narrative (129–132).

Parallel material is again plentiful: *Rhetorica ad Alexandrum* 30–31, Aristotle, *Rhetoric* 3. 1416b16–1417b20; Cicero, *De inventione* 1.27–30, *De oratore* 2.326–330; *Ad Herennium* 1.12–16; Anonymus Seguerianus 40–142 (15–41 Dilts–Kennedy); Apsines 3 (122–139 Dilts–Kennedy); Theon 78–79 Spengel; Julius Victor 423–427 Halm = 71–76 Giomini–Celantano. Lausberg §§ 289–347.

Chapters 3 (Digression), 4 (Proposition, *πρόθεσις*), and 5 (Partition) deal with elements in the speech which are less clearly defined. "Digression" (Lausberg §§ 340–342; Anonymus Seguerianus 62; see also M. Heath, *Unity*

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*in Greek Poetics* (Oxford 1989) 90–101) may also be a form of transition from Narrative to Proof, or from Proof to Peroration (4.3.5, 12). “Proposition” (Lausberg §§ 289, 246; Anonymus Seguerianus 160–168, where it is a part of Proof) and “Partition” (Lausberg § 347) are often not distinguished from each other (*Ad Herennium* 1.17, *De inventione* 1.31), and Quintilian is unusual in attempting to separate these various procedures for signposting or preparing the way for what is to come. He breaks off (4.5.28) with two points, important in themselves, but not very clearly connected with what goes before.

# LIBER QUARTUS

## PROHOEMIUM

- 1 Perfecto, Marce<sup>1</sup> Vitori, operis tibi dicati tertio libro et iam  
quarta fere laboris parte transacta, nova insuper mihi dili-  
gentiae causa et altior sollicitudo quale iudicium hominum  
emereret accessit. Adhuc enim velut studia inter nos  
conferebamus, et si parum nostra institutio probaretur a  
2 ceteris, contenti fore domestico usu videbamur, ut tui  
meique filii formare disciplinam satis putaremus. Cum  
vero mihi Domitianus Augustus sororis suae nepotum de-  
legaverit curam, non satis honorem iudiciorum caelestium  
intellegam nisi ex hoc oneris quoque magnitudinem meti-  
3 tiar. Quis enim mihi aut mores excolendi sit modus, ut eos  
non inmerito probaverit sanctissimus censor, aut studia, ne  
fefellisse in iis videar principem ut in omnibus ita in elo-  
4 quentia quoque eminentissimum? Quod si nemo miratur

<sup>1</sup> Marcelle *recc.*: see on 1 *prooem.* 6

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<sup>1</sup> Compare Plutarch, *De audiendis poetis* 1.15A, where once again the education of the author's son and the addressee's son is the occasion of the book.

<sup>2</sup> See General Introduction. These are the two sons of Flavius Clemens and Flavia Domitilla, whom Domitian planned to make his successors (Suetonius, *Domitian* 15).

## BOOK FOUR

### PROOEMIUM

Having completed the third book of the work I have dedicated to you, Marcus Vitorius, and so now finished about a quarter of my task, I find myself with a fresh motive for diligence and a deeper anxiety concerning the public judgement that I may deserve. Hitherto, we were, in a way, discussing our studies privately between ourselves, and, if our educational system was not much approved by others, we thought we could be content with using it in our own families, judging it enough to prescribe an education for your son and for mine.<sup>1</sup> But now that Domitianus Augustus has entrusted to me the care of his sister's grandsons,<sup>2</sup> I should be unappreciative of the honour of this mark of divine approval if I did not take it as the standard by which to measure the magnitude of my task. For what limit can I set to my endeavour to develop both my character, so as to earn the approval of our revered Censor,<sup>3</sup> and my literary learning,<sup>4</sup> lest I should seem to have disappointed in this an emperor who is as distinguished for eloquence as he is for every other accomplishment? No one is surprised that

<sup>3</sup> Domitian became *ensor perpetuus* in 84 or 85.

<sup>4</sup> Others (Watson, Butler, Rahn) take the "character" and the "learning" to be that of Q.'s pupils, not of Q. himself.



- poetas maximos saepe fecisse ut non solum initiis operum suorum Musas invocarent, sed proveci quoque longius, cum ad aliquem graviorem venissent locum, repeterent
- 5 vota et velut nova precatione uterentur, mihi quoque profecto poterit ignosci si, quod initio quo primum hanc materiam inchoavi non feceram, nunc omnis in auxilium deos ipsumque in primis quo neque praesentius aliud nec studiis magis propitium numen est invocem, ut, quantum nobis expectationis adiecit, tantum ingenii adspiret dexterque ac volens adsit et me qualem esse credidit faciat.
- 6 Cuius mihi religionis non haec sola ratio quae maxima est, sed alioqui sic procedit ipsum opus ut maiora praeteritis ac magis ardua sint quae ingredior. Sequitur enim ut iudicialium causarum, quae sunt maxime variae atque multiplices, ordo explicetur: quod prohoemii sit officium, quae ratio narrandi, quae probationum fides, seu proposita confirmamus sive contra dicta dissolvimus, quanta vis in perorando, seu reficienda brevi repetitione rerum memoria est iudicis, sive adfectus, quod est longe potentissimum, commovendi. De quibus partibus singulis quidam
- 7 separatim scribere maluerunt velut onus totius corporis veriti, et sic quoque compluris de una quaque earum libros ediderunt. Quas ego omnis ausus contexere prope infinitum laborem prospicio et ipsa cogitatione suscepti muneris fatigor. Sed durandum est, quia coepimus, et si viribus deficiemur, animo tamen perseverandum.

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5 Q. has in mind the invocations in (e.g.) Homer, *Iliad* 2.485, 761; Vergil, *Aeneid* 6.641, 9.77, 10.103.

6 I.e. Domitian himself.

7 Or "placed in me."

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the frequent practice of the greatest poets was to invoke the Muses not only at the beginning of their works, but also later on, when they came to some particularly important passage, to repeat their vows and as it were offer up fresh prayers;<sup>5</sup> surely then I may be pardoned for doing what I omitted to do when I first began this work, and calling on all the gods to help me, and in the first place on that God<sup>6</sup> than whom no other power gives such present help or looks with more favour on learning; may he inspire me with genius equal to the new expectations he has aroused for me,<sup>7</sup> may he be favourable to me and come willingly to my aid, and make me what he has believed me to be!

This is the chief, but not the only, reason for this act of devotion; the work itself, in any case, is advancing in such a way that the themes I now approach are greater and more difficult than those that went before. For the next subject is the layout of forensic Causes, which are particularly various and complex: what is the function of a Prooemium; what are the principles of Narrative; how credibility is achieved in Proofs, either in confirming our own propositions or in demolishing those of our opponents; wherein lies the force of the Epilogue, if we have either to refresh the judge's memory by a brief recapitulation of the facts, or (much more important) to stir his emotions. Some have chosen to write separately on these individual topics, fearing the burden, as it were, of the system as a whole, and even so have composed numerous books on each one of them. Venturing, as I do, to weave them all into one work, I see ahead of me almost infinite labour; the very thought of my undertaking makes me tired. But, having begun, I must persevere; my strength may fail me, my courage must keep me going. ' .

- 1 Quod principium Latine vel exordium dicitur, maiore quada-  
 2 dam ratione Graeci videntur prohoemium nominasse, quia a nostris initium modo significatur, illi satis clare partem hanc esse ante ingressum rei de qua dicendum sit  
 3 ostendunt. Nam sive propterea quod οἴμη cantus est et citharoedi pauca illa quae antequam legitimum certamen inchoent emerendi favoris gratia canunt prohoemium cognominaverunt, oratores quoque ea quae prius quam causam exordiantur ad conciliandos sibi iudicum animos  
 4 praelocuntur eadem appellatione signarunt, sive, quod οἴ-  
 5 μον idem Graeci viam appellant, id quod ante ingressum rei ponitur sic vocare est institutum: certe prohoemium est quod apud iudicem dici prius quam causam cognoverit possit, vitioseque in scholis facimus quod exordio semper sic utimur quasi causam iudex iam noverit. Cuius rei licentia ex hoc est, quod ante declamationem illa velut imago litis exponitur. Sed in foro quoque contingere istud principiorum genus secundis actionibus potest, primis quidem raro umquam, nisi forte apud eum cui res aliunde iam nota sit dicimus.
- 5 Causa principii nulla alia est quam ut auditorem quo sit nobis in ceteris partibus accommodatior praeparemus. Id

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<sup>1</sup> So also Anonymus Seguerianus 4, but pipers (αὐληταί) in the parallel account in Aristotle (*Rhetoric* 3. 1414b23). For οἴμη ("song") see e.g. Homer, *Odyssey* 8.74, 481.

<sup>2</sup> See e.g. 3.6.96–97; such outlines are common in *Declamationes minores* and in Calpurnius Flaccus.

<sup>3</sup> E.g. after an adjournment (*comperendinatio*).

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### CHAPTER 1

#### *Prooemia*

What in Latin is called *principium* or *exordium*, the Greeks seem to have had rather better reasons for calling *prooimion*, because our words merely signify “beginning,” whereas theirs makes it clear that this is the part which precedes the introduction of the subject to be treated. Now *oimē* means song, and lyre-players<sup>1</sup> gave the name *prooimion* to the short pieces they perform to win favour before they begin the formal competition; it may be for this reason, therefore, that orators also chose this name to denote what they say with the object of winning over the minds of the judges before they start on the actual case. Alternatively, because the Greeks also call a road *oimos*, it became the practice to use *prooimion* of what is said before one enters on the real matter. In any case, a Prooemium is what can be said before the judge before he takes cognizance of the Cause, and it is a bad practice of our schools to assume in the Prooemium that the judge already knows the Cause. This licence arises from the fact that the outline of the dispute is always given before the declamation.<sup>2</sup> At the same time, this sort of Prooemium may be in place in court also, at a second hearing,<sup>3</sup> but rarely, if ever, at a first hearing, unless we happen to be speaking before a judge who has prior knowledge of the case from another source.

*Goodwill, attentiveness, and readiness to learn*

The reason for a Prooemium is simply to prepare the hearer to be more favourably inclined towards us for the

fieri tribus maxime rebus inter auctores plurimos constat, si benivolum attentum docilem fecerimus, non quia ista non per totam actionem sint custodienda, sed quia initiis praecipue necessaria, per quae in animum iudicis ut procedere ultra possimus admittimur.

- 6 Benivolentiam aut a personis duci aut a causis accepimus. Sed personarum non est, ut plerique crediderunt,  
 7 triplex ratio, ex litigatore et adversario et iudice: nam exordium duci nonnumquam etiam ab actore causae solet. Quamquam enim pauciora de se ipso dicit et parcius, plurimum tamen ad omnia momenti est in hoc positum, si vir bonus creditur. Sic enim continget ut non studium advocati videatur adferre, sed paene testis fidem. Quare in primis existimetur venisse ad agendum ductus officio vel cognitionis vel amicitiae, maximeque, si fieri poterit, rei publicae aut alicuius certe non mediocris exempli. Quod sine dubio multo magis ipsis litigatoribus faciendum est, ut ad  
 8 agendum magna atque honesta ratione aut etiam necessitate accessisse videantur. Sed ut praecipua in hoc dicentis auctoritas, si omnis in subeundo negotio suspicio sordium aut odiorum aut ambitionis afuerit, ita quaedam in his quoque commendatio tacita, si nos infirmos inparatos in pares agentium contra ingeniis dixerimus, qualia sunt

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<sup>4</sup> This triad is standard in all discussions of Prooemia: Lausberg §§ 266–279.

<sup>5</sup> See Cicero, *De inventione* 1.22, *Ad Herennium* 1.8, Aristotle, *Rhetoric* 1415a27, Anonymus Seguerianus 7. This too is a standard distinction.

<sup>6</sup> This assumes that the litigant and the advocate are not the

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rest of the proceedings. Most authors agree that there are three main ways of doing this: by making him well disposed, attentive, and ready to learn.<sup>4</sup> Of course, these aims have to be maintained throughout the pleading, but they are particularly vital in the initial stage, since it is by means of this that we gain admission to the judge's mind so as to make further progress later.

We are taught that Goodwill can be derived either from persons or from the case itself.<sup>5</sup> However, the three-fold classification of persons, which most writers use—plaintiff, opponent, and judge—is incorrect, because the Prooemium is sometimes based also on the person of the pleader.<sup>6</sup> For although he may say less about himself, and more sparingly, it has a decisive influence on the whole affair if he is believed to be a good man. For he will thus be able to give the impression not of a partisan advocate but almost of a trustworthy witness. So in the first place let him be believed to have undertaken the case out of a sense of duty to a relative or a friend or (best of all if possible) to his country, or at least because it sets some sort of important precedent. Of course, it is much more important for the plaintiffs themselves to give the impression that they have taken action for some great and honourable reason or even from necessity. However, while it is true that the speaker's authority carries most weight if there is no suspicion of sordid motive, personal enmity, or ambition in his undertaking of the case, there is also a certain tacit approval to be won by proclaiming ourselves weak, unprepared, and no match for the talents of the opposing party. Many of

same—i.e. Q. is drawing attention to the difference between Roman and Greek court procedure.

- 9 pleraque Messalae prohoemia. Est enim naturalis favor pro laborantibus, et iudex religiosus libentissime patronum audit quem iustitiae suae minime timet. Inde illa veterum circa occultandam eloquentiam simulatio, multum
- 10 ab hac nostrorum temporum iactatione diversa. Vitandum etiam ne contumeliosi maligni superbi maledici in quemquam hominem ordinemve videamur, praecipueque eorum qui laedi nisi adversa iudicum voluntate non possint.
- 11 Nam in iudicem ne quid dicatur non modo palam sed quod omnino intellegi possit stultum erat monere, nisi fieret. Etiam partis adversae patronus dabit exordio materiam, interim cum honore, si eloquentiam eius et gratiam nos timere fingendo ut ea suspecta sint iudici fecerimus, interim per contumeliam, sed hoc perquam raro, ut Asinius pro Urbiniae heredibus Labienum adversarii patronum inter argumenta causae malae posuit.
- 12 Negat haec prohoemia esse Cornelius Celsus quia sint extra litem: sed ego cum auctoritate summorum oratorum magis ducor, tum pertinere ad causam puto quidquid ad dicentem pertinet, cum sit naturale ut iudices iis quos libentius audiunt etiam facilius credant.

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<sup>7</sup> See 1.7.35, 10.1.113. Tacitus (*Dialogus* 20) comments on his "beginning with the weak state of his health."

<sup>8</sup> The trick is to claim to be inexperienced or incompetent: it is used ironically by Plato's Socrates (*Apology* 17A), seriously in (e.g.) the Prooemia of Lysias 19, Isaeus 10. See 12.9.5 on M. Antonius' advice (Cicero, *De oratore* 2.4) that "it is better not to be thought to have had lessons."

<sup>9</sup> For example, the equestrian *ordo* or the *publicani*.

<sup>10</sup> *ORF* 174.7, p. 522. Asinius Pollio's speeches in this case before the centumviral court (c.10 BC) are mentioned again at 7.2.4, 7.2.26, 9.3.13, and by Tacitus, *Dialogus* 38.2.

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Messala's Prooemia are of this kind.<sup>7</sup> There is a natural prejudice in favour of people who have difficulties, and a scrupulous judge is always very ready to listen to an advocate who does not present a threat to his integrity. Hence the ancient orators' trick of concealing their eloquence<sup>8</sup>—so unlike the self-advertisement of our own times! We must also avoid giving the impression of being abusive, malicious, proud, or slanderous towards any individual or class,<sup>9</sup> especially those who cannot be hurt without turning the judges against us. As to the judge, it would be foolish of me to warn against saying explicitly or even hinting at anything unfavourable to him, were it not that this does happen. The other side's advocate will also provide us with prooemium material; we can sometimes pay him honour by pretending to be afraid of his eloquence and influence, so as to lead the judge to look on these with suspicion; and sometimes, though very occasionally, we can insult him: for example, Asinius, in his speech for the heirs of Urbinia,<sup>10</sup> made the appearance of Labienus<sup>11</sup> as his opponent's advocate an argument for the badness of their cause.

Cornelius Celsus<sup>12</sup> says that these are not really Prooemia at all, because they are irrelevant to the case. However, I am influenced by the authority of the greatest orators, and I also think that whatever is relevant to the speaker is relevant to the Cause, because it is natural for judges to be more willing to believe those whom they find it easier to listen to.

<sup>11</sup> See Seneca, *Controversiae* 10 *praef.* 4–8 for the character of this orator and historian, nicknamed Rabienus for his furious personality.

<sup>12</sup> Fr. 8 Marx.



## QUINTILIAN

- 13 Ipsius autem litigatoris persona tractanda varie est: nam tum dignitas eius adlegatur, tum commendatur infirmitas. Nonnumquam contingit relatio meritorum, de quibus verecundius dicendum erit sua quam aliena laudanti. Multum agit sexus aetas condicio, ut in feminis senibus
- 14 pupillis, liberos parentis coniuges adlegantibus: nam sola rectum quoque iudicem inclinat miseratio. Degustanda tamen haec prohoemio, non consumenda.

Adversarii vero persona prope isdem omnibus sed e contrario ductis in pugnari solet. Nam et potentes sequitur invidia et humiles abiectosque contemptus et turpes ac nocentes odium, quae tria sunt ad alienandos iudicum animos potentissima. Neque haec dicere<sup>1</sup> sat est, quod datur etiam imperitis, <sed><sup>2</sup> pleraque augenda ac minuenda ut expediet. Hoc enim oratoris est, illa causae.

- 16 Iudicem conciliabimus nobis non tantum laudando eum, quod et fieri cum modo debet et est tamen parti utrique commune, sed si laudem eius ad utilitatem causae nostrae coniunxerimus, ut adlegemus pro honestis dignitatem illi suam, pro humilibus iustitiam, pro infelicibus misericordiam, pro laesis severitatem, et similiter cetera.
- 17 Mores quoque, si fieri potest, iudicis velim nosse. Nam prout asperi lenes, iucundi graves, duri remissi erunt, aut

<sup>1</sup> indicare M. W.

<sup>2</sup> add. D. A. R.

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<sup>13</sup> Compare Cicero, *De inventione* 1.22.

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The character of the litigant himself may also be treated in various ways. Sometimes his worth is emphasized, sometimes his weakness is commended to the court's indulgence. On occasion, an account of his services is possible; but one needs to be more reserved if it is one's own services that one is praising than if it is another's! Sex, age, and status are also important, for example with women, old men, wards, or those who introduce children, parents, or wives to help their case, since pity on its own may move even a rigorous judge. But only a taste of these things should be given in the Prooemium; they must not be exhausted.

The character of the opponent<sup>13</sup> is commonly impugned by much the same arguments, but taken in the opposite way. Envy attends the powerful, contempt the mean and abject, hatred the guilty and disgraced; and these are the three feelings which have the greatest power to alienate the judges. Simply to say these things, however, is not enough, for even the untrained are capable of this; they must generally be exaggerated or extenuated, whichever is expedient. This is the orator's job; the facts themselves are provided by the Cause.

We should ensure the judge's goodwill not only by praising him (which must be done with restraint, though it is something both sides can do) but by linking his praise to the needs of our own Cause. With a client of good standing, we invoke the judge's own dignity; with a humbler client, his sense of justice; with the unfortunate, his mercifulness; with the victim of wrong, his severity; and so on. I like, if possible, to know the judge's character too. For whether it is harsh or mild, pleasant or grave, stern or relaxed, we shall need to take advantage of its qualities for

adsumere in causam naturas eorum qua competent aut mi-  
 18 tigare qua repugnabunt oportebit. Accidit autem interim  
 hoc quoque, ut aut nobis inimicus aut adversariis sit ami-  
 cus qui iudicat: quae res utrique parti tractanda est, ac nes-  
 cio an etiam ei magis in quam videatur propensior. Est  
 enim nonnumquam pravus<sup>3</sup> hic ambitus, adversus amicos  
 aut pro iis quibuscum simultates gerant pronuntiandi,  
 19 faciendique iniuste ne fecisse videantur. Fuerunt etiam  
 quidam suarum rerum iudices. Nam et in libris observa-  
 tionum a Septimio editis adfuisse Ciceronem tali causae  
 invenio, et ego pro regina Berenice apud ipsam eam dixi.  
 Similis hic quoque superioribus ratio est: adversarius enim  
 fiduciam partis suae iactat, patronus timet cognoscentis  
 verecundiam.

20 Praeterea detrahenda vel confirmanda opinio, si quam  
 [praecipue]<sup>4</sup> domo videbitur iudex attulisse. Metus etiam  
 nonnumquam est amovendus, ut Cicero pro Milone ne  
 arma Pompei disposita contra se putarent laboravit, non-  
 21 numquam adhibendus, ut idem in Verrem facit. Sed ad-  
 hibendi modus alter ille frequens et favorabilis, ne male  
 sentiat populus Romanus, ne iudicia transferantur, alter  
 autem asper et rarus, quo minatur corruptis accusationem,

<sup>3</sup> *E:* parvus *A:* pravis *B*

<sup>4</sup> *del. Radermacher*

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<sup>14</sup> Possibly the P. Septimius to whom Varro dedicated Books 2–4 of *De lingua Latina*, or the writer on architecture mentioned by Vitruvius, 7 *praef.* 14.

<sup>15</sup> This implies that the speech (unknown to us) was known to Q. only through Septimius.

<sup>16</sup> See General Introduction, vol. I. Berenice, with whom Titus fell in love in Judaea, visited Rome with her brother Agrippa

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our Cause where they are useful, or play them down where they present an obstacle. It sometimes happens also that the judge is either an enemy of ours or a friend of our opponents. Both parties need to deal with this situation, more particularly, I suspect, the party whom he seems to favour. There is sometimes a perverse desire to give judgement against friends or in favour of persons with whom the judge has a quarrel, and thus to commit an injustice to avoid giving the impression of having done so. And there have been some who have been judges in their own case: I find it stated in Septimius'<sup>14</sup> books of *Observations* that Cicero<sup>15</sup> was once involved in such a Cause, and I myself spoke on behalf of Queen Berenice<sup>16</sup> before the Queen herself. The principle here is similar to the foregoing: the opponent emphasizes the confidence of his own side, the advocate fears the judge may be too scrupulous.

Furthermore, if the judge seems to have come into court with a fixed opinion, this must be either destroyed or confirmed. We sometimes need also to calm judges' fears (as Cicero in the *Pro Milone* strove to persuade them not to think that Pompey's soldiers, who were stationed all round the court, were meant as a threat to them) or indeed sometimes to excite fears, as Cicero did in speaking against Verres. Of the two ways of doing this, the common and acceptable one is to warn against risking the displeasure of the Roman people and the transference of jurisdiction to other courts;<sup>17</sup> the other, which is both rare and brutal,

in 75; Titus sent her away when he succeeded his father in 79. The nature of the case is unclear; but see J. A. Crook, *AJP* 72 (1951) 162–176. <sup>17</sup> A reference to the circumstances of Cicero's prosecution of Verres.

et id quidem in consilio ampliore utcumque tutius (nam et  
 22 mali inhihentur et boni gaudent), apud singulos vero num-  
 quam suaserim, nisi defecerint omnia. Quod si necessitas  
 exiget, non erit iam ex arte oratoria, non magis quam ap-  
 pellare, etiamsi id quoque saepe utile est, aut antequam  
 pronuntiet reum facere; nam et minari et deferre etiam  
 non orator potest.

23 Si causa conciliandi nobis iudicis materiam dabit, ex  
 hac potissimum aliqua in usum principii quae maxime fa-  
 vorabilia videbuntur decerpi oportebit. Quo in loco Vergi-  
 nius fallitur, qui Theodoro placere tradit ut ex singulis  
 quaestionibus singuli sensus in prohoemium conferantur.  
 24 Nam ille non hoc dicit, sed ad potentissimas quaestiones  
 iudicem praeparandum: in quo vitii nihil erat, nisi in uni-  
 versum id praeciperet, quod nec omnis actio patitur nec  
 omnis causa desiderat. Nam protinus a petitore primo  
 loco, dum ignota iudici lis est, quo modo ex quaestionibus  
 duces sententias? Nimirum res erunt indicandae prius.  
 Demus aliquas (nam id exiget ratio nonnumquam):  
 etiamne potentissimas omnis, id est totam causam? Sic erit  
 25 in prohoemio peracta narratio. Quid vero si, ut frequenter  
 accidit, paulo est durior causa? Non benivolentia iudicis  
 petenda ex aliis partibus erit, sed non ante conciliato eius  
 animo nuda quaestionum committetur asperitas. Quae si

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<sup>18</sup> See Cicero's *actio prima* against Verres, 34–40, 50.

<sup>19</sup> See on 3.1.21.

<sup>20</sup> Fr. 8 Granatelli. See on 2.11.2.

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consists of threatening prosecution for corruption.<sup>18</sup> This is at any rate safer with a large jury (for the bad among them are inhibited by these thoughts, and the good feel pleased), but I should never recommend it for use before a single judge, unless all else has failed. If necessity ever drives us to it, it will no longer be a matter of the orator's art; and the same is true of an appeal—though this too is often useful—or an indictment of the judge before he gives his decision. It does not take an orator to make threats or lay information!

If the Cause gives us material for winning over the judge, some parts of this material—those which seem most favourable—should be selected for use in the Prooemium. Verginius<sup>19</sup> is wrong here, when he tells us that Theodorus<sup>20</sup> held that only one thought relating to each Question should be used in the Prooemium. Theodorus in fact does not say this, but only that the judge should be softened up for the most important Questions. There would be nothing wrong with this view, if he did not make a universal rule of something which not every pleading allows and not every Cause requires. For, as the plaintiff speaks first, when the case is still unknown to the judge, how can we derive ideas from the Question? Of course the facts will have to be stated first. But let us suppose that some facts are so treated (our strategy will sometimes require this): will they include all the most important ones, that is to say the whole Cause? In that case, the Narrative will be over and done with in the Prooemium. But suppose, as often happens, the Cause is rather an awkward one. Should we not try to secure the judge's goodwill from other parts of the speech, instead of exposing the naked harshness of our Questions without having first won his sympathy? If it

26 recte semper initio dicendi tractarentur, nihil prohoemio  
opus esset. Aliqua ergo nonnumquam quae erunt ad conci-  
liandum nobis iudicem potentissima non inutiliter interim  
ex quaestionibus in exordio locabuntur.

Quae sint porro in causis favorabilia enumerare non est  
necesse, quia et manifesta erunt cognita cuiusque contro-  
versiae condicione et omnia colligi in tanta litium varietate  
27 non possunt. Ut autem haec invenire et augere, ita quod  
laedit aut omnino repellere aut certe minuere ex causa est.  
Miseratio quoque aliquando ex eadem venit, sive quid pas-  
28 si sumus grave sive passuri. Neque enim sum in hac opi-  
nione qua quidam, ut eo distare prohoemium ab epilogo  
credam quod in hoc praeterita, in illo futura dicantur, sed  
quod in ingressu parcius et modestius praetemptanda sit  
iudicis misericordia, in epilogo vero liceat totos effundere  
adfectus et fictam orationem induere personis et defunc-  
tos excitare et pignora reorum producere: quae minus in  
29 exordiis sunt usitata. Sed haec quae supra dixi non movere  
tantum verum ex diverso amoliri quoque prohoemio opus  
est. Ut autem nostrum miserabilem si vincamur exitum, ita  
adversariorum superbum si vicerint utile est credi.

30 Sed ex iis quoque quae non sunt personarum nec causa-  
rum verum adiuncta personis et causis duci prohoemia  
solent. Personis adplicantur non pignora modo, de quibus

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<sup>21</sup> Spalding however argues that *hoc* and *illo* have the opposite reference: Prooemia deal with past events, the Epilogue with the future outcome.

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was always right to handle the Questions at the outset, there would be no need for a Prooemium. In a word: *some* points, which are particularly important for conciliating the judge, may *sometimes* profitably be taken out of the Questions and placed in the Prooemium.

It is unnecessary to list the favourable points in a Cause, because they will be obvious as soon as we come to know the circumstances of the particular dispute, and cases are so varied that it is impossible to specify them all. It is in the interest of our Cause to discover and amplify these favourable points, while totally refuting or at least disparaging those which do damage. Again, the Cause may sometimes give opportunity for an appeal to pity, if we have suffered greatly or are likely to do so. I am not of the opinion (which some scholars hold) that the difference between the Prooemium and the Epilogue is that the latter deals with the past and the former with the future.<sup>21</sup> It lies rather in the fact that, in our opening remarks, we need to go about making our first appeal to the judge's pity more sparingly and with more restraint, whereas in the Epilogue we can give rein to every emotion, put imaginary speeches into the mouths of our characters, raise the dead from the grave, and bring forward the defendants' nearest and dearest. All this is not so usual in Prooemia! Yet the Prooemium has not only to rouse the feelings I have mentioned, but also, in reverse, to remove them. It is useful to create the belief that the outcome will be pitiable for us if we lose, and our opponents will be arrogant if they win.

However, Prooemia are often drawn not from features inherent in persons or Causes, but from features connected with them. Connected with persons are not only those nearest and dearest to them, as I said, but also rela-



- supra dixi, sed propinquitates, amicitiae, interim regiones etiam civitatesque et si quid aliud eius quem defendimus casu laedi potest. Ad causam extra pertinet tempus, unde principium pro Caelio, locus, unde pro Deiotaro, habitus, unde pro Milone, opinio, unde in Verrem, deinceps, ne omnia enumerentur, fama iudiciorum, expectatio vulgi: nihil enim horum in causa est, ad causam tamen pertinent.
- 31 Adicit Theophrastus ab oratione <diversae partis><sup>5</sup> principium, quale videtur esse Demosthenis pro Ctesiphonte ut sibi dicere suo potius arbitrio liceat rogantis quam eo modo quem accusator actione praescripserit.
- 32 Fiducia ipsa solet opinione adrogantiae laborare. Faciunt favorem et illa paene communia, non tamen omittenda vel ideo ne occupentur: optare, abominari, rogare, sollicitum agere, quia <. . .><sup>6</sup> plerumque attentum iudicem facit si res agi videtur nova magna atrox, pertinens ad exemplum, praecipue tamen si iudex aut sua vice aut rei publicae commovetur: cuius animus spe metu admonitione precibus, vanitate denique, si id profuturum credemus, agitandus est. Sunt et illa excitandis ad audiendum non
- 33
- 34

<sup>5</sup> *add. D.A.R., cf. 4.1.54 (ab ordine principium Watt 1993)*

<sup>6</sup> *The lacuna (Winterbottom) covers the transition to "attentiveness." Shackleton Bailey reads quin ("furthermore") for quia, with no lacuna*

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<sup>22</sup> The trial was held on a holiday.

<sup>23</sup> A private hearing.

<sup>24</sup> Troops surrounded the court.

<sup>25</sup> He means the assumption that no wealthy or influential defendant could be convicted (see the *actio prima*, 1).

<sup>26</sup> Fr. 680 Fortenbaugh. Compare 3.6.3. For what follows, see

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tions, friends, sometimes districts and even cities, and anything else which can be damaged by the misfortune of our client. Connected with the Cause, as external circumstances, are: the time (this is the starting point of the Prooemium of *Pro Caelio*);<sup>22</sup> place (as in *Pro Deiotaro*);<sup>23</sup> circumstances (as in *Pro Milone*);<sup>24</sup> public opinion (as in the *Verrines*);<sup>25</sup> and lastly (for I cannot list everything) the reputation of the courts and the expectations of the people at large. None of these is *in* the Cause, but they are all relevant to it. Theophrastus<sup>26</sup> adds that Prooemia may be based on the <opponent's> speech; such (it appears) is Demosthenes' Prooemium in his speech for Ctesiphon, in which he pleads to be allowed to speak at his own discretion rather than in the way prescribed by the prosecutor in his own speech.

Confidence itself often suffers from being thought arrogance. Goodwill is also produced by devices which come near to being common to both parties; these must not be forgotten, if only to prevent their being used first against oneself: prayer, imprecation, entreaty, simulated anxiety, because . . .<sup>27</sup> it commonly makes the judge attentive if the affair is seen to be unparalleled, important, scandalous, or likely to set a precedent, and especially if he is affected by it on his own account or on that of the state. His mind needs to be moved by hope, fear, warnings, prayers, even by an untruth, if we think that will help. Another useful way of exciting attention is to make the judges think

Demosthenes, *On the Crown* 2, Aeschines, *Against Ctesiphon* 202–205.

<sup>27</sup> We seem here to pass from Goodwill to Attentiveness without any indication; there are probably some words missing.

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inutilia, si nos neque diu moraturos neque extra causam dicturos existiment.

Docilem sine dubio et haec ipsa praestat attentio, sed et illud, si breviter et dilucide summam rei de qua cognoscere debeat indicarimus (quod Homerus atque Vergilius operum suorum principiis faciunt): nam is eius rei modus est ut propositioni similior sit quam expositioni, nec quo modo quidque sit actum sed de quibus dicturus sit orator ostendat. Nec video quod huius rei possit apud oratores reperiri melius exemplum quam Ciceronis pro A. Cluentio:

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‘Animadverti, iudices, omnem accusatoris orationem in duas divisam esse partes: quarum altera mihi niti et magno opere confidere videbatur invidia iam inveterata iudicii Iuniani, altera tantum modo consuetudinis causa timide et diffidenter attingere rationem veneficii criminum, qua de re lege est haec quaestio constituta.’ Id tamen totum respondententi facilius est quam proponenti, quia hic admonendus iudex, illic docendus est.

Nec me quamquam magni auctores in hoc duxerint, ut non semper facere attentum ac docilem iudicem velim: non quia nesciam, id quod ab illis dicitur, esse pro mala causa qualis ea sit non intellegi, verum quia istud non negligentia iudicis contingit, sed errore. Dixit enim adver-

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<sup>28</sup> Homer's preludes were admired (see 10.1.48 and Horace, *Ars Poetica* 136–152), and Vergil followed his example (see Servius' defence of the order of events in *Aeneid* 1–3 (pp. 4–5 Thilo-Hagen)).

<sup>29</sup> l.

<sup>30</sup> See Aristotle, *Rhetoric* 3. 1415a26.

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that we shall not detain them long or say anything irrelevant to the case.

This attentiveness of course in itself makes the judge receptive of information; so also will the provision of a brief and lucid summary of the matter on which he is called upon to pronounce (Homer and Vergil do this in the Prooemia of their poems).<sup>28</sup> The scale of the Prooemium requires that this be more like a Proposition than a full account, and that the orator make clear not everything that happened but just what he is going to discuss. I do not think one can find a better example of this in the orators than the Prooemium of Cicero's *Pro Cluentio*.<sup>29</sup>

I have observed, judges, that the entire prosecution speech was divided into two parts, one of which seemed to me to rely on and put great confidence in the long-established odium arising from the trial before Junius, while the other seemed to touch cautiously and diffidently, and only in order to conform with normal practice, on the question of the charge of poisoning, with which this court is by law established to deal.

All this, however, is easier for the defence than for the prosecution, since the former has only to remind the judge, while the latter has to instruct him.

No authority, however great, can make me believe that I should not always want to make the judge attentive and receptive. This is not because I do not grasp what they are saying—namely that it is to the advantage of a bad Cause that its badness should not be understood<sup>30</sup>—but because this result comes not from failure of attention on the judge's part but from his being mistaken. Our opponent

- sarius et fortasse persuasit: nobis opus est eius diversa opinione, quae mutari non potest nisi illum fecerimus ad ea quae dicemus docilem et intentum. Quid ergo est? Inminuenda quaedam et elevanda et quasi contemnenda esse consentio ad remittendam intentionem iudicis quam
- 39 adversario praestat, ut fecit pro Ligario Cicero. Quid enim agebat aliud ironia illa quam ut Caesar minus se in rem tamquam non novam intenderet? Quid pro Caelio, quam ut res expectatione minor videretur?
- 40 Verum ex iis quae proposuimus aliud in alio genere causae desiderari palam est. Genera porro causarum pluri-  
mi quinque fecerunt: honestum, humile, dubium vel anceps, admirabile, obscurum, id est *ἔνδοξον*, *ἄδοξον*, *ἀμφίδοξον*, *παράδοξον*, *δυσπαρακολούθητον*: quibus recte videtur adici turpe, quod alii humili, alii admirabili
- 41 subiciunt. Admirabile autem vocant quod est praeter opinionem hominum constitutum. In ancipiti maxime benivolam iudicem, in obscuro docilem, in humili attentum parare debemus. Nam honestum quidem ad conciliationem satis per se valet: in admirabili et turpi remediis opus est.

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<sup>31</sup> A favourite with Q., who also knew Tubero's prosecution speech (5.13.31, 11.1.78). The "irony" lies in the ironical acceptance of Ligarius' peccadillo as a new and unheard-of crime.

<sup>32</sup> See *Ad Herennium* 1.5 (omitting *obscurum*), Cicero, *De inventione* 1.20, "Augustine" in *RLM* 147–151 Halm (the fullest account). Lausberg § 64 treats these types as marking "degrees of defensibility." They are sometimes called *figurae*, *σχήματα*. Diagnosis of the case in these terms is naturally relevant to the form of the Prooemium.

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(let us suppose) has spoken and perhaps been convincing; we need the judge's opinion to be different, and it cannot be changed unless we make him receptive and attentive to what we are going to say. I agree of course that some points have to be minimized, disparaged, and almost held up to scorn in order to reduce the attention which the judge pays to our opponent. Cicero did this in the *Pro Ligario*.<sup>31</sup> For what was his point in all that irony except to make Caesar pay less attention to the case, thinking it was nothing new? And what was the object of the irony in the *Pro Caelio* except to make the affair seem less serious than was thought?

### *Different types of Cause require different types of Prooemium*

It is obvious, however, that the need for the various procedures I have set out varies with the Type of Cause. Now most authorities give five Types of Causes:<sup>32</sup> Honourable, Mean, Doubtful or Ambivalent, Paradoxical, and Obscure (*endoxon, adoxon, amphidoxon, paradoxon, dysparakolouthēton*). It seems right to add a sixth—the “Scandalous”—which some include under “Mean” and others under “Paradoxical.” (By this last they mean anything that is contrary to common expectation.) In Ambivalent Causes it is our main duty to make the judge well disposed, in Obscure Causes receptive of information, and in Mean Causes attentive. Honourable Causes are in themselves sufficient to win a fair hearing; the Paradoxical and the Scandalous need palliatives.

- 42 Et eo quidam exordium in duas dividunt partis, principium et insinuationem, ut sit in principiis recta benivolentiae et attentionis postulatio: quae quia esse in turpi causae genere non possit, insinuatio subrepat animis, maxime ubi frons causae non satis honesta est, vel quia res sit improba vel quia hominibus parum probetur, aut si facie quoque ipsa premitur vel invidiosa consistentis ex diverso patroni aut patris vel miserabili senis caeci infantis.
- 43 Et quidem quibus adversus haec modis sit medendum verbosius tradunt, materiasque ipsi sibi fingunt et ad morem actionum prosecuntur: sed hae, cum oriantur ex causis, quarum species consequi omnes non possumus, nisi generaliter comprehenduntur in infinitum sunt extrahendae.
- 44 Quare singulis consilium ex propria ratione nascetur. Illud in universum praeceperim, ut ab iis quae laedunt ad ea quae prosunt refugiamus: si causa laborabimus, persona subveniat, si persona, causa; si nihil quod nos adiuvet erit, quaeramus quid adversarium laedat; nam ut optabile est
- 45 plus favoris mereri, sic proximum odii minus. In iis quae negari non poterunt elaborandum ut aut minora quam dictum est aut alia mente facta aut nihil ad praesentem quaestionem pertinere aut emendari posse paenitentia aut satis

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<sup>33</sup> See *Ad Herennium* 1.9.11, Cicero, *De inventione* 1.21–25, Lausberg §§ 280–281. *Ad Herennium* gives ἔφοδος as Greek for *insinuatio*, but this term is rare in the extant literature. Many ingenious devices, however, are described, e.g., in Apsines 1 (76–111 Diltz–Kennedy), who is wholly concerned with fictitious themes (compare what Q. says below, § 43).

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### *Introductions and Insinuations*

Some therefore divide the Prooemium into two parts, the Introduction and the Insinuation,<sup>33</sup> the former containing a direct appeal for goodwill and attention. But as this is impossible in Scandalous Causes, let Insinuation worm its way into the judge's mind, particularly (1) when the thrust of the Cause is not very honourable, either because the affair is disreputable or because it is widely disapproved, or (2) if the mere appearance of the Cause makes it either invidious (if a patron or a father is on the opposite side) or vulnerable to pity (if the opponent is old, blind, or an infant). Our authorities tell us indeed at excessive length what remedies can be used for these difficulties, and they themselves invent fictitious themes and follow them up like real pleadings. But as pleadings derive from Causes, the varieties of which cannot all be covered, they must be multiplied to infinity, unless some general classification is found. The plan in any particular instance will therefore arise out of the special nature of the case. As a universal principle, I am inclined to recommend that we should abandon anything that is damaging and take refuge in what is to our advantage. If our problem comes from the Cause, let the Person come to our aid, and vice versa. If we have nothing that can help us, let us see what will damage our opponent. We must of course hope to gain more favour than he does, but the next best thing is to attract less dislike. When denial is impossible, we must try hard to show either (1) that the offence is less than was stated or (2) that the act was done with other intentions or (3) that it has nothing to do with the present question or (4) that it can be atoned for by repentance or (5) that it has been punished



iam punita videantur. Ideoque agere advocato quam litigatori facilius, quia et laudat sine adrogantiae crimine et aliquando utiliter etiam reprehendere potest. Nam se quoque moveri interim finget, ut pro Rabirio Postumo Cicero, dum aditum sibi ad aures faciat et auctoritatem induat vera sentientis, quo magis credatur vel defendenti eadem vel neganti. Ideoque hoc primum intuebimur,<sup>7</sup> litigatoris an advocati persona sit utendum, quotiens utrumque fieri potest; nam id in schola liberum est, in foro rarum ut sit idoneus suae rei quisque defensor. Declamaturus autem maxime positas in adfectibus causas propriis personis debet induere. Hi sunt enim qui mandari non possunt, nec eadem vi perfertur alieni animi qua sui motus.

His etiam de causis insinuatione videtur opus esse, si adversarii actio iudicum animos occupavit, si dicendum apud fatigatos est; quorum alterum promittendo nostras probationes et adversas eludendo vitabimus, alterum spe brevitatis et iis quibus attentum fieri iudicem docuimus. Et urbanitas oportuna reficit animos et undecumque petita iudicis voluptas levat taedium. Non inutilis etiam est ratio occupandi quae videntur obstare, ut Cicero dicit scire se mirari quosdam quod is qui per tot annos defenderit multos, laeserit neminem, ad accusandum Verrem descenderit. Deinde ostendit hanc ipsam esse sociorum

<sup>7</sup> *Spalding*: intuemur AB

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<sup>34</sup> The Prooemium (1-5) hardly makes this clear; the Epilogue certainly does.

<sup>35</sup> *Divinatio in Q. Caecilium* 1-5.

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enough already. It is easier therefore for an advocate to do this than for a litigant, because he can praise without being thought arrogant and can sometimes even criticize to good effect. Sometimes, like Cicero in *Pro Rabirio Postumo*,<sup>34</sup> he may pretend that he is himself deeply moved, until he finds the way to make the judge listen to him and acquires the authority that comes from sincerity, so that he inspires more confidence either in defending the act or in denying it. So the first thing we shall consider is whether we should use the person of the litigant or an advocate, when both possibilities are available; there is a free choice about this in the schools, but in the forum it is only rarely that a man is a suitable defender of his own Cause. The declaimer, on the other hand, particularly in emotional Causes, should take on the appropriate character, because emotions cannot be delegated, and we cannot give the same force to another's feelings as to our own.

Other reasons for needing to use Insinuation include cases where the opponent's pleading has captured the minds of the judges, or where one has to speak before a weary court. The first of these difficulties may be avoided by promising proofs of our own and evading the opposition's proofs; the second by promising to be brief, and by the resources I have recommended for ensuring the judge's attention. An opportune witticism also restores attention, and anything (wherever it comes from) which entertains the judge relieves tedium. It is useful too to anticipate apparent objections, as Cicero does when he says he knows that some people are surprised because, having defended many persons over so many years, and never attacked anyone, he has now come forward to prosecute Verres.<sup>35</sup> He proceeds then to show that the case is really a

50 defensionem: quod schema *πρόληψις* dicitur. Id cum sit utile aliquando, nunc a declamatoribus quibusdam paene semper adsumitur, qui fas non putant nisi a contrario incipere.

Negant Apollodorum secuti tris esse de quibus supra diximus praeparandi iudicis partes, sed multas species enumerant, ut ex moribus iudicis, ex opinionibus ad causam extra pertinentibus, ex opinione de ipsa causa, quae sunt prope infinitae, tum iis ex quibus omnes controversiae constant, personis factis dictis causis temporibus locis  
51 occasionibus ceteris. Quas veras esse fateor, sed in haec genera reccidere. Nam si iudicem benivolum attentum docilem habeo, quid amplius debeam optare non reperio: cum metus ipse, qui maxime videtur esse extra haec, et attentum iudicem faciat et ab adverso favore deterreat.

52 Verum quoniam non est satis demonstrare discentibus quae sint in ratione prohoemii, sed dicendum etiam quo modo perfici facillime possint, hoc adicio, ut dicturus intueatur quid,<sup>8</sup> apud quem, pro quo, contra quem, quo tempore, quo loco, quo rerum statu, qua vulgi fama dicendum

<sup>8</sup> *recc.*: cui A: qui B

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<sup>36</sup> Compare 9.2.16, where it is translated *praesumptio*. Other terms for this “anticipation of an objection” are *προκατάληψις*, *προκατασκευή*, *praemunitio*, *praeparatio*, *anticipatio*: Lausberg §§ 854–855.

<sup>37</sup> In 4.1.5. The Apollodoreans (fr. 1 Granatelli) in fact (see Anonymus Seguerianus 26–28) took “goodwill” to be the only aim of the Prooemium, but doubtless enumerated many ways of achieving it. Q.’s criticism seems to be directed against the organization of their teaching rather than its essence.

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defence of the allies. This figure is called *prolēpsis*.<sup>36</sup> It is indeed sometimes useful, but nowadays some declaimers use it almost all the time, and seem to think it against the rules not to begin with a Reply to an Objection.

### *Alternative views*

The followers of Apollodorus do not give the three methods of softening up the judge which I have mentioned.<sup>37</sup> Instead, they list many variations: for example, using the judge's character, opinions bearing on the case from outside, current opinion about the case itself, and so on almost without end; and they include also the elements of which all controversies are composed: persons, deeds, sayings, motives, times, places, opportunities, and so on. These, I admit, are real aspects of the matter, but they fall under our general heads. For if I have a judge who is well disposed, attentive, and receptive to instruction, I do not know what else I ought to pray for; even fear, which seems particularly to fall outside our headings, both makes the judge attentive and prevents him favouring the other side.

### *Practical considerations*

However, as it is not sufficient simply to explain the theory of the Prooemium to our pupils, but we have also to tell them how it is most easily put into practice, I add a further point. Before he speaks, the student must consider what, in whose presence, in whose defence, against whom, at what time and place, in what circumstances, and in what

53 sit: quid iudicem sentire credibile sit antequam incipimus: tum quid aut desideremus aut deprecemur. Ipsa illum natura eo ducet ut sciat quid primum dicendum sit. At nunc omne quo coeperunt prohoemium putant, et ut quidque succurrit, utique si aliqua sententia blandiatur, exordium.

Multa autem sine dubio sunt et aliis partibus causae communia, nihil tamen in quaque melius dicitur quam quod aequè bene dici alibi non possit.

54 Multum gratiae exordio est quod ab actione diversae partis materiam trahit: hoc ipso quod non compositum domi sed ibi atque ex re natum et facilitate famam ingenii auget et facie simplicis sumptique ex proximo sermonis fidem quoque acquirit, adeo ut, etiam si reliqua scripta atque elaborata sint, tamen plerumque videatur tota extemporalis oratio cuius initium nihil praeparati habuisse manifestum est.

55 Frequentissime vero prohoemium decebit et sententiarum et compositionis et vocis et vultus modestia, adeo ut in genere causae etiam indubitabili fiducia se ipsa nimium exerere non debeat. Odit enim iudex fere litigantis securitatem, cumque ius suum intellegat tacitus reverentiam postulat.

56 Nec magis<sup>9</sup> diligenter ne suspecti simus ulla<sup>10</sup> parte vitandum est, propter quod minime ostentari debet in principiis cura, quia videtur ars omnis dicentis contra iudicem

<sup>9</sup> D.A.R. (*cf. Corsi's translation and see Housman on Manilius 2.621*): minus AB

<sup>10</sup> illa *Burman*: illi <hac> *Watt 1988*

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climate of opinion he has to speak; what the judge may be supposed to think before we start; and finally what it is that we want or want to avoid. Nature herself will then guide him to the knowledge of what has to be said first. Nowadays, on the other hand, people think any sort of beginning a Prooemium, and anything that comes to mind, especially if some clever epigram beckons, a proper exordium.

There are no doubt many things which are common also to other parts of a Cause, but the best points to make in any one part are those which cannot be made equally successfully anywhere else.

There is much attraction in an exordium which takes material from the opponent's pleading, if only because it has not been composed in advance but is produced on the spot to fit the circumstances; the facility it shows enhances the speaker's reputation for talent, and the appearance of simple everyday language makes it all the more convincing. Indeed, even if the rest has been written out and carefully worked up, a whole speech may give the impression of spontaneity if it is obvious that its opening contains nothing prepared beforehand.

However, what will be most often appropriate in the Prooemium is a certain restraint of thought, Composition, voice, and facial expression; indeed one's self-confidence ought not to be too obvious even when the Cause admits no room for doubt. A judge generally dislikes a complacent litigant, and, being well aware of his own rights, tacitly demands respect.

Nowhere else is it more necessary to be careful to avoid suspicion; the Prooemium is the one place in which careful preparation should least be on show, because the speaker's art seems here to be employed wholly against the judge. To

57 adhiberi. Sed ipsum istud evitare summae artis; nam id sine dubio ab omnibus, et quidem optime, praeceptum est, verum aliquatenus temporum condicione mutatur, quia iam quibusdam in iudiciis, maximeque capitalibus aut apud centumviros, ipsi iudices exigunt sollicitas et accuratas actiones, contempnuntque se nisi in dicendo etiam diligentia appareat credunt, nec doceri tantum sed etiam  
58 delectari volunt. Et est difficilis huius rei moderatio: quae tamen ita temperari potest ut videamur accurate, non callide dicere.

Illud ex praeceptis veteribus manet, ne quod insolens verbum, ne audacius tralatum, ne aut ab obsoleta vetustate aut poetica licentia sumptum in principio deprehendatur.  
59 Nondum enim recepti sumus et custodit nos recens audientium intentio: magis conciliatis animis et iam calentibus haec libertas feretur, maximeque cum in locos fuerimus ingressi, quorum naturalis ubertas licentiam verbi notari  
60 circumfuso nitore non patitur. Nec argumentis autem nec locis nec narrationi similis esse in prohoemio debet oratio, neque tamen deducta semper atque circumlita, sed saepe simplici atque inlaboratae similis nec verbis vultuque nimia promittens; dissimulata enim et, ut Graeci dicunt, ἀνεπίφαντος actio melius saepe subrepat. Sed haec prout formari animum iudicum expediet.

61 Turbari memoria vel continuandi verba facultate destitui nusquam turpius, cum vitiosum prohoemium possit

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<sup>38</sup> Not a term familiar in Greek rhetoric, but see Philo, *De Josepho* 249 τὸ ἀνεπίφαντον καὶ ἀτραγώδητον "absence of display and melodrama," opposed to ἀλαζονεία and ἀπαιδευσία "pretentiousness and lack of good taste."

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avoid this impression is itself a mark of supreme art. This undoubtedly excellent rule is universally taught; nevertheless, the conditions of the times require some modifications to it, since, in some trials, and particularly those concerned with capital charges, and also in the centumviral court, judges have now themselves come to demand meticulous and polished pleadings, and think themselves insulted unless care is apparent also in the oratory; they want not only to be informed, but also to be entertained. It is difficult to strike a happy medium in this; but a possible compromise is to give an impression of polish without too much ingenuity.

The old rule still holds good that no unfamiliar word, no overbold metaphor, no archaism or poeticism should be detected in the Prooemium. At this stage, we are not yet accepted, the attention of the audience is fresh and watchful; when their minds are won over and they are beginning to warm up, they will tolerate this freedom better, especially when we come to commonplaces whose natural richness allows any verbal licence to pass unobserved amid the surrounding brilliance. The style of the Prooemium should be different from that of the Proofs, Commonplaces, and Narrative; it must not however always be finely spun or sophisticated, but often simple and apparently effortless, not promising too much either by the words or by the speaker's expression. An unobtrusive delivery (what the Greeks call *anepiphantos*)<sup>38</sup> often worms its way into the mind better. But all this will depend on the extent to which it is expedient to shape the judges' attitudes.

There is no place in a speech where confusion of memory or loss of fluency is more shaming; a faulty Prooemium



videri cicatricosa facies: et pessimus certe gubernator qui navem dum portu egreditur impegit.

62 Modus autem principii pro causa; nam breves simplices, longius perplexae suspectaeque et infames desiderant. Ridendi vero qui velut legem prohoemiis omnibus dederunt ut intra quattuor sensus terminarentur. Nec minus evitanda est inmodica eius longitudo, ne in caput excrevisse videatur et quos<sup>11</sup> praeparare debet fatiget.

63 Sermonem a persona iudicis aversum (*ἀποστροφή* dicitur) quidam in totum a prohoemio summovent, nonnulla quidem in hanc persuasionem ratione ducti. Nam prorsus esse hoc magis secundum naturam confitendum est, ut eos adloquamur potissimum quos conciliare nobis studemus.

64 Interim tamen et est prohoemio necessarius sensus aliquis et hic acrior fit atque vehementior ad personam directus alterius. Quod si accidat, quo iure aut qua tanta superstitione prohibeamur dare per hanc figuram sententiae vi-

65 res? Neque enim istud scriptores artium quia non liceat sed quia non putent utile vetant. Ita, si vincet utilitas, propter eandem causam facere debemus propter quam

66 vetamur. Et Demosthenes autem ad Aeschinen orationem in prohoemio convertit, et M. Tullius cum pro aliis quibusdam ad quos ei visum est, tum pro Ligario ad Tiberonem:

67 nam erat multo futura languidior si esset aliter figurata. Quod facilius cognoscet si quis totam illam partem vehe-

<sup>11</sup> *edd.*: quo AB

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<sup>39</sup> See 9.2.38–39.      <sup>40</sup> *On the Crown* 11. Q. suggests below (§ 68) that the effect would be lost if the whole were turned into third-person statements: “Aeschines, malicious as he is, thought this perfectly silly . . .”

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is like a badly scarred face, and it is a bad pilot indeed who runs his ship aground while leaving harbour.

The length of the Prooemium depends on the Cause. Simple Causes need a short one, complicated, dubious, or discredited ones need something longer. One can only laugh at those who make it a sort of rule for all Prooemia that they should be no longer than four sentences. Undue length is to be avoided just as much, so as not to give the impression that the head has outgrown the body, or to bore the people it ought to be softening up.

Addressing a person other than the judge (this is called Apostrophe)<sup>39</sup> is banned altogether from the Prooemium by some authorities, and they have some reason for their view. It must be admitted that the more natural thing is to address primarily the persons whom we wish to win over to our side. However, even the Prooemium sometimes needs to have some striking thought, and this becomes more pointed and vehement if it is directed to another person. If we should be in this position, what rule or superstition is to prevent our giving force to our thought by means of this Figure? The textbook writers do not forbid it because they think it illicit, but because they do not think it useful. So, if usefulness is to be the decisive factor, we shall be obliged to employ it for the same reasons for which we are forbidden it. Both Demosthenes and Cicero illustrate this: Demosthenes addresses Aeschines in the Prooemium,<sup>40</sup> and Cicero has chosen to address various persons in some of his defence speeches, in particular Tubero in the *Pro Ligario*. That speech indeed would have been much less effective if it had not been figured in this way. This will be more easily understood if you take the whole of the very

- mentissimam—cuius haec forma est: 'habes igitur, Tubero, quod est accusatori maxime optandum' et cetera—converstat ad iudicem: tum enim vere aversa videatur oratio et languescat vis omnis, dicentibus nobis: 'habet igitur
- 68 Tubero quod est accusatori maxime optandum.' Illo enim modo pressit atque institit, hoc tantum indicasset. Quod idem in Demosthene, si flexum illi mutaveris, accidet. Quid? non Sallustius directo ad Ciceronem, in quem ipsum dicebat, usus est principio, et quidem protinus: 'graviter et iniquo animo maledicta tua paterer, M. Tulli': sicut Cicero fecerat in Catilinam: 'quo usque tandem abutere'?
- 69 Ac ne quis ἀποστροφὴν miretur, idem Cicero pro Scauro ambitus reo, quae causa est in commentariis (nam bis eundem defendit), prosopopoeia loquentis pro reo utitur; pro Rabirio vero Postumo eodemque Scauro reo repetundarum etiam exemplis; pro Cluentio, ut modo ostendi,
- 70 partitione. Non tamen haec, quia possunt bene aliquando fieri, passim facienda sunt, sed quotiens praeceptum vice-rit ratio: quo modo et similitudine, dum brevi, et tralatione

<sup>41</sup> *Pro Ligario* 2.

<sup>42</sup> Q. plays on the word: in abandoning the *apostrophe* (*aversio*, "turning away"), the speaker would really "turn away" from his audience.

<sup>43</sup> [Sallust] *In Ciceronem* 1. Q. quotes this work again, 9.3.89. It is generally held to be spurious (Syme, *Sallust* 314–318).

<sup>44</sup> *In Catilinam* 1.1. The translation supplies *patientia nostra*, not in the Latin, but probably not to be added to Q.'s text: he just does not trouble to complete a very familiar quotation.

<sup>45</sup> A part of one of these defences is extant. Cicero's *commentarii* (see 10.7.30 and Asconius, *In orationem in toga candida* 67.25) were notes made beforehand for speeches. When a speech

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vehement passage<sup>41</sup> that begins “And so, Tubero, you have what a prosecutor must hope for most of all,” and address it instead to the judge; for then it would really seem to be “turned away”<sup>42</sup> and all its force would fade, if we found ourselves saying “So Tubero has what a prosecutor must hope for most of all.” The original sentence was pressing and urgent; the modified one would have simply been a statement of fact. And so too if you change the figure in Demosthenes. And did not Sallust, when speaking against Cicero himself, address him directly in his Prooemium,<sup>43</sup> right at the beginning? “I should feel deeply aggrieved by your abuse of me, Marcus Tullius . . .” Cicero had done the same in his speech against Catiline:<sup>44</sup> “How long will you abuse <our patience>?” Finally (to stop anyone feeling surprised by the use of Apostrophe) Cicero in his defence of Scaurus on the bribery charge (this is the speech found in his notes; he actually defended Scaurus twice)<sup>45</sup> uses a Prosopopoeia of an imagined defence advocate; and in *Pro Rabirio Postumo*<sup>46</sup> and again in the speech defending Scaurus against a charge of extortion, he uses historical examples, and in *Pro Cluentio* (as I pointed out just now)<sup>47</sup> a Partition. These procedures however are not to be adopted indiscriminately because they are sometimes successful, but only when there is a reason which overrides the rule. Likewise Simile (so long as it is short), Metaphor,

was not subsequently published, these notes could still preserve portions of it, such as Prooemium and Epilogue. Tiro, Cicero’s freedman, published at least 13 books of them (Diomedes, *GL* 1.368.28).

<sup>46</sup> Especially § 23 (Plato, Callisthenes, Demetrius). For *exempla* in *Pro Scauro*, note §§ 3–4, 42. <sup>47</sup> 4.1.36.

atque aliis tropis, quae omnia cauti illi ac diligentes prohibent, utemur interim, nisi cui divina illa pro Ligario ironia, de qua paulo ante dixeram, displicet.

71 Alia exordiorum vitia verius tradiderunt. Quod in pluris causas accommodari potest, vulgare dicitur: id minus favorabile aliquando tamen non inutiliter adsumimus, magnis saepe oratoribus non evitatum. Quo et adversarius uti potest, commune appellatur; quod adversarius in suam utilitatem deflectere potest, commutabile; quod causae non cohaeret, separatum; quod aliunde trahitur, tralatum; praeterea quod longum, quod contra praecepta est.<sup>12</sup> Quorum pleraque non principii modo sunt vitia sed totius orationis.

72 Haec de prohoemio, quotiens erit eius usus. Non semper autem est; nam et supervacuum aliquando est, si sit praeparatus satis etiam sine hoc iudex aut si res praeparatione non egeat. Aristoteles quidem in totum id necessarium apud bonos iudices negat. Aliquando tamen uti nec si velimus eo licet, cum iudex occupatus, cum angusta sunt tempora, cum maior potestas ab ipsa re cogit incipere.

73 Contraque est interim prohoemii vis etiam non exordio; nam iudices et in narratione nonnumquam et in argu-

<sup>12</sup> praeterea . . . est *del. Meyer, om. Julius Victor 433,34 Halm (= 71,15 Giomini-Celentano)*

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<sup>48</sup> *Ad Herennium* 1.11, Cicero, *De inventione* 1.26: Lausberg § 282.

<sup>49</sup> Anonymus Seguerianus 21–25 lists four reasons for omitting the Prooemium: (1) lack of emotive possibilities in the case, (2) judge unwilling to hear extraneous matters, (3) jury already friendly, (4) shortage of time.

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and other tropes (all forbidden by these cautious pedants) may be used occasionally—unless of course you disapprove of the marvellous use of irony in the *Pro Ligario*, of which I spoke a little while ago.

On other faults of Prooemia, the teachers have given truer advice. A Prooemium applicable to a number of cases is called a stock one;<sup>48</sup> it is less attractive, but can sometimes be used to some advantage. Even the great orators have often not troubled to avoid it. One that your opponent can also use is called “common”; one that he can turn to his own advantage is “interchangeable”; one that has no connection with the Cause is “detached”; one that comes from another context, “transferred.” They also speak of “long” and “irregular” Prooemia. But most of these features are not only faults of the beginning but faults of a speech as a whole.

### *Prooemia not always necessary*

So much for the Prooemium, when there is need for one. This however is not always so;<sup>49</sup> sometimes it is actually superfluous, if the judge is sufficiently well prepared without it or if the subject does not require any preparation. Aristotle<sup>50</sup> indeed says that a Prooemium is totally unnecessary with good judges. Sometimes, even if we wanted to have one, it is not allowed—when the judge is busy, the time short, or a greater authority orders us to go straight to the heart of the matter.

Conversely, we can have what is in effect a Prooemium elsewhere than at the beginning. We sometimes beg the

<sup>50</sup> *Rhetoric* 3, 1415b7.

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- mentis ut attendant et ut faveant rogamus, quo Prodicus  
 74 velut dormitantes eos excitari putabat, quale est: 'tum C.  
 Varenus, <is><sup>13</sup> qui a familia Anchariana occisus est — hoc  
 quaeso, iudices, diligenter attendite.' Utique si multiplex  
 causa est, sua quibusque partibus danda praefatio est, ut  
 75 'audite nunc reliqua' et 'transeo nunc illuc'. Sed in ipsis  
 etiam probationibus multa funguntur prohoemii vice, ut  
 facit Cicero pro Cluentio dicturus contra censores, pro  
 Murena cum se Servio excusat. Verum id frequentius est  
 quam ut exemplis confirmandum sit.
- 76 Quotiens autem prohoemio fuerimus usi, tum sive ad  
 expositionem transibimus sive protinus ad probationem, id  
 debet in principio postremum esse cui commodissime  
 77 iungi initium sequentium poterit. Illa vero frigida et pueril-  
 is est in scholis adfectatio, ut ipse transitus efficiat aliquam  
 utique sententiam et huius velut praestigiae plausum pet-  
 tat, ut Ovidius lascivire in *Metamorphoses* in solet; quem  
 tamen excusare necessitas potest, res diversissimas in spe-  
 78 ciem unius corporis colligentem: oratori vero quid est ne-  
 cesse surripere hanc transgressionem, et iudicem fallere  
 qui ut ordini rerum animum intendat etiam commonen-  
 dus est? Peribit enim prima pars expositionis si iudex nar-

<sup>13</sup> *add. edd.*, cf. 9.2.56

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<sup>51</sup> Radermacher, *AS* p. 67. See on 3.1.10.

<sup>52</sup> Cicero, *Fr. orat.* II.2.8 Schoell; Crawford (1994) 14, 17. Details of this murder case are not known; but it was quite a favourite with Q.: see on 4.2.24; also 5.10.69; 6.1.49; 7.1.9; 7.2.9–10, 22, 36; 9.2.56.

<sup>53</sup> 117–118.      <sup>54</sup> 7.

<sup>55</sup> Similarly, Brooks Otis (*Ovid as an Epic Poet* (Oxford 1966)

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judges to be attentive and to look kindly on us both in the Narrative and in the Proofs. Prodicus<sup>51</sup> thought this was a way of rousing them from their slumbers. For example: "Then Gaius Varenus, the man who was killed by Ancharius' slaves—please, members of the jury, pay careful attention here."<sup>52</sup> Certainly, if the case is a complex one, each part needs its own preface, such as "Now hear what comes next," or "I now pass to . . ." Even within the Proofs there are many passages which function as a Prooemium, as for example where Cicero in the *Pro Cluentio*<sup>53</sup> is about to attack the censors, and in the *Pro Murena*<sup>54</sup> when he apologizes to Servius. The practice is too common to need illustration.

However, when we *have* used a Prooemium, whether we then pass to a statement of facts or straight to the proofs, the last item in the Prooemium ought to be that to which the beginning of the next section can most conveniently be linked. It is a pedantic and childish affectation of the schools to make the transition itself produce some clever thought at all costs, and to seek applause for this sleight of hand, as it were; this is the sort of silly game Ovid is in the habit of playing in the *Metamorphoses*,<sup>55</sup> though he has the excuse of necessity, because he is assembling very different subjects into some semblance of a unity. But why should an orator cover up this transition and mislead the judge, who ought really to be warned to keep his mind on the sequence of events? If the judge is not yet aware that the Narrative is in progress, the first part of its exposi-

80) observes that the transitions "are in many cases . . . so absurd or far-fetched that we can hardly restrain our amusement (and so without question, Ovid intended)."



79 rari nondum sciet. Quapropter, ut non abrupte cadere in narrationem, ita non obscure transcendere est optimum. Si vero longior sequetur ac perplexa magis expositio, ad eam ipsam praeparandus iudex erit, ut Cicero saepius, sed et hoc loco fecit: ‘paulo longius exordium rei demonstrandae repetam, quod quaeso, iudices, ne moleste patiamini; principiis enim cognitis multo facilius extrema intelletis.’ Haec fere sunt mihi de exordio comperta.

2

- 1 Maxime naturale est, et fieri frequentissime debet, ut praeparato per haec quae supra dicta sunt iudice res de
- 2 qua pronuntiaturus est indicetur: ea est narratio. In qua sciens transcurram subtiles nimium divisiones quorundam plura eius genera facientium. Non enim solam volunt esse illam negotii de quo apud iudices quaeritur expositionem, sed personae, ut: ‘M. Lollius<sup>1</sup> Palicanus, humili loco Picens, loquax magis quam facundus’; loci, ut: ‘oppidum est in Hellesponto, Lampsacum, iudices’; temporis, ut:

vere novo, gelidus canis cum montibus umor  
liquitur;

<sup>1</sup> *Pighius*: Ollius A: Acilius B

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<sup>56</sup> *Pro Cluentio* 11.

<sup>1</sup> Sallust, *Histories* 4, fr. 43 Reynolds: see Syme, *Sallust* 209–210. For the antithesis compare also Eupolis fr. 116 (Kassel–Austin) λαλεῖν ἄριστος, ἀδυνατώτατος λέγειν (“very good at chattering, quite incompetent in a speech”); Sallust’s imitation of this is noted by Gellius, 1.15.12–13.

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tion of the facts will be wasted. The best plan therefore is neither to pass abruptly to the Narrative nor to obscure the transition. If a long and complicated exposition is to follow, the judge will have to be prepared for it. Cicero often does this, for example in the following passage: "I am going to go rather a long way back to introduce the facts I need to demonstrate. Please, members of the jury, do not be annoyed at this. If you know the beginning, you will find it much easier to understand the end."<sup>56</sup> This completes what I have found to say about the Prooemium.

## CHAPTER 2

### *Narrative*

It is most natural, and most frequently the right course, to point out the facts on which the judge is to pronounce as soon as he has been prepared for it by the means described above. This constitutes the Narrative. In dealing with it, I shall knowingly pass over the over-subtle divisions made by those who distinguish various types. They want the term to cover not only the exposition of the facts which are the subject of the inquiry before the judges, but also any account (a) of the person involved (e.g. "Marcus Lollius Palicanus, a Picentine of humble birth, loquacious rather than eloquent");<sup>1</sup> (b) of the place (e.g. "Lampsacus, members of the jury, is a town on the Hellespont");<sup>2</sup> (c) of the time (e.g. "In early spring, when on the whitened mountains / The frozen moisture melts");<sup>3</sup> (d) of causes, which

<sup>2</sup> Cicero, *In Verrem* 1.63.

<sup>3</sup> Vergil, *Georgics* 1.43–44.

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3 caesarum, quibus historici frequentissime utuntur cum  
 exponunt unde bellum seditio pestilentia. Praeter haec  
 alias perfectas, alias imperfectas vocant: quod quis ignorat?  
 Adiciunt expositionem et praeteritorum esse temporum,  
 quae est frequentissima, et praesentium, qualis est Cice-  
 ronis de discursu amicorum Chrysogoni, postquam est  
 nominatus, et futurorum, quae solis dari vaticinantibus  
 potest: nam ὑποτύπωσις non est habenda narratio. Sed  
 nos potioribus vacemus.

4 Plerique semper narrandum putaverunt: quod falsum  
 esse pluribus coarguitur. Sunt enim ante omnia quaedam  
 tam breves causae ut propositionem potius habeant quam  
 5 narrationem. Id accidit aliquando utrique parti, cum vel  
 nulla expositio est, vel de re constat de iure quaeritur, ut  
 apud centumviros: ‘filius an frater debeat esse intestatae  
 heres’, ‘pubertas annis an habitu corporis aestimetur’: aut  
 cum est quidem in re narrationi locus, sed aut ante iudici  
 6 nota sunt omnia aut priore loco recte exposita. Accidit ali-  
 quando alteri, et saepius ab actore, vel quia satis est propo-  
 nere vel quia sic magis expedit. Satis est dixisse: ‘certam  
 creditam pecuniam peto ex stipulatione’, ‘legatum peto ex

<sup>4</sup> *Pro Roscio Amerino* 60.      <sup>5</sup> See 9.2.40. Lausberg § 814.

<sup>6</sup> So the Apollodoreans (Anonymus Seguierianus 113, 32 Dilts-Kennedy): cf. Lausberg § 337.

<sup>7</sup> Both these questions gave rise to legal differences. On intes-  
 tacy and the position of women, see e.g. Treggiari (1991) 380–381.  
 The age of puberty was probably reckoned as 12 for girls, 14 for  
 boys, though older legal practice required a physical examination  
 (see *Declamationes minores* 279).

<sup>8</sup> I.e. the agreement to meet a demand for action or payment;  
 both the demand (*dabisne?* “will you give?”) and the reply (*dabo*  
 “I will”) are essential to the procedure.

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historians very often introduce when they explain how a war or a rebellion or a plague came about. Besides this, they make a distinction between “complete” and “incomplete” Narratives. Well, everyone can see that! Then they add that a Narrative may relate to the past (which is the commonest form) or to the present (like Cicero’s account of the panic of Chrysogonus’ friends when his name was mentioned)<sup>4</sup> or the future (which is possible only for prophets, for a Hypotyposis<sup>5</sup> cannot be regarded as a Narrative). Let us keep our time for more important matters.

### *Is a Narrative essential?*

Most rhetors think that there must always be a Narrative,<sup>6</sup> but there are many considerations which prove this wrong. In the first place, some Causes are so brief that they have a Proposition rather than a Narrative. This sometimes applies to both parties, when (a) there is no statement of facts; (b) the facts are admitted and only the law is in question, as in the centumviral court, with questions like “Should the son or the brother be the heir of a woman who dies intestate?” or “Is puberty determined by age or by physical development?”<sup>7</sup> or (c) there is scope for Narrative in the facts, but everything is known to the judge beforehand or has been satisfactorily explained in a previous speech. Sometimes again, this situation holds for one party only, usually the plaintiff, either because it is sufficient for him to make a simple preliminary statement or because that is the more expedient course for him. (1) It is sufficient to say “I claim full repayment of the loan in virtue of the stipulation”<sup>8</sup> or “I claim the legacy in virtue of the will.”

testamento'. Diversae partis expositio est cur ea non de-  
 7 beantur. Et satis est actori et magis expedit sic indicare:  
 'dico ab Horatio sororem suam interfectam'. Namque et  
 <ex><sup>2</sup> propositione iudex crimen omne cognoscit, et ordo  
 8 et causa facti pro adversario magis est. Reus contra tunc  
 narrationem subtrahet cum id quod obicitur neque negari  
 neque excusari poterit, sed in sola iuris quaestione consis-  
 tet; ut in eo qui, cum pecuniam privatam ex aede sacra sur-  
 ripuerit, sacrilegii reus est confessio verecundior est quam  
 expositio: 'non negamus pecuniam de templo esse subla-  
 tam, calumniatur tamen accusator actione sacrilegii, cum  
 privata fuerit, non sacra: vos autem de hoc cognoscitis, an  
 sacrilegium sit admissum.'

9 Sed ut has aliquando non narrandi causas puto, sic ab il-  
 lis dissentio qui non existimant esse narrationem cum reus  
 quod obicitur tantum negat: in qua est opinione Cornelius  
 Celsus, qui condicionis huius esse arbitratur plerasque  
 10 caedis causas et omnis ambitus ac repetundarum. Non  
 enim putat esse narrationem nisi quae summam criminis  
 de quo iudicium est contineat, deinde fatetur ipse pro Ra-  
 birio Postumo narrasse Ciceronem: atqui ille et negavit  
 pervenisse ad Rabirium pecuniam, qua de re erat quaestio  
 constituta, et in hac narratione nihil de crimine exposuit.  
 11 Ego autem magnos alioqui secutus auctores duas esse in  
 iudiciis narrationum species existimo, alteram <in><sup>3</sup> ipsius  
 causae, alteram in rerum ad causam pertinentium exposi-

<sup>2</sup> *add. Halm*

<sup>3</sup> *add. Halm*

<sup>9</sup> See 3.6.76.

<sup>10</sup> Compare 3.3.49.

<sup>11</sup> Fr. 9 Marx.

<sup>12</sup> Compare Cicero, *De inventione* 1.27, *Ad Herennium* 1.12; Anonymus Seguierianus 55, 19 Dilts-Kennedy.

It is for the other party to explain why these sums are not due. (2) It is both sufficient and more expedient for the plaintiff to say: "I declare that Horatius killed his own sister."<sup>9</sup> For here the judge comes to know the whole charge from this Proposition, while the sequence of events and the motive rather favour the other side. A defendant, on the other hand, will dispense with a Narrative when the charge can neither be denied nor mitigated, but rests wholly on a question of law: for example, in the case of the man who is accused of sacrilege when he has stolen private money from a temple,<sup>10</sup> a confession is more decent than a Narrative: "We do not deny that money was removed from the temple, but the prosecutor is making a false charge by bringing an action for sacrilege, since the money was private, not religious, property. What you have to decide is whether sacrilege has been committed."

While I agree that there are sometimes these reasons for leaving out the Narrative, I do not agree with those who hold that there is no Narrative when the defendant merely denies the charge. This is the view of Cornelius Celsus,<sup>11</sup> who holds that most cases of murder and all cases of bribery and extortion are of this kind. He thinks that a Narrative must contain the essential facts of the charge before the court. Yet he himself proceeds to acknowledge that Cicero has a Narrative in the *Pro Rabirio Postumo*; Cicero however denied that any money came into Rabirius' hands (that is what the inquiry was about) and said nothing in this Narrative about the charge. My own view—and I follow normally reliable authorities<sup>12</sup> in this—is that there are two types of Narrative in forensic cases, one involving the exposition of the Cause itself, the other the exposition of

- 12 tione. 'Non occidi hominem': nulla narratio est; convenit: sed erit aliqua et interim etiam longa contra argumenta eius criminis, de ante acta vita, de causis propter quas innocens in periculum deducatur, aliis quibus incredibile id
- 13 quod obicitur fiat. Neque enim accusator tantum hoc dicit 'occidisti', sed quibus id probet narrat: ut in tragoediis, cum Teucer Ulixem reum facit Aiace occisi, dicens inventum eum in solitudine iuxta exanime corpus inimici cum gladio cruento, non id modo Ulixes respondet, non esse a se id facinus admissum, sed sibi nullas cum Aiace inimicitias fuisse, de laude inter ipsos certatum: deinde subiungit quo modo in eam solitudinem venerit, iacentem exanimem sit conspicatus, gladium e vulnere extraxerit. His
- 14 subtexitur argumentatio. Sed ne illud quidem sine narratione est, dicente accusatore: 'fuisti in eo loco in quo tuus inimicus occisus est': 'non fui'; dicendum enim ubi fuerit.

Quare ambitus quoque causae et repetundarum hoc etiam plures huiusmodi narrationes habere poterunt quo plura crimina: in quibus ipsa quidem neganda sunt, sed argumentis expositione contraria resistendum est, interdum

15 singulis, interdum universis. An reus ambitus male narabit quos parentes habuerit, quem ad modum ipse vixerit, quibus meritis fretus ad petitionem descenderit? Aut qui repetundarum insimulabitur, non et ante actam vitam et

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<sup>13</sup> A speech on the other side of this case is given in *Ad Herennium* 2.28–30 (cf. *ibid.* 1.18, and Cicero, *De inventione* 1.11, 92; Julius Victor 388, 8 Halm = 22, 36 Giomini–Celentano). The basis is perhaps Sophocles' *Teucer* or Pacuvius' adaptation.

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matters relevant to the Cause. "I did not kill the man": no Narrative here. Agreed; but there will be *some* Narrative, and sometimes even a long one, to counter prosecution arguments, to present the defendant's past life, to explain the reasons which have brought an innocent man into jeopardy, and to advance other considerations by which the charge can be discredited. For the accuser does not simply say "You killed him"; he narrates facts to prove it. To take an example from tragedy:<sup>13</sup> when Teucer accuses Ulysses of murdering Ajax, saying that he was found in a lonely place near the lifeless body of his enemy, holding a blood-stained sword, Ulysses' reply is not only that he did not commit the crime, but that he had no quarrel with Ajax, there was simply a rivalry in honour between them; and he then goes on to explain how he came to the lonely place, saw the lifeless body, and withdrew the sword from the wound. The argumentation follows on this. And even when the accuser says "You were on the spot where your enemy was killed," and the answer is "I was not," there is still a Narrative, because he has to say where he was.

Thus cases of bribery and extortion also may have several Narratives of this kind, to correspond with the number of charges. The charges must of course be denied, but the accuser's arguments must be resisted, either singly or *en bloc*, by a counter-exposition of the facts. Is it wrong for a defendant in a bribery case to talk about his parents, his style of life, the record of service on which he relied in seeking office? Will not a man who is charged with extor-

But the general theme "man discovered in a lonely place with a dead body" was a familiar topic in the schools: e.g. *Prolegomenon Sylloge* 251, 13 Rabe.



- 16 quibus de causis vel<sup>4</sup> provinciam universam vel accusatorem aut testem offenderit non inutiliter exponet? Quae si narratio non est, ne illa quidem Ciceronis pro Cluentio prima, cuius est initium: 'A. Cluentius Habitus'. Nihil enim hic de veneficio sed de causis quibus ei mater inimica sit dicit.
- 17 Illae quoque sunt pertinentes ad causam sed non ipsius causae narrationes, vel exempli gratia, ut in Verrem de L. Domitio, qui pastorem, quod is aprum, quem ipsi muneri optulerat, exceptum esse a se venabulo confessus esset, in
- 18 crucem sustulit: vel discutiendi alicuius extrinsecus criminis, ut pro Rabirio Postumo: 'nam ut ventum Alexandream est, iudices, haec una ratio a rege proposita Postumo est servandae pecuniae, si curationem et quasi dispensationem regiam suscepisset': vel augendi, ut describitur iter Verris.
- 19 Ficta<sup>5</sup> interim narratio introduci solet, vel ad concitandos iudices, ut pro Roscio circa Chrysogonum, cuius paulo ante habui mentionem, vel ad resolvendos aliqua urbanitate, ut pro Cluentio circa fratres Caepasios, interdum per digressionem decoris gratia, qualis rursus in Verrem de Proserpina: 'in his quondam locis mater filiam quaesisse dicitur.'

Quae omnia eo pertinent ut appareat non utique non

<sup>4</sup> *Regius*: per AB, om. *recc.*

<sup>5</sup> *Faceta Spalding* ("amusing")

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14 11.      <sup>15</sup> *In Verrem* 5.7. The slave shepherd's offence was to possess such a weapon.

<sup>16</sup> 28.      <sup>17</sup> *In Verrem* 5.26–28.

<sup>18</sup> 60 (see above, 4.1.3).

tion find it useful to speak of his past life, and the reasons for which he has fallen foul of the whole province or of his accuser or of a witness? If this is not a Narrative, then neither is the first Narrative in Cicero's *Pro Cluentio*,<sup>14</sup> beginning "Aulus Cluentius Habitus . . ." For he says nothing there about the poisoning, but speaks only of the reasons why Cluentius' mother is hostile to him.

Other Narratives, not belonging to the Cause itself but relevant to it, are (a) Narratives told as examples, for instance, in the speech against Verres, the story of Lucius Domitius,<sup>15</sup> who crucified a shepherd because he confessed that the boar which he had brought as a present to Domitius had been killed with a hunting spear; (b) Narratives intended to dispel some charge irrelevant to the case: for example, in the *Pro Rabirio Postumo*:<sup>16</sup> "On arrival at Alexandria, members of the jury, the only means of saving his money which the king proposed to Postumus was that he should undertake the control and stewardship, as it were, of royal property"; (c) Narratives intended for Amplification, like the description of Verres' journey.<sup>17</sup>

A fictitious Narrative is sometimes introduced, either (a) to arouse the emotions of the judges, as in the passage of *Pro Roscio*<sup>18</sup> about Chrysogonus which I mentioned above, or (b) to relax them with a little humour, as in the passage about the brothers Caepasius in *Pro Cluentio*,<sup>19</sup> or sometimes (c) as a digression for ornament, like the passage about Proserpina, also in the Verrines: "Once upon a time, in this place, a mother is said to have searched for her daughter . . ." <sup>20</sup>

The point of all this is to show that a speaker who denies

<sup>19</sup> 57.

<sup>20</sup> In *Verrem* 4.106, not quoted verbatim.

narrare eum qui negat, sed illud ipsum non narrare quod negat.

- 20 Ne hoc quidem simpliciter accipiendum, quod est a me positum, supervacuum esse narrationem rei quam iudex noverit: quod sic intellegi volo, si non modo factum quid sit sciet, sed ita factum etiam ut nobis expedit opinabitur.
- 21 Neque enim narratio in hoc reperta est, ut tantum cognoscat iudex, sed aliquanto magis ut consentiat. Quare etiam si non erit docendus sed aliquo modo adficiendus, narrabimus cum praeparatione quadam: scire quidem eum in summam quid acti sit, tamen rationem quoque facti
- 22 cuiusque cognoscere ne gravetur. Interim propter aliquem in consilium adhibitum nos repetere illa simulemus, interim ut rei quae ex adverso proponatur iniquitatem omnes etiam circumstantes intellegant. In quo genere plurimis figuris erit varianda expositio ad effugiendum taedium nota audientis, sicut 'meministi' et 'fortasse supervacuum fuerit hic commorari', 'sed quid ego diutius cum tu optime
- 23 noris?', 'illud quale sit tu scias', et his similia. Alioqui, si apud iudicem cui nota causa est narratio semper videtur supervacua, potest videri non semper esse etiam ipsa actio necessaria.
- 24 Alterum est de quo frequentius quaeritur, an sit utique narratio prohoemio subicienda: quod qui opinantur non

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a charge does not necessarily fail to produce a Narrative of some kind, but does not narrate the circumstances which he is denying.

Even the statement I made above, that a Narrative of a matter already known to the judge is superfluous, is not to be taken without qualification. I mean that it is superfluous only if he not only knows the fact but takes a view of it which is in our favour. For Narrative was not invented simply to acquaint the judge with the facts, but rather to ensure that he agrees with us. So, even if he does not need instruction, but only to be influenced in some way, we shall provide a Narrative with some preparatory phrases, such as that "he knows in outline what happened, but we hope he will not think it burdensome to learn what lies behind the several facts." Let us pretend sometimes to be repeating the facts for the benefit of someone who has joined the court, and sometimes to be making sure that all the members of the public present also understand the unfairness of our opponent's position. In all this, the Narrative should be varied by a generous use of Figures, so as to avoid boring those who find themselves hearing things they already know: "You remember," "It is perhaps unnecessary to dwell on this," "Why should I say more, when you know this very well?" "Even though you know what this amounts to," and the like. Besides, if a Narrative is always thought superfluous before a judge who knows the Cause, it might be thought that the pleading itself is not always necessary.

### *Where should the Narrative be placed?*

A second question, one which is asked more often, is whether the Narrative should always come next to the

possunt videri nulla ratione ducti. Nam cum prohoemium idcirco comparatum sit ut iudex ad rem accipiendam fiat conciliator docilior intentior, et probatio nisi causa prius cognita non possit adhiberi, protinus iudex notitia rerum  
 25 instruendus videtur. Sed hoc quoque interim mutat condicio causarum, nisi forte M. Tullius in oratione pulcherrima quam pro Milone scriptam reliquit male distulisse narrationem videtur tribus praepositis quaestionibus, aut<sup>6</sup> profuisset exponere quo modo insidias Miloni fecisset Clodius si reum qui a se hominem occisum fateretur defendi omnino fas non fuisset, aut si iam praeiudicio senatus damnatus esset Milo, aut si Cn. Pompeius, qui praeter aliam gratiam iudicium etiam militibus armatis cluserat, tamquam ad-  
 26 versus ei timeretur. Ergo hae quoque quaestiones vim prohoemii optinebant, cum omnes iudicem praepararent. Sed pro Vareno quoque postea narravit quam obiecta diluit. Quod fiet utiliter quotiens non repellendum tantum erit crimen, sed etiam transferendum, ut his prius defensis velut initium sit alium culpandi narratio, ut in armorum ra-

<sup>6</sup> an *Eberhard*

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<sup>21</sup> Compare Aristotle, *Rhetoric* 3. 1417b10, *Rhetorica ad Alexandrum* 1438b14–25; also Anonymus Seguerianus 124 (54 Dilts–Kennedy), contrasting Apollodorus’ rigidity in this regard with the freer prescriptions of Alexander Numeniu and Neocles.

<sup>22</sup> I.e. the extant *Pro Milone* which differed from the speech Cicero actually delivered. Q. knew both. (The unsuccessful speech had been taken down at the time (Asconius, *In Milonianam* 40 Clark). See 4.3.17.) In the extant speech, Cicero shows in the Prooemium that homicide may be justifiable in some circumstances (7–11), that the senate approved Milo’s action (12–

Prooemium.<sup>21</sup> Those who think it should cannot be thought to have no good reasons. For since the purpose of the Prooemium is to make the judge better disposed, more receptive, and more attentive in taking in the facts; and since the Proof cannot be produced unless the Cause is duly known, it seems that the judge ought to be provided with knowledge of the facts at the outset. But even this is sometimes altered by the circumstances of the Cause—unless, that is, you think that Cicero, in his magnificent published defence of Milo,<sup>22</sup> was wrong to delay his Narrative by placing three Questions before it, or that it would have been advantageous to explain how Clodius set an ambush for Milo (a) if it had been wrong in principle to defend a client who confessed to homicide, (b) if Milo had been condemned in advance by the senate's judgement, or (c) if Pompey, who, as well as exerting influence in other ways, had blockaded the court with armed soldiers, was to be feared as Milo's enemy. These three Questions therefore had also the force of a Prooemium, because they all helped to prepare the judge. Again, in the *Pro Vareno*<sup>23</sup> Cicero postponed the Narrative till he had disposed of certain objections. This will be done with advantage whenever we have not only to rebut the charge but to shift it on to our opponents, so that, once this defence has been completed, the Narrative can form the beginning of the incrimination of the other person, just as in armed combat

14), and that Pompeius allowed that it might be justified (15). See also 3.6.12.

<sup>23</sup> *Fr. orat.* II.12 Schoell (Crawford (1994) p. 12). Compare 4.1.74. Varenus was convicted of murder (7.2.36) but Cicero's defence was none the less admired for its strategy.

tione antiquior cavendi quam ictum inferendi cura est.

27 Erunt quaedam causae, neque id raro, crimine quidem de quo cognitio est faciles ad diluendum, sed multis ante actae vitae flagitiis et gravibus oneratae, quae prius amovenda sunt, ut propitius iudex defensionem ipsius negotii cuius propria quaestio est audiat. Ut si defendendus sit M. Caelius, nonne optime patronus occurrat prius conviciis luxuriae petulantiae inpudicitiae veneficii, in quibus solis omnis Ciceronis versatur oratio: tum deinde narret de bonis Pallae totamque de vi explicet causam, quae est ipsius actione defensa?

28 Sed nos ducit scholarum consuetudo, in quibus certa quaedam ponuntur (quae themata dicimus) praeter quae nihil est diluendum, ideoque narratio prohoemio semper subiungitur. Inde libertas declamatoribus, ut etiam secun-  
29 do partis suae loco narrare videantur. Nam cum pro petitore dicunt, et expositione tamquam priores agant uti solent et contradictione tamquam respondeant, idque fit recte. Nam cum sit declamatio forensium actionum meditatio, cur non in utrumque protinus locum exerceat? Cuius rationis ignari ex more cui adsuerunt nihil in foro putant  
30 esse mutandum. Sed in scholasticis quoque nonnumquam evenit ut pro narratione sit propositio. Nam quid exponet

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<sup>24</sup> For Palla, see *Pro Caelio* 23. The nature of this charge is not known, because the previous speaker, Crassus, had dealt with it, and Cicero therefore did not need to explain. For Q.'s interpretation of *Pro Caelio* in general, see Stroh (1975) 299ff.

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the protection of ourselves has priority over striking an offensive blow.

There will also (and this is by no means rare) be Causes in which it is easy to rebut the charge that is the subject of the trial, but which labour under the burden of many grave offences in the client's past life. These have to be disposed of first, so that the judge can give a friendly hearing to the defence of the matter which is actually in question. For example, if Marcus Caelius had to be defended, would it not be best for his advocate to meet first the accusations of luxury, wantonness, immorality, and poisoning—which form the whole subject of Cicero's speech—and only then proceed to narrate the story of the property of Palla and develop the whole question of violence, which has been defended in Caelius' own speech?<sup>24</sup>

However, our guide is the practice of the schools, in which specific data are put before us (we call them "themes"), and we do not have to refute anything which falls outside these; in such circumstances, the Narrative always follows straight after the Prooemium. Hence declaimers have the freedom to deliver a Narrative even when they speak second on the side assigned to them. Indeed when they speak for the plaintiff they normally include both a Narrative, as if they were the first speakers, and a Refutation, as though they were replying. This is all quite proper, because, declamation being simply practice in forensic pleading, why should it not provide instant exercise for both situations? Those who fail to understand this think that they need make no changes in their practice when they appear in court. But it sometimes happens even in school exercises that a simple Proposition can replace a Narrative. For what is to be explained by the woman who



quae zelotypum malae tractationis accusat aut qui Cynicum apud censores reum de moribus facit, cum totum crimen uno verbo in qualibet actionis parte posito satis indicetur? Sed haec hactenus.

- 31 Nunc quae sit narrandi ratio subiungam. Narratio est rei factae aut ut factae utilis ad persuadendum expositio, vel, ut Apollodorus finit, oratio docens auditorem quid in controversia sit. Eam plerique scriptores maximeque qui sunt ab Isocrate volunt esse lucidam brevem veri similem. Neque enim refert an pro lucida perspicuam, pro veri simili probabilem credibilemve dicamus. Eadem nobis placet divisio, quamquam et Aristoteles ab Isocrate parte in una dissenserit, praeceptum brevitatis inridens tamquam necesse sit longam esse aut brevem expositionem nec liceat ire per medium, Theodori quoque solam relinquunt ultimam partem, quia nec breviter utique nec dilucide
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<sup>25</sup> Cases of *mala tractatio* are not known in Roman law but are not quite irrelevant (see 7.4.11). The background to this quite common declamation theme (Seneca, *Controversiae* 3.7, 4.6, 5.3; Q. 9.2.79; *Declamationes minores* 363; Calpurnius Flaccus 51) is therefore Greek rather than Roman (Bonner *RD* 94, Treggiari (1991) 430). The declamation here suggested may be of the less serious kind; the *zelotypus*, “jealous husband,” was a stock character in mime (Juvenal 8.197).

<sup>26</sup> Compare *Declamationes minores* 283: again this is from the less realistic area of declamation.

<sup>27</sup> So Cicero, *De inventione* 1.27. A Narrative does not guarantee its truth.

accuses her jealous husband of ill-treatment,<sup>25</sup> or the man who charges his Cynic son before the censors with an offence against morals,<sup>26</sup> when the whole charge can be indicated by a single word in any part of the pleading that you choose? But enough of this.

### *Theory of Narrative*

I turn next to the theory of Narrative. A Narrative is an exposition, designed to be persuasive, of an action done or deemed to be done;<sup>27</sup> alternatively (as Apollodorus defines it)<sup>28</sup> it is a speech instructing the hearer on what is in dispute. Most writers, especially the followers of Isocrates, require that it should be lucid, brief, and plausible.<sup>29</sup> It does not matter if we say “perspicuous” instead of “lucid,” or “probable” or “credible” instead of “plausible.” I agree with this division, although Aristotle<sup>30</sup> dissents from Isocrates in one respect, because he ridicules the rule of brevity, as though a Narrative necessarily had to be either long or short and one could never find a middle way; while the followers of Theodorus leave only the last criterion standing, on the ground that it is not necessarily expedient to be

<sup>28</sup> Anonymus Seguerianus 50 (18 Dilts–Kennedy) gives Apollodorus’ definition as “exposition of circumstance,” and prefers Alexander Numenius’s “exposition and communication with the hearer of the matter we are sharing with him,” which is much closer to what Q. gives as from Apollodorus.

<sup>29</sup> So (e.g.) *Rhetorica ad Alexandrum* 30, *Ad Herennium* 1.14 (with Caplan), Cicero, *De inventione* 1.28, Anonymus Seguerianus 63, 21 Dilts–Kennedy.

<sup>30</sup> *Rhetoric* 3. 1416b30ff.

33 semper sit utile exponere. Quo diligentius distinguenda sunt singula, ut quid quoque loco prosit ostendam.

Narratio est aut tota pro nobis aut tota pro adversariis aut mixta ex utrisque. Si erit tota pro nobis, contenti simus<sup>7</sup> his tribus partibus, per quas efficitur quo facilius iudex intellegat meminerit credat. Nec quisquam reprehensione dignum putet quod proposuerim eam quae sit tota pro nobis debere esse veri similem cum vera sit. Sunt enim plurima vera quidem, sed parum credibilia, sicut falsa quoque frequenter veri similia. Quare non minus laborandum est ut  
34 iudex quae vere dicimus quam quae fingimus credat. Sunt quidem hae quas supra retuli virtutes aliarum quoque partium; nam et per totam actionem vitanda est obscuritas et modus ubique custodiendus, et credibilia esse oportet omnia quae dicuntur. Maxime tamen haec in ea parte custodienda sunt quae prima iudicem docet: in qua si acciderit ut aut non intellegat aut non meminerit aut non credat, frustra in reliquis laborabimus.

36 Erit autem narratio aperta ac dilucida si fuerit primum

<sup>7</sup> a: sumus AB

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<sup>31</sup> So (perhaps) Anonymus Seguierianus 79 (24 Dilts–Kennedy), where the point is made that clarity should have priority over brevity, while the expediency of the case is always decisive. On “desirable” obscurity (which should not be obscurity of *style*), *ibid.* 142, 41 Dilts–Kennedy. See in general G. L. Kustas, *Studies in Byzantine Rhetoric* (Thessalonica 1973) ch. 3, esp. pp. 77–83. We may recall Macaulay’s remark on Pitt the Younger: “When he wished to be understood, he never failed to make himself understood . . . When he did not wish to be explicit (and no man who is at the head of affairs always wishes to be explicit) he had a marvel-

brief, and not always expedient to be lucid.<sup>31</sup> This makes it all the more important to go carefully into particular differences, so as to show what is best in any given situation.

A Narrative is either wholly in our favour, or wholly in favour of our opponents, or a mixture of both. If it is wholly in our favour, let us rest content with the three requirements which make it easier for the judge to understand, to remember, and to believe.<sup>32</sup> No one should think there is anything reprehensible in my suggestion that a Narrative which is wholly in our favour should be plausible, when it is in fact true. There are many true things that are not very credible, and false things are frequently plausible. We must therefore make just as much effort to make the judge believe the true things we say as to make him believe what we invent. These virtues which I have just mentioned belong of course to other parts of the speech too. Obscurity must be avoided throughout the pleading, proportion must be preserved everywhere, and everything which is said ought to be credible. But these requirements must be particularly observed in the part where the judge is first given the facts; if it turns out that he fails to understand or to remember or to believe us here, our labours in the rest will be in vain.

### *Lucidity*

A Narrative will be clear and lucid, first, if it is set out in

lous power of saying nothing in language which left on his audience the impression that he had said a great deal.”

<sup>32</sup> Brevity conduces to memorability, as clarity does to understanding, and plausibility to belief. Compare § 33.

- exposita verbis propriis et significantibus et non sordidis quidem, non tamen exquisitis et ab usu remotis, tum distincta rebus personis temporibus locis causis, ipsa etiam pronuntiatione in hoc accommodata ut iudex quae dicentur quam facillime accipiat. Quae quidem virtus negligitur a plurimis, qui ad clamorem dispositae vel etiam forte circumfusae multitudinis compositi non ferunt illud intentionis silentium, nec sibi diserti videntur nisi omnia tumultu et vociferatione concusserint: rem indicare sermonis cotidiani et in quemcumque etiam indoctorum cadentis existimant, cum interim quod tamquam facile contemnunt nescias praestare minus velint an possint.
- 37 Neque enim aliud in eloquentia cuncta experti difficilius reperient quam id quod se dicturos fuisse omnes putant postquam audierunt, quia non bona iudicant esse illa, sed vera: tum autem optime dicit orator cum videtur vera
- 38 dicere. At nunc velut campum nacti expositionis hic potissimum et vocem flectunt et cervicem reponunt et brachium in latus iactant totoque et rerum et verborum et compositionis genere lasciviunt: deinde, quod sit monstro simile, placet actio, causa non intellegitur. Verum haec omittamus, ne minus gratiae praecipiendo recta quam offensae reprehendendo prava mereamur.
- 39

normal but expressive words—not vulgar of course, but not out of the way and recondite either—and, secondly, if it gives a distinct view of facts, persons, times, places, and causes; the delivery must be designed to ensure that the judge takes in what is said as easily as possible. This last virtue is neglected by the many speakers who have prepared themselves for the applause of a large audience stationed there for the purpose (or perhaps even turning up by chance), and thus cannot bear the silence that indicates attention, or believe in their own competence unless they have made the whole place rock with noise and clamour. To state the facts is, they think, a subject for ordinary conversational speech, well within the powers even of an uneducated person; and yet one cannot be certain whether they lack the will to do the thing they despise as so easy, or the capacity! However comprehensive their experience of eloquence, they will never find anything harder than the thing that everyone, on hearing it, thinks he could have said himself, because he judges it not to be well put, but only to be true. Now the real orator speaks best when he seems to be speaking the truth. In our day, however, speakers take the Narrative as offering, as it were, a free field, and choose this as the best moment to flex the voice, throw back the head, thump the sides, and indulge in every possible play of ideas and words and Composition. Hence the topsy-turvy consequence that the performance pleases, and the Cause remains unintelligible. But let us say no more about this, lest the offence I give by rebuking bad practice outweigh any favour that my good advice may earn!

40 Brevis erit narratio ante omnia si inde coeperimus rem  
 exponere unde ad iudicem pertinet, deinde si nihil extra  
 causam dixerimus, tum etiam si reciderimus omnia quibus  
 41 sublatis neque cognitioni quicquam neque utilitati detra-  
 hatur; solet enim quaedam esse partium brevitatis, quae  
 longam tamen efficit summam. 'In portum veni, navem  
 prospexi, quanti veheret interrogavi, de pretio convenit,  
 conscendi, sublatae sunt anchorae, solvimus oram, profecti  
 sumus.' Nihil horum dici celerius potest, sed sufficit di-  
 cere: 'e portu navigavi'; et quotiens exitus rei satis ostendit  
 42 priora, debemus hoc esse contenti quo reliqua intellegun-  
 tur. Quare, cum dicere liceat: 'est mihi filius iuvenis', om-  
 nia illa supervacua: 'cupidus ego liberorum uxorem duxi,  
 natum filium sustuli, educavi, in adulescentiam perduxi.'  
 Ideoque Graecorum aliqui aliud circumcisam expositio-  
 nem, id est *σύντομον*, aliud brevem putaverunt, quod illa  
 supervacuis careret, haec posset aliquid ex necessariis de-  
 43 siderare. Nos autem brevitatem in hoc ponimus, non ut  
 minus sed ne plus dicatur quam oporteat. Nam iterationes  
 quidem et *ταυτολογίας* et *περισσολογίας*, quas in nar-  
 ratione vitandas quidam scriptores artium tradiderunt,

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<sup>33</sup> A similar example in Julius Victor 424 Halm = 72 Giomini-Celentano. Compare also Plutarch, *On talkativeness* 21 (= *Moralia* 513A-C); and B. Jonson, *Silvae* 2228 (Herford and Simpson): "I came to the stairs, I tooke a pair of oars, then launch'd out, rowed a pace, I landed at the court gate . . ." etc.

<sup>34</sup> *σύντομος*, "cut short," roughly corresponds to *circumcisus*. The Greek for *brevis* is presumably *βραχύς*; but I know no Greek statement of Q.'s distinction.

<sup>35</sup> Anonymus Seguerianus 68 (23 Dilts-Kennedy) advises

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### *Brevity*

The Narrative will be brief (1) if we begin to expound the facts from the point where they first concern the judge; (2) if we avoid saying anything irrelevant to the Cause; and (3) if we prune away everything which can be removed without in any way damaging either the process of judgement or our own interest. There is often a sort of conciseness in detail which nevertheless makes the whole thing too long. For example: "I arrived at the harbour, I saw the ship, I asked how much a passage would cost, we agreed the price, I went on board, the anchor was raised, we cast off, we set out on our way."<sup>33</sup> None of these details could be put more rapidly, but it would be enough to say "I sailed from the harbour." And whenever the outcome of an event makes the earlier stages obvious, we ought to rest content with the point that enables all the rest to be understood. So, when it is open to us to say "I have a young son," it is superfluous to say "As I wanted children, I married a wife; a child was born, I acknowledged him, reared him, and have now brought him to manhood." For this reason some of the Greeks make a distinction between a concise (*syntomos*)<sup>34</sup> exposition and a brief one, the former being free from superfluities, and the latter deficient in some necessary points. Our definition of brevity however is not "saying less than one ought to say," but "not saying more." I pass over iterations and tautologies and excess verbiage (*perissologia*) which some textbook writers say must be avoided in Narrative:<sup>35</sup> these are faults to be shunned for

against tautology, synonyms, unnecessary epithets, repetitions, and periphrases,



transeo: sunt enim haec vitia non tantum brevitatis gratia  
 44 refugienda. Non minus autem cavenda erit, quae nimium  
 corripientes omnia sequitur, obscuritas, satiusque aliquid  
 narrationi superesse quam deesse; nam supervacua cum  
 taedio dicuntur, necessaria cum periculo subtrahuntur.  
 45 Quare vitanda est etiam illa Sallustiana (quamquam in ipso  
 virtutis optinet locum) brevitatis et abruptum sermonis  
 genus: quod otiosum fortasse lectorem minus fallat, au-  
 dientem transvolat, nec dum repetatur expectat, cum  
 praesertim lector non fere sit nisi eruditus, iudicem rura  
 plerumque in decurias mittant de eo pronuntiatum  
 quod intellexerit, ut fortasse ubique, in narratione tamen  
 46 praecipue, media haec tenenda sit via dicendi: 'quantum  
 opus est et quantum satis est'. 'Quantum opus est' autem  
 non ita solum accipi volo, 'quantum ad indicandum suf-  
 ficit', quia non inornata debet esse brevitatis, alioqui sit in-  
 docta; nam et fallit voluptas, et minus longa quae delectant  
 videntur, ut amoenum ac molle iter, etiamsi est spatii am-  
 47 plioris, minus fatigat quam durum aridumque compen-  
 dium. Neque mihi umquam tanta fuerit cura brevitatis ut  
 non ea quae credibilem faciunt expositionem inseri velim.  
 Simplex enim et undique praecisa non tam narratio vocari  
 potest quam confessio.

Sunt porro multae condicione ipsa rei longae narra-  
 tiones. Quibus extrema, ut praecepi, prohoemii parte ad  
 intentionem praeparandus est iudex, deinde curandum

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<sup>36</sup> See 8.3.82, 10.1.32, 10.1.102 (*velocitas*). Seneca, *Epistles* 114.17–18; Leeman, *Orationis Ratio* 182.

<sup>37</sup> Q. frequently stresses this point, and is hard on *rusticitas* of any kind: 1.11.16, 6.3.17, 11.3.117, 12.10.53, 57.

<sup>38</sup> 4.1.79.

other reasons besides brevity. But we must be no less on our guard against the obscurity that comes from compressing everything too much: it is better for there to be too much in a Narrative than too little. Superfluity may be boring, but leaving out essentials is dangerous. We must therefore avoid even the famous "Sallustian brevity"<sup>36</sup> (though in Sallust himself it counts as a virtue) and that abrupt sort of language which may perhaps not mislead a leisured reader, but which passes over the head of the hearer and does not wait to be called back. At the same time, readers are as a rule well educated, whereas the courts are often filled with juries sent up from the country,<sup>37</sup> who have to give judgement on what they have managed to understand. Consequently, we must aim, perhaps everywhere but particularly in the Narrative, at keeping to the middle road, and saying "as much as is needed and as much as suffices." By "as much as is needed" I do not mean "the minimum necessary to convey the meaning," for brevity must not be inelegant, or it would simply show lack of education. For pleasure is in fact beguiling, and things that delight us seem less long, just as a pleasant easy road, even if it is in fact longer, tires us less than a short cut which is hard going and arid. I should never be so keen on brevity as to want to exclude details which make the exposition more credible. If it is simplified and abridged at every point, it may be called a "confession" rather than a Narrative.

Many Narratives, too, are necessarily long because of the actual nature of the facts. With these the last part of the Prooemium should (as I have suggested)<sup>38</sup> serve to prepare the judge; we should also make use of every device to

ut omni arte vel ex spatio eius detrahamus aliquid vel ex taedio.

48 Ut minus longa sit efficiemus quae poterimus differendo, non tamen sine mentione eorum quae differemus: 'quas causas occidendi habuerit, quos adsumpserit conscios, quem ad modum disposuerit insidias, probationis  
49 loco dicam.' Quaedam vero ex ordine praetermittenda, quale est apud Ciceronem: 'moritur Fulcinius; multa enim quae sunt in re, quia remota sunt a causa, praetermittam.'

Et partitio taedium levat: 'dicam quae acta sint ante ipsum rei contractum, dicam quae in re ipsa, dicam quae  
50 postea'; ita tres potius modicae narrationes videbuntur quam una longa. Interim expediet expositionem brevi interfatione distinguere: 'audistis quae ante acta sunt: accipite nunc quae insecuntur.' Reficietur enim iudex priorum fine et se velut ad novum rursus initium praeparabit.

51 Si tamen adhibitis quoque his artibus in longum exierit ordo rerum, erit non inutilis in extrema parte commonitio, quod Cicero etiam in brevi narratione fecit: 'adhuc, Caesar, Q. Ligarius omni culpa caret: domo est egressus non modo nullum ad bellum, sed ne ad minimam quidem belli suspicionem', et cetera.

52 Credibilis autem erit narratio ante omnia si prius consuluerimus nostrum animum ne quid naturae dicamus

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<sup>39</sup> *Pro Caecina* 11.

<sup>40</sup> *Pro Ligario* 4.

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reduce (1) length and (2) tedium.

(1) We shall manage to reduce the length by postponing what we can, while never forgetting to mention what it is that we are going to postpone: "What motives he had for killing him, what accomplices he picked, how he set his ambush, I will explain when I come to my proofs." Some points however should be simply omitted from the account, as in Cicero:<sup>39</sup> "Fulcinius dies; there are many matters involved in this event which I shall pass over, because they have nothing to do with the Cause."

(2) Partition also relieves tedium: "I shall tell you what happened before the beginning of this affair, I shall tell you what happened during it, and I shall tell what happened afterwards." This will give the impression of three modest Narratives instead of one long one. Sometimes it will be advantageous to interrupt the Narrative with a brief interjection like "You have heard what happened before; now learn what follows." The judge will then feel refreshed by reaching the end of the first stage, and will prepare himself as it were for a fresh beginning.

If, however, when all these devices have been applied, the sequence of facts still turns out to be long, it will be useful to add a résumé at the end: Cicero does this even in a brief Narrative:<sup>40</sup> "Hitherto, Caesar, Quintus Ligarius has been wholly free of blame; he left home not only with no war in view, but without the slightest suspicion of war," and so on.

### *Credibility*

The Narrative will be credible (1) if we consult our own hearts first and so do not say anything contrary to what is

adversum, deinde si causas ac rationes factis praeposuerimus, non omnibus, sed de quibus quaeritur, si personas convenientes iis quae facta credi volumus constituerimus, ut furti reum cupidum, adulterii libidinosum, homicidii temerarium, vel his contraria si defendemus: praeterea loca, tempora, et similia.

- 53 Est autem quidam et ductus rei credibilis, qualis in comoediis etiam et in mimis. Aliqua enim naturaliter secuntur et cohaerent, ut si bene priora narraveris iudex  
 54 ipse quod postea sis narraturus expectet. Ne illud quidem fuerit inutile, semina quaedam probationum spargere, verum sic ut narrationem esse meminerimus, non probationem. Nonnumquam tamen etiam argumento aliquo confirmabimus quod proposuerimus, sed simplici et brevi, ut in veneficiis: sanus bibit, statim concidit, livor ac tumor  
 55 confestim est insecutus. Hoc faciunt et illae praeparationes, cum reus dicitur robustus armatus <paratus><sup>8</sup> contra infirmos inermis securos. Omnia denique quae probatione tractaturi sumus, personam causam locum tempus instrumentum occasionem, narratione delibabimus. Aliquando  
 56 si destituti fuerimus his, etiam fatebimur vix esse credibile sed verum, et hoc maius habendum scelus: nescire nos quo modo factum sit aut quare, mirari, sed probaturos.  
 57 Optima vero praeparationes erunt quae latuerint. Ut a

<sup>8</sup> *suppl. Peters*

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<sup>41</sup> See R. Janko, *Aristotle on Comedy* (London 1984); M. Fuhrmann, *Einführung in die antike Dichtungstheorie* (1973) 54–70. Q. does not distinguish between the careful plot-construction of comedy and the much looser structure of mime; both have to possess some sort of coherence.

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natural; (2) if we give motives and reasons before events (not *all* events, but those on which the inquiry turns); (3) if we set up characters appropriate to the actions which we wish to be believed: for example, an alleged thief should be covetous, an adulterer lustful, a murderer rash; if we are for the defence we take the opposite line; and (4) if we also specify places, times, and the like.

There is also a *pattern* of events which is credible, like that which is found also in comedy or mime.<sup>41</sup> Some things have a natural sequence and coherence such that, if you tell the first part well, the judge will himself anticipate what you are next going to relate. It will be useful also to sow some seeds of the Proofs, but in such a way that we never forget that this is still the Narrative, and not the Proof. We may however sometimes confirm an assertion by some Argument, but it must be a simple, short one. Thus in a poisoning case: "He was perfectly well as he drank, but he collapsed immediately, and discoloration and swelling soon followed." The same effect is produced by the preparatory remarks in which a defendant is said to be strong, armed, and ready, and facing opponents who are weak, unarmed, and off their guard. We can in fact give a taste in the Narrative of everything that we shall be treating in the Proof: person, motive, place, time, means, opportunity. Sometimes, if none of these is available, we shall go so far as to admit that the story is hardly credible, but none the less true, which makes the crime all the worse: "We do not know how or why it was done; we wonder at it, but we will prove it." The best preparatory remarks will

Cicerone sunt quidem utilissime prædicta omnia per quae Miloni Clodius, non Clodio Milo insidiatus esse videatur, plurimum tamen facit illa callidissima simplicitatis imitatio: 'Milo autem, cum in senatu fuisset eo die quoad senatus est dimissus, domum venit, calceos et vestimenta mutavit, paulisper, dum se uxor, ut fit, comparat, commoratus est.' Quam nihil festinato, nihil praeparato fecisse videtur Milo! Quod non solum rebus ipsis vir eloquentissimus, quibus moras et lentum perfectionis ordinem ducit, sed verbis etiam vulgaribus et cotidianis et arte occulta consecutus est: quae si aliter dicta essent, strepitu ipso iudicem ad custodiendum patronum excitassent. Frigida videntur ista plerisque, sed hoc ipso manifestum est quo modo iudicem fefellerit, quod vix a lectore deprenditur.

58  
59  
60 Haec sunt quae credibilem faciant expositionem. Nam id quidem, ne qua contraria aut repugnantia in narratione dicamus, si cui praecipendum est, is reliqua frustra docetur, etiam si quidam scriptores artium hoc quoque tamquam occultum et a se prudenter erutum tradunt.

61 His tribus narrandi virtutibus adiciunt quidam magnificentiam, quam *μεγαλοπρέπεια* vocant, quae neque in omnes causas cadit (nam quid in plerisque iudiciis privatis de certa credita, locato et conducto, interdictis habere loci potest supra modum se tollens oratio?), neque

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<sup>42</sup> *Pro Milone* 28. Q. here gives us a good specimen of his sensitive *explication* of Cicero, an important element in his teaching.

<sup>43</sup> Anonymus Seguerianus 101 (p. 28 Dilts-Kennedy): "Some have said that Grandeur, Amplification (*αὔξησις*), Pleasure (*ἡδονή*), and Mildness or Fairness (*προσήνεια ἢτοι ἐπιείκεια*) are virtues of Narrative."

be those which go unnoticed; thus Cicero very advantageously anticipates everything that shows that it was Clodius who lay in wait for Milo, and not Milo for Clodius. Most effective of all is this clever pretence of simple candour:<sup>42</sup> “Milo, having been in the Senate all day until the sitting ended, came home, changed his shoes and clothes, and waited a little while his wife got ready—you know what women are.” How leisurely, how unpremeditated are Milo’s actions made to seem! The most eloquent of orators achieves his end not only by the details, with which he prolongs the delays and the slow proceedings of the departure, but by his common, everyday language and well concealed art. If these things had been put in any other way, the sound of the words would itself have aroused the judge to keep a sharp eye on the advocate. Many find this passage unimpressive, but the very fact that it is barely noticed by the reader shows how it must have slipped under the judge’s guard.

These are the qualities that make a statement of facts credible. If anyone needs to be told to avoid damaging or inconsistent points in a Narrative, it is pointless trying to teach him the rest, although some textbook writers actually produce this piece of advice as a secret unearthed by their own wisdom.

### *Grandeur and Vividness*

To these three virtues of Narrative, some add Grandeur (*megaloprepeia*, as it is called).<sup>43</sup> This however is not appropriate in all Causes—what scope can there be for a lofty tone in most private trials, when they are about loans, letting and hiring, or interdicts?—nor indeed is it always



- semper est utilis, ut vel proximo exemplo Miloniano patet.
- 62 Et meminerimus multas esse causas in quibus confitendum excusandum summittendum sit quod exponimus: quibus omnibus aliena est illa magnificentiae virtus. Quare non magis proprium narrationis est magnifice dicere quam miserabiliter invidiose graviter dulciter urbane: quae cum suo quoque loco sint laudabilia, non sunt huic parti proprie adsignata et velut dedita.
- 63 Illa quoque ut narrationi apta, ita ceteris quoque partibus communis est virtus quam Theodectes huic uni proprie dedit; non enim magnificam modo vult esse verum etiam iucundam expositionem. Sunt qui adiciant his evidenti-
- 64 am, quae ἐνάργεια Graece vocatur. Neque ego quemquam deceperim ut dissimulem Ciceroni quoque plures partes placere. Nam praeterquam planam et brevem et credibilem vult esse evidentem, moratam, cum dignitate. Sed in oratione morata debent esse omnia, cum dignitate quae poterunt: evidentiā in narratione, quantum ego intellego, est quidem magna virtus, cum quid veri non dicendum sed quodammodo etiam ostendendum est, sed subici perspicuitati potest. Quam quidam etiam contrariam interim putaverunt, quia in quibusdam
- 65 causis obscuranda veritas esset. Quod est ridiculum; nam qui obscurare vult narrat falsa pro veris, et in iis quae narrat debet laborare ut videantur quam evidentissima.

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<sup>44</sup> See on 1.4.18. The “virtue” is presumably “charm” or “pleasure” (χάρις, ἡδονή).

<sup>45</sup> I.e. the vividness which makes the hearer feel that he is *seeing* what is described: see 6.2.32, 8.3.61, 9.2.40; Caplan on *Ad Herennium* 4.68; Russell (1964) on “Longinus” 15.2.

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advantageous, as is apparent from the passage of the *Pro Milone* just quoted. Let us remember also that there are many Causes in which we have to confess, excuse, or minimize the facts we are relating; grandeur is a virtue alien to all such situations. Speaking with grandeur is therefore no more a special feature of Narrative than speaking pitifully or maliciously, or with dignity or charm or wit. All these are admirable in their proper place, but they are not the peculiar and inalienable property of this part of the speech.

Likewise, the virtue which Theodectes<sup>44</sup> made peculiar to Narrative is indeed appropriate to it, but, again, is common to the other parts as well. He wishes the Narrative to be not only grand but attractive. Others add Vividness, in Greek called *enargeia*.<sup>45</sup> Nor do I want to deceive anyone by hiding the fact that Cicero also asked for more qualities. He wants the Narrative, in addition to being clear, brief, and credible, to be vivid, in character, and possessing dignity.<sup>46</sup> But *everything* in a speech should be in character and, so far as possible, should possess dignity. As to vividness, it is, to my understanding, undoubtedly an important virtue of Narrative, when a truth requires not only to be told but in a sense to be presented to the sight. All the same, it can be included under Lucidity. This last is a quality which some have thought to be actually damaging on occasion, because (they say) in some Causes the truth has to be obscured. This is absurd, since anyone who wants to obscure something is presenting false statements as true, and needs to strive in his Narrative to make them seem as vivid as possible.

<sup>46</sup> *Topica* 97: ut moderatae (moratae *edd.*, to make Cicero agree with Q.), ut cum dignitate.

66 Sed quatenus etiam forte quadam pervenimus ad difficilius narrationum genus, iam de iis loquamur in quibus res contra nos erit: quo loco nonnulli praetereundam narrationem putaverunt. Et sane nihil est facilius nisi prorsus totam causam omnino non agere. Sed si aliqua iusta ratione huiusmodi susceperis litem, cuius artis est malam esse causam silentio confiteri? Nisi forte tam hebes futurus est iudex ut secundum id pronuntiet quod sciet narrare  
 67 te noluisse. Neque infitias eo in narratione ut aliqua neganda, aliqua adicienda, aliqua mutanda, sic aliqua etiam tacenda: sed tacenda quae tacere oportebit et liberum erit. Quod fit nonnumquam brevitatis quoque gratia, quale illud est: 'respondit quae ei visum est.'

68 Distinguamus igitur genera causarum. Namque in iis in quibus non de culpa quaeretur sed de actione, etiam si erunt contra nos themata confiteri nobis licebit: 'pecuniam de templo sustulit, sed privatam, ideoque sacrilegus non  
 69 est'; 'virginem rapuit, non tamen optio patri dabitur'; 'ingenuum stupravit et stupratus se suspendit: non tamen ideo stuprator capite ut causa mortis punietur, sed decem milia, quae poena stupratori constituta est, dabit.' Verum in his quoque confessionibus est aliquid quo invidia quam expositio adversarii fecit detrahi possit, cum etiam servi

<sup>47</sup> Compare *In Verrem* 2.73.

<sup>48</sup> Compare 3.6.38.

<sup>49</sup> Declamations (e.g. Seneca, *Controversiae* 1.5, *Declamationes minores* 280, 286) often assume a law allowing the victim of a rape to choose between the death of the rapist and marriage with him: Bonner, *RD* 89–91; *GD* 34; Sussman on Calpurnius Flaccus 16. See also 7.8.4, Tacitus, *Dialogus* 35. <sup>50</sup> Compare 7.4.42. The fine as a penalty for rape occurs in other declamations: *Declamationes minores* 252, 370; Sopater 8.362 Walz. See *GD* 35.

*Difficult cases*

Since we have now inadvertently arrived at the more difficult kind of Narratives, let us now speak of those in which the facts are against us. Some have held that, in this case, the Narrative should be omitted. Nothing is easier—except of course not taking the Cause on at all! But if you do take on a case of this kind for some good reason, what sort of art is it that admits the weakness of a Cause by silence? Or is the judge going to be stupid enough to give judgement in line with something which he knows you did not want to put before him? (I do not of course deny that, just as there may be some points in a Narrative to be denied, some to be added, and some to be altered, so also there may be some to be passed over in silence—but only those which it is right to pass over, where there is freedom to do so. This occurs sometimes for the sake of brevity, as in the sentence “He answered as he thought fit.”)<sup>47</sup>

Let us then distinguish the different types of Cause. (1) In those in which the question is not one of guilt but of legal procedure we can make a confession, even if the set theme of the declamation is against us: “He took money from the temple, but it was private money, and so he is not guilty of sacrilege”;<sup>48</sup> “He raped the virgin, but it is not her father who is given the choice”;<sup>49</sup> “He seduced a free-born boy and the victim hanged himself, but the seducer is not liable to capital punishment as having caused the death, but to a fine of 10,000 sesterces, the penalty laid down for a seducer.”<sup>50</sup> However, even in these confessions there can be some mitigation of the odium produced by our opponent’s Narrative. After all, even our slaves try to extenuate

70 nostri de peccatis suis mollius loquantur. Quaedam enim quasi non negantes<sup>9</sup> mitigabimus: 'Non quidem, ut adversarius dicit, consilium furti in templum attulit nec diu captavit eius rei tempus, sed occasione et absentia custodum corruptus et pecunia, quae nimium in animis hominum potest, victus est. Sed quid refert? Peccavit et fur est: nihil  
71 attinet id defendere cuius poenam non recusamus.' Interim quasi damnemus ipsi: 'Vis te dicam vino inpulsum, errore lapsum, nocte deceptum? Vera sunt ista fortasse: tu tamen ingenuum stuprasti, solve decem milia.'

Nonnumquam propositione praemuniri potest causa,  
72 deinde exponi. Contraria sunt omnia tribus filiis qui in mortem patris coniurarant: sortiti nocte singuli per ordinem cum ferro cubiculum intrarunt patre dormiente: cum occidere eum nemo potuisset, excitato omnia indicarunt.  
73 Si tamen pater, qui divisit patrimonium et reos parricidii defendit, sic agat: 'Quod contra legem sufficit, parricidium obicitur iuvenibus quorum pater vivit atque etiam liberis suis adest. Ordinem rei narrare quid necesse est cum ad legem nihil pertineat? Sed si confessionem culpae meae exigitis, ego fui pater durus, et patrimonii quod iam melius  
74 ab his administrari poterat tenax custos', deinde subiciat stimulos ab iis quorum indulgentiores parentes erant semper tamen eum habuisse animum qui sit eventu de-

<sup>9</sup> *Gemoll*: narrantes AB: <nova> narrantes Watt 1988

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<sup>51</sup> The accusers in this (unparalleled?) declamation theme are presumably relatives of the father, since the father himself defends his sons.

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their own misdeeds. We can palliate some offences by not denying them, as it were: "He did not, as my opponent alleges, enter the temple with the intention of theft, nor wait long for a suitable moment; he was led astray by the opportunity and the absence of the guards, and overcome by the thought of money, which has only too much influence over the human mind. But what does it matter? He did wrong and he is a thief; it is pointless to defend an act when we do not object to the penalty for it." Sometimes we can almost go as far as condemning the man ourselves: "Do you want me to say you were drunk, or mistaken, or deceived in the darkness? That may well be true; but the fact is, you seduced a free-born boy. Pay your 10,000 sesterces."

It is possible sometimes for a Cause to be first given support by a preliminary statement, and then fully expounded. In the case of the three sons who had conspired to kill their father, everything is against them. They drew lots and went into the bedroom at night, sword in hand, one after the other, while their father was asleep; none of them had the heart to kill him, and when he woke up they told him everything.<sup>51</sup> But suppose the father, who has divided his estate between them and is defending them on a charge of parricide, were to say: "On the legal question, it is enough to say that parricide is being alleged against young men whose father is alive and indeed is here to defend them. Why need I relate the order of events, when it has no bearing on the law? If you demand a confession of my own guilt, I was a hard father and an overpossessive guardian of an estate which could have been better managed by these sons of mine." And suppose he were to go on to say that they had been encouraged by young men who had more indulgent fathers, but nevertheless, as the event

premsus, ut occidere patrem non possent; neque enim iure iurando opus fuisse si alioqui hoc mentis habuissent, nec sorte nisi quod se quisque eximi voluerit: omnia haec qualiacumque placidioribus animis accipientur illa brevi primae propositionis defensione mollita.

- 75 At cum quaeritur an factum sit vel quale factum sit, licet omnia contra nos sint, quo modo tamen evitare expositionem salva causae ratione possumus? Narravit accusator, neque ita ut quae essent acta tantum indicaret, sed adiecit invidiam, rem verbis exasperavit: accesserunt probationes,
- 76 peroratio incendit et plenos irae reliquit. Expectat naturaliter iudex quid narretur a nobis. Si nihil exponimus, illa esse quae adversarius dixit et talia qualia dixit credat necesse est. Quid ergo? Eadem exponemus? Si de qualitate agetur, cuius tum demum quaestio est cum de re constat, eadem, sed non eodem modo: alias causas, aliam
- 77 mentem, aliam rationem dabo. Verbis elevare quaedam licebit: luxuria liberalitatis,<sup>10</sup> avaritia parsimoniae, negligentia simplicitatis nomine lenietur; vultu denique voce habitu vel favoris aliquid vel miserationis merebor; solet nonnumquam movere lacrimas ipsa confessio. Atque ego libenter interrogem, sint illa defensuri quae non narraverint necne. Nam si neque defenderint neque narraverint,
- 78 tota causa prodetur: at si defensuri sunt, proponere certe plerumque id quod confirmaturi sumus oportet. Cur ergo

<sup>10</sup> *Bonnell*: hilaritatis A: ilaratis B

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<sup>52</sup> Interpretation uncertain. Does Q. mean that he would ask his opponents in court these questions? More probably, he puts the dilemma as a teacher to people who disagree with his opinion and think that a defence Narrative may be dispensed with.

proved, always retained the feeling that they could not possibly kill their father; if they had had the inclination to do it anyway, they would not have needed to swear an oath, or to draw lots, unless they had each wanted to get out of it. All this, whatever it amounts to, will be accepted more comfortably if it has been softened by the brief defence in the preliminary summary.

(2) But when the Issue is one of Fact or Quality, though everything is against us, how can we avoid a Narrative without damaging our Cause? Suppose the accuser has delivered a Narrative, not only showing what was done, but throwing in prejudice, and using words that make the matter worse; suppose also there have been Proofs, and an Epilogue which has fired the jury and left them boiling with anger. The judge is naturally waiting to hear our Narrative. If we give none, he is bound to believe the facts to be what our opponent said and to be such as he described. So what shall we do? Restate the same facts? If we are going to be dealing with a question of Quality, which only arises when the facts are agreed, we *should* restate them, but not in the same way: I shall then allege different motives, attitudes of mind, and principles. It will be possible to extenuate some things by choice of words: luxury will be toned down as liberality, avarice as thrift, carelessness as simplicity. Finally, I shall try to earn some favour or pity by my expression, voice, and bearing. Confession itself sometimes produces tears. And I shall want to ask<sup>52</sup> whether they are going to justify matters which they have not set out in a Narrative, or not. For if they neither justify the facts nor state them, the whole Cause will be given away. But if they do propose to justify them, then it is certainly right, as a rule, to state in advance what one is about to confirm. So why not set out



79 non exponamus quod et dilui potest et, ut hoc contingat, utique indicandum est? Aut quid inter probationem et narrationem interest nisi quod narratio est probationis continua propositio, rursus probatio narrationi congruens confirmatio? Videamus ergo num expositio haec longior demum esse debeat et paulo verbosior praeparatione et quibusdam argumentis (argumentis dico, non argumentatione); cui tamen plurimum conferet frequens adfirmatio effecturos nos quod dicimus: non posse vim rerum ostendi prima expositione: expectent et opiniones suas differant et bene sperent.

80 Denique utique narrandum est quidquid aliter quam adversarius exposuit narrari potest, aut etiam prohoemia sunt in his causis supervacua: quae quid magis agunt quam ut cognitioni rerum accommodatiorem iudicem faciant? Atqui constabit nusquam esse eorum maiorem usum quam ubi animus iudicis ab aliqua contra nos insita opinione flectendus est.

81 Coniecturales autem causae, in quibus de facto quaeritur, non tam saepe rei de qua iudicium est quam eorum per quae res colligenda est expositionem habent. Quae cum accusator suspiciose narret, reus levare suspicionem debeat, aliter ab hoc atque ab illo ad iudicem perferri oportet.

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<sup>53</sup> See below, § 108. *Argumentatio* is the process of arguing and debating, while *argumentum* (see 5.10) means a particular point or piece of evidence which can be used.

<sup>54</sup> I.e., as Anonymus Seguierianus 52 (19 Dilts-Kennedy) puts it, they usually require a "general" Narrative (*γενικὴ διήγησις*) rather than a "special" (*εἰδική*) one, which is confined to matters which are "before the judge."

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facts which can be minimized, and, to achieve this, must at any rate be stated? To put it another way, what is the difference between Proof and Narrative, except that the Narrative is a preliminary statement of the Proof given at length, and the Proof is a confirmation which conforms to the Narrative? Let us consider therefore whether this statement needs now to be longer and somewhat wordier than usual, because it includes the preparatory remarks and some Arguments (Arguments, be it noted, not Argumentation!);<sup>53</sup> what will help it most, however, is a frequent repetition of the assurance that we shall make good what we say later on: "The force of the facts cannot be brought out at the first telling of them; wait, keep your minds open, and have confidence."

In any case, we must certainly include in the Narrative anything which can be treated in a different way from that in which it was treated by the opponent; otherwise, one would have to say that in these Causes there is no need for Prooemia either, for what can they do except make the judge better prepared to understand the facts? Yet it will be agreed that they are never more useful than when his mind has to be diverted from a prejudice which he has formed against us.

Conjectural Causes, in which the question is one of fact, more often have a Narrative of the circumstances from which the fact may be inferred than of the actual fact itself which is before the court.<sup>54</sup> Since the accuser relates these circumstances so as to arouse suspicions, and the defendant has to dispel these suspicions, defendant and accuser have to bring the facts to the judge's notice in different ways.

82 At enim quaedam argumenta turba valent, diducta leviora sunt. Id quidem non eo pertinet ut quaeratur an narrandum, sed quo modo narrandum sit. Nam et congerere plura in expositione quid prohibet, si id utile est causae, et promittere, sed et dividere narrationem et probationes subiungere partibus atque ita transire ad sequentia?

83 Namque ne iis quidem accedo qui semper eo putant ordine quo quid actum sit esse narrandum, sed eo malo narrare quo expedit. Quod fieri plurimis figuris licet. Nam et aliquando nobis excidisse simulamus cum quid utiliore loco reducimus, et interim nos relicturos<sup>11</sup> rerum<sup>12</sup> ordinem testamur quia sic futura sit causa lucidior: interim re exposita subiungimus causas quae antecesserunt. Neque enim est una lex defensionis certumque praescriptum: pro re, pro tempore intuenda quae prosint, atque ut erit vulnus, ita vel curandum protinus vel, si curatio differri potest, interim deligandum.

85 Nec saepius narrare duxerim nefas, quod Cicero pro Cluentio fecit, estque non concessum modo sed aliquando etiam necessarium, ut in causis repetundarum omnibusque quae simplices non sunt. Amentis est enim super-

<sup>11</sup> *Zumpt*: reddituros *A*: reducturos *B*

<sup>12</sup> *Vassis*: relicum *AB*

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<sup>55</sup> Compare 7.10.11–12.

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It may be objected that some Arguments are collectively powerful, but not of much weight if taken separately. This is not relevant to the question whether a Narrative is needed, but only to the question how it should be constructed. For what is to prevent us, if it is advantageous to the Cause, from assembling a number of Arguments in the Narrative, promising more, and indeed subdividing the Narrative and adding Proofs to individual parts of it, and thus making a transition to the next section?<sup>255</sup>

### *Order of Narrative*

I say this because I cannot agree either with those who think that a Narrative must always follow the chronological order of events: I prefer to narrate events in the order that is most advantageous. There are many Figures which make this possible. Sometimes, when we are recalling a point in a place where it does more good, we pretend that it slipped our mind before. Sometimes too we declare that we are going to abandon the order of events, because the case will be clearer that way. Sometimes again we add the causes after we have explained the event, though chronologically they came first. There is no single law or fixed rule for a defence; we have to look for the best course in accordance with the facts and the occasion. It depends on the nature of a wound whether it should be treated immediately or, if treatment can be put off, temporarily bandaged up.

To give more than one Narrative, as Cicero did in the *Pro Cluentio*, is not in my view a crime; indeed it is not only permissible but sometimes even necessary, as in extortion cases and complex cases generally. Only a madman lets

- 86 stitione praeceptorum contra rationem causae trahi. Narrationem ideo ante probationes ponere est institutum ne iudex qua de re quaeratur ignoret. Cur igitur, si singula probanda aut refellenda erunt, non singula etiam narrentur? Me certe, quantacumque nostris experimentis habenda est fides, fecisse hoc in foro quotiens ita desiderabat utilitas, probantibus et eruditis et iis qui iudicabant, scio: et (quod non adroganter dixerim, quia sunt plurimi quibuscum egi qui me refellere possint si mentiar) fere ponendae a me causae officium exigebatur.
- 87 Neque ideo tamen non saepius id facere oportebit ut rerum ordinem sequamur. Quaedam vero etiam turpiter convertuntur, ut si peperisse narres, deinde concepisse, apertum testamentum, deinde signatum, in quibus si id quod posterius est dixeris, de priore tacere optimum; palam est enim praecessisse.
- 88 Sunt quaedam et falsae expositiones, quarum in foro duplex genus est: alterum quod instrumentis adiuvatur, ut P. Clodius fiducia testium qua nocte incestum Romae commiserat Interamnae se fuisse dicebat: alterum quod est tuendum dicentis ingenio. Id interim ad solam vere-

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<sup>56</sup> Cicero, *Pro Milone* 46.

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himself be drawn into acting against the interests of the Cause because of some superstitious adherence to rules. The practice of placing the Narrative before the Proofs is intended to ensure that the judge is not ignorant of what the matter in question is. Why then, if Proofs and Refutations can be taken point by point, should not this be done also with Narratives? If any weight may be put on my personal experience, I know that I have done this in court, whenever my interest required it, with the approbation both of the learned and of the judges in the case; and it was I who was generally assigned the task of laying the foundations of the Cause (I am not saying this out of vanity, because there are many people, associated with my cases, who could refute me if I were lying).

This does not mean however that we should not usually adhere to the natural order of events. Indeed, a reversal of that order may have a very unfortunate effect, for example if you say that a woman bore a child, and then that she became pregnant; or that the will was opened, and then that it was sealed. In such cases, if you have mentioned the second stage, you will do well to say nothing about the first, for it is obvious that it preceded the other.

### *False Narratives*

There are also some false Narratives. So far as the courts are concerned, there are two kinds of these: (1) one which depends on external evidence, as when Publius Clodius relied on witnesses when he said he was at Interamna on the night when he had committed incest at Rome;<sup>56</sup> (2) one which can only be supported by the speaker's ingenuity: this is sometimes simply a matter of

- cundiam<sup>13</sup> pertinet, unde etiam mihi videtur dici color,  
 89 interim ad quaestionem.<sup>14</sup> Sed utrumcumque erit, prima  
 sit curarum ut id quod fingemus fieri possit, deinde ut et  
 personae et loco et tempori congruat et credibilem ratio-  
 nem et ordinem habeat: si continget, etiam verae alicui rei  
 cohaereat, aut argumento quod sit in causa confirmetur;  
 nam quae tota extra rem petita sunt mentiendi licentiam  
 90 produnt. Curandum praecipue, quod fingentibus frequen-  
 ter excidit, ne qua inter se pugnent; quaedam enim par-  
 tibus blandiuntur, sed in summam non consentiunt: prae-  
 terea ne iis quae vera esse constabit adversa sint: in schola  
 91 etiam ne color extra themata quaeratur. Utrubique autem  
 orator meminisse debet actione tota quid finxerit, quo-  
 niam solent excidere quae falsa sunt: verumque est illud  
 quod vulgo dicitur, mendacem memorem esse oportere.  
 92 Sciamus autem, si de nostro facto quaeratur, unum nobis  
 aliquid esse dicendum: si de alieno, mittere in plura suspi-  
 ciones licere. Est tamen quibusdam scholasticis contro-  
 versiis, in quibus ponitur aliquem non respondere quod

<sup>13</sup> veri<tatem fu>candam Ludwig, *Rh. Mus.* 131 (1988), 301  
 (“to putting a false color on the truth”)

<sup>14</sup> interim <rerum> ad confictionem Ludwig, *loc. cit.* (“to the  
 invention of material”)

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<sup>57</sup> This term means any “colouring” of the facts to the advantage of the speaker: a “gloss” or (in the political jargon of the 1990s) a “spin.” Seneca’s *Controversiae* pay particular attention to *colores*: see Fairweather (1981), index, s.v.; Bornecque (1902) 52, 100–102. Q. apparently connects the notion with colouring or

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avoiding embarrassment (which I think is why it is called a “colour”),<sup>57</sup> but sometimes it involves the Question. In either case, our first concern must be that what we invent should be feasible; and our second, that it should conform to the person, the place, and the time, and have a credible structure and order; if possible, it should also be linked with something which is true, or be confirmed by an Argument which has a role in the Cause. Fictions drawn entirely from circumstances outside the case reveal that we have taken out a licence to lie. The most important precautions however (often forgotten by those who make things up) are (1) to avoid self-contradiction (for some stories are attractive in parts, but do not make a consistent whole); (2) to avoid any inconsistency with what is acknowledged to be true; (3) also, in school exercises, not to look for a “colour” outside the terms of the theme. Both in school and in the courts, the orator will need to remember his fictions throughout the pleading, because falsehoods commonly slip from the mind; the common saying that “a liar should have a good memory”<sup>58</sup> is very true. Let us note, however, that if it is our own action which is in question, we shall have to make one statement and stick to it, whereas if it is a matter of the actions of others, we can cast suspicion in various directions. In some school *controversiae*, however, where it is an element of the theme that a person does

blushing for shame; but it is not easy to see how this fits, and Ludwig’s conjecture certainly gives plainer sense.

<sup>58</sup> Compare Apuleius, *Apology* 69, Jerome, *Adversus Rufinum* 3.13.



## QUINTILIAN

interrogatur, libertas omnia enumerandi quae responderi potuissent.

93 Fingenda vero meminerimus ea quae non cadant in testem: sunt autem haec quae a nostro ducuntur animo, cuius ipsi tantum conscii sumus, item quod a defunctis (nec hoc enim est qui neget) itemque ab eo cui idem expediet (is enim non negabit), ab adversario quoque quia<sup>15</sup>  
94 non est habiturus in negando fidem. Somniorum et superstitionum colores ipsa iam facilitate auctoritatem perderunt.

Non est autem satis in narratione uti coloribus nisi per totam actionem consentiant, cum praesertim quorundam  
95 probatio sola sit in adseveratione et perseverantia: ut ille parasitus qui ter abdicatum a divite iuvenem et absolutum tamquam suum filium adserit, habebit quidem colorem quo dicat et paupertatem sibi causam exponendi fuisse, et ideo a se parasi personam esse susceptam quia in illa domo filium haberet, et ideo illum innocentem ter abdicatum quia filius abdicantis non esset; nisi tamen omnibus<sup>16</sup>  
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<sup>15</sup> qua B

<sup>16</sup> in omnibus A

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<sup>59</sup> Q. may be thinking of cases in which a person is debarred from speaking by loss of citizen rights or is physically incapable (tongue cut out, for instance: *GD* 28) or just deliberately silent (like the rape victim who weeps and does not speak: Calpurnius Flaccus 16).

<sup>60</sup> Compare Seneca, *Controversiae* 7.7.15 (Junius Otho told a dream whenever he was at a loss for a *color*); *Declamationes minores* 299 (a dead father appears to his daughter in a dream).

<sup>61</sup> This complex case (not known from other sources) is made up of familiar items. The "parasite" is a poor hanger-on of rich households, a character of comedy and satire

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not reply to questions put to him, we have freedom to enumerate all the answers that could have been given.<sup>59</sup>

Let us remember to confine our fictions to matters which cannot be checked by a witness. This means things derived (1) from our own thoughts, of which we possess unique knowledge, (2) from the dead (no one can deny them), (3) from someone who shares our interest (he will not deny them), or even (4) from our adversary (because his denial will not be believed). “Colours” based on dreams and superstitions have lost all authority because they are so easy to invent.<sup>60</sup>

There is no point in using “colours” in the Narrative unless they are consistent throughout the speech, especially as the only proof of some things consists of persistent assertion. For example, the parasite who claims as his son the young man who has been three times disowned by the rich man, and three times declared innocent, will certainly have a “colour.”<sup>61</sup> He can say that he exposed the child because of his poverty, and took up the role of a parasite because he had a son in the rich man’s house; and that the innocent boy had been disowned three times because he was not the child of the man who sought to disown him.

who is also familiar in the rhetorical school. Exposure of children, *abdicatio* (Bonner, *RD* 101ff.; *GD* 31f.; Sussman on Calpurnius Flaccus 18), and the conflict between rich and poor (*GD* 27–30) are all standard topics. For a particularly rich mixture of these ingredients, which may be compared with Q.’s example, note Himerius, *Oration* 4 (29–36 Colonna: see *GD* 29–30): Poor Man exposed his son, who is brought up by Rich Man; Rich Man bribes the boy to seduce his natural mother, who is Poor Man’s wife; Poor Man kills son and wife, as caught in adultery; Rich Man then reveals the boy’s identity.

verbis et amorem patrium atque hunc quidem ardentissimum ostenderit et odium divitis et metum pro iuvene, quem periculose mansurum in illa domo in qua tam invisus sit sciat, suspicione subiecti petitoris non carebit.

97 Evenit aliquando in scholasticis controversiis, quod in foro an possit accidere dubito, ut eodem colore utraque pars utatur, deinde eum pro se quaeque defendat, ut in illa  
98 controversia: 'uxor marito dixit appellatam se de stupro a privigno et sibi constitutum tempus et locum: eadem contra filius detulit de noverca, edito tantum alio tempore ac loco: pater in eo quem uxor praedixerat filium invenit, in eo quem filius uxorem: illam repudiavit: qua tacente filium abdicat.' Nihil dici potest pro iuvene quod non idem sit  
99 pro noverca; ponentur tamen etiam communia, deinde ex personarum comparatione et indicii ordine et silentio repudiatae argumenta ducentur.

100 Ne illud quidem ignorare oportet, quaedam esse quae colorem non recipiant sed tantum defendenda sint, qualis est ille dives qui statuam pauperis inimici flagellis cecidit et reus est iniuriarum: nam factum eius modestum esse nemo dixerit, fortasse ut sit tutum optinebit.

101 Quod si pars expositionis pro nobis, pars contra nos erit, miscenda sit an separanda narratio cum ipsa causae condi-

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<sup>62</sup> Again not paralleled, but declaimers made lavish use of stepmother-stepson relationships: Seneca, *Controversiae* 4.5, 4.6, 4.7, 6.7, 7.5, 9.6. A real-life case is recorded in Valerius Maximus 5.9.1.

<sup>63</sup> Not so absurd as it might seem: *Digest* 47.10.27 reports the jurist Labeo as holding that if your father's tomb statue is vandalized you can proceed for *iniuria*, but not for violation of the grave.

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But unless, in everything he says, he displays paternal affection of the most ardent kind, hatred of the rich man, and fear for the boy, whom he knows will be at risk as long as he remains in the house in which he is so much hated, he can hardly avoid the suspicion that he has been suborned to bring the action.

It sometimes happens in school *controversiae* (though I doubt whether it can happen in court) that both sides use the same “colour,” each then defending it on his own behalf. The following *controversia* illustrates this.<sup>62</sup> “A wife has told her husband that her stepson has made improper advances to her, and she has made an assignation for a certain time and place. The son reported the same of his stepmother, but gave a different time and place. The father found his son in the place mentioned by his wife, and his wife in the place mentioned by his son. He divorced his wife. She made no statement, and he now seeks to disown his son.” Here nothing can be said on behalf of the young man that cannot also be said on behalf of the stepmother. Still, what is common to both sides will also have to be set out, and then arguments will be drawn from the comparison of the two characters, the order in which they laid information, and the silence of the divorced wife.

We must also realize that there are facts which do not admit any “colour,” but have simply to be justified: for example, the rich man who flogged the statue of the poor man who was his enemy and is tried for assault;<sup>63</sup> no one could claim that his action was reasonable, but one may be able to make it out to be safe in law.

(3) If part of the Narrative tells in our favour, and part against us, one has to take account of the particular circumstances of the Cause in considering whether the Nar-

cione deliberandum est. Nam si plura sunt quae nocent, quae prosunt obruentur. Itaque tunc dividere optimum erit, et iis quae partem nostram adiuvabunt expositis et confirmatis adversus reliqua uti remediis de quibus supra  
 102 dictum est. Si plura proderunt, etiam coniungere licebit, ut<sup>17</sup> quae obstant<sup>18</sup> in mediis velut auxiliis nostris posita minus habeant virium. Quae tamen non erunt nuda ponenda, sed ut et nostra aliqua argumentatione firmemus et diversa cur credibilia non sint adiciamus, quia nisi distinxerimus verendum est ne bona nostra permixtis malis inquinentur.

103 Illa quoque de narratione praecipitur solent, ne qua ex ea fiat excursio, ne avertatur a iudice sermo, ne alienae personae vocem demus, ne argumentemur; adiciunt quidam etiam, ne utamur adfectibus: quorum pleraque sunt frequentissime custodienda, immo numquam nisi ratio coegerit mutanda.

104 Ut sit expositio perspicua et brevis, nihil quidem tam raro poterit habere rationem quam excursio: nec umquam  
 105 debet esse nisi brevis et talis ut vi quadam videamur adfectus velut recto itinere depulsi, qualis est Ciceronis circa nuptias Sasiae: 'O mulieris scelus incredibile et praeter hanc unam in omni vita inauditum! O libidinem effrenatam et indomitam! O audaciam singularem! Nonne

<sup>17</sup> *om. B*

<sup>18</sup> obstant sint *B*

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<sup>64</sup> 4.1.63.      <sup>65</sup> Compare (e.g.) 5.12.14, 7.1.10, Cicero, *Orator* 50, Longinus, *Ars rhetorica* fr. 4: the analogy is with military tactics, weaker troops to be put between stronger units, so as to be kept in line (Homer, *Iliad* 4.299).

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rative should be put all together or divided up. (i) If the damaging points are more numerous, the advantageous ones will be smothered by them. So in this case it is best to divide, and, after setting out and confirming the points which help our Cause, to use the palliatives spoken of above<sup>64</sup> to counter the others. (ii) If the better points predominate, it will be open to us to make the Narrative one continuous whole, so that the problematic items have less force, because they will be surrounded, as it were, by our auxiliaries.<sup>65</sup> But none of these points should be set out baldly, but in such a way that we confirm ours with some form of Argumentation and add reasons for disbelieving what the other side says. If we do not make this distinction, it is to be feared that our good things may be infected by the admixture of the bad.

### *Further limitations and possibilities of Narrative*

Here are some other common rules for Narrative: no Digression, no Apostrophe, no Prosopopoeia, no Argumentation. Some add, no Appeals to the Emotions. Most of these prohibitions are normally to be observed, or rather only breached when there is a compelling reason.

If a Narrative is to be clear and brief, nothing can be justified as rarely as a Digression; and if there is ever to be one, it must be short and such that we seem to have been driven off course by the violence of our feelings. Thus Cicero on Sasia's marriage:<sup>66</sup> "The incredible wickedness of the woman! Unheard of in human history, apart from her! Unbridled, uncontrolled lust! Unparalleled audacity!

<sup>66</sup> *Pro Cluentio* 15.

timuisse, si minus vim deorum hominumque famam, at illam ipsam noctem facesque illas nuptiales, non limen cubiculi, non cubile filiae, non parietes denique ipsos, superiorum testes nuptiarum?

106 Sermo vero aversus a iudice et brevius indicat interim et coarguit magis: qua de re idem quod in prohoemio dixeram sentio, sicut de prosopopoeia quoque, qua tamen non Servius modo Sulpicius utitur pro Aufidia: 'sommone te languidum an gravi lethargo putem pressum?' sed M. quoque Tullius circa nauarchos (nam ea quoque rei expositio est): 'ut adeas, tantum dabis' et reliqua. Quid? pro Cluentio Staieni Bulbique conloquium nonne ad celeritatem plurimum et ad fidem confert? Quae ne fecisse inobservantia quadam videatur, quamquam hoc in illo credibile non est, in Partitionibus praecipit ut habeat narratio suavitatem, admirationes, expectationes, exitus inopinatos, conloquia personarum, omnes adfectus.

108 Argumentabimur in narratione, ut dixi, numquam: argumentum ponemus aliquando, quod facit pro Ligario Cicero cum dicit sic eum provinciae praefuisse ut illi pacem esse expediret. Inseremus expositioni et brevem cum  
109 res poscet defensionem et rationem factorum; neque enim narrandum est tamquam testi, sed tamquam patrono. Rei ordo per se talis est: 'Q. Ligarius legatus C. Considio pro-

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67 4.1.63.

68 See 6.1.20, 10.1.22: *ORF* pp. 379, 531. The circumstances of this inheritance case (44–43 BC?) remain obscure.

69 *In Verrem* 5.118. See below, 9.4.71.

70 70ff.

71 *Partitiones oratoriae* 32.

72 2–4.

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How could she not have feared, if not the vengeance of heaven and the judgement of men, then at least the coming of that night, the bridal torches, the bedroom door, her daughter's room, the very walls that had witnessed her former marriage!"

As to Apostrophe, it sometimes shortens a statement or proves it more cogently, and my view of this is the same as I expressed in connection with the Prooemium.<sup>67</sup> The same applies to Prosopopoeia, which was used however not only by Servius Sulpicius in his defence of Aufidia<sup>68</sup> ("Am I to think you were drowsy with sleep or weighed down by some heavy lethargy?") but also by Cicero in the passage about the ships' captains<sup>69</sup> (for this too is a Narrative), where he says "To be admitted, you must give so much . . ." and so on. Again, in the *Pro Cluentio*<sup>70</sup> does not the conversation between Staienus and Bulbus contribute very greatly both to the speed and to the credibility of the Narrative? Lest it should be thought that Cicero did this through inadvertence of some kind (though in him that is unbelievable), observe that he recommends in the *Partitions*<sup>71</sup> that a Narrative should possess passages which charm, surprise, and rouse expectations, as well as unexpected turns, conversations between persons, and all kinds of emotions.

Argumentation in Narrative, as I said, we shall never use; Argument we shall sometimes, as Cicero does in the *Pro Ligario*<sup>72</sup> when he says that his client ruled the province in such a way that peace was in his interest. We shall also insert a brief defence and reasoned account of events in a Narrative when the situation demands, for one should not be telling the story as a witness but as an advocate. The order of facts runs: "Quintus Ligarius went out as legate to



fectus.' Quid ergo M. Tullius? 'Q. enim' inquit 'Ligarius, cum esset nulla belli suspicio, legatus in Africam C. Con-  
 110 sidio profectus est'; et alibi: 'non modo nullum ad bellum, sed ne ad minimam quidem suspicionem belli.' Et cum esset indicaturo satis 'Q. Ligarius nullo se implicari negotio passus est', adiecit 'domum spectans, ad suos redire cupiens'. Ita quod exponebat et ratione fecit credibile et adfectu quoque implevit.

111 Quo magis miror eos qui non putant utendum in narratione adfectibus. Qui si hoc dicunt 'non diu neque ut in epilogo', mecum sentiunt: effugiendae sunt enim morae. Ceterum cur ego iudicem nolim dum doceo etiam mo-  
 112 vere? cur, quod in summa sum actionis parte<sup>19</sup> petiturus, non in primo statim rerum ingressu, si fieri potest, consequar? cum praesertim etiam in probationibus faciliorem sim animum eius habiturus occupatum vel ira vel miseratione. An non M. Tullius circa verbera civis Romani omnis  
 113 brevissime movit adfectus, non solum condicione ipsius, loco iniuriae, genere verberum, sed animi quoque commendatione? Summum enim virum ostendit, qui cum virgis caederetur non ingemuerit, non rogaverit, sed tantum civem se Romanum esse cum invidia caedentis et fiducia  
 114 iuris clamaverit. Quid? Philodami casum nonne cum per totam expositionem incendit invidia tum in supplicio ipso lacrimis implevit, cum flentis non tam narraret quam ostenderet patrem de morte filii, filium de patris? Quid ulli

<sup>19</sup> D.A.R. (*A has parte before sum, B omits it*)

<sup>73</sup> *In Verrem* 5.162.

<sup>74</sup> *Ibid.* 1.76.

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Gaius Considius.” But how does Cicero put it? “Quintus Ligarius, when there was no hint of war, went out to Africa as legate to Gaius Considius.” And elsewhere: “Not only to no war, but to not the slightest hint of war.” And when it would have been clear enough for the purpose of giving information to say “Quintus Ligarius did not allow himself to be implicated in any scheme,” he added “because his mind was on home, and he wanted to get back to his people.” In this way Cicero both made his statement credible by giving a reason, and also filled it with emotion.

This makes me all the more surprised at those who think emotion is not to be used in Narrative. If they mean “not for long, and not as in the Epilogue,” they are agreeing with me; for we must avoid prolixity. But why should I not want to move the judge while I am instructing him? Why should I not, if possible, pursue the object I am to seek in the last part of my pleading, right from the opening stages—especially as I shall find him more amenable during my Proofs if he is already possessed by anger or pity? Does not Cicero, when he describes the flogging of a Roman citizen,<sup>73</sup> move every emotion in a very few words, not only by emphasizing the victim’s standing, the scene of the outrage, and the sort of flogging, but also by praising the man’s courage? He shows us a hero who, when beaten with rods, neither groaned nor begged for mercy, but only cried out that he was a Roman citizen, to the disgrace of his executioner, and so showed his confidence in the law. Again, take the misfortunes of Philodamus.<sup>74</sup> Does not Cicero both fan the flame of indignation throughout his account, and fill our eyes with tears at the moment of punishment, when he describes, or rather sets before our eyes, the father weeping for his son’s death and the son for his father’s?

- 115 epilogi possunt magis habere miserabile? Serum est enim  
advocare iis rebus adfectum in peroratione quas securus  
narraveris: adsuevit illis iudex iamque eas sine motu men-  
tis accipit quibus commotus novis non est; et difficile est  
mutare habitum animi semel constitutum.
- 116 Ego vero (neque enim dissimulabo iudicium meum,  
quamquam id quod sum dicturus exemplis magis quam  
praeceptis ullis continetur) narrationem, [ut]<sup>20</sup> si ullam  
partem orationis, omni qua potest gratia et venere exor-  
nandam puto. Sed plurimum refert quae sit natura eius rei
- 117 quam exponimus. In parvis ergo, quales sunt fere privatae,  
sit ille pressus et velut adplicitus rei cultus, in verbis sum-  
ma diligentia: quae in locis impetu feruntur et circum-  
iectae orationis copia latent, hic expressa et, ut vult Ze-  
non, 'sensu tincta' esse debent: compositio dissimulata
- 118 quidem, sed tamen quam iucundissima: figurae non illae  
poeticae et contra rationem loquendi auctoritate veterum  
receptae (nam debet esse quam purissimus sermo), sed  
quae varietate taedium effugiant et mutationibus animum  
levant, ne in eundem casum, similem compositionem,  
pares elocutionum tractus incidamus. Caret enim ceteris  
lenociniis expositio et, nisi commendetur hac venustate,
- 119 iaceat necesse est. Nec in ulla parte intentior est iudex,  
eoque nihil recte dictum perit. Praeterea nescio quo modo

<sup>20</sup> *del. Regius*

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<sup>75</sup> SVF 1.79; in Plutarch (*Phocion* 5) Zeno says only that the philosopher should speak "dipping his words in sense" (like dipping a pen in ink, presumably).

<sup>76</sup> Q. is thinking mainly of "grammatical" Figures: see 9.3.1.

## BOOK 4.2

What more pitiful effect could any Epilogue produce? It is too late to summon up emotion in your Peroration for matters which you narrated with perfect sang-froid; the judge has grown used to them, and remains unaffected by matters which did not stir him when they were fresh. It is hard to change a state of mind once established.

Personally (I will not conceal my opinion, though what I am going to say rests on examples rather than on any rules) I believe that Narrative, as much as any part of the speech, should be adorned with all possible grace and charm. But what matters most is the nature of the subject to be expounded. In minor cases, such as are most private suits, the ornamentation must be restrained and as it were tailored to the subject. Choice of words must be very careful; expressions which, in set commonplaces, can be borne along with the tide and pass unnoticed because of the richness of their stylistic environment, must here stand out clearly and, as Zeno advises, be “dipped in sense.”<sup>75</sup> The Composition must be unobtrusive, but as pleasing as possible; the Figures<sup>76</sup> must not be poetical ones or those that run counter to the usage of ordinary speech, even if warranted by the authority of the ancients—for our language here must be as pure as possible—but only such as use variety to escape tedium and change to relax the mind, so as to stop us from falling into repetitions of the same endings, similar rhythms, or balancing sentences. The Narrative has to dispense with other means of seduction, and unless it has this sort of charm it is sure to fall flat. There is no part of the speech to which the judge is more attentive, and so nothing that is well said here is wasted. Moreover, a judge

etiam credit facilius quae audienti iucunda sunt, et voluptate ad fidem ducitur.

120 Ubi vero maiorres erit, et atrocia invidiose et tristia miserabiliter dicere licebit, non ut consumantur adfectus sed ut tamen velut primis lineis designentur, ut plane qualis  
121 futura sit imago rei statim appareat. Ne sententia quidem velut fatigatum intentione stomachum iudicis reficere dissuaserim, maxime quidem brevi interiectione,<sup>21</sup> qualis est illa: 'fecerunt servi Milonis quod suos quisque servos in tali re facere voluisset', interim paulo liberiore, qualis est illa: 'nubit genero socrus nullis auspibus, nullis auctoribus, funestis ominibus omnium.' Quod cum sit factum iis  
122 quoque temporibus quibus omnis ad utilitatem potius quam ostentationem componebatur oratio et erant adhuc severiora iudicia, quanto nunc faciendum magis, cum in ipsa capitis aut fortunarum pericula inrupit voluptas? Cui hominum desiderio quantum dari debeat alio loco dicam: interim aliquid indulgendum esse confiteor.

123 Multum confert adiecta veris credibilis rerum imago, quae velut in rem praesentem perducere audientis videtur, qualis est illa M. Caeli in Antonium descriptio: 'namque ipsum offendunt temulento sopore profligatum, totis praecordiis stertentem ructuosos spiritus geminare, praeclarasque contubernales ab omnibus spondis trans-

<sup>21</sup> breviter iniecta B (*scil.* sententia)

<sup>77</sup> Cicero, *Pro Milone* 29.

<sup>78</sup> Cicero, *Pro Cluentio* 14.

<sup>79</sup> 8 *prooemium*, 8.3.6ff.

<sup>80</sup> ORF pp. 482-483. See Cicero, *Pro Caelio* 74. C. Antonius Hybrida (Cicero's colleague as consul) was accused by Caelius in 59 BC.

## BOOK 4.2

is for some reason readier to trust what he finds it agreeable to hear, and the pleasure leads to belief.

On the other hand, when the subject is more serious, we shall have a chance to speak of crimes with indignation and of sorrows with pity, not so as to use up the stock of emotion, but only to give the first outline as it were, so that the coming picture of the situation is apparent at the start. I should not wish either to discourage stimulating the judge's jaded appetite with a clever thought, preferably in the form of a brief comment (as in "Milo's slaves did what anyone would have wished his own slaves to do in such a situation")<sup>77</sup> but occasionally in a rather freer manner: "Mother-in-law marries son-in-law; no auspices, no witnesses, omens all dark."<sup>78</sup> If this was done even in the days when every speech was designed for use rather than for show and the courts had stricter principles, how much more should we do it now, when pleasure has forced its way in even where life or fortune is in jeopardy? How far we ought to indulge this taste I shall discuss in another context.<sup>79</sup> For the time being, I admit there ought to be some degree of indulgence.

A considerable contribution to the effect may be made by combining the true facts with a plausible picture of the scene, which, as it were, gives the impression of bringing the audience face to face with the event. Marcus Caelius' description, in his speech against Antonius, illustrates this:<sup>80</sup>

They found the man himself stretched out in a drunken stupor, snoring with all the force of his lungs, belching repeatedly, while the distinguished ladies who shared his quarters sprawled over every

124 versas incubare et reliquas circum iacere passim: quae tamen exanimatae terrore, hostium adventu percepto, excitare Antonium conabantur, nomen inclamabant, frustra a cervicibus tollebant, blandius alia ad aurem invocabat, vehementius etiam nonnulla feriebat: quarum cum omnium vocem tactumque noscicaret, proximae cuiusque collum amplexu petebat: neque dormire excitatus neque vigilare ebrius poterat, sed semisomno stupore<sup>22</sup> inter manus centurionum concubinarumque iactabatur.' Nihil his neque credibilius fingi neque vehementius exprobrari neque manifestius ostendi potest.

125 Ne illud quidem praeteribo, quantam adferat fidem expositioni narrantis auctoritas, quam mereri debemus ante omnia quidem vita, sed et ipso genere orationis: quod quo fuerit gravius ac sanctius, hoc plus habeat necesse est in  
126 adfirmando ponderis. Effugienda igitur in hac praecipue parte omnis calliditatis suspicio, neque enim se usquam custodit magis iudex: nihil videatur fictum, nihil sollicitum: omnia potius a causa quam ab oratore profecta credantur. At hoc pati non possumus, et perire artem putamus  
127 nisi appareat, cum desinat ars esse si apparet. Pendemus ex laude atque hanc laboris nostri ducimus summam: ita quae circumstantibus ostentare volumus, iudicibus prodimus.

<sup>22</sup> *Cameron, Class. Rev.* 16 (1966) 17: sopore AB

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<sup>81</sup> For this idea, see 1.11.3, 12.9.5, Caplan on *Ad Herennium* 4.10, "Longinus" 22.1.

## BOOK 4.2

couch, and the other women were lying on the floor all around. Half dead with terror, and aware now of the enemy's approach, they tried to rouse up Antonius; they shouted his name, and tried in vain to hoist him up by his neck; some whispered blandishments in his ear, one or two gave him an energetic slap. He recognized all their voices and their touch, and tried to put his arms round the neck of whoever was nearest to him. He was too much aroused to sleep, and too drunk to stay awake; dazed and half-asleep, he was thrown around in the arms of his centurions and his concubines.

Nothing can be more plausibly invented, more strongly censured, or more vividly portrayed.

I must not omit to mention too the credibility which the personal authority of the narrator lends to his story. We have to earn this, primarily, by our life, but also by our style; the more serious and dignified this is, the more weight it is bound to lend to our assertions. It is therefore particularly important in this part of the speech to avoid any suggestion of excessive ingenuity. The judge is nowhere more on his guard than here. There must be no feeling of insincerity or excessive care. Everything must seem to come from the Cause, not from the orator. Yet we find this intolerable, and we think our art is wasted unless it can be seen, when the truth is that it ceases to be art once it is detected!<sup>81</sup> We are addicted to applause, and think it the goal of all our labour. And so the exhibition we want to make for the audience turns into an indiscreet disclosure to the judges.



128 Est quaedam etiam repetita narratio, quae ἐπιδιή-  
 γησις dicitur, sane res declamatoria magis quam forensis,  
 ideo autem reperta ut, quia narratio brevis esse debet, fu-  
 sius et ornatius res posset exponi, quod fit vel invidiae  
 gratia vel miserationis. Id enim<sup>23</sup> raro faciendum iudico  
 neque sic umquam ut totus ordo repetatur; licet enim per  
 partes idem consequi. Ceterum qui uti ἐπιδιηγῆσαι volet,  
 narrationis loco rem stringat, et, contentus indicare quid  
 facti sit, quo sit modo factum plenius se loco suo expositu-  
 rum esse promittat.

129 Initium narrationis quidam utique faciendum a per-  
 sona putant, eamque si nostra sit ornandam, si aliena  
 infamandam statim. Hoc sane frequentissimum est, quia  
 130 personae sunt inter quas litigatur. Sed haec quoque in-  
 terim cum suis accidentibus ponenda est,<sup>24</sup> cum id pro-  
 futurum est, ut: 'A. Cluentius Habitus fuit pater huiusce,  
 iudices, homo non solum municipii Larinatis, ex quo erat,  
 sed regionis illius et vicinitatis virtute existimatione nobili-  
 tate princeps'; interim sine his ut: 'Q. enim Ligarius cum  
 131 esset'; frequenter vero et a re, sicut pro Tullio Cicero: 'fun-  
 dum habet in agro Thurino M. Tullius paternum', Demo-

<sup>23</sup> est B: et Halm

<sup>24</sup> Halm: ponendae AB

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<sup>82</sup> Lausberg § 313. Aristotle, *Rhetoric* 3. 1414b14 says that *epidiēgēsis* and *prodiēgēsis* were species distinguished by Theodorus of Byzantium (compare Plato, *Phaedrus* 266E). Later rhetors multiplied varieties: Anonymus Seguerianus 57–61, with Dilts–Kennedy ad loc.

<sup>83</sup> Cicero, *Pro Cluentio* 11.

<sup>84</sup> Cicero, *Pro Ligario* 2: see above, 4.2.109.

<sup>85</sup> 14.

## BOOK 4.2

### *Second Narrative*

There is also a kind of repeated Narrative, called *epidiēgēsis*,<sup>82</sup> a feature of declamation rather than forensic practice, which was devised, since a Narrative is supposed to be short, to enable the facts to be set out at greater length and with more ornament. It is a means of producing indignation or pity. I consider it should be used rarely, and never in such a way as to repeat the whole sequence of events, as its effect can be achieved with the parts only. Anyone who wishes to use *epidiēgēsis* should touch lightly on the subject in his main Narrative, content himself with briefly indicating what happened, and promise to explain more fully how it happened in another place.

### *Beginnings and ends of Narratives*

Some hold that a Narrative should always start from a person, praising him from the start if he is on our side or discrediting him if he is on the other. This is indeed the commonest practice, because litigation is between persons. But the person too may *either* (1) be introduced with his attendant circumstances, if this is likely to be to our advantage (“Aulus Cluentius Habitus, this man’s father, members of the jury, was a man whose character, reputation, and birth made him a leading figure not only in the municipality of Larinum where he came from, but in all the neighbouring region”)<sup>83</sup> or (2) sometimes without these details (“For Quintus Ligarius, being . . .”).<sup>84</sup> However, we often begin with a fact, as Cicero does in the *Pro Tullio*<sup>85</sup> (“Marcus Tullius has a family farm in the territory of Thurium”) or Demosthenes in his speech for

sthenes pro Ctesiphonte: τοῦ γὰρ Φωκικοῦ συστάντος πολέμου.

- 132 De fine narrationis cum iis contentio est qui perduci expositionem volunt eo unde quaestio oritur: 'his rebus ita gestis P. Dolabella praetor interdixit, ut est consuetudo, de vi hominibus armatis, sine ulla exceptione, tantum ut unde deiecisset restitueret': deinde: 'restituisse se dixit: sponsio facta est: hac de sponsione vobis iudicandum est.' Id a petitore semper fieri potest, a defensore non semper.

3

- 1 Ordine ipso narrationem sequitur confirmatio; probanda sunt enim quae propter hoc exposuimus. Sed priusquam ingrediar hanc partem, pauca mihi de quorundam opinione dicenda sunt. Plerisque moris est, prolato rerum ordine, protinus utique in aliquem laetum ac plausibilem
- 2 locum quam maxime possint favorabiliter excurrere. Quod quidem natum ab ostentatione declamatoria iam in forum venit, postquam agere causas non ad utilitatem litigatorum sed ad patronorum iactationem repertum est, ne, si pressae illi qualis saepius desideratur narrationis gracilitati coniuncta argumentorum pugnacitas fuerit, dilatis diu-

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<sup>86</sup> *On the Crown* 18.

<sup>87</sup> *Cicero, Pro Caecina* 23.

## BOOK 4.3

Ctesiphon<sup>86</sup> (“On the outbreak of the Phocian war . . .”).

As to the end of the Narrative, it is possible to dispute the view of those who hold that it should be continued to the point where the Question begins: “This done, the praetor Publius Dolabella issued an interdict, as is usual, against ‘violence and the use of armed men,’ without any exception, specifying only that he should restore him to the property from which he had expelled him.”<sup>87</sup> The next words are: “He alleged that he had restored it. A sum was put down as a wager; this is the sum on which you have to rule.” This can always be done on the claimant’s side, not always on the defendant’s.

## CHAPTER 3

### *Digression*

In the basic order of a speech, Confirmation comes after Narrative. We set things out to be proved, and we now have to prove them. But before I enter on this, I have a few things to say about an opinion held by some people. Most speakers, having expounded the course of events, are in the habit of dashing immediately, without fail, and employing all the attractions at their command, into some rich general topic which will earn applause. This practice originated in the exhibitionism of declaimers, but it has finally reached the courts, because the purpose of pleading a case has now been found to be not the good of the litigants but the self-advertisement of the advocates. The fear is, presumably, that if the concise delicacy usually required for the Narrative were to be followed by the contentious tone of argument, the oratorical delights would be post-

- 3 tius<sup>1</sup> dicendi voluptatibus oratio refrigescat. In quo vitium illud est, quod sine discrimine causarum atque utilitatis hoc tamquam semper expediat aut etiam necesse sit faciunt, eoque sumptas ex iis partibus qua proprius<sup>2</sup> erat locus sententias in hanc congerunt, ut plurima aut iterum dicenda sint aut, quia [alia]<sup>3</sup> alieno loco dicta sunt, dici suo non possint.
- 4 Ego autem confiteor hoc expatiandi genus non modo narrationi sed etiam quaestionibus vel universis vel interim singulis oportune posse subiungi cum res postulat aut certe permittit, atque eo vel maxime inlustrari ornarique orationem, sed si cohaeret et sequitur, non si per vim cuneatur et quae natura iuncta erant distrahit. Nihil enim
- 5 tam est consequens quam narrationi probatio, nisi excursus ille vel quasi finis narrationis vel quasi initium probationis est. Erit ergo illi nonnumquam locus, ut, si expositio circa finem atrox fuerit, prosequamur eam velut erumpente protinus indignatione. Quod tamen ita fieri oportebit si res dubitationem non habebit: alioqui prius est quod obicias verum efficere quam magnum, quia criminum invidia pro reo est priusquam probatur; difficillima est enim gravissimi cuiusque sceleris fides.
- 6
- 7 Item fieri non inutiliter potest ut, si merita in adversa-

<sup>1</sup> dulcius *M. W.* (“*the pleasures of speaking in a more agreeable style*”)

<sup>2</sup> qua proprius *Shackleton Bailey*: quarum alius *AB*

<sup>3</sup> *del. Regius*: iam *Halm*

poned too long and the performance would be a flop. The mistake in this is that they take no account of differences of Causes and practical requirements, but proceed as if this stage was always advantageous and even necessary. They therefore remove striking thoughts from those parts of the speech where they properly belonged, and concentrate them here, with the consequence that many things either have to be repeated or cannot now be said in their right place, because they have already been said in a wrong one.

I must admit, however, that this sort of discursive passage can be opportunely attached not only to the Narrative but to the Questions (taken either as a whole or, on occasion, individually) when the situation demands or at any rate allows it. I admit too that this is a very important source of lustre and elegance for the speech—but only if it coheres with it and follows naturally, not if it is driven in forcibly like a wedge and splits asunder naturally cohesive elements. There is nothing that follows more naturally on the Narrative than the Proof does, unless this Digression proves to be either a sort of end of the Narrative or a sort of beginning of the Proof. There will therefore sometimes be a place for it; for example, if the end of the Narrative has been shocking, we can follow it up with a kind of instant outburst of indignation. This however will be the right course only if there is no doubt about the facts. Otherwise, it is more important to establish the truth of your charge than the enormity of it, because the odium of the offence works in the defendant's favour until it is proved, since it is always the most dreadful crimes which are the most difficult to credit.

It can also be quite useful to explain the services your side has given to the opponent, and then to attack him as

rium aliqua exposueris, in ingratum inveharis, aut, si varietatem criminum narratione demonstraveris, quantum ob  
 8 ea periculum intentetur ostendas. Verum haec breviter omnia; iudex enim ordine audito festinat ad probationem et quam primum certus esse sententiae cupit. Praeterea cavendum est ne ipsa expositio vanescat, aversis in aliud animis et inani mora fatigatis.

9 Sed ut non semper est necessaria post narrationem illa prokursio, ita frequenter utilis ante quaestionem praeparatio, utique si prima specie minus erit favorabilis, si legem asperam tuebimur aut poenarias actiones inferemus. Est hic locus velut sequentis exordii ad conciliandum probationibus nostris iudicem, mitigandum, concitandum. Quod liberius hic et vehementius fieri potest quia iudici  
 10 nota iam causa est. His igitur velut fomentis, si quid erit asperum, praemolliemus, quo facilius aures iudicum quae post dicturi erimus admittant, ne ius nostrum oderint; nihil enim facile persuadetur invitis. Quo loco iudicis quoque noscenda natura est, iuri magis an aequo sit adpositus: proinde enim magis aut minus erit hoc necessarium. Ceterum res eadem et post quaestionem perorationis vice fungitur.

12 Hanc partem *παρέκβασις* vocant Graeci, Latini egressum vel egressionem. Sed hae sunt plures, ut dixi, quae per totam causam varios habent excursus, ut laus hominum locorumque, ut descriptio regionum, expositio quarundam  
 13 rerum gestarum vel etiam fabulosarum. Quo ex genere est

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<sup>1</sup> See 7.4.20.

<sup>2</sup> These Latin terms are not found in our material except here and in Julius Victor (427 Halm = 76–77 Giomini–Celentano), who depends on Q. But Cicero (*Brutus* 82) uses the verb *egredi*.

being ungrateful; or again to show the great variety of the charges in your Narrative, and then to point out what great dangers they threaten. But do all this briefly. Once the judge has heard the facts, he is in a hurry to get to the Proof, and wants to come to a definite decision as soon as possible. Care must be taken also that the impact of the Narrative is not lost because the attention of the court has been diverted and wearied by a pointless delay.

However, though this kind of excursus is not always a necessary sequel to the Narrative, it is often a useful preparatory stage before the Question, especially if this is at first glance unfavourable, or if we are invoking a harsh law or bringing a penal action.<sup>1</sup> This is the place for a kind of second Prooemium, to win over the judge to our Proofs, and either mollify or excite him. This can be done here more freely and with more vehemence because he already knows the Cause. So we shall use these emollients, as it were, as a precaution, if there are any rough places, so as to make the judges listen more readily to what we are going to say and not be prejudiced against our legal claims. It is never easy to persuade people against their will. At this point one needs also to know the judge's cast of mind—whether he is more inclined to strict law or to equity—because the need for this procedure will vary accordingly. The same kind of excursus functions also as a peroration, after the Question.

The Greeks call this part of the speech *parekbasis*; the Latin terms are *egressus* or *egressio*.<sup>2</sup> There are however (as I said) several types, which allow excursuses of various kinds at all points in the Cause: for instance, Encomia of persons or places, descriptions of areas, exposition of historical or legendary events. Such are the Encomium of



in orationibus contra Verrem compositis Siciliae laus, Proserpinae raptus, pro C. Cornelio popularis illa virtutum Cn. Pompei commemoratio: in quam ille divinus orator, veluti nomine ipso ducis cursus dicendi teneretur, abrupto quem inchoaverat sermone devertit actutum.

- 14 *Παρέκβασις* est, ut mea quidem fert opinio, alicuius rei, sed ad utilitatem causae pertinentis, extra ordinem excurrentis tractatio. Quapropter non video cur hunc ei potissimum locum adsignent qui rerum ordinem sequitur, non magis quam illud, cur hoc nomen ita demum proprium putent si aliquid in digressu sit exponendum, cum tot modis a
- 15 recto itinere declinet oratio. Nam quidquid dicitur praeter illas quinque quas fecimus partes egressio est: indignatio, miseratio, invidia, convicium, excusatio, conciliatio, maledictorum refutatio, similia his, quae non sunt in quaestione: omnis amplificatio, minutio, omne adfectus genus: et quae<sup>4</sup> maxime iucundam et ornatam faciunt orationem, de luxuria, de avaritia, de religione, de officiis. Quae cum
- 16 sunt argumentis subiecta similium rerum, quia cohaerent egredi non videntur; sed plurima sunt quae rebus nihil secum cohaerentibus inseruntur, quibus iudex reficitur admonetur placatur rogatur laudatur. Innumerabilia sunt haec, quorum alia sic praeparata adferimus, quaedam ex

<sup>4</sup> et quae *Spalding*: atque ea AB: atque ea <quae> *Winterbottom*

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<sup>3</sup> 2.2, 4.106. <sup>4</sup> See 4.4.8; 5.13.18, 25; 6.5.10; 9.2.55; 9.4.14; 10.5.12. The two lost speeches *Pro Cornelio* (*Oratorum Fragmenta* VII Schoell, Crawford (1994) 65–144) are best known from Asconius' commentary. They date from 65 BC, and were delivered in defence of a former *tribunus plebis* on a charge of

Sicily and the Rape of Proserpina in the *Verrines*,<sup>3</sup> or the demagogic recital of the virtues of Gnaeus Pompeius in the *Pro Cornelio*,<sup>4</sup> where the divine orator, stopped in his tracks as it were by the general's name, breaks off the topic on which he had embarked and plunges straight into his digression.

A *parekbasis*, in my view, is the treatment of a theme relevant to the purposes of the Cause that branches out from the basic structure. Therefore I do not see why they should specially assign it to the place next after the sequence of events, any more than why they should confine the name to cases where something has to be explained in a Digression: there are so many different ways of diverging from the straight path of a speech. After all, anything we say which does not fall under the Five Parts we have listed is an "egression": bursts of indignation, appeals to pity, hostile comment, reproach, excuse, conciliatory remarks, refutation of slander, and anything similar which does not fall within the Question; so also all Amplification and Disparagement, every kind of emotional appeal, and those favourite sources of pleasure and ornament, the stock passages on luxury, avarice, religion, or duty. When these are subordinate to Arguments involving similar subjects, they are not felt as Digressions, because they cohere with the whole; but many such passages are inserted with no such coherence with the context, and serve to refresh, admonish, placate, plead with, or praise the judge. Such things are countless. Some we bring into court ready made,

*maiestas* for having read out his own bill in the popular assembly contrary to law. This defence (a favourite with Q.) was regarded as one of Cicero's most successful and ingenious performances.

- occasione vel necessitate ducimus si quid nobis agentibus novi accidit, interpellatio, interventus alicuius, tumultus.
- 17 Unde Ciceroni quoque in prohoemio, cum diceret pro Milone, degredi fuit necesse, ut ipsa oratiuncula qua usus est patet. Potest autem paulo longius exire qui praeparat aliquid ante quaestionem et qui finitae probationi velut commendationem adicit: at qui ex media erumpit, cito ad id redire debet unde devertit.

4

- 1 Sunt qui narrationi propositionem subiungant tamquam partem iudicialis materiae: cui opinioni respondimus. Mihi autem propositio videtur omnis confirmationis initium: quod non modo in ostendenda quaestione principali, sed nonnumquam etiam in singulis argumentis poni solet, maximeque in iis quae ἐπιχειρήματα vocantur. Sed nunc de priore loquimur.
- 2 Ea non semper uti necesse est. Aliquando enim sine propositione quoque satis manifestum est quid in quaestione versetur, utique si narratio ibi finem habet ubi initium quaestio, adeo ut aliquando subiungatur expositioni quae solet in argumentis esse summa collectio: 'haec sicut<sup>1</sup> exposui <ita><sup>2</sup> gesta sunt, iudices, insidiator superatus est,

<sup>1</sup> *So. Cic. Pro Milone* 30: si ut AB

<sup>2</sup> *Cic. loc. cit.: om. AB*

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<sup>5</sup> See 4.2.25.

<sup>1</sup> Apparently in 3.9.2.

<sup>2</sup> See 5.14.5ff., Lausberg § 371.

## BOOK 4.4

others arise out of opportunity or necessity, if something untoward happens during the course of our pleading—an interruption, somebody's intervention, or a public disturbance. It was for this reason that Cicero too was compelled to digress in a Prooemium, when he was defending Milo, as is plain from the short speech which he actually delivered.<sup>5</sup> A speaker who is leading up to the Question or adding some sort of final appeal at the end of his Proof can digress at rather greater length; one who breaks off in the middle must get back quickly to the point where he left the main track.

## CHAPTER 4

### *Propositions*

Some put the Proposition immediately after the Narrative, as being a part of the matter before the court. I have already answered this view.<sup>1</sup> My own opinion is that a Proposition is the initial stage of any Confirmation, and is found not only when we set out the principal Question, but sometimes also in the individual Arguments, especially those which are called *epicheirēmata*.<sup>2</sup> I am now speaking only of the former kind.

It is not always essential to make use of a Proposition. Sometimes the point involved in the Question is obvious enough without one, especially if the Narrative ends where the Question begins. (Indeed we sometimes find attached to the Narrative the Recapitulation which is standard in Arguments: "Members of the jury, these events took place precisely as I have described; the ambusher was overcome, violence was conquered by violence—or rather,

- 3 vi victa vis vel potius oppressa virtute audacia est.' Nonnumquam valde est utilis, praecipue ubi res defendi non potest et de iure<sup>3</sup> quaeritur, ut pro eo qui pecuniam privatam de templo sustulit: 'sacrilegii agitur, de sacrilegio cognoscitis', ut iudex intellegat id unum esse officii sui quaerere, an id quod obicitur sacrilegium sit. Item in causis obscuris aut multiplicibus, nec semper propter hoc solum, ut sit causa lucidior, sed aliquando etiam ut magis moveat. Movet autem si protinus subtexantur aliqua quae prosint: 'lex aperte scripta est, ut peregrinus qui murum ascenderit morte multetur: peregrinum te esse certum est: quin ascenderis murum non quaeritur: quid superest nisi ut te puniri oporteat?' Haec enim propositio confessionem adversarii premit et quodam modo iudicandi moram tollit, nec indicat quaestionem, sed adiuvat.
- 5 Sunt autem propositiones et simplices et duplices vel multiplices: quod accidit non uno modo. Nam et plura crimina iunguntur, ut cum Socrates accusatus est quod corrumperet iuventutem et novas superstitiones introduceret: et singula ex pluribus colliguntur, ut cum legatio male

<sup>3</sup> fine A ("definition")

<sup>3</sup> Cicero, *Pro Milone* 30.

<sup>4</sup> Cicero, *De oratore* 2.100, calls this a childish case: a foreigner disobeys the law and repels the enemy, but is accused none the less. But it was a favourite: see Fortunatianus 99.5 Halm, Julius Victor 384.12 Halm (= 17.25 Giomini-Celentano), Hermogenes 40.11 Rabe, 82.11 Rabe; Apsines 5.10 (= 156 Dilts-

audacity was crushed by courage.”)<sup>3</sup> It can, however, sometimes be very useful, especially when the facts cannot be justified and the Question is one of Definition, as in the defence of the man who removed private money from the temple: “This is a case of sacrilege, sacrilege is what you are judging”; thus the judge realizes that his sole duty is to inquire whether the alleged crime amounts to sacrilege. It is useful also in obscure or complex Causes, not always with the sole object of making the Cause clearer, but sometimes to make it more emotive. It has this effect if we immediately introduce into it some remark that is to our advantage. “The text of the law is clear: a foreigner who goes up on the wall is punished by death. You are certainly a foreigner. There is no question that you went up on the wall. What remains to be said, except that you ought to be punished?”<sup>4</sup> This Proposition puts pressure on the opponent’s confession, and in a way speeds up the proceedings; it does not simply indicate the Question, it advances it.

Propositions may be simple, double, or multiple, and this happens in more ways than one. (1) Several charges may be combined, as when Socrates was accused of corrupting the youth and introducing new superstitions;<sup>5</sup> (2) single charges may be made up of several, as when Aeschines is accused of the maladministration of the em-

Kennedy). It is a stock example of problems concerning “Letter and Spirit of the Law,” and is discussed by Q. in this connection, 7.6.6.

<sup>5</sup> The double (or perhaps triple) charge against Socrates is well attested: Plato, *Apology* 24B, Xenophon, *Memorabilia* 1.1.1, Diogenes Laertius 2.40. See T. C. Brinkhouse and N. D. Smith, *Socrates on Trial* (Oxford 1989) 30–37.

- gesta obicitur Aeschini quod mentitus sit, quod nil ex mandatis fecerit, quod moratus sit, quod munera acceperit.
- 6 Recusatio quoque pluris interim propositiones habet, ut contra petitionem pecuniae: 'male petis: procuratorem enim tibi esse non licuit: sed neque illi cuius nomine litigas habere procuratorem; sed neque est heres eius a quo accepisse mutuam dicor; sed nec ipsi debui.' Multiplicari haec in quantum libet possunt, sed rem ostendisse satis est. Hae si ponantur singulae subiectis probationibus, plures sunt propositiones: si coniungantur, in partitionem cadunt.
- 8 Est et nuda propositio, qualis fere in coniecturalibus: 'caedis ago', 'furtum obicio', et<sup>4</sup> ratione subiecta, ut: 'maiestatem minuit C. Cornelius; nam codicem tribunus plebis ipse pro contione legit.' Praeter haec utimur propositione aut nostra, ut: 'adulterium obicio', aut adversarii, ut: 'adulterii mecum agitur', aut communi, ut: 'inter me et adversarium quaestio est uter sit intestato propior.' Nonnumquam diversas quoque iungimus: 'ego hoc dico, adversarius hoc.'
- 9 Habet interim vim propositionis, etiamsi per se non est propositio, cum exposito rerum ordine subicimus: 'de his cognoscitis', ut sit haec commonitio iudicis, quo se ad quaestionem acrius intendat et velut quodam tactu excitatus finem esse narrationis et initium probationis intellegat, et nobis confirmationem ingredientibus ipse quoque quo-

<sup>4</sup> *Meister*: est AB

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<sup>6</sup> See Demosthenes, *Oration* 19 (343 BC), an attack on Aeschines' handling of the negotiations with Philip in 346.

<sup>7</sup> See 7.1.19. For the legal background, see Crook (1979) 236–241; *Digest* 3.3.      <sup>8</sup> See above, 4.3.12.

bassy<sup>6</sup> because (a) he lied, (b) he fulfilled none of his instructions, (c) he wasted time, and (d) he took bribes; (3) a rebuttal also sometimes comprises several Propositions, as in this answer to a claim for money: “Your claim is invalid, for you had no right to act as agent,<sup>7</sup> nor had the person on whose behalf you are litigating the right to have an agent; nor is he the heir of the man from whom I am said to have had the loan; nor again did I owe him the money.” These examples can be multiplied at will; it is enough to illustrate what is meant. If these Propositions are put forward one at a time, with the Proofs following, there are several Propositions; if they are massed together, it amounts to a Partition.

A Proposition may also be put forward either (1) by itself, as usually in Conjectural Causes (“I prosecute for murder” or “I allege theft”), or (2) accompanied by a reason (“Gaius Cornelius is guilty of *maiestas*, in as much as, being tribune of the plebs, he read out his bill in person before the assembly”).<sup>8</sup> In addition, we can use a Proposition (a) of our own (“I allege adultery”) or (b) of the adversary’s (“the charge against me is adultery”), or (c) one that both sides may use (“the question between me and my opponent is which of us is closer in kin to the intestate deceased”). Sometimes (d) opposing Propositions may be combined (“I say this, my opponent says that”).

The effect of a Proposition, though it is not strictly one, is sometimes obtained by finishing the account of the facts and then saying, “These are the matters on which you are to give judgement.” This serves as a reminder to the judge to give closer attention to the Question, a nudge, as it were, to rouse him to the realization that the Narrative is over and the Proof is beginning, and that, as we begin the Con-



dam modo novum audiendi sumat exordium.

5

- 1 Partitio est nostrarum aut adversarii propositionum aut utrarumque ordine conlocata enumeratio. Hac quidam utendum semper putant, quod ea fiat causa lucidior et iudex intentior ac docilior si scierit et de quo dicimus et de
- 2 quo dicturi postea sumus. Rursus quidam periculosum id oratori arbitrantur duabus ex causis: quod nonnumquam et excidere soleant quae promisimus et si qua in partiendo praeterimus occurrere: quod quidem nemini accidet nisi qui plane vel nullo fuerit ingenio vel ad agendum nihil
- 3 cogitati praemeditatique detulerit. Alioqui quae tam manifesta et lucida est ratio quam rectae partitionis? Sequitur enim naturam ducem adeo ut memoriae id maximum sit auxilium, via dicendi non decedere. Quapropter ne illos quidem probaverim qui partitionem vetant ultra tris propositiones extendere: quae sine dubio, si nimium sit multiplex, fugiet memoriam iudicis et turbabit intentionem, hoc tamen numero velut lege non est alliganda, cum possit causa pluris desiderare.
- 4 Alia sunt magis propter quae partitione non semper sit utendum: primum quia pleraque gratiora sunt si inventa subito nec domo allata sed inter dicendum ex re ipsa nata

firmation, he too is in a sense to make a fresh start in hearing the case.

## CHAPTER 5

*Partition*

“Partition” is the orderly enumeration of our Propositions, or those of our opponent, or both. Some think it must always be included, because it makes the Cause clearer, and the judge more attentive and receptive if he knows both what we are presently speaking about and what we are going to speak about later on. Others, again, think it risky for the orator, and for two reasons: (1) promises are often forgotten, and (2) points often come to mind which we omitted in the Partition. But this will never happen except to a person of no ability whatsoever, or one who has not given any thought or preparation to the case before he comes forward to plead. Besides, what scheme is so obvious and lucid as that of a correct Partition? It follows the guidance of nature, with the result that keeping to the planned path of the speech proves the greatest possible aid to memory. I cannot therefore approve either of those who insist that a Partition must not include more than three Propositions. No doubt, if it contains too many items, it will escape the judge’s memory and disturb his attention; but it should not be tied down by law, as it were, to this number, since a Cause may well need more.

There are other more significant reasons why a Partition is not always to be used. (1) First, most things give more pleasure if they seem to have been discovered on the spot, not brought from home but born of the situation in

videantur, unde illa non iniucundà schemata: ‘paene excidit mihi’ et ‘fugerat me’ et ‘recte admones’; propositis enim probationibus omnis in relicum gratia novitatis praecerpitur.

- 5 Interim vero etiam fallendus est iudex et variis artibus subeundus ut aliud agi quam quod petimus putet. Nam est nonnumquam dura propositio, quam iudex si providit non aliter praeformidat quam qui ferrum medici prius quam curetur aspexit: at si re non ante proposita securum ac nulla denuntiatione in se conversum intrarit oratio, efficiet quod promittenti non crederetur.
- 6 Interim refugienda non modo distinctio quaestionum est, sed omnino tractatio: adfectibus turbandus et ab intentione auferendus auditor. Non enim solum oratoris est docere, sed plus eloquentia circa movendum valet. Cui rei contraria est maxime tenuis illa et scrupulose in partis secta divisionis diligentia eo tempore quo cognoscenti iudicium conamur auferre.
- 7 Quid quod interim quae per se levia sunt et infirma, turba valent, ideoque congerenda sunt potius, et velut eruptione pugnandum? Quod tamen rarum esse debet et ex necessitate demum, cum hoc ipsum quod dissimile rationi est coegerit ratio.
- 8 Praeter haec in omni partitione est utique aliquid potentissimum, quod cum audivit iudex cetera tamquam

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<sup>1</sup> Compare 9.2.61. These Figures were supposed to give an impression of sincerity: Hermogenes 359 Rabe (= p. 94 Wooten (1987)).

the course of the speech; hence such agreeable Figures as “I nearly forgot,” “It had escaped me,” “Thank you for reminding me.”<sup>1</sup> If the Proofs have been signalled in advance, all the future charm of novelty has been anticipated.

(2) Sometimes however even the judge has to be misled and tricked by various devices into thinking that our aim is other than it is. For a Proposition is sometimes off-putting, and if the judge has foreseen it he becomes frightened of it, like a patient who sees the surgeon’s knife before the operation. On the other hand, if there has been no preliminary notice and our words come upon the judge when he is off his guard, and no warning has alerted him to them, they will achieve a credibility which they would not have had if we had given notice of them beforehand.

(3) We have sometimes to avoid not only a clear articulation of the Questions, but any handling of them at all; in this case the judge has to be disturbed emotionally and distracted from paying attention. For it is not the sole duty of the orator to instruct; the major force of eloquence in fact lies in its power to arouse emotion. And what does the most disservice to this power is precisely that delicate and meticulous niceness of subdivision at the very moment when we are trying to rob the judge of his power of judgement.

(4) Again, there are times when points which in themselves are slight and feeble have cumulative force, and so have preferably to be concentrated; we have to sally forth to do battle, as it were. But this must be rare, and only under extreme necessity, when reason forces us to do the very thing which runs counter to reason.

(5) Furthermore, in every Partition there is sure to be some specially potent item, and when the judge has heard

supervacua gravari solet. Itaque, si plura vel obicienda sunt vel diluenda, et utilis et iucunda partitio est, ut quo quaque de re dicturi simus<sup>1</sup> ordine appareat; at, si unum  
 9 crimen varie defendemus, supervacua. Ut si ita partiamur: 'dicam non talem esse hunc quem tueor reum ut in eo credibile videri possit homicidium, dicam occidendi causam huic non fuisse, dicam hunc eo tempore quo homo occisus est trans mare fuisse': omnia quae ante id quod ultimum  
 10 est exequeris inania videri necesse est. Festinat enim iudex ad id quod potentissimum est, et velut obligatum promisso patronum, si est patientior, tacitus appellat, si vel occupatus vel in aliqua potestate vel etiam sic moribus compositus, cum convicio efflagitat. Itaque non defuerunt qui  
 11 Ciceronis illam pro Cluentio partitionem improbarent, qua se dicturum esse promisit primum neminem maioribus criminibus, gravioribus testibus in iudicium vocatum quam Oppianicum, deinde praeiudicia esse facta ab ipsis iudicibus a quibus condemnatus sit, postremo iudicium pecunia temptatum non a Cluentio, sed contra Cluentium: quia, si probari posset quod est tertium, nihil necesse fuerit dicere priora. Rursus nemo tam erit aut iniustus aut  
 12 stultus quin eum fateatur optime pro Murena esse partitum: 'intellego, iudices, tris totius accusationis partis fuisse, et earum unam in reprehensione vitae, alteram in contentione dignitatis, tertiam in criminibus ambitus esse

<sup>1</sup> *Halm*: sumus AB

<sup>2</sup> 9.

<sup>3</sup> 11.

this he tends to be impatient with everything else and regard it as superfluous. If therefore we have to advance or refute a number of points, a Partition is both useful and agreeable, to ensure that the order in which we propose to speak of each matter is quite clear. If on the other hand there is a single charge to be defended in various ways, a Partition is superfluous. Consider the following example: "I shall say that the defendant who is my client is the kind of man of whom a charge of homicide is unbelievable; I shall say that he had no motive for the killing; I shall say that he was overseas when the man was killed." Everything you set out in this Partition except the last point is bound to seem futile. The judge is in a hurry to get to the crux of the matter. The advocate, as it were, is bound by his promise; and if the judge is a patient man, he does not explicitly call upon him to fulfil it; but if he is busy, or a very powerful person, or simply cannot control his temper, he insists quite brutally. For this reason, some have criticized the Partition in Cicero's *Pro Cluentio*,<sup>2</sup> in which he promised to show, first, that no man was ever brought to court on graver charges or on stronger evidence than Oppianicus; secondly, that the very judges by whom he was condemned had already passed previous judgements on the case; and finally that the attempt to bribe the jury had been made *against* Cluentius, not *by* him. Their point is that if the third statement could be proved, there was no need to make the first two. On the other hand, no one will be unfair or foolish enough to deny that the Partition in the *Pro Murena*<sup>3</sup> is admirable: "I understand, members of the jury, that this whole accusation had three parts, one of which related to aspersions on my client's way of life, one to his candidature for high office, and the third to charges of

versatam.' Nam sic et ostendit lucidissime causam et nihil fecit altero supervacuum.

- 13 De illo quoque genere defensionis plerique dubitant: 'si occidi, recte feci, sed non occidi'; quo enim pertinere prius si sequens firmum sit? Haec invicem obstare et utroque utentibus in neutro haberi fidem. Quod sane in parte verum est, ut<sup>2</sup> illo sequenti, si modo indubitabile est,
- 14 sit solo utendum; at si quid in eo quod est fortius timebimus, utraque probatione nitentur. Alius enim alio moveri solet; et qui factum putabit, iustum credere potest, qui tamquam iusto non movebitur, factum fortasse non credit: ut certa manus uno telo potest esse contenta, incerta plura
- 15 spargenda sunt, ut sit et fortunae locus. Egregie vero Cicero pro Milone insidiatorem primum Clodium ostendit, tum addidit ex abundanti, etiam si id non fuisset, talem tamen civem cum summa virtute interfectoris et gloria recari potuisse.
- 16 Neque illum tamen ordinem, de quo prius dixi, damnaverim, quia quaedam, etiam si ipsa sunt dura, in id tamen valent, ut ea molliant quae sequuntur. Nec omnino sine ratione est quod vulgo dicitur: inicum petendum ut aecum
- 17 feras. Quod tamen nemo sic accipiat ut omnia credat audenda. Recte enim Graeci praecipiunt non temptanda quae effici omnino non possint. Sed quotiens hac de qua

<sup>2</sup> *recc.*: et AB

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<sup>4</sup> See §§ 9–10 above.

<sup>5</sup> I.e. "Ask much to have a little." Q.'s saying was taken into English in the sixteenth century (R. Taverner, *Proverbs or Adages . . . gathered out of the Chiliades of Erasmus*, 1539).

<sup>6</sup> "Do not desire impossible things" (μη ἐπιθυμῆιν ἀδυνάτων)

bribery.” This makes the Cause perfectly clear, and no one point renders another superfluous.

Many also feel qualms about the type of defence that runs “If I killed him, I did right; but I did not kill him.” What is the point of the first part, they say, if the second is secure? The two are mutually inconsistent; if both are used, we believe neither. This is of course partly true; if the second statement is beyond doubt, it should be used on its own, but if there is any ground for apprehension about the stronger statement, we should use the double Proof. People are moved by different arguments; a person who believes in the killing may think it was justly done, and a person who is not to be moved by the plea of justice may perhaps not believe in the killing. A sure hand may be content with one shot; an unsure one needs to spray them around, to give fortune a chance too. It was brilliant of Cicero in the *Pro Milone* first to show that Clodius set the ambush, and then to add, as an extra argument, that, even if that had not been so, a citizen like that could none the less have been killed to the great honour and glory of his killer.

I should not however condemn the order of which I spoke just now,<sup>4</sup> because some arguments, though awkward in themselves, have the power to soften what follows. The common saying, “If you want a fair deal, ask for an unfair one,”<sup>5</sup> is not without good grounds, but should not be taken to mean that one should stop short of nothing. The Greeks are right to advise “not attempting the absolutely impossible.”<sup>6</sup> But whenever we employ the double de-

is the advice of Chilon, one of the Seven Sages; Diogenes Laertius 1.70.



loquor duplici defensione utemur, id laborandum est, ut in illam partem sequentem fides ex priore ducatur; potest enim videri qui tuto etiam confessurus fuit mentiendi causam in negando non habere.

18 Et illud utique faciendum est, ut, quotiens suspicabimur iudici aliam probationem desiderari quam de qua loquimur, promittamus nos plene et statim de eo satis esse  
19 facturos, praecipueque si de pudore agitur.<sup>3</sup> Frequenter autem accidit ut causa parum verecunda iure tuta sit: de quo ne inviti iudices audiant et adversi, frequentius sunt admonendi secururam defensionem probitatis ac dignitatis: expectent paulum et agi ordine sinant.

20 Quaedam interim nos et invitis litigatoribus simulandum est dicere, quod Cicero pro Cluentio facit circa iudiciariam legem: nonnumquam quasi interpellemur ab iis subsistere: saepe avertenda ad ipsos oratio, hortandi ut sinant nos uti nostro consilio. Ita subrepetur animo iudicis, et, dum sperat probationem pudoris, asperioribus illis minus repugnabit. Quae cum receperit, etiam verecundiae defensioni facilior erit. Sic utraque res invicem iuvabit eritque iudex circa ius nostrum spe modestiae attentior, circa modestiam iuris probatione proclivior.

22 Sed ut non semper necessaria aut utilis etiam partitio est, ita oportune adhibita plurimum orationi lucis et

<sup>3</sup> agetur A

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<sup>7</sup> 144-145.

fence of which I am speaking, we must try to ensure that credibility attaches to the second line of defence as a result of the first. For a defendant who could have confessed without risk may be held to have no motive for lying if he denies the charge.

In any case, whenever we suspect that the judge is looking for a Proof other than that which we are offering, it is important to promise that we will satisfy him on the point fully and quickly, especially if personal morality is involved. It often happens that a somewhat discreditable Cause is safe in law; to prevent the judges then giving it a reluctant and hostile hearing, they must be frequently reminded that a defence of our client's integrity and honour is to follow; they have only to wait for a while and let things be taken in order.

We may sometimes have to pretend that we are speaking against the litigant's own wishes, as Cicero does in the *Pro Cluentio*<sup>7</sup> with reference to the law against corruption in the courts, and sometimes that we pause, as though our clients were interrupting us; we must often address our words to them, and urge them to let us use our discretion. In this way, we shall worm our way into the judge's mind, and, because he is expecting us to prove our client's moral integrity, he will be less hostile to the more problematic aspects. And once he accepts these, he will also be more receptive to the defence of our client's honour. Thus the two points help each other: the judge will be more attentive to our legal argument because he hopes we will vindicate our client's decency, and more inclined to listen to that vindication because the point of law has been proved.

But, though a Partition is not always necessary or always even useful, it adds greatly to the clarity and charm of

- gratiae confert. Neque enim solum id efficit, ut clariora  
 fiant quae dicuntur, rebus velut ex turba extractis et in  
 conspectu iudicum positis, sed reficit quoque audientem  
 certo singularum partium fine, non aliter quam facientibus  
 23 iter multum detrahunt fatigationis notata inscriptis lapidi-  
 bus spatia. Nam et exhausti laboris nosse mensuram volup-  
 tati est, et hortatur ad reliqua fortius exequenda scire  
 quantum supersit. Nihil enim longum videri necesse est in  
 24 quo quid ultimum sit certum est. Nec inmerito multum ex  
 diligentia partiendi tulit laudis Q. Hortensius, cuius tamen  
 divisionem in digitos diductam nonnumquam Cicero levi-  
 ter eludit. Nam est suus et in digestu<sup>4</sup> modus et vitanda  
 utique maxime concisa nimium et velut articulosa partitio.  
 25 Nam et auctoritati plurimum detrahunt minuta illa nec  
 iam membra sed frusta: et huius gloriae cupidi, quo sub-  
 tilius et copiosius divisisse videantur, et supervacua ad-  
 sumunt et quae natura singularia sunt secant, nec tam  
 plura faciunt quam minora: deinde cum fecerunt mille  
 particulas, in eandem incidunt obscuritatem contra quam  
 partitio inventa est.
- 26 Et divisa autem et simplex propositio, quotiens utiliter  
 adhiberi potest, primum debet esse aperta atque dilucida<sup>5</sup>  
 (nam quid sit turpius quam id esse obscurum ipsum quod  
 in eum solum adhibetur usum ne sint cetera obscura<sup>6</sup>),

<sup>4</sup> *H. J. Mueller*: gestu A (suus certus modus B)

<sup>5</sup> *recc.*: atque lucida B: ac dilucida A

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<sup>8</sup> Editors cite Rutilius Namatianus 2.7–8: *Intervalla viae fessis praestare videtur / Qui notat inscriptus milia crebra lapis*, “The stone that marks by its inscription the many miles seems to afford the tired travellers some breaks upon the road” (J. W. and A. M. Duff, *LCL Minor Latin Poets* 823).

a speech if it is used opportunely. It not only makes what is said clearer, by pulling the points out of the crowd, as it were, and presenting them to the judges' view; it also relieves the hearer by setting limits to particular parts, just as the fatigue of a journey is a good deal relieved by reading the distances on the milestones!<sup>18</sup> It is also pleasant to know how much of our work has been done, while the knowledge of how much remains is an encouragement to set about the rest with a better heart. Nothing need seem long when its end is certain. Quintus Hortensius deserves the considerable praise given him for the carefulness of his Partitions,<sup>9</sup> though Cicero sometimes makes gentle fun of his counting his headings on his fingers. For even organization has its limits, and we must anyway avoid too much fragmentation and, as it were, over-articulation, in Partitions. For these tiny items—fragments rather than units—detract very much from one's authority, while those who covet this sort of fame, wanting to be seen to have made ever more subtle and exhaustive divisions, both include things that are irrelevant and subdivide what are by nature single units. The result is not so much to multiply points as to diminish their significance. And secondly, having created their thousand little pieces, they lapse into the very kind of obscurity which Partition was invented to cure.

Whether divided or in one piece, the Proposition, whenever it can profitably be introduced, must be (1) clear and lucid (for what can be more shaming than obscurity in a passage introduced solely to prevent other things from

<sup>9</sup> Cicero, *Brutus* 302; compare *Divinatio in Caecilium* 45.

27 tum brevis nec ullo supervacuo onèrata verbo; non enim quid dicamus sed de quo dicturi simus ostendimus. Optinendum etiam ne quid in ea desit, ne quid supersit. Superest autem sic fere, cum aut in species partimur quod in genera partiri sit satis, aut genere posito subicitur species, ut 'dicam de virtute iustitia continentia', cum iustitia atque continentia virtutis sint species.

28 Partitio prima est, quid sit de quo conveniat, quid de quo ambigatur. In eo quod convenit, quid adversarius fateatur, quid nos: in eo quod ambigatur, [quae dicturi sumus]<sup>6</sup> quae nostrae propositiones, quae partis adversae.

Turpissimum vero non eodem ordine exequi quo quidque proposueris.

<sup>6</sup> *del. Gesner*

being obscure?) and (2) short and not burdened by any superfluous word. We are not explaining what we are saying, but what we are going to say. We must ensure too that there is nothing lacking, and nothing redundant in it. Redundance commonly results when we divide things into species which need only be divided into genera, or when we state a genus and then add the species: for example, "I shall speak of virtue, justice, and self-control," where justice and self-control are in fact species of the genus virtue.

The primary Partition is between agreed and disputed facts. Agreed facts are divided into those admitted by our opponent and those admitted by ourselves. Disputed facts are divided into those which are our Propositions and those which are our opponents'.

It is a particularly disgraceful mistake to treat your points in a different order from that which was given in your Proposition.

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## BOOK FIVE





## INTRODUCTION

Pursuing his scheme of the Parts of a Speech, Quintilian now comes to Proofs (*pisteis*), the one invariably essential element in any Cause.

Chapter 1 states the basic division into "technical" (*entechnoi*) and "nontechnical" (*atechnoi*) *pisteis*, i.e. those which are based on the "art" of rhetoric and those (like the evidence of witnesses and documents) which come from outside sources, and are provided by the circumstances of the case. This division goes back to the early stages of Greek rhetoric; it is in *Rhetorica ad Alexandrum* (7, 14) and is well developed in Aristotle (*Rhetoric* 1.2, 1.15). Though it appears only incidentally in *Ad Herennium* and *De inventione*, and perhaps did not play a major role in Hermagoras' system, it is in general standard elementary teaching in the schools: Cicero, *De oratore* 2.116, *Topica* 8, 24; *Partitiones oratoriae* 5–6; Anon. Seg. 145; Apsines 4.1; Minucianus 340 Spengel–Hammer; and especially Julius Victor 403ff. Halm = 44ff. Giomini–Celentano, largely based on Quintilian. Lausberg § 350.

(A) Quintilian takes the nontechnical proofs first (5.2–7).

Chapter 2 discusses previous decisions, though without any clear reference to Roman legal procedures. See *Ad Herennium* 2.19; Lausberg § 353.

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Chapter 3 deals with Rumours, a simple topic, not given much attention by rhetors: see however *Ad Herennium* 2.12.

Torture, the theme of 5.4, is much more significant, since the extraction of evidence by torture from slaves was a feature of Athenian law, and so a *topos* with the orators. Discussions include *Rhetorica ad Alexandrum* 16, Aristotle, *Rhetoric* 1.15, 1376b31; *Ad Herennium* 2.10, Cicero, *Partitiones oratoriae* 117, *Topica* 74. See also *Declamationes Minores* 269 (with Winterbottom's notes), Bonner, *RD* 112. Cicero, *Pro Sulla* 78–79 develops the topic.

In discussing “documentation” (5.5), Quintilian is mainly concerned with forgery; Cicero's *Pro Archia* (8–9) and *In Verrem* 2 (186–191) illustrate the use of this area of argument in various contexts.

Oaths (5.6) were more important, and still had considerable significance in Roman law, since an oath as to the justice of his case taken by one party at the invitation of the other before the praetor was regarded as determining the issue, and perjury, however common, was not condoned.

Finally, witnesses (5.7; Lausberg § 354). Quintilian's treatment (predecessors include *Rhetorica ad Alexandrum* 15.1–3, *Ad Herennium* 2.9–12) covers both the “commonplace” *de testibus*—i.e. the discussion of the value of witnesses in comparison with other forms of evidence, to be handled according to the needs of the case (1–7)—and also methods of Interrogation (8–37). There is a great deal of practical sense in this last part of the chapter, and Quintilian is able to draw on his own experience.

(B) Technical proofs will be seen to be of various kinds, Signs, Arguments, and Examples being the main ones.

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Such a classification goes back, again, to classical Greek rhetoric (*Rhetorica ad Alexandrum* 9–13, Aristotle, *Rhetoric* 2.20–25). Aristotle's account, concerned to show the correspondences between rhetorical and logical argument, is more sophisticated and philosophical than his predecessors', and indeed than much of what was written later. Our best evidence for Hellenistic rhetoric here is in *De inventione* and *Ad Herennium*. In *De oratore* (2.162–177) and in *Topica* (8–78), Cicero went back to Aristotle in many respects. Quintilian's treatment is, as usual, eclectic, not dependent on any one source. For the background, see especially F. Solmsen, "The Aristotelian Tradition in Ancient Rhetoric," *American Journal of Philology* 62 (1941) 35–50, 169–190 (especially 169–176).

Quintilian begins (5.8) with some principles common to all technical proofs. They may be classified as depending on things or on persons, either in themselves or in relation to others; as resting on Consequences or Contradictions; and as relating to Antecedents, Contemporaneous Events, or Sequels. Some again are of general application, some derive from the particular Cause. Proofs may be "necessary," "credible," or just "not contradictory." Four forms of Proof may be distinguished: A, so not B; A, so B; not A, so B; not A, so not B (Lausberg § 356).

Chapter 9 then proceeds to Signs (*signa, indicia; sēmeia*). These, in Quintilian's view, are distinct from Arguments and from Examples; they are provided by the circumstances, and the orator's task is to draw the conclusions from them that his case requires. They are classified as necessary (in Greek *aluta sēmeia, tekēmēria*), or not necessary (probabilities, Greek *eikota*). (Lausberg §§ 358–365; Caplan on *Ad Herennium* 2.6.)

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Chapter 10, on Arguments, is the longest and most difficult of these chapters. There is first a terminological problem (10.1–11), partly concerned with the terms Enthymeme (*enthymēma*) and Epicheireme (*epicheirēma*). The first of these terms was used by Aristotle for a rhetorical argument corresponding to the syllogism, and containing either one or two premisses and a conclusion; the second came to cover this type of argument, but was more commonly used for a five-stage argument, in which each of the premisses had to be proved before one proceeded to a conclusion (Solmsen, loc. cit. 169–170). Quintilian knows other uses of these terms, and the terminology was clearly unstable: Demetrius 30–33 provides the nearest parallel in earlier literature to Quintilian’s discussion. Quintilian’s argument itself is analysed in detail by M. F. Burnyeat in D. J. Furley and A. Nehamas, edd., *Aristotle’s Rhetoric: Philosophical Essays* (Princeton, 1998) 39–43.

The main part of this chapter (10.20–94) is however concerned with the *loci*—“topics,” “places,” “areas,” “sources”—of Arguments. These are “topics” not in the sense of *loci communes*, stock arguments about subjects of general interest (witnesses, luxury, or whatever), but in the sense of patterns or models into which any content can be inserted. This again is essentially an inheritance from Aristotle (*Topics, Rhetoric* 2.22–23), but with many later refinements and confusions. Lausberg §§ 373–399 covers Quintilian’s ground. Quintilian summarizes his list himself at 5.10.94, before proceeding (95–99) to a discussion of fictitious grounds of argument and some practical considerations.

With 5.11, we turn to “examples” (*paradeigmata*), the

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rhetorical analogue of induction, in the sense that "arguments" are the analogue of syllogistic reasoning. This too is an Aristotelian subject (*Rhetoric* 2.20), also treated in *Ad Herennium* (1.46, 4.59–62), Cicero (*De inventione* 1.49, *De oratore* 3.205, *Topics* 44–45), Apsines 6 (167–173 Dilts–Kennedy), Minucianus 341–343 Spengel–Hammer, Anon. Seg. 154–156, 45 Dilts–Kennedy (where Paradigm and Enthymeme are the only two species of "artificial" Proofs); Lausberg §§ 410–426; in general, McCall (1969). For the student of literature (as opposed to logic or technical rhetoric) this is a richer and more suggestive chapter. After some discussion of terminology (1–5), Quintilian proceeds to consider examples from history (perfect parallels or events that can be used as opposites or in *a fortiori* arguments, 9–10), with instances from Cicero (11–16). Poetic examples follow (17–20), then proverbs and sayings (21–23) and similes (24–26). The focus of the rest of the chapter is mainly on practical considerations: cautions to be observed, refinements of theory to be avoided, the use of "authorities" (36–40; see Anon. Seg. 181, 51 Dilts–Kennedy), and the possibility of using an opponent's actions or words in your own interest (43). Quintilian concludes (44) by defending his (and others') classification of all this as coming under the proofs which depend on "art."

Chapter 12 is certainly practical in scope. It discusses how arguments should be marshalled—individually or in groups—and how emotional and character arguments can be used. But the main thrust (12.17–22) is one of Quintilian's attacks on contemporary declamatory practices, with a clear reference at the end to his book on "the decadence of eloquence" (General Introduction, vol. I).

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Refutation (*lysis, anaskeuē*), the subject of 5.13, is not very commonly treated as a separate subject elsewhere: Apsines 5 (150–167 Dilts–Kennedy) is the fullest extant account, but see also Anon. Seg. 186–190 (43–47 Dilts–Kennedy), *Ad Herennium* 2.32–46, Julius Victor 413–416 Halm = 57–61 Giomini–Celentano; Martin 129–133. Quintilian is fairly systematic: 1–3, prosecution is easier than defence; 4–10, how to deal with points (a) derived from the Cause, (b) extraneous to it; 11–15, arrangement of refutations (cf. 5.12.4–5, 14–16 on the arrangement of positive arguments); 15–22, how to refute statements; 23–24, how to refute Examples; 25–35, how to use opponents' weaknesses; 36–38, no need to answer *every* objection; 39–42, how to refute defence arguments. At this point, Quintilian thinks again of the declamation school, and points out how its conditions (and especially its free use of imaginary objections) differ from those of real life (42–50). After some further general advice, he summarizes this group of themes (chapters 11–13), and (after a further dig at mere theorists) prepares the way for his discussion of how to construct Enthymemes or Epicheiremes, which is to be the subject of 5.14.

The detail of this complex chapter will be discussed in the Notes. For the background see especially Caplan on *Ad Herennium* 2.28. It begins (1–4) by defining and illustrating Enthymemes *ex consequentibus* and *ex pugnantibus*. Next (5–9) the five-part Epicheireme is considered, and then (10–13) the three-part variety (the original Enthymeme). An Epicheireme is shown to be a syllogism arguing from *probable* premisses; examples are given, and we are told how to refute one (14–23). It is also an imperfect (rhetorical) syllogism (24–26). These “mysteries” (27)

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are clearly distasteful to Quintilian. He does not think a speech full of such subtleties is much use; they are rather for philosophers. Eloquence is not to be so limited and restricted; arguments need to be unobtrusive, and diversified by figures and other devices (28–35).



# LIBER QUINTUS

## PROHOEMIUM

- 1 Fuerunt et clari quidem auctores quibus solum videretur oratoris officium docere—namque et adfectus duplici ratione excludendos putabant, primum quia vitium esset omnis animi perturbatio, deinde quia iudicem a veritate depelli misericordia gratia ira<sup>1</sup> similibusque non oporteret; et voluptatem audientium petere, cum vincendi tantum gratia diceretur, non modo agenti supervacuum, sed
- 2 vix etiam viro dignum arbitrabantur—plures vero qui nec ab illis sine dubio partibus rationem orandi summovent, hoc tamen proprium atque praecipuum crederent opus, sua confirmare et quae ex adverso proponerentur refutare.
- 3 Utrumcumque est (neque enim hoc loco meam interpono sententiam), hic erit liber illorum opinione maxime necessarius, quo toto haec sola tractantur: quibus sane et ea
- 4 quae de iudicialibus causis iam dicta sunt serviunt. Nam neque prohoemii neque narrationis est alius usus quam

<sup>1</sup> gratia ira *Winterbottom*: gratia A: vel ira B

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<sup>1</sup> The first point is Stoic (Plutarch, *On moral virtue*, *Moralia* 449D = *SVF* 3. 119, 21ff.); the second is in Aristotle (*Rhetoric* 1. 1354a16ff.).

## BOOK FIVE

### PROOEMIUM

There have been some authorities, and famous ones at that, who have held that the sole duty of an orator is to instruct. They believed that emotions were to be excluded (1) because every disturbance of the mind was a vice, and (2) because it was wrong for the judge to be diverted from the truth by pity, favour, anger, or the like.<sup>1</sup> They also thought that to aim to give pleasure to the audience, when the only point of speaking was to win, was not only a superfluous function for the pleader, but one hardly worthy of a real man. The majority however, while not isolating the system of oratory from these parts of it (for they undoubtedly are parts of it), nevertheless thought that its special and principal task was to confirm one's own points and refute those advanced on the other side. Whichever of these two views is the right one (I am not giving my own opinion here), this book, the whole of which is concerned with this one area, will, in these people's eyes, be the most essential of all. Indeed what has already been said about forensic Causes<sup>2</sup> is subsidiary to this. For neither the Prooemium nor the Narrative has any function except to prepare the

<sup>2</sup> 3.9–11: cf. Aristotle, *Rhetoric* loc. cit.

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ut huic iudicem praeparent, et status nosse atque ea de quibus supra scripsimus intueri supervacuum foret nisi  
5 ad hanc perveniremus. Denique ex quinque quas iudicialis materiae fecimus partibus quaecumque alia potest aliquando necessaria causae non esse: lis nulla est cui probatione opus non sit.

Eius praecepta sic optime divisuri videmur ut prius quae in commune ad omnes quaestiones pertinent ostendamus, deinde quae in quoque causae genere propria sunt exequamur.

### 1

- 1 Ac prima quidem illa partitio ab Aristotele tradita consensus fere omnium meruit, alias esse probationes quas extra dicendi rationem acciperet orator, alias quas ex causa traheret ipse et quodam modo gigneret; ideoque illas ἀτέχνους, id est inartificiales, <has ἐντέχνους, id est artificiales,><sup>1</sup> vocaverunt. Ex illo priore genere sunt praeiudicia, rumores, tormenta, tabulae, ius iurandum, testes, in quibus pars maxima contentionum forensium consistit. Sed ut ipsa per se carent arte, ita summis eloquentiae viribus et adiuvanda<sup>2</sup> sunt plerumque et refellenda. Quare mihi videntur magnopere damnandi qui totum hoc genus a  
3 praeceptis removerunt. Nec tamen in animo est omnia quae pro his aut contra dici solent complecti. Non enim

<sup>1</sup> *add. Regius*

<sup>2</sup> *Winterbottom: adlevanda AB*

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<sup>1</sup> Aristotle, *Rhetoric* 1. 1355b35.

<sup>2</sup> The noun *pisteis*, "proofs," is understood.

judge for the Proof; and it would be pointless to learn the Issues and consider the matters we discussed above, unless we intended to proceed finally to this. Lastly, of the five parts into which we divided the forensic speech, any one of the other four may sometimes be unnecessary for the Cause; but there is no dispute which does not need a Proof.

I think the best division of the rules of Proof will be first to show which apply generally to all Questions; and secondly to list those which are proper to each particular kind of Cause.

## CHAPTER 1

### *Technical and nontechnical Proofs*

There has been almost universal acceptance of Aristotle's<sup>1</sup> primary classification of Proofs into those which the speaker receives from areas outside the principles of oratory, and those which he himself derives from his Cause and in a sense generates. The former have been called *atechnoi*,<sup>2</sup> that is "nontechnical," <and the latter *entechnoi*, that is "technical">. In the first category come previous decisions, rumours, evidence from torture, documents, oaths, and witnesses; the major part of forensic disputes rests on these. But, though these things themselves involve no art, it generally takes high powers of eloquence to support or to refute them. It seems to me therefore that we must strongly disapprove of those who have excluded this subject altogether from their teaching. However, I have no intention of covering all the points made for or against these types of Proof. For example, I do not propose to

communes locos tradere destinamùs, quod esset operis infiniti, sed viam quandam atque rationem. Quibus demonstratis non modo in exequendo suas quisque vires debet adhibere, sed etiam inveniando similia, ut quaeque condicio litium poscet. Neque enim de omnibus causis dicere quisquam potest saltem praeteritis, ut taceam de futuris.

2

- 1 Iam praeiudiciorum vis omnis tribus in generibus versatur: rebus quae aliquando ex paribus causis sunt iudicatae, quae exempla rectius dicuntur, ut de rescissis patrum testamentis vel contra filios confirmatis: iudiciis ad ipsam causam pertinentibus, unde etiam nomen ductum est, qualia in Oppianicum facta dicuntur et a senatu adversus Milonem: aut cum de eadem causa pronuntiatum est, ut in reis deportatis et adsertione secunda et partibus centumvirialium quae in duas hastas divisae sunt.
- 2 Confirmantur praecipue duobus: auctoritate eorum qui pronuntiaverunt, et similitudine rerum de quibus quaeritur; refelluntur autem raro per contumeliam iudicum, nisi forte manifesta in iis culpa erit; vult enim cognoscentium quisque firmam esse alterius sententiam, et ipse

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1 Cicero, *Pro Cluentio* 49.      2 *Pro Milone* 12.

3 The legal consequences of confinement to an island or exile included loss of citizen rights and of the power of making a will: *Digest* 48.22.7, 48.23 (a deported person restored to his property might be sued in respect of previous debts). For applications for freedom (*adsertio*) see 3.6.57.

4 See on 3.10.3, and also 4.1.57, 7.4.10.

teach Commonplaces (that would be an endless task), but only some sort of method and principle. Having been shown these, the pupil must not only exercise his own powers in putting them into practice, but also discover analogous examples, as the circumstances of each case demand. No one can deal even with all past Causes, to say nothing of future ones.

## CHAPTER 2

### *Previous Judgements*

Previous Judgements (to begin with these) all fall under three heads: (1) matters on which judgement has been given in the past on parallel cases: these are more correctly called "precedents," for example the rescinding of a father's will or its confirmation against the opposition of his children; (2) judgements relevant to the same Cause (hence the name "Previous Judgements"), such as are said to have been given against Oppianicus<sup>1</sup> or by the senate against Milo;<sup>2</sup> (3) pronouncements in the same Cause, for example when defendants are deported,<sup>3</sup> or an application for freedom is renewed, or when parts of a case in the Centumviral courts have been divided between two panels.<sup>4</sup>

Confirmation of such judgements is made in two main ways: by the authority of the judges in the previous case, and by the similarity of the cases in question. A reversal is rarely secured by denouncing the previous judges, unless the fault is manifestly theirs. (Every judge wants another judge's decision to stand, because he is going to pronounce judgement himself, and he does not like to produce a pre-

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- 3 pronuntiaturus, nec libenter exemplum quod in se fortasse  
3 reccidat facit. Confugiendum ergo est in duobus superioribus, si res feret, ad aliquam dissimilitudinem causae, vix autem ulla est per omnia alteri similis. Si id non continget aut eadem causa erit, actionum incusanda negligentia aut de infirmitate personarum querendum contra quas erit iudicatum, aut de gratia quae testes corruerit, aut de invidia aut de ignorantia, aut inveniendum quod causae postea  
4 accesserit. Quorum si nihil erit, licet tamen dicere multos iudiciorum casus ad inique pronuntiandum valere, ideoque damnatum Rutilium, absolutos Clodium atque Catilinam, rogandi etiam iudices ut rem potius intueantur ipsam quam iuri iurando alieno suum donent.
- 5 Adversus consulta autem senatus et decreta principum vel magistratum remedium nullum est, nisi aut inventa quantulumcumque causae differentia aut aliqua vel eorundem vel eiusdem potestatis hominum posterior constitutio quae sit priori contraria: quae si deerunt, lis non erit.

### 3

- 1 Famam atque rumores pars altera consensum civitatis et velut publicum testimonium vocat, altera sermonem sine ullo certo auctore dispersum, cui malignitas initium dederit, incrementum credulitas, quod nulli non etiam

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<sup>5</sup> See 11.1.13, Cicero, *In Pisonem* 95. Rutilius became a standard *exemplum*: Seneca, *De vita beata* 18, *Epistulae* 24.4. Clodius was prosecuted for incest and profanation of the mysteries of Bona Dea (Cicero, *Pro Sestio* 16), and Catiline escaped prosecution for incest in 73 BC, and for embezzlement in his province of Africa in 67–66.

## BOOK 5.3

cedent which may perhaps recoil upon himself.) So in the first two categories, if circumstances allow, we must have recourse to some dissimilarity between the Causes; and hardly any Cause is exactly like another in every respect. If this is not possible, or if the Cause is the same, we have to blame the negligence of the previous pleadings, and complain of the vulnerability of the persons against whom judgement has been given, of the influence that corrupted the witnesses, or of prejudice or ignorance; alternatively, we must find some new feature of the case that has arisen subsequently. If none of these options is available, we can still point out that many accidental circumstances in trials may lead to an unfair decision: Rutilius was condemned, Clodius and Catiline acquitted.<sup>5</sup> We must ask the judges also to look at the actual facts, rather than let their own decision upon oath depend on the oaths of others.

Against decisions of the senate or decrees of emperors or magistrates, there is no remedy, unless there has come to light some difference, however small, in the Cause, or some subsequent decision by the same persons or others of equal authority, which runs counter to the previous decision. Failing this, there will be no case to try.

## CHAPTER 3

### *Rumours*

Rumours and common talk are called “the verdict of society” and “the testimony of the public” by one party; to the other, they are “vague, unauthenticated talk, started by malice and developed by credulity, something that can happen to the most innocent of men through the fraud of



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innocentissimo possit accidere fraude inimicorum falsa vulgantium. Exempla utrimque non deerunt.

### 4

- 1 Sicut in tormentis quoque, qui est locus frequentissimus, cum pars altera quaestionem vera fatendi necessitatem vocet, altera saepe etiam causam falsa dicendi, quod aliis patientia facile mendacium faciat, aliis infirmitas necessarium. Quid attinet de his plura? Plenae sunt orationes veterum ac novorum.
- 2 Quaedam tamen in hac parte erunt propria cuiusque litis. Nam sive de habenda quaestione agetur, plurimum intererit quis et quem postulet aut offerat et in quem et ex qua causa: sive iam erit habita, quis ei praefuerit, quis et quo modo sit tortus, an credibilia dixerit, an inter se constantia, perseveraverit in eo quod coeperat an aliquid dolore mutarit, prima parte quaestionis an procedente cruciatu. Quae utrimque tam infinita sunt quam ipsa rerum varietas.

### 5

- 1 Contra tabulas quoque saepe dicendum est, cum eas non solum refelli sed etiam accusari sciamus usitatum esse.

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<sup>1</sup> "Question" also comes to mean "torture" in English: *OED* s.v. I.2.b.

## BOOK 5.5

enemies who spread false tales.” There will be no lack of examples on either side.

### CHAPTER 4

#### *Torture*

So also with Torture. This is a very common topic: one side says the “question”<sup>1</sup> makes a confession of truth inevitable, the other that it is often the cause of false statements, because the endurance of some witnesses makes it easy for them to lie, and the weakness of others makes it necessary. Need I say more? The speeches both of ancient and of modern orators are full of this. There will, however, be some considerations in this area which are peculiar to individual cases. (1) If the point is whether torture should be used, it will make all the difference who demands or offers whom, and against whom and for what reasons the victim is asked for or offered. (2) If it has already taken place, the important points are: who was in charge, who was tortured and in what way, whether his evidence was credible and consistent, whether he persisted in his initial statement or changed something under the influence of pain, and whether he did this at the beginning of the questioning or as the torture proceeded. These considerations, on both sides, are as infinitely varied as are real situations.

### CHAPTER 5

#### *Documents*

Documents also often have to be contested, for we know that it is usual not only for them to be rebutted, but to be

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- Cum sit autem in his aut scelus signatorum aut ignorantia, tutius ac facilius id quod secundo loco diximus tractatur, quod pauciores rei fiunt. Sed hoc ipsum argumenta ex causa trahit, si forte aut incredibile est id actum esse quod tabulae continent, aut, ut frequentius evenit, aliis probationibus aequè inartificialibus solvitur, si aut is in quem signatum est aut aliquis signator dicitur afuisse vel prius esse defunctus, si tempora non congruunt, si vel antecedentia vel insequentia tabulis repugnant. Inspectio etiam ipsa saepe falsum deprendit.

### 6

- 1 Ius iurandum litigatores aut offerunt suum aut non recipiunt oblatum aut ab adversario exigunt aut recusant cum ab ipsis exigatur. Offerre suum sine illa condicione ut vel
- 2 adversarius iuret fere improbum est. Qui tamen id faciet, aut vita se tuebitur, ut eum non sit credibile peieraturum, aut ipsa vi religionis (in qua plus fidei consequitur si id egerit ut non cupide ad hoc descendere, sed ne hoc quidem recusare videatur), aut, si causa patietur, modo litis, propter quam devoturus se ipse non fuerit: aut præter alia causae instrumenta adiciet ex abundantia hanc quoque conscientiae suae fiduciam.

## BOOK 5.6

the subject of an accusation. But as this implies either fraud or ignorance in the signatories, it is safer and easier to go for the second of these, because there are then fewer persons to be accused. But this too draws Arguments from the Cause, (1) if what the document alleges is unbelievable or (as happens more often) is nullified by other non-technical Proofs; (2) if either the person whose interests are affected by the document or one of the signatories is said to have been absent or to have died before the signing; (3) if the dates do not agree; (4) if either prior or subsequent events conflict with the document. Simple inspection also often reveals a forgery.

## CHAPTER 6

### *Oaths*

Litigants may either offer to take an oath or decline to accept one offered by an opponent. They may demand one from an opponent or decline to take one when challenged. To offer to take an oath without stipulating that one's opponent should also take one verges on dishonesty. If a litigant does this, however, he will defend himself either (1) on the ground of his way of life—it is incredible that *he* should perjure himself!—or (2) by the very solemnity of the act (this has more credibility if he has taken care to seem, not indeed eager to have recourse to this procedure, but not reluctant either), or (3), if the case allows, by stressing the limited scope of the dispute (he is not going to risk the wrath of the gods for *this!*), or (4) by adding to his other means of winning his case the additional safeguard of this further proof of a clear conscience.

- 3 Qui non recipiet condicionem<sup>1</sup> et a multis contemni iuris iurandi metum dicet, cum etiam philosophi quidam sint reperti qui deos agere <curam><sup>2</sup> rerum humanarum negarent: eum vero qui nullo deferente iurare sit paratus et ipsum velle de causa sua pronuntiare et quam id quod
- 4 offert leve ac facile credat ostendere. At is qui defert agere<sup>3</sup> modeste videtur, cum litis adversarium iudicem faciat, et eum cuius cognitio est onere liberat, qui profecto alieno
- 5 iure iurando stari quam suo mavult. Quo difficilior recusatio est, nisi forte res est ea quam credibile sit notam ipsi non esse. Quae excusatio si deerit, hoc unum relinquetur, ut invidiam sibi quaeri ab adversario dicat, atque id agi ut in causa in qua vincere non possit queri possit. Itaque hominem quidem malum occupaturum hanc condicionem fuisse, se autem probare malle quae adfirmet quam dubium cuiquam relinquere an peierarit.
- 6 Sed nobis adolescentibus seniores in agendo facti praecipere solebant ne umquam ius iurandum deferremus, sicut neque optio iudicis adversario esset permittenda nec ex advocatis partis adversae iudex eligendus. Nam si dicere contraria turpe advocato videretur, certe turpius habendum facere quod noceat.

<sup>1</sup> recipit (A) <et iniquam> condicionem a

<sup>2</sup> add. *Burman*; so also *Julius Victor* 405.33 *Halm* = 46.10 *Giomini-Celentano*

<sup>3</sup> alioqui agere A

## BOOK 5.6

A litigant who declines to accept an oath when offered will say that many people also shrug off the terrors of an oath (we even find philosophers who deny that the gods care about human affairs),<sup>1</sup> but a man who is ready to take an oath without being asked to do so is trying to give judgment in his own Cause and show how trivial and easy a thing it is that he is offering. On the other hand, the man who puts his opponent on oath is thought to be acting modestly in making his opponent the judge of the dispute, and also frees the person who hears the case from a burden, since he would surely prefer the decision to rest on another man's oath than on his own. This makes refusal to take an oath all the more difficult, unless the affair is such that one can be believed not to have knowledge of it. Failing this excuse, the only course left is to say that one's opponent is trying to stir up bad feeling and that his object is to have ground for complaint in a Cause which he cannot win; consequently (one may say) a dishonest man would have snatched at this proposal, but "I prefer to prove my statements rather than leave a doubt in anyone's mind as to whether I have committed perjury."

When I was young, however, the old hands at pleading used to advise us never to ask an opponent to take an oath, just as one would never give him the choice of a judge, or select a judge from among the advocates on the opposite side; for (they would say), if it was thought a disgrace for a lawyer to say anything damaging to his client, it must be even more disgraceful to do something to harm him.

<sup>1</sup> Notably the Epicureans, but see also Plato, *Laws* 10, 900Dff., for arguments against this view, doubtless already common.

1 Maximus tamen patronis circa testimonia sudor est. Ea dicuntur aut per tabulas aut a praesentibus. Simplicior contra tabulas pugna; nam et minus obstitisse videtur pudor inter paucos signatores et pro diffidentia premitur absentia. Si reprehensionem non capit ipsa persona, infamare signatores licet. Tacita praeterea quaedam cogitatio refragatur his omnibus, quod nemo per tabulas dat testimonium nisi sua voluntate, quo ipso non esse amicum ei se contra quem dicit fatetur. Neque tamen protinus cesserit orator quo minus et amicus pro amico et inimicus contra inimicum possit verum, si integra sit ei fides, dicere. Sed late locus uterque tractatur.

3 Cum praesentibus vero ingens dimicatio est, ideoque velut duplici contra eos proque iis acie configitur actionum et interrogationum.

In actionibus primum generaliter pro testibus atque in  
4 testis dici solet. Est hic communis locus, cum pars altera nullam firmiorem probationem esse contendit quam quae sit hominum scientia nixa, altera ad detrahendam illis fidem omnia per quae fieri soleant falsa testimonia enumerat.  
5 Sequens ratio est cum specialiter quidem sed tamen multos pariter invadere patroni solent. Nam et gentium

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<sup>1</sup> I.e. about making false statements.

BOOK 5.7  
CHAPTER 7

*Witnesses*

What causes advocates most stress is the evidence. This is given either in writing or by witnesses in person. Written statements are easier to combat: (1) there will surely have been fewer scruples<sup>1</sup> when there were only a few persons present to sign the document; (2) absence from court can be attacked as showing lack of confidence; (3) if the main personality involved is unassailable, we can discredit the signatories. Moreover, there is always a tacit prejudice against all these things, because no one gives evidence in writing except of his own free will, and by the very fact of so doing he reveals that he is no friend of the person against whom he testifies. On the other hand, the orator should not immediately admit that a friend could not be speaking the truth on behalf of a friend, or an enemy against an enemy, if the speaker is a man of honour. Both these topics, however, admit treatment at length.

It is with witnesses who are present that the great struggle comes. This is why the battle for and against them is conducted on the two fronts of set speech and interrogation.

In set speeches it is customary to begin with general observations for and against witnesses. This is a topic open to both sides: one contends that there is no firmer Proof than that which depends on personal knowledge; the other, to detract from witnesses' credibility, lists the reasons for which false evidence is commonly given. The next stage is when (as often) advocates become more specific, but still impugn many witnesses at once. We know that



- simul universarum elevata testimonia ab oratoribus scimus et tota genera testimoniorum: ut de auditionibus (non enim ipsos esse testes sed iniuratorum adferre voces), ut in causis repetundarum (qui se reo numerasse pecunias
- 6 iurant, litigatorum, non testium habendos loco). Interim adversus singulos derigitur actio, quod insectationis genus et permixtum defensionem legimus in orationibus plurimis et separatim editum, sicut in Vatinius testem. Totum igitur excutiamus locum, quando universam institutionem
- 7 adgressi sumus. Sufficiebant alioqui libri duo a Domitio Afro in hanc rem compositi, quem adolescentulus senem colui, ut non lecta mihi tantum ea sed pleraque ex ipso sint cognita. Is verissime praecepit primum esse in hac parte officium oratoris ut totam causam familiariter norit. Quod
- 8 sine dubio ad omnia pertinet; quomodo contingat explicabimus cum ad destinatum huic parti locum venerimus. Ea res suggeret materiam interrogationi et veluti tela ad manum subministrabit, eadem docebit ad quae iudicis animus actione sit praeparandus. Debet enim vel fieri vel detrahi testibus fides oratione perpetua, quia sic quisque dictis movetur ut est ad credendum vel non credendum ante formatus.
- 9 Et quoniam duo genera sunt testium, aut voluntariorum aut eorum quibus in iudiciis publicis lege denuntiari

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<sup>2</sup> E.g. Greeks (Cicero, *Pro Flacco* 9), Gauls (Cicero, *Pro Fonteio* 21), Bithynians (Pliny, *Epistulae* 5.20.4). See also 11.1.89.

<sup>3</sup> Compare Cicero, *Pro Flacco* 90–92.

<sup>4</sup> An extant speech by Cicero. Vatinius had been a witness in the case of P. Sestius, whom Cicero defended in 56 BC.

<sup>5</sup> See especially 10.1.118.      <sup>6</sup> 12.8.

orators have discredited the evidence of whole nations,<sup>2</sup> or whole classes of evidence, for example hearsay (“they are not witnesses themselves, they are simply repeating statements not made on oath”) or in extortion trials (“those who swear that they have paid over money to the defendant should be treated as parties to the suit, not as witnesses”).<sup>3</sup> Sometimes again the pleading is directed against individuals: we read this type of attack both embedded in the defence in many speeches, and also published separately, as in *Against the Witness Vatinius*.<sup>4</sup> Let us therefore go into the whole subject, since I have undertaken a complete coverage of an orator’s education. If I had not, Domitius Afer’s<sup>5</sup> two books on this subject would have sufficed. I sat at the old man’s feet when I was young, so that I have not only read his views, but heard most of them from his own mouth. He very properly laid down that the first duty of an orator in this area was to know the whole Cause intimately. (This of course applies to everything. How it can be achieved, I shall explain when I come to the place reserved for this topic.)<sup>6</sup> Such knowledge will suggest material for the interrogation, and will, as it were, put weapons in the speaker’s hand. It will also show him what he must prepare the judge for in his set speech, for it is in the continuous speech that the witnesses’ credibility must be established or destroyed, because the effect of words on an individual depends on the degree to which he has been previously disposed either to believe or to be incredulous.

There are two kinds of witnesses: voluntary, and those whose presence in the public courts is commonly demanded by law. Both sides use the former; the latter are

solet, quorum altero pars utraque utitur, alterum accusatoribus tantum concessum est: separemus officium dantis testes et refellentis.

- 10 Qui voluntarium producit scire quid is dicturus sit potest, ideoque faciliorem videtur in rogando habere rationem. Sed haec quoque pars acumen ac vigilantiam poscit, providendumque ne timidus, ne inconstans, ne imprudens
- 11 testis sit: turbantur enim et a patronis diversae partis inducuntur in laqueos et plus deprenti nocent quam firmi et interriti profuissent. Multum igitur domi ante versandi, variis percontationibus, quales haberi ab adversario possunt, explorandi sunt. Sic fit ut aut constent sibi aut, si quid titubaverint, oportuna rursus eius a quo producti sunt interrogatione velut in gradum reponantur. In iis quoque adhuc qui constiterint sibi vitandae insidiae; nam frequenter subici ab adversario solent et omnia profutura polliciti diversa respondent, et auctoritatem habent non arguentium
- 12 illa sed confitentium. Explorandum igitur quas causas laedendi adversarium adferant, nec id sat est inimicos fuisse, sed an desierint, an per hoc ipsum reconciliari velint, ne corrupti sint, ne paenitentia propositum mutaverint. Quod cum in iis quoque qui ea quae dicturi videntur [re]<sup>1</sup> vera

<sup>1</sup> *del. Spalding*

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<sup>7</sup> But note the case of Varenus in AD 106 or 107 (Pliny, *Epistulae* 5.20), where the extension to the defence of the power to summon such witnesses is said to be "just, but not covered by the law or usual."

available only to the prosecution.<sup>7</sup> Let us therefore distinguish the duty of the speaker who produces witnesses and the speaker who refutes them.

*Prosecution treatment of witnesses*

(1) One who produces a voluntary witness may well know what he is going to say; he therefore appears to have an easier task in questioning him. But even this part requires acumen and watchfulness; care must be taken that the witness is not frightened, inconsistent, or unwise. Witnesses are confused, and are drawn into traps by the advocates on the other side; they do more damage by being caught like this than they would have done good by a firm and fearless performance. They must therefore be carefully rehearsed at home and tested by various questions of the kind that the other side may raise. This will ensure either that they are consistent or at least, if they should stumble, that they are put back on their feet, as it were, by a timely question from the advocate who has produced them. And even with those who have been consistent, we must avoid a possible ambush; for witnesses are often put forward fraudulently by the other side, and, having promised evidence wholly in our favour, give answers of quite an opposite kind, and make themselves felt not as disproving the charge but as admitting it. We must therefore find out what reasons they have for harming our opponent. It is not enough that they have once been his enemies: have they ceased to be so, do they want to be reconciled to him by this means? We must beware that they have not been bribed, or have repented and changed their purpose. Such precautions are necessary even with witnesses who know

- sciunt necessarium est praecavere, tum multo magis in iis  
 14 qui se dicturos quae falsa sunt pollicentur. Nam et fre-  
 quentior eorum paenitentia est et promissum suspectius  
 et, si perseverarint, reprehensio facilior.
- 15 Eorum vero quibus denuntiatur pars testium est quae  
 reum laedere velit, pars quae nolit, idque interim scit ac-  
 cusator, interim nescit. Fingamus in praesentia scire: in  
 utroque tamen genere summis artibus interrogantis opus  
 16 est. Nam si habet testem cupidum laedendi, cavere debet  
 hoc ipsum ne cupiditas eius appareat, nec statim de eo  
 quod in iudicium venit rogare sed aliquo circumitu ad  
 id pervenire, ut illi quod maxime dicere voluit videatur  
 expressum, nec nimium instare interrogationi, ne omnia  
 respondendo testis fidem suam minuat, sed in tantum evo-  
 17 care eum quantum sumere ex uno satis sit. At in eo qui  
 verum invitus dicturus est, prima felicitas interrogantis ex-  
 torquere quod is noluerit. Hoc non alio modo fieri potest  
 quam longius interrogatione repetita. Respondebit enim  
 quae nocere causae non arbitrabitur, ex pluribus deinde  
 quae confessus erit eo perducetur ut quod dicere non vult  
 18 negare non possit. Nam ut in oratione parva<sup>2</sup> plerumque  
 colligimus argumenta, quae per se nihil reum adgravare  
 videantur, congregatione deinde eorum factum convinci-  
 mus: ita huius modi testis multa de ante actis, multa de  
 insecutis, loco tempore persona ceteris est interrogandus,

<sup>2</sup> *Winterbottom*: sparsa A: prosa B: perpetua *Meister*

that the facts they are apparently going to state are true, and much more so with those who promise to say things which are false, since the latter repent more often, their promises are less reliable, and, if they do persist, they are easier to refute.

(2) Of witnesses who are compelled to appear, some want to damage the defendant, some do not. The prosecutor may or may not know this. (a) For the moment let us suppose he knows, though in either case great skill is required on the part of the interrogator. If he has a witness who wants to do damage, he should take care that this desire does not become obvious; he should not question him at first on the subject of the trial, but approach it in a roundabout way, so that what the witness really very much wanted to say seems to be forced out of him. And do not press the questioning too far, lest the witness lose some of his credibility by answering everything, but call him into service only for so much as is reasonable to get out of a single witness. With the witness who is going to tell the truth with reluctance, the prime success for the interrogator is to extort from him what he did not want to say. This can only be done by questioning which starts a long way from the point. He will then give answers which he does not think harm the Cause; later on, he will be led from a number of admissions to the point when he cannot deny what he does not want to say. For, just as in a formal speech we often gather together trivial Arguments, which in themselves seem to do the defendant no harm, and then prove the case against him by their cumulative effect, so a witness of this kind should be interrogated about many points, both preceding and following the events in question—places, times, persons, and so on—so that he is trapped

19 ut in aliquod responsum incidat post quod illi vel fateri quae volumus necesse sit vel iis quae iam dixerit repugnare. Id si non contingit, relicum erit ut eum nolle dicere manifestum sit, protrahendusque ut in aliquo quod vel extra causam sit deprehendatur, tenendus etiam diutius, ut omnia ac plura quam res desiderat pro reo dicendo suspectus iudici fiat: quo non minus nocebit quam si vera in reum dixisset.

20 At si, quod secundo loco diximus, nesciet actor quid propositi testis attulerit, paulatim et, ut dicitur, pedetentim interrogando experietur animum eius, et ad id responsum quod eliciendum erit per gradus ducet. Sed quia  
21 nonnumquam sunt hae quoque testium artes, ut primo ad voluntatem respondeant, quo maiore fide diversa postea dicant, est actoris<sup>3</sup> suspectum testem dum prodest dimittere.

22 Patronorum in parte expeditior, in parte difficilior interrogatio est. Difficilior hoc, quod raro umquam possunt ante iudicium scire quid testis dicturus sit, expeditior,  
23 quod cum interrogandus est sciunt quid dixerit. Itaque, quod in eo incertum est, cura et inquisitione opus est, quis reum premat, quas et quibus ex causis inimicitias habeat, eaque in oratione praedicenda atque amolienda sunt, sive

<sup>3</sup> *Regius*: oratoris AB

into some answer and then must either admit what we want or contradict his previous statements. If this cannot be done, it remains to make his reluctance to speak obvious; he should be led on till he is caught out in something (it may even be something not relevant to the Cause), and kept in play for a long time, so that the judge becomes suspicious of him, because he is saying everything, indeed more than the situation requires, to help the defendant. This will do just as much harm to the accused as if he had spoken the truth against him.

(b) If however (to take my second alternative) the prosecutor does not know what the witness's intentions are, he must proceed gradually, one step at a time, as they say, in his interrogation, and sound out the man's mind and lead him step by step to the answer which has to be elicited from him. But, as it is also sometimes a trick of witnesses to answer at first as you would wish, so as to be believed later on when they say something very different, the prosecutor's business is to dismiss a suspect witness while he is still an asset.

### *Defence treatment of witnesses*

For defending advocates, interrogation is in some respects easier, in others harder. It is harder because they can very seldom know before the trial what the witness is going to say; it is easier because, when he comes to be interrogated, they know what he has said. Therefore, as regards any uncertainty there is about him, there must be careful inquiry: we must find out who is against the defendant, what quarrel he has with him, and for what reasons. All this will need to be anticipated and disposed of in the



## QUINTILIAN

odio conflatos testes sive invidia sive gratia sive pecunia videri volumus. Et si deficientur numero pars diversa, paucitatem, si abundabit, conspiracyem, si humiles producet, vilitatem, si potentes, gratiam oportebit incessere.

- 24 Plus tamen proderit causas propter quas reum laedant exponere: quae sunt variae et<sup>4</sup> pro conditione cuiusque litis aut litigatoris. Nam contra illa quae supra diximus simili ratione responderi locis communibus solet, quia et in paucis atque humilibus accusator simplicitate gloriari potest, quod neminem praeter eos qui possint scire quaesierit, et multos atque honestos commendare aliquanto est facilius.
- 25 Verum interim et singulos ut exornare, ita destruere contingit aut recitatis in actione <testimoniis><sup>5</sup> aut testibus nominatis, quod iis temporibus quibus testis non post finitas actiones rogabatur facilius et frequentius fuit. Quid autem in quemque testium dicendum sit, sumi nisi ex ipsorum personis non potest.

- 26 Reliquae interrogandi sunt artes:<sup>6</sup> qua in re primum est nosse testem. Nam timidus terreri, stultus decipi, iracundus concitari, ambitiosus inflari, longus protrahi potest, prudens vero et constans vel tamquam inimicus et pervi-

<sup>4</sup> del. Halm      <sup>5</sup> add. Winterbottom, after Halm

<sup>6</sup> M.W.: partes AB

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<sup>8</sup> Q. implies that, in his day, examination of witnesses came after the formal pleadings, but that older practice was different. It appears from Cicero, *De domo* 45 that, in trials before the *comitia*, witness statements preceded the formal speeches. See J. Humbert, *Les plaidoyers écrits et les plaidoiries réelles de Cicéron* (1925) 53ff.

## BOOK 5.7

set speech, whether we want the witnesses to be thought to have been assembled by hatred, by envy, by influence, or by a bribe. If the other side's witnesses are lacking in numbers, we should attack them for their fewness: if there are many, for conspiracy; if they are of low class, for their poor character; if they are powerful people, for undue influence. It will be more useful, however, to expose their motives for injuring the defendant; these are various, and depend on the circumstances of each case or each litigant. The usual answer to the moves I have just mentioned is similarly by means of Commonplaces, since the prosecutor can boast of his honesty if he has produced only a few, humble witnesses, on the ground that he has sought no one who was not in a position to know the facts; while it is considerably easier for him to stress the value of witnesses who are numerous and of good standing. However, it is sometimes possible also to praise, or indeed to destroy, individuals, if <the evidence> has been read out in the course of the pleading, or if the witnesses have been named. This was easier and commoner in the days when witnesses were not examined after the end of the pleadings.<sup>8</sup> But what should be said against any particular witness depends entirely on the personalities involved.

### *Interrogation*

There remains the technique of interrogation. In this, the first thing is to know your witness. A timid witness can be terrorized, a fool deceived, the irascible provoked, the ambitious flattered, the long-winded encouraged in his prolixity. The sensible and steady witness must be either (1) sent away at once as hostile and obstinate, (2) refuted

27 cax dimittendus statim, vel non interrogatione sed brevi interlocutione patroni refutandus est, aut aliquo, si continget, urbane dicto refrigerandus, aut, si quid in eius vitam dici poterit, infamia criminum destruendus. Probos quosdam et verecundos non aspere incessere profuit; nam saepe qui adversus insectantem pugnassent modestia mitigantur.

Omnis autem interrogatio aut in causa est aut extra causam.

28 In causa, sicut accusatori praecepimus, patronus quoque altius et unde nihil suspecti sit repetita percontatione, priora sequentibus adplicando saepe eo perducit homines ut invitis quod prosit extorqueat. Eius rei sine dubio neque disciplina ulla in scholis neque exercitatio traditur, et naturali magis acumine aut usu contingit haec virtus. Si quod tamen exemplum ad imitationem demonstrandum sit, solum est quod ex dialogis Socraticorum maximeque Platonis duci potest: in quibus adeo scitae sunt interrogatio-  
29 nes ut, cum plerisque bene respondeatur, res tamen ad id quod volunt efficere perveniat. Illud fortuna interim praestat, ut aliquid quod inter se parum consentiat a teste dicatur, interim, quod saepius evenit, ut testis testi diversa dicat. Acuta autem interrogatio ad hoc quod casu fieri solet etiam ratione perducet.

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<sup>9</sup> In § 17.      <sup>10</sup> A point made by Crook (1995) 166, whose favourable estimate of Q.'s teaching should be noted.

<sup>11</sup> In 10.1.82–83, Q. speaks of the value (for acquiring stylistic fluency) of Xenophon and the other Socratics (he also quotes Aeschines of Sphettus, translated by Cicero, 5.11.27).

<sup>12</sup> Compare Cicero, *Pro Flacco* 22 for the value of skill in handling witnesses.

by a brief intervention from the defending advocate rather than by an interrogation, (3) (if the chance presents itself) discomfited by some witty observation, or (4) destroyed by the scandal of his offences, if anything can be brought against his way of life. It has proved useful to show restraint in attacking honest and modest witnesses, because people who would have fought back against an onslaught are often mollified by courtesy.

Every interrogation is concerned either (1) with matters within the Cause or (2) with something outside the Cause.

(1) *Within the Cause.* As we suggested to the prosecution,<sup>9</sup> the defending advocate, by beginning his questioning far back, in an area where there is nothing to suspect, and then setting the earlier answers against the later ones, often brings the witnesses to the point where he can extract from them whatever helps him against their will. There is of course no systematic teaching or practice of this skill in the schools,<sup>10</sup> and excellence in it depends more on natural acumen and experience. But if one has to propose a model for imitation, the only one is that which can be found in the dialogues of the Socratics, and especially Plato.<sup>11</sup> Here there are such shrewd interrogations that, even if most of the answers are good, the conclusion is the one the questioners want to elicit. Fortune is sometimes kind enough to us to let a witness say something inconsistent with his own statement; more often, witnesses contradict one another. An acute interrogation, however, will achieve by method the result commonly attained by chance.<sup>12</sup>

30 Extra causam quoque multa quae prosint rogari solent,  
 de vita testium aliorum, de sua quisque, si turpitude, si hu-  
 militas, si amicitia accusatoris, si inimicitiae cum reo: in  
 quibus aut dicant aliquid quod prosit, aut in mendacio vel  
 31 cupiditate laedendi deprendantur. Sed in primis interro-  
 gatio cum debet esse circumspecta, quia multa contra pa-  
 tronos venuste testes saepe respondent eique praecipue  
 rei vulgo favetur, tum verbis quam maxime ex medio  
 sumptis, ut qui rogatur (is autem saepius est imperitus)  
 intellegat, aut ne intellegere se neget, quod interrogantis  
 non leve frigus est.

32 Illae vero pessimae artes, testem subornatum in sub-  
 sellia adversarii mittere, ut inde excitatus plus noceat vel  
 dicendo contra reum cum quo sederit, vel, cum adiuvisse  
 testimonio videbitur, faciendo ex industria multa inmo-  
 deste atque intemperanter, per quae non a se tantum dictis  
 detrahat fidem, sed ceteris quoque qui profuerant auferat  
 utilitatem: quorum mentionem habui non ut fierent sed ut  
 vitarentur.

Saepe inter se collidi solent inde testatio, hinc testes.  
 Locus utrimque: haec enim se pars iure iurando, illa con-  
 sensu signantium tuetur.

(2) Outside the Cause, witnesses are often asked many things which may be of value to us, about the life of other witnesses or about their own: for example any scandal or degradation, friendship with the accuser, or hostility towards the defendant. Here they may either say something which is in our favour, or be caught out in a lie or in the wish to do harm. Above all, however, the interrogation must be, on the one hand, circumspect (because witnesses often make clever answers to disconcert defence advocates, and this is something commonly viewed with great favour) and, on the other hand, couched, so far as possible, in the language of ordinary speech, so that the witness (who is more often than not a person of no education) understands, or does not claim not to understand (this could be a serious embarrassment to the interrogator).

It is a disreputable practice, however, to do a deal with a witness and send him to sit on the opposing benches, so that, being called from that side, he does more damage, either by speaking against the defendant with whom he has been sitting, or else, while appearing to have helped him with his testimony, by deliberately giving much of it in an extravagant and exaggerated manner, so as not only to discredit his own statement but to cancel out the value of others who had previously been helpful. I mention these devices not to recommend them, but to warn against them.

### *Conflicts and failings of evidence*

Written evidence and oral evidence often conflict. There are general arguments on both sides. One party relies on the oath, the other on the agreement of the signatories.

33 Saepe inter testes et argumenta quaesitum est. Inde  
scientiam in testibus et religionem, ingenia esse in argu-  
mentis dicitur: hinc testem gratia metu pecunia ira odio  
amicitia ambitu fieri, argumenta ex natura duci, in his iudi-  
34 cem sibi, in illis alii credere. Communia haec pluribus cau-  
sis, multumque iactata sunt, semper tamen iactabuntur.

Aliquando utrimque sunt testes, et quaestio sequitur ex  
ipsis, utri meliores viri, ex causis, utri magis credibilia dixe-  
rint, ex litigatoribus, utri gratia magis valuerint.

35 His adicere si qui volet ea quae divina testimonia vo-  
cant, ex responsis oraculis ominibus, duplicem sciat esse  
eorum tractatum: generalem alterum, in quo inter Stoicos  
et Epicuri sectam secutos pugna perpetua est regaturne  
providentia mundus, specialem alterum circa partis divi-  
36 nationis,<sup>7</sup> ut quaeque in quaestionem cadet. Aliter enim  
oraculorum, aliter haruspicum augurum coniectorum ma-  
thematicorum fides confirmari aut refelli potest, cum sit  
rerum ipsarum ratio diversa.

Circa eius modi quoque instrumenta firmanda vel de-  
struenda multum habet operis oratio, si quae sunt voces  
per vinum somnum dementiam emissae, vel excepta parvo-

<sup>7</sup> *Regius (and Julius Victor 406,35 Halm = 47.25 Giomini-Celentano):* divinationem AB

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<sup>13</sup> See Cicero, *Partitiones oratoriae* 6, *Topica* 77; Julius Victor 406 Halm = 47 Giomini-Celentano. "Responses" are the pronouncements of soothsayers or augurs. Such things are particularly common in declamation themes. <sup>14</sup> Theon (*Progymnasmata* 12, 125-127 Spengel) gives a *thesis* on this subject.

<sup>15</sup> In Seneca, *Controversiae* 7.5 a five-year-old testifies against his father's agent.

The relative importance of witnesses and Arguments has often been discussed. On the one side it is argued that witnesses have knowledge and are bound by their oath, while Arguments are just a matter of mental ingenuity. On the other side, it is said that witnesses are procured by influence, fear, money, anger, hatred, friendship, or bribery, whereas Arguments are drawn from nature; with these the judge trusts himself, with witnesses he trusts others. These points are common to many Causes; they have been much canvassed, and they will continue to be canvassed.

Sometimes, both sides have witnesses, and the question arises (1) as regards themselves, which have the better character; (2) as regards the Causes, which parties have spoken more credibly; (3) as regards the litigants, which have had greater influence.

If anyone likes to add what are called "divine testimonies"<sup>13</sup>—from responses, oracles, and omens—he should be told that there are two ways of handling these: (1) a general treatment, including the perpetual debate between the Stoics and the Epicureans as to whether the universe is governed by Providence;<sup>14</sup> (2) a special treatment, relating to whatever type of divination comes into the question, since there are different ways of supporting or discrediting oracles, soothsayers, augurs, interpreters of dreams and omens, and astrologers, because the principles of the things themselves are different.

Oratory finds a lot of work also in supporting or discrediting other resources of the kind—words spoken in drunkenness, sleep, or madness, or the overheard remarks of little children,<sup>15</sup> who will be said by one side never to



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lorum indicia, quos pars altera nihil fingere, altera nihil iudicare<sup>8</sup> dictura est.

37 Nec tantum praestari hoc genus potenter, sed etiam ubi non est desiderari solet: 'Pecuniam dedisti: quis numeravit? ubi? unde?' 'Venenum arguis: ubi emi? a quo? quanti? per quem dedi? quo conscio?' Quae fere omnia pro Cluentio Cicero in crimine veneficii excutit.

Haec de inartificialibus quam brevissime potui.

### 8

- 1 Pars altera probationum, quae est tota in arte constatque rebus ad faciendam fidem adpositis, plerumque aut omnino negligitur aut levissime attingitur ab iis qui argumenta velut horrida et confragosa vitantes amoenioribus locis desident, neque aliter quam ii qui traduntur a poetis gustu cuiusdam apud Lotophagos graminis et Sirenum cantu deleniti voluptatem saluti praetulisse, dum laudis falsam imaginem persecuntur ipsa propter quam dicitur victoria cedunt.
- 2 Atqui cetera, quae continuo magis orationis tractu decurrunt, in auxilium atque ornamentum argumentorum comparantur, nervisque illis quibus causa continetur adiciunt inducti super corporis speciem: ut, si forte quid

<sup>8</sup> indicare *Burman*

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<sup>16</sup> 167.

<sup>1</sup> *Odyssey* 9.82ff., 12.142ff.

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make anything up, and by the other to have no judgement.

The following kind of questioning is one which is not only often employed to great effect, but also often demanded when it is not employed: "You gave the money: who paid it over? Where? Where did it come from?" "You accuse me of poisoning: where did I buy the poison? From whom? For how much? Who was my agent? Who was my accomplice?" Cicero deals with almost all these aspects in handling the poisoning charges in *Pro Cluentio*.<sup>16</sup>

This ends my account of nontechnical Proofs; I have made it as short as possible.

## CHAPTER 8

### *Technical Proofs*

The second class of Proofs is entirely within the scope of our art, and comprises various means of creating belief; it is however, in general, either completely neglected or very superficially treated by those who, as it were, avoid the rugged and stony ranges of Argument and lay themselves down in pleasanter places. Like the characters we read of in the poets, who preferred pleasure to safety, enervated by the taste of some herb in the land of the Lotus-eaters or by the song of the Sirens,<sup>1</sup> these people give up the victory which is the object of their speaking to pursue a false shadow of glory.

Yet all the other things, which are developed more in the continuous sweep of oratory, are devised simply to help and adorn Arguments; they add the appearance of a clothing of flesh to the sinews which hold the Cause together. Thus, if it is said that something has been done out

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factum ira vel metu vel cupiditate dicatur, latius quae cuiusque adfectus natura sit prosequamur. Isdem laudamus incusamus augemus minuimus describimus deteremus querimus consolamur hortamur. Sed horum esse opera in rebus aut certis aut de quibus tamquam certis loquimur potest. Nec abnuerim esse aliquid in delectatione, multum vero in commovendis adfectibus: sed haec ipsa plus valent cum se didicisse iudex putat, quod consequi nisi argumentatione aliaque omni fide rerum non possumus.

4 Quorum priusquam partior species, indicandum est esse quaedam in omni probationum genere communia. Nam neque ulla quaestio est quae non sit aut in re aut in persona, neque esse argumentorum loci possunt nisi in iis  
5 quae rebus aut personis accidunt, eaque aut per se inspicere solent aut ad aliud referri, neque ulla confirmatio nisi aut ex consequentibus aut ex pugnantibus, et haec necesse est aut ex praeterito tempore aut ex coniuncto aut ex insequenti<sup>1</sup> petere, nec ulla res probari nisi ex alia potest eaque  
6 sit oportet aut maior aut par aut minor. Argumenta vero reperiuntur aut in quaestionibus, quae etiam separatae a complexu rerum personarumque spectari per se possint, aut in ipsa causa, cum invenitur aliquid in ea non ex communi ratione ductum sed eius iudicii de quo cognoscitur proprium.

7 Probationum praeterea omnium aliae sunt necessariae, aliae credibiles, aliae non repugnantes. Et adhuc omnium probationum quadruplex ratio est, ut vel quia est aliquid,

<sup>1</sup> *Halm*: consequentibus AB

<sup>2</sup> Or "Incompatibilities": in Greek *μαχόμενα*.

of anger, fear, or greed, we may expatiate on the nature of each of these emotions. We use the same means to praise, blame, exaggerate, minimize, describe, deter, complain, comfort, or exhort. But the operation of these skills is confined to matters which are certain or which we speak of as certain. I would not deny that there is some good in giving pleasure, and a great deal in exciting emotion; but even these achievements are more effective when the judge thinks he has been properly instructed, and this is something we cannot do except by means of Argumentation and all the other methods of producing belief.

Before I make my classification of Arguments, I must point out that there are some features common to all kinds of Proofs. There is no Question which is not based either on things or on persons, and there can be no Topics of Argument not based on the accidents of things or persons, which in turn may be either considered in themselves or related to something else. Again, there can be no Confirmation which is not based either on Consequences or on Conflicts,<sup>2</sup> and these must be sought either in the Antecedents or in Contemporaneous Happenings or in the Sequel; nor can any one thing be proved except by means of something else, and that something else must be either greater or less or equal. As for Arguments, they are found either (1) in such Questions as can be considered by themselves in isolation from any context of facts or persons, or (2) in the Cause itself, when something is discovered in it which is not based on general principles but is peculiar to the case to be judged.

Furthermore, Proofs are either necessary, credible, or not contradictory. There are also four forms of Proof: (1) because something holds good, something else does not:

aliud non sit, ut: 'dies est, nox non est', vel quia est aliquid, et aliud sit: 'sol est super terram, dies est', vel quia aliquid non est, aliud sit: 'non est nox, dies est', vel quia aliquid non est, nec aliud sit: 'non est rationalis, nec homo est.'

His in universum praedictis partes subiciam.

9

- 1 Omnis igitur probatio artificialis constat aut signis aut argumentis aut exemplis. Nec ignoro plerisque videri signa partem argumentorum. Quae mihi separandi ratio haec fuit prima, quod sunt paene ex illis inartificialibus (cruenta enim vestis et clamor et livor et talia sunt instrumenta, qualia tabulae, rumores, testes, nec inveniuntur ab oratore, sed ad eum cum ipsa causa deferuntur), altera, quod signa, sive indubitata sunt, non sunt argumenta, quia ubi illa sunt quaestio non est, argumento autem nisi in re controversa locus esse non potest, sive dubia, non sunt argumenta sed ipsa argumentis egent.
- 2
- 3 Dividuntur autem in has primas duas species, quod eorum alia sunt, ut dixi, quae necessaria <sunt, alia quae non necessaria>.<sup>1</sup> Priora illa sunt quae aliter habere se non pos-

<sup>1</sup> *add. Spalding*

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<sup>3</sup> Cf. Sextus Empiricus, *Against the logicians* 2.108–123 (ed. R. G. Bury, LCL, vol. II, 294–302) for a critique of treatments of these hypothetical propositions. Q. seems to be trespassing on the philosophers' territory; but note that the rhetor Alexander Numeniu (7.409, 12 Walz) uses the same set of instances.

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“it is day, so it is not night”; (2) because something holds good, something else does too: “the sun is up, so it is day”; (3) because something does not hold good, something else does: “it is not night, so it is day”; (4) because something does not hold good, something else does not either: “he is not rational, so he is not a man.”<sup>3</sup>

Having stated these general points, I will proceed to details.

## CHAPTER 9

### *“Signs”*

Every Technical Proof consists of Signs, Arguments, or Examples. I am aware that many people regard Signs as a species of Arguments; but my reasons for distinguishing them are (1) that they almost come under Non-technical Proofs (bloodstained clothing, a cry, discoloration of the skin, and the like are “instruments” like documents, rumours, and witnesses; they are not discovered by the orator, they come to him with the Cause itself); (2) that if the Signs are indubitable, they cannot be Arguments, because where there are such Signs there can be no Question, and there is no scope for Argument except where there is a dispute; whereas if the Signs are doubtful, again they are not Arguments, but themselves stand in need of Arguments.

The classification of Signs is into two primary species, the necessary <and the unnecessary>, as I said above. (1) The former species consists of those which cannot be

sunt, quae Graeci tecmeria vocant. Quae sunt alyta semia: eoque<sup>2</sup> mihi vix pertinere ad praecepta artis videntur; nam  
 4 ubi est signum insolubile, ibi ne lis quidem est. Id autem accidit cum quid aut necesse est fieri factumve esse, aut omnino non potest fieri vel esse factum: quo in causis posito non est lis facti. Hoc genus per omnia tempora perpendi  
 5 solet: nam et coisse eam cum viro quae peperit, quod est praeteriti, et fluctus esse cum magna vis venti in mare incubuit, quod coniuncti, et eum mori cuius cor est vulneratum, quod futuri, necesse est. Nec fieri potest ut ibi messis sit ubi satum non est, ut quis Romae sit cum est Athenis, ut  
 6 sit ferro vulneratus qui sine cicatrice est. Sed quaedam et retrorsum idem valent, ut vivere hominem qui spirat et spirare qui vivit, quaedam in contrarium non recurrunt: nec enim, quia movetur qui ingreditur, etiam ingreditur  
 7 qui movetur. Quare potest et coisse cum viro quae non peperit, et non esse ventus in mari cum est fluctus, neque utique cor eius vulneratum esse qui perit. Ac similiter satum fuisse potest ubi non fuit messis, nec fuisse Romae qui non fuit Athenis, nec fuisse ferro vulneratus qui habet cicatricem.

8 Alia sunt signa non necessaria, quae εἰκότα Graeci

<sup>2</sup> *Radermacher*: quae AB

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<sup>1</sup> See Anonymus Seguerianus 150–151, 43 Dilts–Kennedy (Neocles): “A *tekmērion* is an irrefutable probability from the occurrence of which it follows that the fact of which it is a *tekmērion* invariably and always happens. A *sēmeion* is a *tekmērion* in the moment of being apprehended (ἤδη καταλαμβανόμενον, i.e. not yet established with the force of a *tekmērion*).”

otherwise: the Greeks call them *tekmēria*.<sup>1</sup> These are *aluta sēmeia* (“irrefutable signs”). They therefore seem to me scarcely to be relevant to the rules of rhetoric; for where a sign is “irrefutable” there is no dispute either. This happens either when something occurs or has occurred *necessarily*, or when it simply cannot occur or have occurred. If this is stated as part of the Cause, there is no dispute of fact. This type of Sign comes into play in all three divisions of time: it is necessary that a woman who has given birth should have had intercourse with a man (past),<sup>2</sup> that there should be waves when a high wind strikes the sea (contemporaneous), and that a man who has a wound in the heart should die (future). Again, there can be no harvest where no crop has been sown, a man cannot be at Rome when he is at Athens, or have been wounded by a sword when he has no scar. Some Signs work equally well in reverse also (a man who breathes is alive, a man who is alive breathes) but others are not reversible; it does not follow from “a man who comes in is moving” that “a man who moves is coming in.” Thus a woman who has not borne a child may have had intercourse with a man, and there may be waves without a high wind, and a man who dies has not necessarily had a wound in the heart. Similarly, a crop may have been sown where there has been no harvest, the man who was not at Athens may not have been at Rome, and the man who has a scar may not have been wounded by a sword.

(2) Other Signs are not necessary; the Greeks call them

<sup>2</sup> Compare Aristotle, *Rhetoric* 1. 1357b15, Cicero, *De inventione* 1.44.



vocant: quae etiam si ad tollendam dubitationem sola non sufficiunt, tamen adiuncta<sup>3</sup> ceteris plurimum valent.

9 Signum vocatur, ut dixi, σημεῖον (quamquam id quidam indicium, quidam vestigium nominaverunt): per quod alia res intellegitur, ut per sanguinem caedes. At sanguis vel ex hostia respersisse vestem potest vel e naribus profluxisse: non utique qui vestem cruentam habuerit homicidium fecerit. Sed ut per se non sufficit, ita ceteris adiunctum testimonii loco ducitur, si inimicus, si minatus ante, si eodem in loco fuit: quibus signum cum accessit, 10 efficit ut quae suspecta erant certa videantur. Alioqui sunt quaedam signa utrique parti communia, ut livores tumores (nam videri possunt et veneficii et cruditatis), et vulnus in pectore sua manu et aliena perisse dicentibus in aequo est. Haec proinde firma habentur atque extrinsecus adiuvantur.

12 Eorum autem quae signa sunt quidem sed non necessaria genus Hermagoras putat non esse virginem Atalanten quia cum iuvenibus per silvas vagetur. Quod si receperimus, vereor ne omnia quae ex facto ducuntur signa faciamus. Eadem tamen ratione qua signa tractantur. Nec mihi videntur Ariopagitae, cum damnaverint puerum coturni-

<sup>3</sup> *recc.*: adiuta AB (“assisted by”)

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<sup>3</sup> Q. here makes *eikos* (“probability”) one of the species of Sign. This is not a usual view (see Aristotle loc. cit., and *Analytica priora* 70a), but Anonymus Seguierianus 152 reports an opinion that *sēmeion* is the same as *eikos*.

<sup>4</sup> 5.9.3.

*eikota*.<sup>3</sup> Though they do not suffice by themselves to remove doubt, they have great force when combined with others.

As I have said,<sup>4</sup> we translate *sēmeion* as *signum*—though some have used *indicium* (“indication”) or *vestigium* (“trace”) instead. It is that from which something else is inferred, for example murder from blood. But it may be the blood of a sacrificed animal that has got on to the clothes, or just a nosebleed: a man whose clothes are bloody has not necessarily committed homicide. But though this Sign is not enough in itself, in combination with others it is taken as a piece of evidence, if the man is an enemy, or has previously made threats, or was in the same place. When the Sign is added to these circumstances, it makes what was only suspected seem certain. Moreover, there are some Signs which can be used by both parties, such as discoloured skin or swellings (which may be due either to poison or to indigestion); a wound in the chest too is equally convincing whether you are arguing for suicide or for murder. The force of these Signs depends entirely on the support they have from other sources.

Hermagoras<sup>5</sup> includes among Signs which are not necessary the argument that “Atalanta is not a virgin, because she roams in the woods with the young men.” If we accept this, I fear we must regard every inference from a fact as a Sign. However, they are treated like Signs. When the Areopagites condemned a young man for tearing out the

<sup>5</sup> Fr. 8 Matthes. Atalanta is the huntress whom Hippomenes tricked by throwing golden apples at her feet, so that he was able to outrun her (Ovid, *Metamorphoses* 10.565–707).

- cum oculos eruentem, aliud iudicasse quam id signum esse perniciosissimae mentis multisque malo futurae si adolevisset. Unde Spuri Maeli Marcique Manli popularitas signum adfectati regni est existimatum. Sed vereor ne longe nimium nos ducat haec via. Nam si est signum adulterae lavari cum viris, erit et convivere cum adolescentibus, deinde etiam familiariter alicuius amicitia uti: fortasse corpus vulsum, fractum incessum, vestem muliebrem dixerit mollis et parum viri signa, si cui (cum signum id proprie sit quod ex eo de quo quaeritur natum sub oculos venit) ut sanguis e caede, ita illa ex inpudicitia fluere videantur.
- 15 Ea quoque quae, quia plerumque observata sunt, vulgo signa creduntur, ut prognostica

vento rubet aurea Phoebe

et

cornix plena pluviam vocat improba voce,

- si causas ex qualitate caeli trahunt, sane ita appellentur.
- 16 Nam si vento rubet luna, signum venti est rubor: et si, ut idem poeta colligit, densatus et laxatus aer facit ut sit inde 'ille avium concentus', idem sentiemus. Sunt autem signa etiam parva magnorum, ut vel haec ipsa cornix; nam maiora minorum esse nemo miratur.

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<sup>6</sup> Quails were kept (like cocks) as fighting birds and as pets (Plutarch, *Alcibiades* 10; D'Arcy W. Thompson, *A Glossary of Greek Birds*, s.v. ὄρνυξ). Q.'s story is not known from other sources. <sup>7</sup> See Livy 4.12–16.

<sup>8</sup> See Livy 6.18–20 (see also 3.7.20, 5.13.24 for these *exempla*).

<sup>9</sup> The following weather signs are from Vergil, *Georgics* 1.431, 388, 422.

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eyes of quails,<sup>6</sup> it seems to me that they decided simply that this was a Sign of a pernicious character which would do harm to many if allowed to develop. So too the popular appeal of Spurius Maelius<sup>7</sup> and Marcus Manlius<sup>8</sup> was judged to be a Sign of their ambition to seize royal power. But I fear that this road is taking us too far. If it is a Sign of an adulteress that she goes to the baths with the men, it will also be one that she dines with young men, or has a close friendship with some men. And one could perhaps say that to have the body hair plucked, to walk with a mincing gait, or to wear clothes like a woman's were Signs of an effeminate and unmanly character, if one believed that these features were a result of an immoral life in the sense that blood is a result of murder; a Sign, after all, is properly something which presents itself to our eyes, having arisen from the matter under investigation.

Again, the common observations which are generally called "Signs," like the "prognostics"<sup>9</sup>—

for wind, gold Phoebe blushes

or

the tedious crow  
in full caw calls for rain

—may well deserve the name, if the reasons for them come from the state of the atmosphere. For if the moon blushes red with wind, the blush is a Sign of wind. And if, as the same poet reasons, the condensation and rarefaction of the air produces "that concert of birds," we shall think the same of this. There can in fact be small Signs of big things, like that crow; that there are big Signs of smaller things is no surprise to anybody.

- 1 Nunc de argumentis: hoc enim nomine complectimur omnia quae Graeci enthymemata, epichiremata, apodixis vocant, quamquam apud illos est aliqua horum nominum differentia, etiam si vis eodem fere tendit. Nam enthymema (quod nos commentum sane aut commentationem interpretemur, quia aliter non possumus Graeco melius usuri) unum intellectum habet quo omnia mente concepta
- 2 significat (sed nunc non de eo loquimur), alterum quo sententiam cum ratione, tertium quo certam quandam argumenti conclusionem vel ex consequentibus vel ex repugnantibus: quamquam de hoc parum convenit. Sunt enim qui illud prius epichirema dicant, pluresque invenias in ea opinione ut id demum quod pugna constat enthymema accipi velint, et ideo illud Cornificius contrarium appellat. Hunc alii rhetoricum syllogismum, alii imperfectum syllogismum vocaverunt, quia nec distinctis nec totidem partibus concluderetur: quod sane non utique ab oratore desideratur.
- 3
- 4 Epichirema Valgius adgressionem vocat; verius autem iudico non nostram administrationem, sed ipsam rem

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<sup>1</sup> Thus in Apsines 285 Spengel–Hammer (= 174 Dilts–Kennedy) Example (*paradeigma*) and Enthymeme are species of the genus Epicheireme, and in Anonymus Seguerianus 146 (41 Dilts–Kennedy) Example and Enthymeme are species of Artificial Proofs.

<sup>2</sup> These words have various other senses in Latin (as, e.g., in Cicero, *De oratore* 2.118), and Q.'s suggestion did not catch on. In 9.2.107 we learn that Visellius used *commentum* in this sense.

<sup>3</sup> Compare Aristotle, *Rhetoric* 2.1394a31.

<sup>4</sup> See *Ad Herennium* 4.25, with Caplan's note.

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### CHAPTER 10

#### *Arguments: terminology*

I now turn to Arguments. Under this name we include all that the Greeks call *enthymēmata*, *epicheirēmata*, or *apodeixeis*; in Greek usage there is some difference between these,<sup>1</sup> but the general sense is much the same. *Enthymēma* (which we may render as *commentum* or *commentatio*,<sup>2</sup> though, as we have no other term available, we shall do better to use the Greek) means (1) anything conceived in the mind (this is not the sense we are speaking of here); (2) a proposition with a reason;<sup>3</sup> (3) a certain mode of completing an Argument, derived either (a) from Consequents or (b) from Conflicts. (There is however no agreement about this. Some call the former of these two an Epicheireme, and you will find a majority to maintain that only that which is based on a conflict is an Enthymeme. Hence Cornificius calls it a “contrary.”)<sup>4</sup> Others called this a “rhetorical syllogism,”<sup>5</sup> others an “imperfect syllogism,” because its parts are not distinct or of the same number as those of the syllogism. (Completeness of argument is of course something *not* necessarily required of the orator.)

Valgius renders *epicheirēma* as “aggression”<sup>6</sup> or attack; I think the word Epicheireme is more correctly used not of our performance but of the actual thing that we are “at-

<sup>5</sup> Compare Aristotle, *Rhetoric* 1.1356b4, Demetrius, 32. See also below, 5.14.24. I have punctuated the translation to indicate that “rhetorical syllogism” and “imperfect syllogism” apply to 3(a) and 3(b); but they may apply only to 3(b).

<sup>6</sup> “Attack” or “lay hands on” is a common non-technical meaning of the verb *epicheirein*.

quam adgredimur, id est argumentum quo aliquid probaturi sumus, etiam si nondum verbis explanatum, iam tamen mente conceptum, epichirema dici.

- 5 Aliis videtur non destinata vel inchoata sed perfecta probatio hoc nomen accipere ultima specie, ideoque propria eius appellatione et maxime in usu posita significatur certa quaedam sententiae comprehensio, quae ex tribus mi-
- 6 nime partibus constat. Quidam epichirema rationem appellarunt, Cicero melius ratiocinationem, quamquam et ille nomen hoc duxisse magis a syllogismo videtur: nam et statum syllogisticum ratiocinativum appellat et exemplis utitur philosophorum. Et quoniam est quaedam inter syllogismum et epichirema vicinitas, potest videri hoc nomine recte abusus.
- 7 Ἀποδείξις est evidens probatio, ideoque apud geometras γραμμικαὶ ἀποδείξεις dicuntur. Hanc et ab epichiremate Caecilius putat differre solo genere conclusionis et esse apodixin imperfectum epichirema eadem causa qua diximus enthymema a syllogismo distare. [Nam et epichirema syllogismi pars est.]<sup>1</sup> Quidam inesse epichiremati apodixin putant et esse partem eius confirmantem.
- 8 Utrumque autem quamquam diversi auctores eodem modo finiunt, ut sit ratio per ea quae certa sunt fidem dubiis adferens: quae natura est omnium argumentorum, neque enim certa incertis declarantur.

<sup>1</sup> *del. Spalding: A omits et . . . inesse: edd. read enthymema for epichirema with no deletion*

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<sup>7</sup> I.e. the species which does not admit any further sub-species. See also 5.10.56.    <sup>8</sup> See 5.14.5ff.; Cicero, *De inventione* 1.51, 57–58.    <sup>9</sup> See 7.8.

tacking," namely the Argument by which we are going to prove something, even if not expressed as yet in words, but only formed in the mind.

Some take it that this name is given not to an intended or unfinished proof but to a perfect one of the lowest species;<sup>7</sup> and consequently, in the strict and most usual use of the term, it signifies a certain mode of structuring a thought which comprises at least three parts.<sup>8</sup> Some have rendered *epicheirēma* as *ratio*; Cicero's *ratiocinatio* is better, though he too seems to have derived the term rather from the Syllogism, since he calls the Syllogistic (Inferential) Issue<sup>9</sup> "ratiocinative," and uses examples from philosophers. Indeed, as there is a close relationship between Syllogism and Epicheireme, he may be thought to have been right in extending the use of the word like this.

Demonstration (*apodeixis*) is a clear proof; hence the term *grammikai apodeixeis* ("linear demonstrations") used by mathematicians.<sup>10</sup> Caecilius<sup>11</sup> thinks that the only difference between this and an Epicheireme lies in the form in which the Argument is concluded, and that the Apodeixis is an imperfect Epicheireme for the same reason that we said that an Enthymeme was different from a Syllogism. [For an Epicheireme is also part of a Syllogism.] Some think that an Apodeixis is inherent in an Epicheireme, and is the part of it which provides the Confirmation. But all authorities, whatever their differences, agree in defining both in the same way, namely as a reasoning which lends credence to what is doubtful by means of what is certain. This indeed is the nature of all Arguments: certainties cannot be proved by uncertainties.

<sup>10</sup> See 1.10.38.

<sup>11</sup> Fr. 31 Ofenloch.



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Haec omnia generaliter *pistis* appellant, quod etiam si propria interpretatione dicere fidem possumus, apertius tamen probationem interpretabimur.

- 9 Sed argumentum quoque plura significat. Nam et fabulae ad actum scaenarum compositae argumenta dicuntur, et orationum Ciceronis velut thema <cum> [ipse]<sup>2</sup> exponit Pedianus inquit: 'argumentum tale est', et ipse Cicero ad Brutum ita scribit: 'veritus fortasse ne nos in Catonem nostrum transferremus illum aliquid, etsi argumentum simile non erat'. Quo apparet omnem ad scribendum
- 10 destinatam materiam ita appellari. Nec mirum, cum id inter opifices quoque sit vulgatum, unde Vergili 'argumentum ingens', vulgoque paulo numerosius opus dicitur argumentosum. Sed nunc de eo dicendum argumento est quod ad probationem <pertinet . . . probationem><sup>3</sup> indicium fidem adgressionem eiusdem rei nomina facit, pa-
- 11 rum distincte, ut arbitrator. Nam probatio et fides efficitur non tantum per haec, quae sunt rationis, sed etiam per inartificialia. Signum autem, quod ille indicium vocat, ab argumentis iam separavi. Ergo cum sit argumentum ratio probationem praestans, qua colligitur aliud per aliud, et

<sup>2</sup> cum *add. Vassis: ipse del. Spalding*

<sup>3</sup> *add. Kiderlin. The lacuna conceals either a name (Celsus, as Regius thought, or Valgius, as Woehrer) or simply e.g. quidam*

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<sup>12</sup> Though *pistis* is, as Q. says, an equivalent of the Latin *fides*, "faith" or "credibility," when it has its technical sense (standard from Aristotle onwards) it has to be rendered by some word meaning "proof."

<sup>13</sup> See *OLD* s.v. 5.

<sup>14</sup> Asconius Pedianus: see e.g. *In Milonianam* 26 Kiessling-

All these things are in general called *pisteis*; strictly speaking, we can translate this as *fides* ("assurances"), but it will be clearer if we interpret it as "Proof."<sup>12</sup>

"Argument" also has various senses. Plots composed for the stage are called "arguments";<sup>13</sup> when Pedianus<sup>14</sup> expounds the theme of Cicero's speeches, he says "The argument is as follows"; and Cicero himself writes to Brutus<sup>15</sup> "Fearing perhaps that I might transfer something from there to my *Cato*, though the argument was different." It is clear then that any material intended for writing is so called. Nor is this surprising, for artists also often use it (hence Vergil's "mighty argument"),<sup>16</sup> and the adjective *argumentosus* is commonly applied to a work which is somewhat complex.<sup>17</sup> Here however we are speaking of the "argument" which <is relevant to Proof.> . . .<sup>18</sup> makes Proof, Sign, *fides*, and "Aggression" all names for the same thing; in my view, this is a confusion, for Proof and *fides* are effected not only by these rational means, but by non-technical ones also. The "Sign," which he calls *indicium*, I have already distinguished from Arguments. Therefore, since Argument is proof-giving reasoning, by which one thing is

Schoell (= 30 Clark); the *argumentum* is an introductory background explanation distinct from the *enarratio* of the text itself.

<sup>15</sup> *Fr. epist.* VII.7 Watt. *Cato* is Cicero's *De senectute*.

<sup>16</sup> *Aeneid* 7.791: of Io's metamorphosis into a cow, as portrayed in gold on Turnus' shield.

<sup>17</sup> In Sidonius, *Epistles* 9.9.10 *argumentosa* are "debatable points" (so Anderson, LCL edition, ad loc.). Here, however, the context makes it clear that it is a word used of works of art, presumably those which have a lot of mythological detail, and, as it were, tell many stories.

<sup>18</sup> See text note.

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12 quae quod est dubium per id quod dubium non est confirmat, necesse est esse aliquid in causa quod probatione non egeat. Alioqui nihil erit quo probemus, nisi fuerit quod aut sit verum aut videatur, ex quo dubiis fides fiat.

13 Pro certis autem habemus primum quae sensibus percipiuntur, ut quae videmus audimus, qualia sunt signa, deinde ea in quae communi opinione consensum est: 'deos esse', 'praestandam pietatem parentibus', praeterea quae legibus cauta sunt, quae persuasione etiam si non omnium hominum, eius tamen civitatis aut gentis in qua res agitur in mores recepta sunt, ut pleraque in iure non legibus sed moribus constant: si quid inter utramque partem convenit, si quid probatum est, denique cuicumque adversarius non  
14 contradicit. Sic enim fiet argumentum: 'cum providentia mundus regatur, administranda res publica <est: sequitur ut administranda res publica><sup>4</sup> sit, si liquebit mundum providentia regi.'

15 Debet etiam nota esse recte argumenta tractaturo vis et natura omnium rerum, et quid quaeque earum plerumque efficiat: hinc<sup>5</sup> enim sunt quae icota dicuntur.

16 Credibilium autem genera sunt tria: unum firmissimum, quia fere accidit, ut 'liberos a parentibus amari', alterum velut propensius: 'eum qui recte valeat in crastinum perventurum', tertium tantum non repugnans: 'in domo

<sup>4</sup> *add. Halm, after Regius*

<sup>5</sup> *Regius: nihil AB*

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<sup>19</sup> The connection is difficult, and in this lacunose context there may be something missing. Q.'s example evidently illustrates Class 2 of his types of "propositions accepted as certain."

<sup>20</sup> Text again uncertain: Regius' *hinc* is hardly satisfactory. Q. must have mentioned *credibilia*, as an interpretation of *eikota*.

inferred from another, and which confirms what is doubtful by means of what is not doubtful, there must be something in the Cause which does not need Proof; for unless there is something which either is or seems to be true, and from which assurance may be given to what is doubtful, there will be nothing by which we can prove anything.

Now we regard as certain (1) things perceived by the senses, for example what we see or hear (Signs come under this head); (2) things about which common opinion is unanimous: the existence of the gods, the duty of respecting parents; (3) provisions of laws; (4) what has been accepted as moral custom, if not in the belief of all mankind, at least in that of the city or nation where the case is being pleaded—many matters of right, for example, involve custom rather than laws; (5) whatever is agreed between both parties; (6) whatever has been proved; (7) lastly, whatever is not contradicted by our opponent. So this is the way in which the Argument will be formed:<sup>19</sup> “Since the world is governed by Providence, the state must also be controlled; <it follows that the state must be controlled,> if it is clear that the world is governed by Providence.”

A speaker who is to handle Arguments correctly must also know the force and nature of all things and what is the normal effect of everything; it is from here that Probabilities (*eikota*) are derived.<sup>20</sup>

Probabilities are of three kinds: (1) the strongest, because almost always true, for example that children are loved by their parents; (2) the highly likely, for example that a man in good health will survive till tomorrow; (3) the merely compatible, for example that a theft in a house was

- 17 furtum factum ab eo qui domi fuit'. Ideoque Aristoteles in secundo de arte rhetorica libro diligentissime est executus quid cuique rei et quid cuique homini soleret accidere, et quas res quosque homines quibus rebus aut hominibus vel conciliasset vel alienasset ipsa natura, ut divitias quid sequatur aut ambitum aut superstitionem, quid boni probent, quid mali petant, quid milites, quid rustici, quo
- 18 quaeque modo res vitari vel adpeti soleat. Verum hoc exequi mitto: non enim longum tantum, sed etiam impossibile ac potius infinitum est, praeterea positum in communi omnium intellectu. Si quis tamen desideraverit, a quo peteret ostendi.
- 19 Omnia autem credibilia, in quibus pars maxima consistit argumentationis, ex huius modi fontibus fluunt: 'an credibile sit a filio patrem occisum, incestum cum filia commissum', et contra veneficium in noverca, adulterium in luxurioso: illa quoque, 'an scelus palam factum', 'an falsum propter exiguam summam', quia suos quidque horum velut mores habet, plerumque tamen, non semper: alioqui indubitata essent, non argumenta.
- 20 Executiamus nunc argumentorum locos, quamquam quibusdam hi quoque de quibus supra dixi videntur. Locos appello non, ut vulgo nunc intelleguntur, in luxuriam et adulterium et similia, sed sedes argumentorum, in quibus
- 21 latent, ex quibus sunt petenda. Nam ut in terra non omni

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<sup>21</sup> 2.1-7; but Q.'s reference is not very precise. For example, Aristotle has nothing about "superstition."

committed by the man who was in the house. This is why Aristotle in the Second Book of the Rhetoric<sup>21</sup> made a very careful study of everything that commonly happens to all things and persons, and what things and persons Nature has made friendly or hostile to other things and persons: for example, what follows from wealth, ambition, or superstition; what good men approve; what bad men want; what soldiers or farmers want; and by what means things are normally avoided or sought. I refrain from pursuing this subject: it is not so much a long task as an impossible, or rather infinite, one, and besides it is a matter of common human understanding. But if anyone feels the lack of this information, I have at least shown him where to look.

All Probabilities—and the bulk of Argumentation consists of these—flow from questions such as the following: is it credible that a father has been killed by his son, or that he committed incest with his daughter? Or again (to take the opposite line) is poisoning credible in a stepmother, or adultery in a debauchee? Again, is a crime committed in public credible, or a forgery done for a small sum of money? Each of these offences has its particular character, as it were—as a rule, of course, not invariably, or these things would be certainties and not Arguments.

### *“Places” of Arguments*

Let us now investigate the Places where Arguments are found, though some hold that these are identical with the topics I have just been discussing. By “Places” I do not mean what are nowadays commonly meant by *loci*, namely set pieces against luxury, adultery, and the like, but the areas in which Arguments lurk and from which they have

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generantur omnia, nec avem aut feram reperias, ubi quaeque nasci aut morari soleat ignarus, et piscium quoque genera alia planis gaudent, alia saxosis, regionibus etiam litoribusque discreta sunt, nec helopem nostro mari aut scarum educas:<sup>6</sup> ita non omne argumentum undique venit  
 22 ideoque non passim quaerendum est. Multus alioqui error et,<sup>7</sup> exhausto labore, quod non ratione scrutabimur non poterimus invenire nisi casu. At si scierimus ubi quodque nascatur, cum ad locum ventum erit facile quod in eo est pervidebimus.

23 In primis igitur argumenta saepe a persona ducenda sunt, cum sit, ut dixi, divisio ut omnia in haec duo partiamur, res atque personas, ut causa tempus locus occasio instrumentum modus et cetera rerum sint accidentia.

Personis autem non quidquid accidit exequendum mihi est, ut plerique fecerunt, sed unde argumenta sumi  
 24 possunt. Ea porro sunt: genus, nam similes parentibus ac maioribus suis plerumque creduntur, et nonnumquam ad honeste turpiterque vivendum inde causae fluunt; natio, nam et gentibus proprii mores sunt nec idem in barbaro,  
 25 Romano, Graeco probabile est; patria, quia similiter etiam civitatum leges instituta opiniones habent differentiam;

<sup>6</sup> D.A.R. (cf. Varro, *De re rustica* 3.17.7): ducas AB

<sup>7</sup> rec.: est AB

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<sup>22</sup> The *helops* (Greek *ellops*), identification uncertain, is a large and noble fish; Ovid (*Halieutica* 96) agrees that it is *nostris incognitus undis*, "unknown in our waters." The *scarus* too (D'Arcy Thompson, *A Glossary of Greek Fishes* p. 238) is an eastern Mediterranean fish, but not unknown in Sicilian waters (Columella 8.16, Petronius 119.32). Both are delicacies.

to be drawn out. For just as all things do not grow in every country, and you would not find a particular bird or animal if you did not know its birthplace or its haunts, while even kinds of fish differ in preferring a smooth or a rocky bottom, or a particular area or coast (you would not land a sturgeon or a parrot-wrasse in our waters!)<sup>22</sup>—so every Argument is not found everywhere, and we have therefore to be selective in our search. Otherwise, we shall go greatly astray, waste our labour, and find ourselves depending on accident to discover what we fail to search for methodically. But if we know where everything is “born,” when we come to the Place we shall easily see the Argument in it.<sup>23</sup>

First, then, Arguments are often drawn from the person. As I said,<sup>24</sup> the Division means that we group them all under two heads, things and persons, so that motive, time, place, opportunity, means, method, and the like are accidents of things.

Accidents of persons I need not treat in detail, as many have, but shall only mention those from which Arguments can be derived. These are:

- (1) Birth, since men are generally believed to be like their parents and ancestors, and reasons for an honourable or a shameful life sometimes flow from this;
- (2) Nationality, since peoples have their own characters, and the same action is not equally probable in a barbarian, a Roman, and a Greek;
- (3) Country, because, in the same way, the laws, institutions, and opinions of societies differ;

<sup>23</sup> In what follows Q. is largely in agreement with Cicero, *De inventione* 1.34–77.

<sup>24</sup> 5.8.4.



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sexus, ut latrocinium facilius in viro, veneficium in femina credas; aetas, quia aliud aliis annis magis convenit; educatio et disciplina, quoniam refert a quibus et quo quisque modo sit institutus; habitus corporis, ducitur enim frequenter in argumentum species libidinis, robur petulantiae, his contraria in diversum; fortuna, neque enim idem credibile est in divite ac paupere, propinquis amicis clientibus abundante et his omnibus destituto (condicionis etiam distantia est: nam clarus an obscurus, magistratus an privatus, pater an filius, civis an peregrinus, liber an servus, maritus an caelebs, parens liberorum an orbus sit, plurimum distat); animi natura, etenim avaritia iracundia misericordia crudelitas severitas aliaque his similia adferunt fidem frequenter aut detrahunt, sicut victus luxuriosus an frugi an sordidus quaeritur; studia quoque, nam rusticus forensis negotiator miles navigator medicus aliud atque aliud efficiunt. Intuendum etiam quid adfectet quisque, locuples videri an disertus, iustus an potens. Spectantur ante acta dictaque; ex praeteritis enim aestimari solent praesentia. His adiciunt quidam commotionem

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- (4) Sex: it is easier to believe brigandage of a man, poisoning of a woman;
  - (5) Age, because different actions go better with different stages of life;
  - (6) Upbringing and training, since it makes a difference by whom and how an individual was educated;
  - (7) Physique, because beauty is often taken as an Argument to imply lust, strength to imply a tendency to violence, and the opposite qualities to draw opposite conclusions;
  - (8) Fortune, because one does not find the same thing credible in a rich man as in a poor man, or in a man who has many relatives, friends, and clients as in one who is without any;
  - (9) Difference of status, because there is a great gap between the famous and the obscure, the magistrate and the private citizen, father and son, citizen and foreigner, freeman and slave, married man and bachelor, the parent and the childless;
  - (10) Cast of mind, because avarice, irascibility, mercifulness, cruelty, severity, and the like often enhance or detract from credibility; one can ask, for instance, whether a man's lifestyle is luxurious, frugal, or miserly;
  - (11) Occupation: farmer, lawyer, business man, soldier, sailor, doctor all make different inferences probable;
  - (12) We need also to consider what claims a man makes: does he wish to appear rich or eloquent, just or powerful?
  - (13) Past actions and utterances are also considered, because we tend to infer the present from the past.
- Some add (14) emotion (by which they mean a temporary

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(accipi volunt temporarium animi motum, sicut iram pavorem), consilia item<sup>8</sup> et praeteriti et praesentis et futuri temporis: quae mihi, etiam si personis accidunt, referenda tamen ad illam partem argumentorum videntur quam ex causis ducimus, sicut habitus quidam animi; <in><sup>9</sup> quo tractatur amicus an inimicus.

30 Ponunt in persona et nomen: quod quidem accidere ei necesse est, sed in argumentum raro cadit, nisi cum aut ex causa datum est, ut Sapiens, Magnus, Pius,<sup>10</sup> aut et ipsum alicuius cogitationis attulit causam, ut Lentulo coniurationis, quod libris Sibyllinis haruspicumque responsis dominatio dari tribus Corneliis dicebatur, seque eum tertium esse credebat post Sullam Cinnamque quia et ipse Cornelius erat. Nam et illud apud Euripiden frigidum sane, quod  
31 nomen Polynicis ut argumentum morum frater incessit. Iocorum tamen ex eo frequens materia, qua Cicero in Verrem non semel usus est.

Haec fere circa personas sunt aut his similia; neque enim complecti omnia vel hac in parte vel in ceteris possumus, contenti rationem plura quaesituris ostendere.

<sup>8</sup> *edd.*: autem AB

<sup>9</sup> *add.* Spalding

<sup>10</sup> *Zumpt*: plenus AB

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<sup>25</sup> Discussed by Aristotle, *Rhetoric* 2.1400b16–25.

<sup>26</sup> This is from Cicero (*In Catilinam* 3.9): see also Sallust, *Catilina* 47. P. Cornelius Lentulus Sura was one of the conspirators. The Sibylline Books are the collection of oracles said to have been acquired by Tarquinius Priscus, and destroyed in a fire in 83 BC. Augustus subsequently assembled a replacement collection. The college of *haruspices*, the diviners, were called on officially to

disturbance of the mind, such as anger or fear); and (15) intentions, present, past, or future; but these, although they are accidents of persons, seem to me to be better referred to the class of Arguments derived from Causes, just like (16) some mental attitudes, under which comes “friend or enemy.”

Names<sup>25</sup> also are regarded as coming under “person.” They are indeed accidents of the person, but they rarely provide an Argument, unless the name is either given for a special reason, like Sapiens, Magnus, or Pius, or has itself provided a motive for some thought, as Lentulus got the idea of a conspiracy from the fact that the Sibylline books and the Responses of the Soothsayers said that absolute power was the lot of three Cornelii, and he thought, because he was a Cornelius, that he was number three after Sulla and Cinna.<sup>26</sup> There is also that point made by Euripides (admittedly very forced) where the brother attacks Polynices’ *name*,<sup>27</sup> as though it was proof of his character. Still, there is often matter for jest in a name; and Cicero availed himself of this more than once in his prosecution of Verres.<sup>28</sup>

These and the like are the considerations that relate to persons. I cannot cover everything, either here or elsewhere, and I content myself with pointing out the general principles on which further inquiry should proceed.

advise on prodigies and portents; their Responses were evidently kept on record.

<sup>27</sup> Meaning “much strife”: see the words of Eteocles (Polynices’ brother) in Euripides, *Phoenissae* 636–637.

<sup>28</sup> The name is also the Latin for “boar”: see Cicero, *In Verrem* 1.121, 4.95.

32 Nunc ad res transeo, in quibus maxime sunt personis iuncta quae agimus, ideoque prima tractanda.

In omnibus porro quae fiunt quaeritur aut quare aut  
 33 ubi aut quando aut quo modo aut per quae facta sunt. Ducuntur igitur argumenta ex causis factorum vel futurorum: quarum materiam [quam quidam ὕλην, alii δύναμιν nominaverunt]<sup>11</sup> in duo genera sed quaternas utriusque dividunt species. Nam fere versatur ratio faciendi circa bonorum adeptionem incrementum conservationem usum aut malorum evitationem liberationem inminutionem to-  
 34 lerantiam: quae et in deliberando plurimum valent. Sed has causas habent recta, prava contra ex falsis opinionibus veniunt. Nam est his initium ex iis quae credunt bona aut mala, inde errores existunt et pessimi adfectus, in quibus sunt ira odium invidia cupiditas spes ambitus audacia metus, cetera generis eiusdem. Accedunt aliquando fortuita, ebrietas, ignorantia, quae interim ad veniam valent, interim ad probationem criminis, ut si quis dum alii in-  
 35 sidiatur alium dicitur interemisse. Causae porro non ad convincendum modo quod obicitur, sed ad defendendum quoque excuti solent, cum quis se recte fecisse, id est honesta causa, contendit: qua de re latius in tertio libro

<sup>11</sup> *del. Kayser*

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<sup>29</sup> These headings come from the standard list of "circumstances" (*peristaseis*), based on the Aristotelian categories: Lausberg § 139.

<sup>30</sup> Probably an interpolation. [Hermogenes] *On invention* (*Peri heurseōs*) 140–141 Rabe gives *hylē* ("matter") as a "seventh" item, added by philosophers to the list of "circumstances"—

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I turn now to things. Of these, actions are the most closely linked to persons, and must therefore be treated first.

With every action, the question is either why or where or when or how or by what means it was done.<sup>29</sup> Arguments are therefore drawn (1) from the motives of past or future actions. The material of these motives [which some have called *hylē*, others *dynamis*]<sup>30</sup> falls into two genera, each of which is divided into four species. For the motive of any action is normally to do with the acquisition, increase, preservation, and use of good things, or with the avoidance, riddance, diminution, or tolerance of bad. (These points are also very important in Deliberation.)<sup>31</sup> These at least are the motives of right actions; wrong actions, on the other hand, arise from false opinions, because they originate with beliefs about good and evil, and from this spring mistakes and evil emotions, such as anger, hatred, envy, greed, expectation, ambition, audacity, fear, and the like. To these are sometimes added accidental circumstances, drunkenness, or ignorance, which sometimes serve as excuses, and sometimes to prove an offence, as for example when a man is said to have killed one person while lying in wait for another. Furthermore, motives are often considered not only to obtain a conviction for the alleged offence, but also in defence, as when a person contends that he did something rightly, that is for an honourable motive. This was discussed more fully in Book Three.<sup>32</sup> Questions of

wrongly, as he thinks, because “matter” really belongs to *all* the “circumstances.”

<sup>31</sup> See 3.8.

<sup>32</sup> 3.11.4–9.

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- 36 dictum est. Finitionis quoque quaestiones ex causis interim pendent: an tyrannicida qui tyrannum a quo deprensus in adulterio fuerat occidit, an sacrilegus qui ut hostes urbe expelleret arma templo adfixa detraxit.
- 37 Ducuntur argumenta et ex loco. Spectatur enim ad fidem probationis montanus an planus, maritimus an mediterraneus, consitus an incultus, frequens an desertus, propincus an remotus, oportunus consiliis an adversus: quam partem videmus vehementissime pro Milone tractasse Ciceronem. Et haec quidem ac similia ad coniecturam frequentius pertinent, sed interim ad ius quoque: 38 privatus an publicus, sacer an profanus, noster an alienus, 39 ut in persona magistratus, pater, peregrinus. Hinc enim quaestiones oriuntur: 'privatam pecuniam sustulisti, verum, quia de templo, non furtum sed sacrilegium est'; 'occidisti adulteros, quod lex permittit, sed quia in lupanari, caedes est'; 'iniuriam fecisti, sed quia magistratui, 40 maiestatis actio est'. Vel contra: 'licuit quia pater eram, quia magistratus'. Sed circa facti controversiam argumenta praestant, circa iuris lites materiam quaestionum. Ad qualitatem quoque frequenter pertinet locus; neque enim ubique idem aut licet aut decorum est: quin etiam in qua quidque civitate quaeratur interest; moribus enim et legi-

<sup>33</sup> Compare Seneca, *Controversiae* 4.7.

<sup>34</sup> Burman referred to Florus 1.22.23: the Romans in the Hannibalic war were short of arms, and therefore took down those which hung in temples (*detracta sunt templis*). <sup>35</sup> 53.

<sup>36</sup> See 3.6.38. <sup>37</sup> See 7.3.6. <sup>38</sup> Compare Seneca, *Controversiae* 9.2, *Declamationes minores* 252 (with Winterbottom's note); Bonner, *RD* 108–109. <sup>39</sup> These last examples are of persons, and so interrupt the argument. The passage

Definition also sometimes depend on motives. Is a man a tyrannicide if he has killed a tyrant who had caught him in the act of adultery?<sup>33</sup> Has a man committed sacrilege if he took the weapons down from the temple to drive the enemy out of the city?<sup>34</sup>

(2) Arguments are also derived from place. It is a consideration relevant to the credibility of a Proof whether the scene of the crime was in the mountains or on the plain, by the sea or inland, cultivated or uncultivated, frequented or isolated, near or far, good for the purpose or bad. We see this line followed with great vigour by Cicero in the *Pro Milone*.<sup>35</sup> These and similar points are more often relevant to Conjecture, but sometimes also to legal Issues: is the place private land or public, sacred or profane, our own or someone else's? This corresponds to "is he a magistrate, a father, or a stranger?" in a person. Here we have the source of various Questions: "You have stolen private money, but as it was from a temple, this is sacrilege, not theft."<sup>36</sup> "You have killed an adulterous couple, which is allowed by law; but as it was in a brothel, it is murder."<sup>37</sup> "You have committed an assault, but as it was against a magistrate, it is *maiestas*."<sup>38</sup> Or, on the other side, "It was legal, because I was his father, because I was a magistrate."<sup>39</sup> These considerations provide Arguments in disputes of Fact, and matter for Questions when the dispute is one of law. Place is also frequently relevant to Quality, since the same action is not necessarily lawful or fitting everywhere. Moreover, it makes a difference in what state the inquiry is held, because states differ in customs and laws. Place is also a

may have been subject to interpolation: *ut . . . peregrinus* and *iniuriam . . . magistratus* come under suspicion.



41 bus distant. Ad commendationem quoque et invidiam va-  
 let; nam et Ajax apud Ovidium 'ante rates' inquit 'agimus  
 causam, et mecum confertur Ulixes!' et Miloni inter cetera  
 42 obiectum est quod Clodius in monumentis ab eo maiorum  
 suorum esset occisus. Ad suadendi momenta idem valet,  
 sicut tempus, cuius tractatum subiungam.

Eius autem, ut alio loco iam dixi, duplex significatio est:  
 generaliter enim et specialiter accipitur. Prius illud est  
 'nunc', 'olim', 'sub Alexandro', 'cum apud Ilium pugnatum  
 est', denique praeteritum, instans, futurum. Hoc sequens  
 habet et constituta discrimina: 'aestate', 'hieme', 'noctu',  
 'interdiu', et fortuita: 'in pestilentia', 'in bello', 'in convi-  
 43 vio'. Latinorum quidam satis significari putaverunt si illud  
 generale 'tempus', hoc speciale 'tempora' vocarent. Quo-  
 rum utrorumque ratio et in consiliis quidem et in illo de-  
 monstrativo genere versatur, sed in iudiciis frequentissima  
 44 est. Nam et iuris quaestiones facit et qualitatem distinguit  
 et ad coniecturam plurimum confert, ut cum interim pro-  
 bationes inexpugnabiles adferat, quales sunt si dicatur, ut  
 supra posui, signator qui ante diem tabularum decessit,  
 aut commisisse<sup>12</sup> aliquid vel cum infans esset vel cum om-  
 45 nino natus non esset: praeter id quod omnia facile argu-  
 menta aut ex iis quae ante rem facta sunt aut ex coniunctis  
 rei aut insequentibus ducuntur. Ex antecedentibus: 'mor-  
 tem minatus es, noctu existi, proficiscentem antecessisti.'

<sup>12</sup> commisisse <quis> Watt 1998

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<sup>40</sup> Ovid, *Metamorphoses* 13.5–6. The scene of the trial is the scene of Ajax's former triumphs.      <sup>41</sup> *Pro Milone* 17.

<sup>42</sup> 3.6.25–26.

<sup>43</sup> 5.5.2.

powerful means of giving a favourable or invidious turn to the Cause. Ajax says in Ovid:

Is it *before the ships* we plead our cause,  
and *here* that I'm confronted with Ulysses?<sup>40</sup>

And among the complaints brought against Milo was the fact that Clodius was killed by him by the tombs of his ancestors.<sup>41</sup> Place has similar importance in deliberation, just like Time, to the discussion of which I now turn.

(3) Time, as I have said in another context,<sup>42</sup> has two meanings. It can be taken in a general or in a special sense. The general sense occurs in "now," "formerly," "under Alexander," "when they fought at Troy," and whenever we speak of past, present and future. The second sense refers both to regular distinctive periods of time—"in summer," "in winter," "at night," "in daytime"—and to chance ones—"in time of plague," "in war," "at dinner." Some Latin writers have thought that the meaning was sufficiently clear if they used the singular *tempus* of general Time, and the plural *tempora* of special Time. In both senses, Time is of course important in Deliberative and Epideictic oratory, but it is most often important in forensic cases. It produces Questions of Law, determines Quality, and makes a great contribution to Conjecture. Here it can sometimes provide irrefutable Proofs, for example (to take a case mentioned above),<sup>43</sup> if a person who is said to be a signatory to a document died before the date on which it was signed, or if a person is said to have committed some crime when he was a baby, or was not born at all. Again, all Proofs can easily be derived from antecedent, contemporaneous, or subsequent events. (a) Antecedent. "You threatened him with death, you went out by night, you

- 46 Causae quoque factorum praeteriti sunt temporis. Secundum tempus subtilius quidam quam necesse erat dividerunt, ut esset iuncti 'sonus auditus est', adhaerentis 'clamor sublatus est'. Insequentis sunt illa: 'latuisti', 'profugisti', 'livores et tumores apparuerunt'. Isdem temporum gradibus defensor utetur ad detrahendam ei quod obicitur fidem.
- 47 In his omnis factorum dictorumque ratio versatur, sed dupliciter. Nam fiunt quaedam quia aliud postea futurum est, quaedam quia aliud antea factum est: ut cum obicitur reo lenocinii, speciosae marito, quod adulterii damnatam quandam<sup>13</sup> emerit, aut parricidii reo luxurioso quod dixerit patri: 'non amplius me obiurgabis'. Nam et ille non quia emit leno est, sed quia leno erat emit, nec hic quia sic erat locutus occidit, sed quia erat occisurus sic locutus est.
- 48 Casus autem, qui et ipse praestat argumentis locum, sine dubio est ex insequentibus, sed quadam proprietate distinguitur, ut si dicam: 'melior dux Scipio quam Hannibal, vicit Hannibalem': 'bonus gubernator, numquam fecit naufragium': 'bonus agricola, magnos sustulit fructus'. Et contra: 'sumptuosus fuit, patrimonium exhaustit': 'turpiter

<sup>13</sup> quondam *Burman*

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<sup>44</sup> An obscure distinction: compare 7.2.46.

<sup>45</sup> The story is not clear. Perhaps the assumed law is that an adulteress can be sold into slavery; the husband buys such a person, and is believed to employ both her and his beautiful wife as prostitutes. With *Burman's quondam* ("once"), the adulteress herself has now become the wife.

started ahead of him." Motives of action also belong to the past. (b) The second category has been divided by some with unnecessary subtlety: "a sound was heard" is described as "Conjunct Time," and "a shout was raised" as "Adherent Time."<sup>44</sup> (c) To Subsequent Time belong "You hid yourself," "You ran away," "Discoloration and swellings appeared." The defence will use the same stages of Time to detract from the credibility of the charge.

The whole pattern of our actions and words is covered by these stages, but in two ways. Some things occur because something else is going to occur later; other things occur because something else happened before. For example (a) the husband of a beautiful woman is accused of keeping a brothel because he bought a woman who was convicted of adultery;<sup>45</sup> (b) a debauchee is accused of parricide because he said to his father "You won't lecture me any more." In the first case, the accused is not a brothel-keeper because he bought the woman, but bought her because he was a brothel-keeper; in the second, the accused is not a parricide because he said these words, but said them because he was going to kill his father.

Chance (which itself provides a Place for Arguments) certainly derives from Subsequent Time, though it has a special character of its own. For example: "Scipio was a greater general than Hannibal; he defeated Hannibal."<sup>46</sup> "He is a good pilot; he has never been wrecked." "He is a good farmer; he has had a huge harvest." Or with the opposite tendency: "He was extravagant; he has exhausted his

<sup>46</sup> Livy (35.14) and Plutarch (*Flaminius* 21) relate a meeting between Scipio and Hannibal, in which Hannibal says he would have reckoned himself first of all generals if he had beaten Scipio.

vixit, vel omnibus invisus est’.

- 49 Intuendae sunt praecipueque in coniecturis et facultates; credibilis est enim occisos a pluribus pauciores, a firmioribus inbecilliores, a vigilantibus dormientis, a praeparatis inopinatos: quorum contraria in diversum valent.
- 50 Haec et in deliberando intuemur et in iudiciis ad duas res solemus referre, an voluerit quis, an potuerit; nam et voluntatem spes facit. Hinc illa apud Ciceronem coniectura: ‘insidiatus est Clodius Miloni, non Milo Clodio: ille cum servis robustis, hic cum mulierum comitatu, ille equis, hic in raeda, ille expeditus, hic paenula inretitus.’
- 51 Facultati autem licet instrumentum coniungere; sunt enim in parte facultatis et copiae. Sed ex instrumento aliquando etiam signa nascuntur, ut spiculum in corpore inventum.
- 52 His adicitur modus, quem *τρόπον* dicunt, quo quaeritur quem ad modum quid sit factum. Idque tum ad qualitatem scriptumque pertinet, ut si negemus adulterum veneno licuisse occidere, tum ad coniecturas quoque, ut si dicam: ‘bona mente factum, ideo palam’, ‘mala, ideo ex insidiis, nocte, in solitudine’.
- 53 In rebus autem omnibus de quarum vi ac natura quaeritur quasque etiam citra complexum personarum ceterorumque ex quibus fit causa per se intueri possumus, tria

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<sup>47</sup> “Will and ability” or “motive and opportunity” (in Greek, *boulēsis kai dynamis*) are standard topics in Conjectural Causes (GD 46). <sup>48</sup> Cf. *Pro Milone* 28. <sup>49</sup> I.e. *per quae* (§ 32), as “Manner” below represents *quomodo* of § 32. <sup>50</sup> The “letter” of the law allows only killing by the sword *in flagrante delicto*; the

estate.” “He has lived a scandalous life; everyone hates him.”

(4) We must also bear Means in mind, especially in Conjectural Causes. It is more credible that a smaller number of men should be killed by a larger, the weaker by the stronger, the sleeping by the waking, the unsuspecting by the well prepared. Converse arguments work in the opposite direction. We take this into account also in Deliberation, while in forensic oratory we usually relate it to two questions—did he wish to do it? could he have done it?<sup>47</sup>—because hope also gives rise to wishes. Hence the famous Conjecture in Cicero: “Clodius lay in wait for Milo, not Milo for Clodius; Clodius had sturdy slaves with him, Milo had his womenfolk; Clodius was on horseback, Milo in a carriage; Clodius was stripped for action, Milo was entangled in his cloak.”<sup>48</sup>

(5) With Means we may combine Instruments,<sup>49</sup> since Resources also come under Means. Sometimes however Signs also arise from Instruments, as when the spear is found sticking in the corpse.

(6) To these again is added Manner (in Greek *tropos*): we ask *how* something has been done. This is relevant to Quality and to Letter and Spirit (if, for instance, we say that it was unlawful to kill the adulterer by poison)<sup>50</sup> and also to Conjecture (if, for instance, I were to say it was done with good intention, and so openly; or with bad intention, and so by ambush, at night, in an isolated place).

In all things the force and nature of which are in question, and which can be viewed apart from the involvement of persons and the other circumstances which create a

“spirit” may be said to condone any way of killing the offender.

sine dubio rursus spectanda sunt: an sit, quid sit, quale sit. Sed quia sunt quidam loci argumentorum omnibus communes, dividi haec tria genera non possunt, ideoque locis potius, ut in quosque incurrent, subicienda sunt.

54 Ducuntur ergo argumenta ex finitione seu fine; nam utroque modo traditur. Eius duplex ratio est: aut enim praecedente finitione quaeritur sitne hoc virtus, aut simpliciter<sup>14</sup> quid sit virtus. Id aut universum verbis complectimur, ut 'rhetorice est bene dicendi scientia', aut per partes, ut 'rhetorice est inveniendi recte et disponendi et eloquendi cum firma memoria et cum dignitate actionis  
55 scientia'. Praeterea finimus aut vi, sicut superiora, aut *ἐτυμολογία*, ut si assiduum ab aere dando et locupletem a locorum, pecuniosum a pecorum copia.

Finitioni subiecta maxime videntur genus species differens proprium: ex iis omnibus argumenta ducuntur.  
56 Genus ad probandam speciem minimum valet, plurimum ad refellendam. Itaque non quia est arbor platanus est, at quod non est arbor utique platanus non est: nec quod virtus est utique iustitia est, at quod non est virtus utique non

<sup>14</sup> praecedente finitione . . . simpliciter *Radermacher*, from *Julius Victor* 398,4–5 *Halm* = 36,11–12 *Giomini-Celentano*: simpliciter . . . praecedente (cedente *B*) finitione *AB*

<sup>51</sup> These are, of course, the questions which define the three basic Issues: Conjecture, Definition, Quality. <sup>52</sup> See 2.17 for these definitions. <sup>53</sup> Cicero (*Topica* 10) attributes this etymology to L. Aelius Stilo; the word is usually taken to come from *ad* + *sedere*, "sitting close to." However, a passage in the Twelve Tables (*ROL* 3. 426 = Gellius 16.10.5) clearly contrasts *adsiduus*, a "settler," with a citizen who is *proletarius*; and if wealth is a mark of the "settler," Aelius' etymology has point (I owe this note to

## BOOK 5.10

Cause, there are once again, of course, three points to be considered: whether it is, what it is, and of what kind it is.<sup>51</sup> However, as some Places of Arguments are common to all these, these three types cannot be kept separate, and it is therefore better to deal with all three Types of Issue under the various Places according to the way in which they occur in them.

Arguments, then, may be based on Definition (*finitio* or *finis*, both terms are traditional). This is of two kinds: either the Definition comes first, and we then ask whether this is Virtue; or we simply ask what Virtue is. We state the Definition either in general terms—"Rhetoric is the science of speaking well"—or by enumerating parts—"Rhetoric is the science of correctly discovering, arranging, and expressing in words, combined with a retentive memory and a dignified delivery."<sup>52</sup> Further we may define a word either by its significance (as in the above example) or by Etymology: for instance *assiduus* from *as* and *do*, "giving money,"<sup>53</sup> *locuples* from the abundance of "places" (*loca*), and *pecuniosus* from abundance of cattle (*pecus*).

The elements which seem particularly to belong to Definition are Genus, Species, Difference, and Property. Arguments may be derived from all these. (1) Genus is little use in proving Species, but very useful for eliminating it. An object is not a plane because it is a tree, but what is not a tree certainly cannot be a plane; a quality which is a virtue is not necessarily justice, but what is not a virtue cer-

Tobias Reinhardt). See also Maltby (1991), s.v. *assiduus*. The following two etymologies are correct: *locuples* and *pecuniosus* both mean "wealthy" (see Cicero, *De re publica* 2.16, Ovid, *Fasti* 5.281, Varro, *De lingua Latina* 5.92).



- potest esse iustitia. [Itaque a genere perveniendum est ad ultimam speciem, ut 'homo est animal' non est satis, id enim genus est: 'mortale'—etiam si est species, cum aliis tamen communis finitio: 'rationale'—nihil supererit ad demonstrandum quod velis.]<sup>15</sup> Contra species firmam probationem habet generis, infirmam refutationem. Nam quod iustitia est, utique virtus est: quod non est iustitia, potest esse virtus, si est fortitudo, constantia, continentia. Numquam itaque tolletur a specie genus, nisi ut omnes species quae sunt generi subiectae removeantur, hoc modo: 'quod neque inmortale est neque mortale, animal non est.'
- 57
- 58 His adiciunt propria et differentia. Propriis confirmatur finitio, differentibus solvitur. Proprium autem est aut quod soli accidit, ut homini sermo, risus, aut quidquid utique accidit, sed non soli, ut igni calfacere. Et sunt eiusdem rei plura propria, ut ipsius ignis lucere calere. Ita quodcumque proprium deerit solvet finitionem, non utique quodcumque erit confirmabit. Saepissime autem
- 59 quid sit proprium cuiusque quaeretur, ut, si per *ἐτυμολογίαν* dicatur: 'tyrannicidae proprium est tyrannum occidere', negemus: non enim si traditum sibi eum carnifex occiderit tyrannicida dicatur; nec si imprudens vel invitus.
- 60 Quod autem proprium non erit, differens erit, ut aliud est servum esse, aliud servire, qualis esse in addictis

<sup>15</sup> *del. Radermacher*

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<sup>54</sup> This passage, which is not in Julius Victor's version (398 Halm = 36 Giomini-Celentano) seems to interrupt Q.'s argument, and is probably rightly deleted. <sup>55</sup> See § 59, and 7.3.7. Questions of motive in tyrannicide often arise in declamations: *Declamationes minores* 345, Seneca, *Controversiae* 3.6, 4.7.

tainly cannot be justice. [Thus we must proceed from the Genus to the lowest Species: "Man is animal" is not enough, for this is the Genus. "Mortal," though a species, is a definition common to other animals; if you add "rational," nothing further remains to show what it is that you mean.]<sup>54</sup> (2) Species, on the other hand, offers a secure Proof of Genus, but a weak Refutation. For what is justice must certainly be a virtue; and what is not justice may still be a virtue, if it is courage, constancy, or self-control. Thus Genus will never be eliminated by Species, unless all the Species belonging to the Genus are eliminated; for instance "That which is neither immortal nor mortal is not an animal."

(3) Properties and Differentiae are the next point. A Definition is confirmed by Properties, destroyed by Differentiae. A Property is either (a) that which belongs to one object alone (as speech or laughter to man) or (b) that which necessarily belongs to something, but not to this alone (as heat to fire). The same thing may have several Properties, as fire itself has those of light and heat. Consequently, the absence of any Property will destroy a Definition; but its presence, whatever it is, will not necessarily confirm it. Property is a very frequent subject of inquiry. Suppose it was said, on the ground of the Etymology, that it is the Property of a tyrannicide to kill a tyrant. We should deny this: an executioner is not said to be a tyrannicide, if the tyrant is handed over to him to be put to death; nor is one who kills a tyrant unwittingly or unwillingly.<sup>55</sup>

What is not a Property will be a Differentia. To be a slave and to be in servitude are different: hence the com-

61 quaestio solet: 'qui servus est si manu mittatur, fit liberti-  
 nus, non item addictus', et plura, de quibus alio loco. Illud  
 quoque differens vocant, cum genere in species<sup>16</sup> diduc-  
 to<sup>17</sup> species ipsa discernitur. Animal genus, mortale spe-  
 cies, terrenum vel bipes differens; nondum enim pro-  
 prium est, sed iam differt a marino vel quadrupede: quod  
 62 non tam ad argumentum pertinet quam ad diligentem fini-  
 tionis comprehensionem. Cicero genus et speciem, quam  
 eandem formam vocat, a finitione diducit, et iis quae ad  
 aliquid sunt subicit: ut, si is cui argentum omne legatum  
 est petat signatum quoque, utatur genere: at si quis, cum  
 legatum sit ei quae viro mater familias esset, neget deberi  
 ei quae in manum non convenerit, specie, quoniam duae  
 formae sint matrimoniorum.

63 Divisione autem adiuvari finitionem docet, eamque  
 differre a partitione quod haec sit totius in partis, illa gene-  
 ris in formas. Partis incertas esse, ut 'quibus constet res  
 publica', formas certas, ut 'quot sint species rerum publi-  
 carum', quas tris accepimus: quae populi, quae paucorum,  
 64 quae unius potestate regerentur. Et ille quidem non iis

<sup>16</sup> *edd.*: speciem AB

<sup>17</sup> *edd.*: diductos A: deducto B

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<sup>56</sup> See 3.6.57, 7.3.26–27, *Declamationes minores* 311, 340, Calpurnius Flaccus 14, for exploitation of the legal difference between slavery and servitude for debt. <sup>57</sup> 7.3.26.

<sup>58</sup> See *Topica* 8: Q. seems to have understood Cicero's phrase "things which are in some way connected with the matter in question" (*quodam modo adfectae ad id de quo quaeritur*) as referring to "relatives" (πρός τι).

<sup>59</sup> So Cicero, loc. cit., who takes *materfamilias* to apply only to wives *in manu* (i.e. in the husband's legal power), although by his

mon question relating to persons in servitude for debt.<sup>56</sup> “If a slave is manumitted, he becomes a freedman; not so a person in servitude.” (There are other points like this, which I shall deal with later.)<sup>57</sup> It is also said to be a *Differentia* when the Genus is divided into Species and the Species itself is characterized. “Animal” is the Genus, “mortal” the Species, “terrestrial” or “biped” the *Differentia*. They are not yet Properties, but they do already mark a difference from “marine” or “quadruped.” This is not however as relevant to Argument as it is to the accuracy and completeness of the Definition. Cicero separates Genus and Species (which he also calls Form) from Definition and includes them under Relation.<sup>58</sup> For example, if the person who has been bequeathed “all the silver” claimed the silver coin as well, he would base his claim on Genus; on the other hand, if a legacy is left by a husband to a woman who was *materfamilias* in his household, and it is denied that the legacy is due to a woman who has never come into her husband’s legal power, the argument is from Species, because there are two types of marriage.<sup>59</sup>

Cicero also points out<sup>60</sup> that Division is an aid to Definition, and that it differs from Partition, inasmuch as Partition breaks up a whole into parts, while Division breaks up a Genus into Forms: the number of parts (on his view) is uncertain (“what elements make up the state?”) whereas the number of Forms is certain (“how many species of states are there? We are told there are three, namely those governed by the people, by a few, and by one man”).

time most women were not in this position, but remained either members of their own family or independent: Treggiari (1991) 16–36. <sup>60</sup> *Topica* 28.

exemplis utitur, quia scribens ad Trebatium ex iure ducere ea maluit: ego apertiora posui.

Propria vero ad coniecturae quoque pertinent partem, ut, quia proprium est boni recte facere, iracundi verbis <aut manu male facere, facta haec ab ipsis><sup>18</sup> esse credantur, aut contra. Nam ut quaedam in quibusdam utique <sunt, ita quaedam in quibusdam utique><sup>19</sup> non sunt, et ratio, quamvis sit<sup>20</sup> ex diverso, eadem est.

65 Divisio et ad probandum simili via valet et ad refellendum. Probationi interim satis est unum habere, hoc modo: 'ut sit civis, aut natus sit oportet aut factus'; utrumque  
66 lendum est: 'nec natus nec factus est'. Fit hoc et multiplex, idque est argumentorum genus ex remotione, quo modo efficitur totum falsum, modo id quod relinquitur verum. Totum falsum est hoc modo: 'Pecuniam credidisse te dicis: aut habuisti ipse aut ab aliquo accepisti aut invenisti aut surripuisti. Si neque domi habuisti neque ab aliquo accepisti' et cetera, 'non credidisti.'  
67 Relicum fit verum sic: 'hic servus quem tibi vindicas aut verna tuus est aut emptus aut donatus aut testamento relictus aut ex hoste captus aut alienus': deinde remotis prioribus supererit 'alienus'. Periculosum et cum cura intuendum genus, quia, si in proponendo unum quodlibet omiserimus, cum risu quoque tota

<sup>18</sup> *suppl. Halm, from Julius Victor 399.3 Halm = 37,14 Gio-  
mini-Celentano*    <sup>19</sup> *suppl. Kayser, from Julius Victor loc. cit.*

<sup>20</sup> *Halm: ita AB: del. Regius*

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61 The addressee of *Topica* was a noted lawyer.

62 Supplement uncertain: "to act wrongly" seems insufficiently specific to characterize the angry man: I should prefer something like *insultare*, "to insult."

He does not of course use these examples, because, writing to Trebatius,<sup>61</sup> he preferred examples from law; I have substituted plainer ones.

Properties also have a part to play in Conjecture: thus, since it is a Property of a good man to act rightly, and of an angry man to act <wrongly><sup>62</sup> in word <or deed>, we believe that <certain acts were committed by them> or not, as the case may be. For just as certain persons necessarily <possess> certain qualities, <so others necessarily> do not. The principle is the same, though it is based on opposite premises.

Division operates by a similar method both in Proof and in Refutation. For Proof, it is sometimes enough to establish one point: "To be a citizen, a man must either be born one or be made one." The demolition must refute both points: "He was neither born a citizen nor made one." This is done in various ways, and forms the class of Arguments by Elimination, by which means sometimes all the possibilities are proved false, and sometimes a remaining alternative is proved true. (1) All false: "You say you lent the money; you either had it yourself, or received it from somebody, or found it, or stole it. If you did not have it at home and you did not receive it from somebody"—and so forth—"you did not lend it." (2) Remaining alternative true: "This slave, whom you claim, is either your home-born slave, or was bought, or given to you, or left to you as a legacy, or captured from the enemy, or belongs to someone else." When the rest are eliminated, only "belonging to someone else" will remain. This is a risky procedure and needs to be watched carefully, because, if we leave out any one alternative in setting out the list, the whole thing is destroyed—and dissolves in general laughter. A safer proce-

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- 68 res solvitur. Tutius quod Cicero pro Caecina facit, cum interrogat, si haec actio non sit, quae sit (simul enim remouentur omnia): vel cum duo ponentur inter se contraria, quorum tenuisse utrumlibet sufficiet, quale Ciceronis est: 'unum quidem certe nemo erit tam inimicus Cluentio qui mihi non concedat, si constet corruptum illud esse iudicium, aut ab Habito aut ab Oppianico esse corruptum: si doceo non ab Habito, vinco ab Oppianico, si ostendo ab
- 69 Oppianico, purgo Habitem.' Fit etiam ex duobus, quorum necesse est <esse><sup>21</sup> alterum verum, eligendi adversario potestas, efficiturque ut utrum elegerit noceat. Facit hoc Cicero pro Oppio: 'utrum cum Cottam adpetisset an cum ipse se conaretur occidere telum e manibus ereptum est?' et pro Vareno: 'optio vobis datur, utrum velitis casu illo itinere Varenum usum esse an huius persuasu et inductu':
- 70 deinde utraque facit accusatori contraria. Interim duo ita proponuntur ut utrumlibet electum idem efficiat, quale est: 'philosophandum <est, etiam si non est philosophandum>',<sup>22</sup> et illud vulgatum: 'quo schema, si intellegitur? quo, si non intellegitur?' et 'mentietur in tormentis qui dolorem pati potest, mentietur qui non potest.'
- 71 Ut sunt autem tria tempora, ita ordo rerum tribus mo-

<sup>21</sup> *add. Halm*      <sup>22</sup> *add. recc.*

63 37.

64 *Pro Cluentio* 64.

65 *Fr. orat.* III.1 Schoell: Crawford (1994) 23–32.

66 *Fr. orat.* II.14 Schoell: Crawford (1994) 7–18. See also 4.1.74, 7.1.9, 9.2.56.

<sup>67</sup> This is from Aristotle's *Protrepticus* (fr. 51 Rose = 36 Düring): the question whether one should do philosophy or not is

dure is Cicero's in *Pro Caecina*,<sup>63</sup> when he asks "If this is not a ground of action, what is?" (for everything is thus eliminated at once), or the trick of putting forward two contrary propositions, to establish either of which will make your point: so in Cicero:<sup>64</sup> "There is certainly one thing that no one, however hostile to Cluentius, would not grant me: if it is agreed that the jury was bribed, it was bribed either by *Habitus* or by *Oppianicus*; if I show it was not by *Habitus*, I prove my point that it was by *Oppianicus*; if I show that it was by *Oppianicus*, I clear *Habitus*." One can also give one's opponent the choice between two propositions, one of which must be true, and ensure that whichever he chooses does his case harm. Cicero does this in the *Pro Oppio*<sup>65</sup>—"Was it when he had attacked *Cotta* or when he tried to kill himself that the weapon was snatched from his hands?"—and in the *Pro Vareno*:<sup>66</sup> "You have a choice; do you want to prove that *Vareno* chose that route by chance, or that he did so at this man's persuasion and inducement?"—and he then proceeds to make both alternatives work against the prosecution. Sometimes two propositions are put forward in such a way that the choice of either leads to the same conclusion: for example "We must philosophize <even though we must not philosophize>,"<sup>67</sup> or the common puzzle: "What is the use of a Figure, if it is understood? And what is its use if it is not understood?"<sup>68</sup> or "The man who can bear pain will lie under torture, the man who cannot will also lie."

Just as there are three divisions of Time, so the order of itself a philosophical question, whatever the answer. Q. may be using Cicero's version in *Hortensius* (fr. 12 Müller).

<sup>68</sup> See 9.2.69.



mentis consertus est: habent enim omnia <initium>,<sup>23</sup> incrementum, summam, ut iurgium, deinde <rixa, tum><sup>24</sup> caedes. Est ergo hic argumentorum quoque locus invicem probantium; nam et ex initiis summa colligitur, quale est: 'non possum togam praetextam sperare cum exordium pullum videam', et contra: 'non dominationis causa Sullam arma sumpsisse, argumentum est dictatura deposita.' Si-

72

73 Est argumentorum locus ex similibus: 'si continentia virtus, utique et abstinentia': 'si fidem debet tutor, et procurator'. Hoc est ex eo genere quod ἐπαγωγὴν Graeci vocant, Cicero inductionem. Ex dissimilibus: 'non si laetitia bonum, et voluptas': 'non quod mulieri, idem pupillo'. Ex contrariis: 'frugalitas bonum, luxuria enim malum': 'si malorum causa bellum est, erit emendatio pax': 'si veniam meretur qui imprudens nocuit, non meretur praemium qui imprudens profuit.' Ex pugnantibus: 'qui est sapiens, stul-

74

<sup>23</sup> *add. recc.*

<sup>24</sup> *add. Winterbottom*

<sup>25</sup> *Shackleton Bailey argues for a lacuna here: the missing passage would mean "when the question is whether the beginning should be referred to the culmination (for example . . . ) or . . ."*

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<sup>69</sup> *Exordium*, "beginning," is from *exordiri*, which has the technical meaning in weaving of "beginning the web" or "laying the warp." *Pullus* is the word used of the drab clothing of the lower classes: compare 2.12.10. The phrase is probably proverbial: a low-class origin gives no hopes of distinction: Otto (1890), s.v. *toga*.

events is made up of three stages: everything has < a beginning, > a development, and a culmination: quarrel, then < brawl, then > murder. So here too is an Place for Arguments which support one another. (1) The culmination may be inferred from the beginning: "I cannot hope for the toga with a purple edge when I see the weave begins so drab."<sup>69</sup> (2) The other way round: "Sulla's resigning the dictatorship is a proof that he did not take up arms to set up a tyranny."<sup>70</sup> (3) We can similarly argue forwards or backwards from the development stage both in Conjecture and in questions of Equity: should the culmination be referred to the beginning, that is, should the murder be set to the account of the man who started the quarrel?<sup>71</sup>

Arguments are also drawn:

(1) From Similarities: "If self-control is a virtue, abstinence must be one too"; "If a guardian owes a duty of trust, so does an agent." (This belongs to the category called *epagōgē* by the Greeks and "induction" by Cicero.)<sup>72</sup>

(2) From Dissimilarities: "If joy is a good thing, it does not follow that pleasure is"; "What applies to a woman need not apply to a ward."

(3) From Contraries: "Frugality is a good thing, for luxury is a bad thing"; "If war is the cause of ill, peace will be the cure"; "If a man who has accidentally done harm deserves pardon, a man who has accidentally done good does not deserve a reward."

(4) From Conflicts: "He who is wise is not a fool."

<sup>70</sup> Sulla's resignation was a hackneyed declamation theme: see 3.8.53; Juvenal 1.16.

<sup>71</sup> See text note; there may well be something missing.

<sup>72</sup> *De inventione* 1.51, *Topica* 10.

- tus non est.' Ex consequentibus sive adiunctis: 'si est bonum iustitia, recte iudicandum': 'si malum perfidia, non est fallendum': idem retro. Nec sunt his dissimilia ideoque huic loco subicienda, cum et ipsa naturaliter congruant: 'quod quis non habuit, non perdidit': 'quem quis amat, sciens non laedit': 'quem quis heredem suum esse voluit, carum habuit, habet, habebit.' Sed cum sint indubitata,
- 75 vim habent paene signorum insolubilium.<sup>26</sup> Sed haec consequentia dico [acolutha] (est enim consequens sapientiae bonitas), illa insequentia, [parepomena,]<sup>27</sup> quae postea facta sunt aut futura. Nec sum de nominibus anxius; vocet enim ut voluerit quisque, dum vis rerum ipsa manifesta sit appareatque hoc temporis, illud esse naturae.
- 76 Itaque non dubito haec quoque <vocare><sup>28</sup> consequentia, quamvis ex prioribus dent argumentum ad ea quae secuntur, quorum duas quidam species esse voluerunt: actionis, ut pro Oppio: 'quos educere invitos in provinciam non potuit, eos invitos retinere qui potuit?'; temporis, <ut><sup>29</sup> in Verrem: 'si finem praetoris edicto adferunt Kalendae Ian., cur non initium quoque edicti nascatur a Kalendis Ian.?'
- 77 Quod utrumque exemplum tale est ut idem in diversum, si retro agas, valeat; consequens enim est eos, qui inviti reti-

<sup>26</sup> *Regius*: innumerabilium AB

<sup>27</sup> *The Greek words acolutha and parepomena* (paregomena AB) *interrupt the construction: del. Winterbottom*

<sup>28</sup> *add. Spalding*      <sup>29</sup> *add. D.A.R.*

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<sup>73</sup> Anonymus Seguerianus 178 (31 Dilts-Kennedy) gives three kinds of *parepomena*—"before the event," "in the event," and "after the event."

(5) From Consequences or Adjuncts: “If justice is a good thing, we must judge rightly”; “If breach of faith is a bad thing, we must not deceive.” Likewise in reverse.

Similar to these, and so to be classified here, because they naturally belong to this group, are the following: “What one has never had, one has not lost”; “A man does not knowingly harm one whom he loves”; “If a man has appointed someone as his heir, he held him dear, still does, and will continue to do so.” But as these statements are indubitable, they almost have the force of irrefutable Signs. However, I call the first group Consequences [*akoloutha*], because goodness is a Consequence of wisdom, and the second Concomitants [*parepomena*], that is, things which happened before or will happen after.<sup>73</sup> I am not troubled about the names: call them what you will, so long as the meaning is clear, and it is seen that the one depends on the time, and the other on the nature of the fact. I have therefore no hesitation in also classifying the following as Consequences, although they offer an Argument from Antecedents to Sequels. Some have made two Species of these: (a) concerned with Action, as in *Pro Oppio*: “How could he have retained against their will people whom he could not take out to the province against their will?”<sup>74</sup> (b) concerned with Time, as in *In Verrem*:<sup>75</sup> “If the first of January marks the end of the praetor’s edict, why should not its beginning also be from the first of January?” Both these examples are such that the Argument would work in reverse. For it is a Consequence that those who could not be re-

<sup>74</sup> Cicero, *Fr. orat.* III.2 Schoell: Crawford (1994) p. 29.

<sup>75</sup> 1.109.

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neri non potuerint, invitos non potuisse educi.<sup>30</sup>

78 Illa quoque quae ex rebus mutuam confirmationem praestantibus ducuntur (quae proprii generis videri quidam volunt et vocant ἐκ τῶν πρὸς ἄλληλα, Cicero ex rebus sub eandem rationem venientibus) fortiter consequentibus iunxerim: 'si portorium Rhodiis locare honestum est, et Hermocreonti conducere', et: 'quod discere  
79 honestum, et docere'. Unde illa non hac ratione dicta sed efficiens idem Domiti Afri sententia est pulchra: 'ego accusavi, vos damnastis'. Est invicem consequens et quod ex diversis idem ostendit, ut qui mundum nasci dicit per hoc ipsum et deficere significet, quia deficit omne quod nascitur.

80 Simillima est his argumentatio qua colligi solent ex iis quae faciunt ea quae efficiuntur, aut contra, quod genus a causis vocant: haec interim necessario fiunt, interim plerumque sed non necessario. Nam corpus in lumine utique umbram facit, et umbra, ubicumque est, ibi esse corpus  
81 ostendit. Alia sunt, ut dixi, non necessaria, vel utrimque vel ex altera parte: 'sol colorat: non utique qui est coloratus a sole est': 'iter pulverulentum facit, sed neque omne iter pulverem movet, nec quisquis est pulverulentus ex itinere  
82 est.' Quae utique fiunt, talia sunt: 'si sapientia bonum

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<sup>30</sup> retineri . . . educi *D.A.R. after Gesner*: duci . . . retineri (retinere *A*) *AB. No interpretation of Q.'s example from In Verrem is given; there may therefore be something missing*

<sup>76</sup> So Cicero, *De inventione* 1.47 (same example); compare Aristotle, *Rhetoric* 2. 1397a23–27 (where the name is Diomedon).

<sup>77</sup> Compare (with Cousin) Ovid, *Metamorphoses* 13.308–309.

tained against their will could not have been induced to go there against their will.

So too I feel no hesitation in counting as Consequences those Arguments which are derived from mutually supportive facts (some make a separate class of these and call them Arguments "based on reciprocal relationship" and Cicero describes them as "coming under the same principle");<sup>76</sup> "If it is honourable for the Rhodians to farm out their harbour dues, it is honourable for Hermocreon to contract for them," or "What is honourable to learn is honourable to teach." Compare also the fine sentence of Domitius Afer which, though not of the same formal structure, has the same effect: "I prosecuted, you condemned."<sup>77</sup> An Argument which proves the same thing from an opposite position is also a reciprocal Consequence: for example, the man who says that the world was born means at the same time that it also decays, because the fact is that everything that is born decays.

(6) Very like these is the form of Argumentation by which effects are commonly inferred from what produces them, and vice versa; this is called "Argument from Causes." These conclusions are sometimes necessary, sometimes generally true but not necessary. For instance, a body necessarily casts a shadow in the light, and the shadow, wherever it falls, indicates that there is a body there. Others, as I said, are not necessary, either as regards both halves of the Argument, or as regards one. For example: "The sun tans the skin; but a man who is tanned has not necessarily been tanned by the sun"; "A journey makes one dusty; but not every journey produces dust, and not everyone who is dusty has come from a journey." Examples of necessary Arguments are: "If it is wisdom that makes a

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virum facit, bonus vir est utique sapiens', itemque: 'boni est honeste facere, mali turpiter, et qui honeste faciunt, boni, qui turpiter, mali iudicantur': recte. At [exercitatio plerumque robustum corpus facit, sed non quisquis est robustus exercitatus, nec quisquis exercitatus robustus est]<sup>31</sup> nec, quia fortitudo praestat ne mortem timeamus, quisquis mortem non timuerit vir fortis erit existimandus, nec si capitis dolorem facit inutilis hominibus sol est.

- 83 Haec ad exhortativum maxime genus pertinent: 'virtus facit laudem, sequenda igitur: at voluptas infamiam, fugienda igitur.' Recte autem monemur causas non utique ab ultimo esse repetendas, ut Medea:

utinam ne in nemore Pelio,

- 84 quasi vero id eam fecerit miseram aut nocentem quod illic ceciderint 'abiegnae ad terram trabes': et Philocteta Paridi:

si<sup>32</sup> inpar esses tibi, ego nunc non essem miser:

quo modo pervenire quolibet retro causas legentibus licet.

- 85 Illud his adicere ridiculum putarem nisi eo Cicero uteretur, quod coniugatum vocant, ut 'eos qui rem iustam

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<sup>31</sup> *del. Winterbottom; the example repeats the point made in § 81*      <sup>32</sup> Philocteta: "Pari duspari, si . . ." *Burman*

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<sup>78</sup> Ennius' version of the opening lines of Euripides' *Medea* (253–261 Warmington = ciii Jocelyn), also quoted *Ad Herennium* 2.34, *De inventione* 1.91, and several other times in Cicero. If the pine tree had never been felled, the Argo would never have sailed, Medea would never have met Jason, and the dreadful situation in which she finds herself could not have arisen.

man good, a good man must be wise”; or again, “It is the part of a good man to act honourably, of a bad man to act basely, and those who act honourably are judged good men, and those who act basely, bad.” A correct conclusion. However [“training generally makes the body strong; but not every strong man has been trained, nor is every trained man strong”] because courage prevents our fearing death, it does not follow that everyone who is not afraid of death is to be regarded as courageous; nor, if the sun produces headache, does it follow that it is useless to mankind.

These Arguments are particularly relevant to Deliberative Oratory: “Virtue brings praise, so it should be pursued; Pleasure brings disgrace, so it should be shunned.” But it is right that we should be warned that causes should not necessarily be sought very far back, as in Medea’s

Ah! would that never in the woods of Pelion . . . ,<sup>78</sup>

as though what made her a miserable and guilty woman was that “the beams of fir fell to the ground” on Pelion; or again in Philoctetes’ words to Paris:

If you had had no *parity* with yourself,  
I should not now have been so miserable.<sup>79</sup>

By tracing causes back like this, one can arrive anywhere one chooses.

(7) If Cicero had not done so, I should have thought it ridiculous to add here what they call Conjugate Argu-

<sup>79</sup> Accius 569 Warmington (*ROL* 2. 518). There is a pun on *par* and *Paris*. Burman’s *Pari duspari* (“Paris, ill-fated Paris”) alludes to the play on words in *Iliad* 3.39 (see also Ovid, *Heroides* 13.43).



faciunt iuste facere', quod certe non eget probatione: 'quod compascuum est, compascere licere'.

- 86 Quidam haec, quae vel ex causis vel ex efficientibus diximus, alieno nomine vocant ecbasis, id est exitus; nam nec hic aliud tractatur quam quid ex quoque eveniat.
- 87 Adposita vel comparativa dicuntur quae minora ex maioribus, maiora ex minoribus, paria ex paribus probant. Confirmatur coniectura ex maiore: 'si quis sacrilegium facit, faciet et furtum'; ex minore: 'qui facile ac palam mentitur, peierabit'; ex pari: 'qui ob rem iudicandam pecuniam accepit, et ob dicendum falsum testimonium accipiet.'
- 88 Iuris confirmatio est eius modi; ex maiore: 'si adulterum occidere licet, et loris caedere'; ex minore: 'si furem nocturnum occidere licet, quid latronem?'; ex pari: 'quae poena adversus interfectorem patris iusta est, eadem adversus matris'; quorum omnium tractatus versatur in syllogismis. Illa magis finitionibus aut qualitatibus prosunt: 'si robor corporibus bonum, non [est]<sup>33</sup> minus sanitas'; 'si furtum scelus, magis sacrilegium'; 'si abstinentia virtus, et continentia'; 'si mundus providentia regitur, administranda res publica'; 'si domus aedificari sine ratione non potest, quid <urbs universa?>;<sup>34</sup> 'si agenda<sup>35</sup> navaliuni cura, et armamentariorum.'<sup>36</sup>

<sup>33</sup> *del. M.W.*      <sup>34</sup> *add. Radermacher*

<sup>35</sup> *Burman*: agenda si B: agendas A

<sup>36</sup> *Zumpt*: armorum AB

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<sup>80</sup> *Topica* 12, with the same example of common grazing. See also Aristotle, *Topica* 114a27.

<sup>81</sup> Lausberg § 381.      <sup>82</sup> Lausberg §§ 395–396.

ment:<sup>80</sup> for instance, “Those who do a just thing are acting justly” (which surely needs no Proof), or “Common grazing may be grazed in common.”

Some call the Arguments which we have described as based on reasons or efficient causes by the foreign name *ekbasis*, that is “outcome.”<sup>81</sup> For here too the only point considered is what comes out of each individual thing.

(8) Arguments which prove the lesser from the greater, the greater from the lesser, or equals from equals, are called Apposite or Comparative Arguments.<sup>82</sup> A Conjecture is confirmed (a) “from the greater”: “If anyone commits sacrilege, he will also commit theft,” (b) “from the lesser”: “A man who lies easily and openly will also commit perjury,” (c) “from equals”: “A man who has taken a bribe to give a judgement will also take one to give false witness.” A legal point is confirmed (a) “from the greater”: “If it is lawful to kill an adulterer, it is lawful to flog him”; (b) “from the lesser”: “If it is lawful to kill a nocturnal thief, what about a violent robber?” (c) “from equals”: “The punishment which is just for a parricide is also just for a matricide.” The basis of the treatment of all these is Syllogism. In Issues of Definition and Quality, the following Arguments are more useful: “If strength is good for the body, health is no less so”;<sup>83</sup> “If theft is a crime, sacrilege is a greater one”; “If abstinence is a virtue, so is continence”; “If the world is governed by providence, the state must be governed”; “If a house cannot be built without a plan, what of <a whole city?>” > “If we must guard naval stores, so must we stores of arms.”

<sup>83</sup> Or, keeping *est* and punctuating after it: “If strength is not a good thing for the body, health is even less so.”

- 90 Ac mihi quidem sufficeret hoc genus, sed in species se-  
catur. Nam et ex pluribus ad unum et ex uno ad plura  
(unde est 'quod semel, et saepius') et ex parte ad totum et  
ex genere ad speciem et ex eo quod continet ad id quod  
continetur, aut ex difficilioribus ad facilia et ex longe po-  
91 sitis ad propiora, et ad omnia quae contraria<sup>37</sup> sunt, eadem  
ratione argumenta ducuntur. Sunt enim et haec maiora et  
minora aut certe vim similem optinent. Quae si persequa-  
mur, nullus erit ea concidendi modus: infinita est enim rer-  
rum comparatio—iucundiora graviora, magis necessaria  
<minus necessaria>,<sup>38</sup> honestiora utiliora: sed mittamus  
92 plura, ne in eam ipsam quam vito loquacitatem incidam.  
Exemplorum quoque ad haec infinitus est numerus, sed  
paucissima attingam. Ex maiore pro Caecina: 'quod exerci-  
tus armatos movet, id advocationem non videbitur mo-  
visse?' Ex faciliore in Clodium et Curionem: 'ac vide an  
facile fieri tu potueris, cum is factus non sit cui tu  
93 concessisti.' Ex difficiliore: 'vide quaeso, Tubero, ut qui de  
meo facto non dubitem de Ligari audeam dicere'; et  
item:<sup>39</sup> 'an sperandi Ligario causa non sit cum mihi apud  
te locus sit etiam pro altero deprecandi?' Ex minore pro  
Caecina: 'itane? scire esse armatos sat est ut vim factam

<sup>37</sup> *D.A.R.*: contra haec *AB*      <sup>38</sup> *add. Winterbottom*

<sup>39</sup> et item *Marshall AJP* 95 (1974) 81: et ibi *B*: tibi *A*: et alibi  
*Winterbottom*

84 43.

<sup>85</sup> *Fr. orat.* XIV.7 Schoell; Crawford (1994) 240. The speech was delivered in the Senate, and not published by Cicero (*Ad Atticum* 2.12.2, 3.15.3). It dealt with Clodius' impiety in going to the rites of the Bona Dea, and consisted largely of invective.

## BOOK 5.10

Personally, I should be satisfied with this generic classification; but there is also a division into species. For on the same principle Arguments can be derived (a) from many to one; (b) from one to many (hence “What happens once, can happen more often”); (c) from part to whole; (d) from Genus to Species; (e) from container to content; (f) from difficult to easy; (g) from remote to close at hand—and indeed from anything to its contrary. In fact, these contrasts are all between greater and lesser, or at least have a similar force; if we followed them all up, there will be no end to the possible subdivisions. The range of Comparison is indeed infinite: pleasanter, graver; more <or less> necessary; more honourable, more expedient. Let us say no more; I do not want to fall into the very longwindedness I am trying to avoid! The number of relevant examples also is infinite, and I shall mention only very few. (a) “From the greater,” in *Pro Caecina*:<sup>84</sup> “Can we think that what moves armies under arms did not move a group of lawyers?” (b) “From the easier,” in *Against Clodius and Curio*:<sup>85</sup> “Consider whether it would have been easy for you to be elected, when the man in whose favour you withdrew failed to get in.” (c) “From the more difficult”: “Observe, please, Tubero, that I, who do not hesitate to speak of my own action, venture to speak of Ligarius’.” Again: “Is there no reason for Ligarius to hope, when there is room for me even to plead the case of another before you?”<sup>86</sup> (d) “From the lesser,” in *Pro Caecina*:<sup>87</sup> “Indeed? Is knowing that the men were armed sufficient for you to prove that violence

<sup>86</sup> *Pro Ligario* 8, 31.

<sup>87</sup> 45.

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probes, in manus eorum incidere non est satis?

94 Ergo, ut breviter contraham summam, ducuntur argumenta a personis causis locis tempore (cuius tres partes diximus, praecedens coniunctum insequens), facultatibus (quibus instrumentum subiecimus), modo (id est, ut quidque sit factum), finitione, genere specie differentibus propriis, remotione, divisione, initio incremento summa, similibus dissimilibus, pugnantibus, consequentibus, efficientibus, effectis, eventis, coniugatis,<sup>40</sup> comparatione (quae in pluris diducitur species).

95 Illud adiciendum videtur, duci argumenta non a confessis tantum sed etiam a fictione, quod Graeci καθ' ὑπόθεσιν vocant, et quidem ex omnibus isdem locis quibus superiora, quia totidem species esse possunt fictae quot  
96 verae. Nam fingere hoc loco est proponere aliquid quod, si verum sit, aut solvat quaestionem aut adiuvet, deinde id de quo quaeritur facere illi simile. Id quo facilius accipiant iuvenes nondum scholam egressi, primo familiaribus  
97 magis ei aetati exemplis ostendam. Lex: 'qui parentes non aluerit, vinciat'. Non alit quis, et vincula nihilo minus recusat. Utitur fictione, si miles, si infans sit, si rei publicae

<sup>40</sup> Capperonnier: fugatis A: om. B

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<sup>88</sup> A summary list (but not the same) is given by Minucianus, 343 Spengel-Hammer. For the whole of this section, see Lausberg §§ 373-399.

<sup>89</sup> Lausberg § 398; Julius Victor (403 Halm = 43 Giomini-Celentano) depends on Q.

<sup>90</sup> Compare Seneca, *Controversiae* 1.1, 1.7; *Declamationes maiores* 5; Bonner, *RD* 95-96.

was done, but falling into their hands is not?"

And so, to sum up briefly: Arguments are derived from Persons; Motives; Places; Time (of which we distinguished three phases, Antecedent, Contemporary, and Subsequent); Means (under which we included Instruments); Manner (that is, how something was done); Definition; Genus, Species, and Differentiae; Properties; Elimination; Division; Beginning, Development, and Culmination; Similarities and Dissimilarities; Contradictions; Consequences; Causes and Effects; Outcomes; Conjugates; and Comparison, which is divided into a number of Species.<sup>88</sup>

### *Fictitious grounds of Arguments*

I think I should add that Arguments may be taken not only from agreed facts, but from fictitious assumptions<sup>89</sup> (the Greeks speak of this type as "hypothetical," *kat' hypothesein*), and in all the categories listed above, because there can be just as many Species based on fiction as on reality. Fiction here means, first, putting forward something which, if true, would either destroy the point raised or strengthen it; and secondly, making the subject of the inquiry appear parallel to our fiction. To help young students who have not yet left school to grasp this more easily, I will first illustrate by examples more familiar to the young. "Law: He who has not supported his parents should be put in prison.<sup>90</sup> An individual fails to support his parents, and yet declines to go to prison." He uses a fiction: suppose he was a soldier, a baby, or absent on public business. Or

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causa absit. Et illa contra optionem fortium: 'si tyrannidem petas, si templorum eversionem'.

98 Plurimum ea res virium habet contra scriptum. Utitur his Cicero pro Caecina: 'Unde tu aut familia aut procurator tuus. Si me vilicus tuus solus deiecisset. . . si vero ne habeas quidem servum praeter eum qui me deiecerit', et alia in eodem libro plurima.

99 Verum eadem fictio valet et ad qualitates: 'si L. Catilina cum suo consilio nefariorum hominum quos secum eduxit hac de re posset iudicare, condemnaret L. Murenam'; et ad amplificationem: 'si hoc tibi inter cenam et in illis inmanibus poculis tuis accidisset'. Sic et: 'si res publica vocem haberet'.

100 Has fere sedes accepimus probationum in universum, quas neque generatim tradere sat est, cum ex qualibet earum innumerabilis argumentorum copia oriatur, neque per singulas species exequi patitur natura rerum: quod qui sunt facere conati, duo pariter subierunt incommoda, ut et  
101 nimium dicerent nec tamen totum. Unde plurimi, cum in hos inexplicabiles laqueos inciderunt, omnem, etiam quem ex ingenio suo potuerant habere, conatum velut  
102 adstricti certis legum vinculis perdiderunt et magistrum respicientes naturam ducem sequi desierunt. Nam ut per

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<sup>91</sup> *GD* 24–25; Bonner, *RD* 88; Q. 7.1.24–25, 7.5.4; Calpurnius Flaccus 26, 27, 35, etc.

<sup>92</sup> 55.

<sup>93</sup> *Pro Murena* 83.

<sup>94</sup> *Philippics* 2.62.

<sup>95</sup> See *In Catilinam* 1.27.

again, against the war hero's choice of reward:<sup>91</sup> "Should you have it if you are aiming at tyranny, or at destroying the temples?"

This device is particularly effective in countering the Letter of the Law. Cicero uses it in *Pro Caecina*:<sup>92</sup> "From where you or your household or your agent have driven him.' Suppose your bailiff had turned me out on his own . . . But suppose you don't even own a slave except the man who turned me out." There are many other examples in this speech.

Fiction also helps us with Quality—"If Catiline could judge this case with a jury of the rascals whom he took with him, he would condemn Lucius Murena"<sup>93</sup>—and with Amplification: "If this had happened to you at dinner, in the midst of your monstrous potations."<sup>94</sup> So also "If the state could speak."<sup>95</sup>

### *Some general reflections on choosing Proofs*

Such, in broad outline, are the traditional Places of Proof. It is not enough to teach the generic types, because an uncountable stock of individual Arguments arises out of each Genus; nor, on the other hand, does nature allow us to pursue the various Species one by one; seeing that those who have tried to do this have suffered from the double disadvantage of saying too much and yet not saying it all. Consequently, most students, finding themselves caught in this inextricable tangle, have imagined themselves constrained by inflexible binding laws, and have therefore abandoned even such efforts as their talents allowed, and have kept their eyes fixed on their teacher and stopped following the guidance of nature. For, granted that it will not



se non sufficiet scire omnes probationes aut a personis aut a rebus peti, quia utrumque in plura dividitur, ita ex antecedentibus et iunctis et insequentibus trahenda esse argumenta qui acceperit num protinus in hoc sit instructus, ut  
 103 quid in quaque causa ducendum sit ex his sciat?—praesertim cum plurimae probationes in ipso causarum complexu reperiantur, ita ut sint cum alia lite nulla communes, eaeque sint et potentissimae et minime obviae, quia communia ex praeceptis accepimus, propria invenienda sunt.  
 104 Hoc genus argumentorum sane dicamus ex circumstantia, quia *περίστασι* dicere aliter non possumus, vel ex iis quae cuiusque causae propria sunt: ut in illo adultero sacerdote, qui lege qua unius servandi potestatem habebat se ipse servare voluit, proprium controversiae est dicere: ‘non unum nocentem servabas, quia te dimisso adulteram occidere non licebat’; hoc enim argumentum lex facit,  
 105 quae prohibet adulteram sine adultero occidere. <Est> et<sup>41</sup> illa, in qua lex est ut argentarii dimidium ex eo quod debebant solverent, creditum suum totum exigerent; ‘argentarius ab argentario <creditum exigit, negat adversarius iure><sup>42</sup> solidum peti. Proprium ex materia est argumentum creditoris, idcirco adiectum esse in lege ut argentarius totum exigeret: adversus alios enim non opus fuisse lege,

<sup>41</sup> *add. Shackleton Bailey*

<sup>42</sup> *add. Radermacher*

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<sup>96</sup> See *Declamationes minores* 284: a husband has caught a priest in adultery; the priest has a legal power of annulling sentence against one person, and claims it to save himself; the husband however disregards this, kills him, and is now charged with murder.

<sup>97</sup> The law is a datum of the exercise, not necessarily a real one:

be enough to know that all Proofs are derived either from Persons or from Things (because both of these have numerous subdivisions), still will anyone who has learned that Arguments are to be taken from Antecedent, Contemporaneous, and Subsequent events, be therefore automatically enabled to know what has to be taken from these sources in each particular Cause? Especially as most Proofs are discovered in the actual complexities of Causes, and so have nothing in common with any other dispute! Moreover these are both the strongest and also the least obvious, because we have learned the common ideas from the rules, while points peculiar to the case have to be discovered. Anyway, let us call this type of Argument one “based on circumstances” (there is no other way of translating *peristasis*) or “on the special features of the individual Cause.” For example, in the case of the adulterer priest who chose to use his power of saving one life to save his own,<sup>96</sup> it is a special feature of the *controversia* that we can say “You were saving more than one life, because once *you* were spared it was no longer lawful to kill the woman.” (This argument follows from the law which forbids an adulteress to be killed without the adulterer.) Or take the case in which the law is that bankers may pay only a half of what they owe, but may claim the whole of what they are owed, and a banker <claims a debt> from another banker <while his opponent denies that it is legal> for it to be claimed in full.<sup>97</sup> Peculiar to the theme is the creditor’s Argument, that there was a special reason for the clause in the law allowing a banker to claim the whole; in the case of

Gaius 4.64 discusses debts due to an *argentarius*, but the relevance of this to this theme is not clear.

cum omnes praeterquam ab argentariis totum exigendi ius haberent.

- 106 Cum multa autem novantur in omni genere materiae, tum praecipue in iis quaestionibus quae scripto constant, quia vocum et in singulis ambiguitas frequens et adhuc in  
 107 coniunctis magis. Et haec ipsa plurium<sup>43</sup> legum aliorumve scriptorum vel congruentium vel repugnantium complexu varientur necesse est, cum res rei aut ius iuris quasi signum est. 'Non debui tibi pecuniam: numquam me appellasti, usuram non accepisti, ultro a me mutuatus es.' 'Lex est: qui patri proditoris reo non adfuerit, exheres sit. Negat filius, nisi si pater absolutus sit.' Quid signi? Lex altera: 'proditoris damnatus cum avvocato exulet'. Cicero pro Cluentio P. Popilium et Tiberium Guttam dicit non iudicii corrupti sed ambitus esse damnatos. Quid signi? Quod accusatores eorum, qui erant ipsi ambitus damnati, e lege sint post hanc victoriam restituti.
- 109 Nec minus in hoc curae debet adhiberi, quid proponendum, quam quo modo sit quod proposueris probandum: hic immo vis inventionis maior, certe prior. Nam ut tela supervacua sunt nescienti quid petat, sic argumenta,

<sup>43</sup> plurium <rerum aut> *Kiderlin*

<sup>98</sup> See 7.1.42–63.

<sup>99</sup> Compare *Declamationes minores* 334.

<sup>100</sup> 98.

other debtors, there would have been no need for this, because everyone has a right to claim his whole debt except from a banker.

Many innovations are made in all kinds of themes, but especially in Questions depending on the Letter of the Law, because there is often verbal ambiguity, not only in individual words but even more in whole phrases. These considerations are themselves bound to vary when there is a set of several laws or other written texts which may either support or contradict one another, one fact serving as a Sign of another fact, or one point of law of another point of law. "I did not owe you money; you never summoned me for debt; you took no interest; indeed, you borrowed from me yourself." Again: a law says "A man who has failed to defend his father on a charge of treason is to be disinherited."<sup>98</sup> A son says this does not apply unless the father is acquitted. What Sign can be found? A second law, which says "A person convicted of treason shall be exiled together with his advocate."<sup>99</sup> Cicero in *Pro Cluentio*<sup>100</sup> says that Publius Popilius and Tiberius Gutta were condemned not for giving a corrupt verdict but for offering a bribe. What is the Sign of this? That their accusers, who had themselves been convicted of bribery, were restored in accordance with the law after their victory.

### *The case of the Thebans v. the Thessalians*

But just as much care should be taken in deciding what to put forward as in working out how what you have put forward should be proved. Indeed, Invention is *more* important here, and certainly comes first. For just as weapons are no use unless you know the target, so Arguments are

- 110 nisi provideris cui rei adhibenda sint. Hoc est quod com-  
prenderi arte non possit, ideoque, cum plures eadem didice-  
rint, generibus argumentorum similibus utentur, alius alio  
plura quibus utatur inveniet. Sit exempli gratia proposita  
controversia quae minime communes cum aliis quaestio-  
111 nes habet: 'Cum Thebas evertisset Alexander, invenit  
tabulas quibus centum talenta mutua Thessalis dedisse  
Thebanos continebatur. Has, quia erat usus commilitio  
Thessalorum, donavit his ultro: postea restituti a Casandro  
Thebani repossunt Thessalos. Apud Amphictyonas agitur.'  
Centum talenta et credidisse eos constat et non recepisse.  
112 Lis omnis ex eo quod Alexander ea Thessalis donasse dicitur  
pendet. Constat illud quoque, non esse iis ab Alexan-  
dro pecuniam datam: quaeritur ergo an proinde sit quod  
113 datum est ac si pecuniam dederit. Quid proderunt argu-  
mentorum loci nisi haec prius videro, nihil eum egisse  
donando, non potuisse donare, non donasse? Et prima qui-  
dem actio facilis ac favorabilis repetentium iure quod vi sit  
ablatum: sed hinc aspera et vehemens quaestio exoritur de  
iure belli, dicentibus Thessalis hoc regna, populos, fines  
114 gentium atque urbium contineri. Inveniendum contra est  
quo distet haec causa a ceteris quae in potestatem victoris  
venirent, nec circa probationem res haeret, sed circa pro-

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<sup>101</sup> This Greek theme is not attested elsewhere, though Alexander's sack of Thebes in 335 BC and its subsequent restoration by Cassander formed a favourite setting for declamation: Kohl (1915) 331-336. For an imaginary case before the Amphictyones (the association of "dwellers around" Delphi, which could punish offenders against the sanctuary, even to the point of ordering a Sacred War) see Cicero, *De inventione* 2.69. Q.'s remark (§ 118) that a plea of equity would weigh heavily is appropriate to this religious court.

superfluous unless you have first seen to what they should be applied. This is something that cannot be covered by textbooks; and this is why, when a number of people have learned the same rules, they will use similar types of Arguments, though one will find more to use than another. Let us take for example a *controversia* in which the Questions have very little in common with other themes. "When Alexander sacked Thebes, he found documents showing that the Thebans had lent a hundred talents to the Thessalians. Because he had had the military assistance of the Thessalians, he made them a present of the documents. Later, when the Thebans were restored by Cassander, they claimed repayment from the Thessalians. The case is pleaded before the Amphictyones."<sup>101</sup> It is agreed that they lent the hundred talents and have not got it back. The whole dispute hangs on the fact that Alexander is said to have given this present to the Thessalians. It is also agreed that they were not given any money by Alexander. The question therefore is whether his gift is tantamount to his having given money. What use will the Places of Arguments be, unless I first see that his gift had no effect, that he had no power to make it, and that in fact he did not make it? The first part of the plea is easy and attractive, based on the right to recover what was taken by force; but then arises a thorny and controversial question about the laws of war, for the Thessalians will say that kingdoms, peoples, and the frontiers of nations and cities depend on these. To answer this, we have to discover in what respect this Cause differs from others relating to property that falls into the power of a conqueror. The problem lies not in the Proof, but in the proposition to be put forward. (1) Let us

- positionem. Dicamus in primis: in eo quod in iudicium deduci potest nihil valere ius belli, nec armis erepta nisi armis posse retineri. Itaque, ubi illa valeant, non esse iudicem:
- 115 ubi iudex sit, illa nihil valere. Hoc inveniendum est, ut adhiberi possit argumentum: ideo captivos, si in patriam suam redierint, liberos esse quia bello parta non nisi eadem vi possideantur. Proprium et illud causae, quod Amphictyones iudicant, ut alia apud centumviros, alia
- 116 apud privatum iudicem in isdem quaestionibus ratio. Tum secundo gradu, non potuisse donari a victore ius, quia id demum sit eius quod teneat: ius, quod sit incorporale, adprendi manu non posse. Hoc reperire est difficilius quam cum inveneris argumentis adiuvere, ut alia sit condicio heredis, alia victoris, quia ad illum ius, ad hunc res transeat.
- 117 Proprium deinde materiae, ius publici crediti transire ad victorem non potuisse, quia quod populus crediderit omnibus debeatur, et, quamdiu quilibet unus superfuerit, esse eum totius summae creditorem, Thebanos autem non
- 118 omnis in Alexandri manu fuisse. Hoc non extrinsecus probatur, quae vis est argumenti, sed ipsum per se valet. Tertii loci pars prior magis vulgaris, non in tabulis esse ius, itaque multis argumentis defendi potest. Mens quoque Alexandri duci debet in dubium, honorarit eos an deceperit. Illud

begin by saying that the laws of war have no force in matters which can be brought to trial, and that what is taken by force of arms can only be retained by force of arms; consequently, where arms prevail, there is no judge; and where there is a judge, arms do not prevail. The point to be discovered, to enable this Argument to be applied, is that, if captives have returned to their own country, they are free precisely because what was acquired by war can only be retained by the same force. Another peculiarity of the Cause is that the judges are the Amphictyones. (Compare the way in which the same Questions will require different treatment in the centumviral courts and before a private judge.) (2) Secondly, let us urge that the right could not have been given by the conqueror, because the only thing which is his is what he holds, and a right, being incorporeal, cannot be physically seized. Discovering this line is more difficult than supporting it, once it is discovered, with Arguments—for example, that the position of an heir and that of a conqueror may be different, because the *right* passes to the heir, and only the actual *object* to the conqueror. Again, it is a special feature of this theme that the right over a public debt could not have passed to the conqueror, because what the people has lent is owed to all, and, so long as any one individual survives, he is the creditor for the entire sum; and the Thebans had not all been in Alexander's power. This point is not proved by external evidence (the Argument is too powerful to need this) but is strong enough on its own. (3) The first part of the third topic—namely that right does not depend on documents—is more banal, and so can be defended by many Arguments. (4) Alexander's intentions should also be brought into question; did he honour the Thessalians or



iam rursus proprium materiae et velut novae controversiae, quod restitutione recepisse ius, etiam si quod amiserint, Thebani videntur. Hic et quid Casander velit quaeritur. Sed vel potentissima apud Amphictyonas aequi tractatio est.

- 119 Haec non idcirco dico quod inutilem horum locorum ex quibus argumenta ducuntur cognitionem putem, alioqui nec tradidissem, sed ne se qui cognoverint ista, si cetera neglegant, perfectos protinus atque consummatos putent et nisi in ceteris quae mox praecipienda sunt elaboraverint mutam quandam scientiam consecutos intellegant.
- 120 Neque enim artibus editis factum est ut argumenta inveniremus, sed dicta sunt omnia antequam praeciperentur, mox ea scriptores observata et collecta ediderunt. Cuius rei probatio est quod exemplis eorum veteribus utuntur et ab oratoribus illa repetunt, ipsi nullum novum et quod dictum non sit inveniunt.
- 121 Artifices ergo illi qui dixerunt. Sed habenda his quoque gratia est, per quos labor nobis detractus est. Nam quae priores beneficio ingenii singula invenerunt, nobis et non sunt requirenda et notata omnia. Sed non magis hoc sat est quam palaestram didicisse nisi corpus exercitatione continentia cibus, ante

deceive them? (5) Again peculiar to this theme, and almost part of a fresh *controversia*, is the fact that the Thebans may be regarded as having recovered their rights in virtue of their restoration, even if they had lost something of them. Here Cassander's intentions may also be questioned; but, given the Amphictyonic court, the most powerful plea is that of equity.

*Further general remarks*

I say this not because I think that a knowledge of these Places from which Arguments are drawn is useless (if I did, I should not have taught them), but so that those who have acquired this information, if they then neglect other things, should not think themselves instantly made perfect adepts and finished orators, but should realize that, unless they work through the precepts I shall be giving later, they have so far achieved nothing but a knowledge that cannot express itself. The discovery of Arguments did not wait for the publication of textbooks; everything was said before any rules were laid down, and only later did writers note, collect, and publish them. The proof of this is that they use old examples of these things, and get them from the orators, while they themselves discover nothing new or hitherto unsaid. The creators of the art therefore were those who made the speeches. Yet we must be grateful to the other people too, because they have shortened our labours. We do not now have to seek out one by one moves which the earlier orators discovered thanks to their own talent; these have all been noted down. But this is no more satisfactory than learning wrestling without having a body developed by exercise, self-discipline, diet, and (above all)

omnia natura iuvatur, sicut contra ne illa quidem satis sine arte profuerint.

- 122 Illud quoque studiosi eloquentiae cogitent, neque omnibus in causis ea quae demonstravimus cuncta posse reperiri, neque, cum proposita fuerit materia dicendi, scrutanda singula et velut ostiatim pulsanda, ut sciant an ad probandum id quod intendimus forte respondeant: nisi  
 123 cum discunt et adhuc usu carent. Infinitam enim faciat ista res dicendi tarditatem, si semper necesse sit ut, temptantes unum quodque eorum, quod sit aptum atque conveniens experiendo noscamus: nescio an etiam impedimento futura sit nisi et animi quaedam ingenita natura et studio exercitata velocitas recta nos ad ea quae convenient causae  
 124 ferant. Nam ut cantus vocis plurimum iuvat sociata nervorum concordia, si tamen tardior manus, nisi inspectis dimensisque singulis, quibus quaeque vox fidibus iungenda sit dubitet, potius fuerit esse contentum eo quo simplex canendi natura tulerit: ita huius modi praeceptis debet quidem aptata esse et citharae modo intenta ratio doctrinae,  
 125 sed hoc exercitatione multa consequendum, ut, quem ad modum illorum artificum, etiam si alio spectant, manus tamen ipsa consuetudine ad gravis, acutos, mediosque horum sonos fertur, sic oratoris cogitationem nihil moretur haec varietas argumentorum et copia, sed quasi offerat se et occurrat, et, ut litterae syllabaeque scribentium cogitationem non exigunt, sic orationem sponte quadam sequatur.<sup>44</sup>

<sup>44</sup> *Zumpt*: sequantur AB

nature. On the other hand, neither are these of any use without skill.

Students of eloquence should also bear in mind (1) that the things I have pointed out cannot all be found in every Cause, (2) that, when the subject has been set, it is not necessary to chase up all these things one by one, and knock on every door, as it were, in order to discover whether they happen to meet the needs of our Proof—unless indeed one is still a learner and without practical experience. It would cause us infinite delay in preparing a speech if we always had to try out every single Argument and learn by experiment which one is apt and suitable. Indeed, all this may actually become a hindrance, unless some native capacity and the quick thinking that is developed by practice lead us straight to the points which are appropriate to our Cause. For just as the singing voice gives most pleasure with a string accompaniment, and yet, if the hand is slower than the voice and hesitates as to which strings should go with each note until it has looked at them and measured them one by one, it would be better to rest content with what the simple voice produces on its own—so also with the rules of eloquence: there must indeed be a theory fitted to them and tuned like a lyre; but it is long practice that is needed to ensure that, just as the musician's hands (even if he himself is looking in another direction) move of their own accord to the low or high or middle note, so this variety and abundance of Arguments does nothing to obstruct the orator's train of thought, but rather offers and presents itself to the mind, as it were, and follows his speech automatically, just as letters and syllables demand no conscious thought from the writer.

- 1 Tertium genus, ex iis quae extrinsecus adducuntur in causam, Graeci vocant παράδειγμα, quo nomine et generaliter usi sunt in omni similium adpositione et specialiter in iis quae rerum gestarum auctoritate nituntur. Nostri fere similitudinem vocare maluerunt quod ab illis parabole dicitur, hoc alterum exemplum, quamquam et hoc simile est,
- 2 illud exemplum. Nos, quo facilius propositum explicemus, utrumque παράδειγμα esse credamus et ipsi appellemus exemplum. Nec vereor ne videar repugnare Ciceroni, quamquam conlationem separat ab exemplo. Nam idem omnem argumentationem dividit in duas partes, inductionem et ratiocinationem, ut plerique Graecorum in παραδείγματα et ἐπιχειρήματα, dixeruntque παράδειγμα ῥητορικὴν ἐπαγωγὴν.
- 3 Nam illa, qua plurimum est Socrates usus, hanc habuit viam, ut, cum plura interrogasset quae fateri adversario necesse esset, novissime id de quo quaerebatur inferret ut simile concessis. [Id est inductio.]<sup>1</sup> Hoc in oratione fieri non potest, sed quod illic
- 4 interrogatur, hic fere sumitur. Sit igitur illa interrogatio talis: ‘Quod est pomum generosissimum? Nonne quod optimum?’ Concedetur. ‘Quid? equus qui generosissimus? Nonne qui optimus?’ Et plura in eundem modum. Deinde, cuius rei gratia rogatum est: ‘Quid? homo nonne is

<sup>1</sup> *del. Spalding*: id est . . . sumitur *del. Radermacher*

<sup>1</sup> *De inventione* 1.49.

<sup>2</sup> *Ibid.* 1.51.

<sup>3</sup> Compare Aristotle, *Rhetoric* 1. 1356b1–26.

## BOOK 5.11

### CHAPTER 11

#### *Examples*

The third kind of Technical Proof, one which is based on matters introduced into a Cause from outside, is called *paradeigma* by the Greeks; they have used this word both generally of any matching of similar things, and especially with reference to things which rest on the authority of history. Our writers have generally preferred *similitudo* to render what the Greeks call *parabolē*, and *exemplum* for this other form; though *exemplum* also involves likeness and a *similitudo* is an Example. To make exposition easier, let us take both to be *paradeigmata* (Paradigms) and let us too call them *exempla* (Examples). I am not afraid of appearing to disagree with Cicero, though he distinguishes Comparison from Example.<sup>1</sup> For he also divides all Argumentation into two parts, Induction and Ratiocination,<sup>2</sup> just as most Greeks have made a division into *paradeigmata* and *epicheirēmata* and have called *paradeigma* “rhetorical induction” (*rhētorikē epagōgē*).<sup>3</sup> This method, of which Socrates made great use, consisted of first asking a number of things which the opponent was bound to admit, and finally introducing the point in question, implying that it was similar to the points already conceded. [This is induction.] This cannot be done in a set speech, but what is put as a series of questions in a dialogue commonly takes the form of an assumption here. Thus suppose the questioning goes: “What is the noblest fruit? Is it not that which is the best?” This will be agreed. “What about a horse? Which is the noblest? Is it not the best?”—and then more instances in the same form. Then comes the question to which all these lead up: “What about a man? Is not the

5 generosissimus qui optimus?' Fatendum erit. Hoc in testium interrogatione valet plurimum, in oratione perpetua dissimile est: aut enim sibi ipse respondet orator: 'Quod pomum generosissimum? Puto quod optimum. Et equus? Qui velocissimus. Ita hominum non qui claritate nascendi, sed qui virtute maxime excellet' . . . <sup>2</sup>

Omnia igitur ex hoc genere sumpta necesse est aut similia esse aut dissimilia aut contraria. Similitudo adsumitur interim et ad orationis ornatum; sed illa cum res exiget,  
 6 nunc ea quae ad probationem pertinent exequar. Potentissimum autem est inter ea quae sunt huius generis quod proprie vocamus exemplum, id est rei gestae aut ut gestae utilis ad persuadendum id quod intenderis commemoratio. Intuendum igitur est totum simile sit an ex parte, ut aut omnia ex eo sumamus aut quae utilia erunt. Simile  
 7 est: 'iure occisus est Saturninus sicut Gracchi.' Dissimile: 'Brutus occidit liberos proditionem molientis, Manlius virtutem filii morte multavit.' Contrarium: 'Marcellus ornamenta Syracusanis hostibus restituit, Verres eadem sociis abstulit.' Et probandorum et culpandorum ex his

<sup>2</sup> *Lacuna marked by Halm*

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<sup>4</sup> This argument is about "nobility," *εὐγένεια*, a common philosophic topic: Aristotle, *περὶ εὐγενείας* (frs. 91–92 Rose), Dio Chrysostom, *Oration* 15. The lacuna conceals Q.'s second alternative: this is probably that, if the speaker does not answer himself, he will develop his "induction" as a series of comparisons: e.g. "as the noblest fruit is the best, and the noblest horse is the best, so the noblest man is he who excels not in distinction of birth but in virtue."

noblest man the best?" This will have to be admitted. This is a very powerful procedure in the examination of witnesses, but it takes a different form in a set speech, where the orator *either* answers himself ("Which is the noblest fruit? The best, I think. And the horse? The swiftest. So among men, the noblest is not the man who excels in distinction of birth, but the man who excels in virtue.")<sup>4</sup> <or> . . .

Now all Arguments of this kind must be either Similars or Dissimilars or Contraries. A Simile<sup>5</sup> is sometimes adopted also to embellish a speech; I shall deal with this when the time comes,<sup>6</sup> but for the moment shall discuss only Similes which are relevant to Proof. The most effective thing of this kind is what is properly called Example, that is to say the mention of an event which either took place or is treated as having taken place, in order to make your point convincing. We have then to consider whether it is similar as a whole or only in part, so that we can take either all its features into use or only the potentially useful ones. Similar: "Saturninus was rightly killed, as were the Gracchi."<sup>7</sup> Dissimilar: "Brutus killed his sons when they were plotting treachery; Manlius punished his son's valour with death." Contrary: "Marcellus restored works of art to the Syracusans when they were the enemy; Verres took them from them though they were our allies."<sup>8</sup> Confir-

<sup>5</sup> I have not tried to be consistent in rendering *similitudo*; "simile," "similitude," "image," "parallel" are all appropriate, and I use them as the context suggests.

<sup>6</sup> 8.3.71ff.

<sup>7</sup> See 2.16.5.

<sup>8</sup> Cicero, *In Verrem* 4.123.



- 8 confirmatio eosdem gradus habet. Etiam in iis quae futura dicemus utilis similibus admonitio est, ut si quis dicens Dionysium idcirco petere custodes salutis suae ut eorum adiutus armis tyrannidem occupet, hoc referat exemplum, eadem ratione Pisistratum ad dominationem pervenisse.
- 9 Sed ut sunt exempla interim tota similia, ut hoc proximum, sic interim ex maioribus ad minora, ex minoribus ad maiora ducuntur. ‘Si propter matrimonia violata urbes eversae sunt, quid fieri adultero par est?’ ‘Tibicines, cum ab urbe discessissent, publice revocati sunt: quanto magis principes civitatis viri et bene de re publica meriti, cum
- 10 invidiae cesserint, ab exilio reducendi!’ Ad exhortationem vero praecipue valent in paria. Admirabilior in femina quam in viro virtus. Quare, si ad fortiter faciendum accendatur aliquis, non tantum adferent momenti Horatius et Torquatus quantum illa mulier cuius manu Pyrrhus est interfectus, et ad moriendum non tam Cato et Scipio quam Lucretia: quod ipsum est ex maioribus ad minora.
- 11 Singula igitur horum generum ex Cicerone (nam unde potius?) exempla ponamus.
- Simile est hoc pro Murena: ‘etenim mihi ipsi accidit ut

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<sup>9</sup> Same instances in Aristotle, *Rhetoric* 1. 1357b30–33.

<sup>10</sup> In 311 BC, the *tibicines*, deprived of their privilege of having meals in the temple of Jupiter, migrated in a body to Tibur: Livy 9.31, Ovid, *Fasti* 6.657ff.

<sup>11</sup> Either the hero of the Alban War (Livy 1.24–26) or the one who “held the bridge” (Livy 2.10).

<sup>12</sup> Pyrrhus, king of Epirus, was killed at Argos in 272 BC, having been wounded by an Argive soldier, and then pelted from the roof with pots thrown by the man’s mother and other women (Plutarch, *Pyrrhus* 324).

mation of approval and blame by Examples takes the same three forms. A reminder of parallels will be useful also in speaking about the future; for example, someone arguing that Dionysius was asking for a personal bodyguard in order to seize absolute power with their help could adduce as an example the fact that Pisistratus attained power in the same way.<sup>9</sup>

But while Examples are sometimes complete parallels (like this last one), they are sometimes taken “from greater to lesser” or “from lesser to greater.” “If whole cities have been overthrown because of violated marriages, what should be done to an adulterer?” “The pipers, having left the city, were recalled by the authority of the people;<sup>10</sup> how much more should leading citizens who have deserved well of the state, but have been victims of envy, be recalled from exile!” Unequal parallels are particularly useful for exhortations. Courage is more to be admired in a woman than in a man. Therefore, if someone is to be fired to do brave deeds, Horatius<sup>11</sup> and Torquatus will carry less weight than the woman by whose hand Pyrrhus was slain;<sup>12</sup> and if we are speaking of facing death, Cato and Scipio<sup>13</sup> will be less persuasive than Lucretia.<sup>14</sup> This is also an Argument “from greater to lesser.”

Let us set out some individual examples of these kinds from Cicero (where could we find better?).

(1) “Similar”: *Pro Murena*:<sup>15</sup> “For it happened to my-

<sup>13</sup> I.e. Quintus Caecilius Metellus Scipio, who committed suicide after Caesar’s victory at Pharsalus (Florus 2.13.68).

<sup>14</sup> Her rape and death are dramatically related by Livy, 1.57–59.

<sup>15</sup> 17.

cum duobus patriciis, altero improbissimo < atque audacissimo >,<sup>3</sup> altero modestissimo atque optimo viro, peterem: superavi tamen dignitate Catilinam, gratia Galbam.'

- 12 Maius minoris pro Milone: 'negant intueri lucem esse fas ei qui a se hominem occisum esse fateatur. In qua tandem urbe hoc homines stultissimi disputant? Nempe in ea quae primum iudicium de capite vidit M. Horati, fortissimi viri, qui nondum libera civitate tamen populi Romani comitiis liberatus est, cum sua manu sororem esse interfectam fateretur.'

Minus maioris: 'occidi, occidi, non Spurium Maelium, qui annona levanda iacturisque rei familiaris, quia nimis amplecti plebem videbatur, in suspicionem incidit regni adpetendi' et cetera, deinde: 'sed eum (auderet enim dicere, cum patriam periculo liberasset) cuius nefandum adulterium in pulvinaribus', et totus in Clodium locus.

- 13 Dissimile pluris casus habet. Fit enim genere modo tempore loco ceteris, per quae fere omnia Cicero praeiudicia quae de Cluentio videbantur facta subvertit: contrario vero exemplo censoriam notam, laudando censorem Africanum, qui eum quem peierasse conceptis verbis palam dixisset, testimonium etiam pollicitus si quis contra diceret, nullo accusante traducere equum passus esset:

<sup>3</sup> *add. edd. from Cic. Pro Murena 17*

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16 7.      <sup>17</sup> *Pro Milone 72. Pulvinaria* are couches on which images of the gods were laid. See also 1.7.12.

<sup>18</sup> *Pro Cluentio 88-96.*

<sup>19</sup> *Ibid. 134.* The censors were responsible for the enrolment of *equites equo publico*, and could strike off the list anyone who was morally or financially unsuitable.

self, that I was a candidate together with two patricians, one unscrupulous <and reckless> in the extreme, the other a most respectable and excellent man: yet I surpassed Catiline in dignity, and Galba in influence.”

(2) “From greater to lesser”: *Pro Milone*:<sup>16</sup> “They say that a man who confesses to having killed a man is not fit to look upon the light of day. In what city do these idiots argue like this? Why, in the city where the first trial on a capital charge was that of the brave Marcus Horatius, who was freed by the assembly of the people of Rome, though at that time the city was itself not yet free, despite the fact that he confessed that he had killed his sister with his own hand.”

(3) “From lesser to greater”: “I killed, I killed—not Spurius Maelius, who reduced the price of corn and sacrificed his own fortune, and therefore fell under suspicion of aiming to be king, because he was thought to be courting the plebs too much . . . ” and so on, and then: “—but (for my client would have the courage to admit it, because he had freed his country from danger) I killed the man whose foul adultery on the sacred couches . . . ” and then follows the whole attack on Clodius.<sup>17</sup>

(4) “Dissimilarities” take various forms: they may turn on Kind, Manner, Time, Place, and so on; Cicero uses almost the whole range to subvert the previous decisions which seemed to apply to Cluentius.<sup>18</sup>

(5) It is however by a “contrary” example that he subverts the censorial stigma,<sup>19</sup> by praising the censor Africanus, who allowed an *eques* to keep his horse because no accuser had come forward, although Africanus himself had publicly said that the man had formally committed perjury, and had undertaken to provide evidence of this if any-

14 quae quia erant longiora non suis verbis exposui. Breve autem apud Vergilium contrarii exemplum est:

at non ille, satum quo te mentiris, Achilles  
talīs in hoste fuit Priamo.

15 Quaedam autem ex iis quae gesta sunt tota narrabimus, ut Cicero pro Milone: 'pudicitiam cum eriperet militi tribunus militaris in exercitu C. Mari, propincus eius imperatoris, interfectus ab eo est cui vim adferebat: facere enim probus adulescens periculose quam perpeti turpiter maluit: atque hunc ille summus vir scelere solutum periculo

16 liberavit'; quaedam significare satis erit, ut idem ac pro eodem: 'neque enim posset Ahala ille Servilius aut P. Nasica aut L. Opimius aut me consule senatus non nefarius haberi, si sceleratos interfici nefas esset.' Haec ita dicentur prout nota erunt vel utilitas causae aut decor postulabit.

17 Eadem ratio est eorum quae ex poeticis fabulis ducuntur, nisi quod iis minus adfirmationis adhibetur: cuius usus qualis esse deberet, idem optimus auctor ac magister eloquentiae ostendit. Nam huius quoque generis eadem in oratione reperietur exemplum: 'itaque hoc, iudices, non sine causa etiam fictis fabulis doctissimi homines memoriae prodiderunt, eum qui patris ulciscendi causa matrem necavisset, variatis hominum sententiis, non solum

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<sup>20</sup> *Aeneid* 2.540.

<sup>21</sup> 9. This episode gave rise to a favourite declamation subject: see 3.11.14.

<sup>22</sup> 8.

<sup>23</sup> *Ibid.* Cicero does not name Orestes, but it is his acquittal by Athena (as in Aeschylus' *Eumenides*) that is meant.

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one should deny it. This is rather a long passage, and so I have not given it in Cicero's words. For a brief instance of a Contrary, we may turn to Vergil:

But Achilles, whom you falsely claim as father,  
was not like this towards his enemy Priam.<sup>20</sup>

Some historical examples may be narrated in full, as Cicero does in *Pro Milone*:<sup>21</sup> "When a military tribune in Gaius Marius' army, a relation of the commander, sexually assaulted a soldier, he was killed by the man whom he was assaulting; that virtuous young man preferred the dangers of action to the disgrace of submission. And the great general acquitted him of any crime and let him go free." With some stories, an allusion may suffice. So Cicero again, in the same speech:<sup>22</sup> "Neither the famous Servilius Ahala nor Publius Nasica nor Lucius Opimius nor the Senate in my consulship could be held innocent of crime, if it were a crime for wicked men to be killed." The manner of mentioning these things will depend on how well known they are and on what is required by the Cause or by good taste.

### *Poetic fables*

The same principle applies to examples drawn from poetic fables, except that these are of less probative force. How they should be used is demonstrated by the same great writer and teacher of eloquence. An Example of this kind in fact will be found in that same speech:<sup>23</sup> "It is not without reason therefore, members of the jury, that even in their fictions learned men have recorded that a man who had killed his mother to avenge his father, when the verdicts of the human judges were divided, was freed by a

- 19 divina sed sapientissimae deae sententia liberatum.' Illae quoque fabellae quae, etiam si originem non ab Aesopo acceperunt (nam videtur earum primus auctor Hesiodus), nomine tamen Aesopi maxime celebrantur, ducere animos solent praecipue rusticorum et imperitorum, qui et simplicius quae ficta sunt audiunt, et capti voluptate facile iis quibus delectantur consentiunt: si quidem et Menenius Agrippa plebem cum patribus in gratiam traditur reduxisse nota illa de membris humanis adversus ventrem
- 20 discordantibus fabula, et Horatius ne in poemate quidem humilem generis huius usum putavit in illis versibus:

quod dixit vulpes aegroto cauta leoni.

Αἴνον Graeci vocant et Αἰσωπέιους, ut dixi, λόγους et Λιβυκούς, nostrorum quidam, non sane recepto in usum nomine, apologationem.

- 21 Cui confine est παροιμίας genus illud quod est velut fabella brevior et per allegorian accipitur: 'non nostrum'

<sup>24</sup> Animal fables in Hesiod (*Works and Days* 202–212) and Archilochus were well known and recognized as earlier than Aesop (who was dated c. 600 BC: Herodotus 2.134). Q.'s statement is paralleled in Theon, *Progymnasmata* 3 (73–74 Spengel).

<sup>25</sup> Livy 2.32; Aesop, *fab.* 132 Hausrath; Shakespeare, *Coriolanus* I.ii (from Plutarch, *Coriolanus* 6).

<sup>26</sup> Horace, *Epistulae* 1.1.73.

<sup>27</sup> Mentioned, with those of Aesop, by Aristotle, *Rhetoric* 2.1393a30, which may be Q.'s ultimate source for the discussion of Fable in rhetoric. Theon (loc. cit.) has similar information, and names a "Libyan" fabulist, Kubissos.

divine verdict—the verdict indeed of the wisest of goddesses.” Consider also those fables which, though not originating with Aesop (for Hesiod seems to be the first author of them),<sup>24</sup> are best known under Aesop’s name: they often attract the mind, particularly that of uneducated rustics, who listen to fiction in a simpler spirit and, in their delight, readily assent to things that they enjoy hearing. Thus Menenius Agrippa is said to have reconciled plebs and patricians by means of the famous story of the quarrel of the limbs against the belly.<sup>25</sup> Horace too did not regard the use of this type as undignified even in poetry: witness the lines, “As the shrewd fox said to the ailing lion . . .”<sup>26</sup> The Greeks call this an *ainos* (“tale”), and speak of Aesopic fables (as I said) and “Libyan fables”;<sup>27</sup> some Roman writers use the word *apologatio*,<sup>28</sup> though the name has not been accepted in common use.

Close to this is the genre of *paroimia* (“proverb”),<sup>29</sup> a sort of abbreviated fable understood allegorically: “Not my

<sup>28</sup> Q. is the first extant authority for this word: *apologus* is earlier (Plautus; *Ad Herennium* 1.10; *De inventione* 1.25).

<sup>29</sup> Proverbs were much studied by rhetoricians, though traditionally their use was mainly in lighter and more “charming” contexts (Demetrius 156). They formed an important species of *auctoritas*, alongside the sayings of poets and great men. See in general *OCD*<sup>3</sup> s.v. *paroemiographers*. See also 8.6.57.



inquit 'onus: bos clitellas.'

- 22 Proximas exempli<sup>4</sup> vires habet similitudo, praecipueque illa quae ducitur citra ullam translationum mixturam ex rebus paene paribus: 'ut qui accipere in campo consuerunt iis candidatis quorum nummos suppressos esse putant inimicissimi solent esse: sic eius modi iudices infesti tum reo
- 23 venerant.' Nam parabole, quam Cicero conlationem vocat, longius res quae comparentur repetere solet. Nec hominum modo inter se opera similia spectantur (ut Cicero pro Murena facit: 'quod si e portu solventibus qui iam in portum ex alto invehuntur praecipere summo studio solent et tempestatum rationem et praedonum et locorum, quod natura adfert ut iis faveamus qui eadem pericula quibus nos perfuncti sumus ingrediantur: quo tandem me animo esse oportet, prope iam ex magna iactatione terram videntem, in hunc, cui video maximas tempestates esse subeundas?') sed et a mutis atque etiam inanimis interim <similitudo><sup>5</sup> huius modi ducitur.
- 24 Et quoniam similibus alia facies in alia ratione, admonendum est rarius esse in oratione illud genus, quod

<sup>4</sup> exemplo *Regius*

<sup>5</sup> *add. E*

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<sup>30</sup> There seem to be two possible interpretations: (1) a slave (?) is speaking, and says it is the ox's job, not his, to carry the pack-saddle; (2) the ox is speaking, and says it is not his job (but the horse's or the mule's). The saying occurs in the form *clitellae bovi sunt impositae, plane non est nostrum onus* in Cicero, *Ad Atticum* 5.15.3 (and Ammianus Marcellinus 16.5.10) and is taken to be a comic fragment (Ribbeck, *Comicorum Romanorum Fragmenta*<sup>2</sup>, p. 122). The second interpretation seems supported by the Greek "proverb" σοφῶς ὁ βοῦς ἔφασκεν ἀστραβὴν ἰδὼν οὐ προσήκειν

load, he says: the ox takes the panniers.”<sup>30</sup>

Similitude has much the same force as Example, especially when it is based on things nearly equal, without any admixture of metaphors: “Just as those who are used to taking bribes in the Campus tend to be particularly hostile to candidates who they think have withheld their money, so, on this occasion, judges of like character had arrived full of hostility to the defendant at that time.” *Parabolē*, which Cicero calls *collatio* (“comparison”),<sup>31</sup> often fetches its terms of comparison from a distance. Nor is it only human actions which are compared with each other (as by Cicero, in *Pro Murena*:<sup>32</sup> “But if sailors who are coming into harbour from the sea often take great trouble to give those who are setting out information about storms and pirates and coasts—for nature makes us think kindly of those who are entering on dangers we have been through ourselves—how, I ask, should I feel, who am now almost in sight of land after all my tossing at sea, towards this man, who, I know, will have great storms to weather?”)—but <Similes> of this kind can be drawn also from animals and even from inanimate objects.

And since similarities have different appearances in different contexts, a warning is necessary that the kind

αὐτῷ τὸ σκεῦος, “It was clever of the ox to say, when he saw the pack-saddle, ‘That thing’s nothing to do with me’”: see Otto (1891) 57. But to find this in Q.’s version we should have to read, e.g., “*non nostrum*” inquit “*onus*” *bos clitellas* <*videns*>. It is, however, an “allegory”: so perhaps we could translate “Not my load, he says; it’s a case of the ox and the panniers.”

<sup>31</sup> *De inventione* 1.30.

<sup>32</sup> 4.

εἰκόνα Graeci vocant, quo exprimitur rerum aut personarum imago—ut Cassius:

quis iste<sup>6</sup> faciem planipedis<sup>7</sup> senis torquens?—

quam id quo probabilius fit quod intendimus: ut, si animum dicas excolendum, similitudine utaris terrae, quae neglecta sentes ac dumos, culta fructus creat: aut, si ad curam rei publicae horteris, ostendas apes etiam formicasque, non modo muta sed etiam parva animalia, in com-  
 25 mune tamen laborare. Ex hoc genere dictum illud est Ciceronis: ‘ut corpora nostra sine mente, ita civitas sine lege suis partibus, ut nervis ac sanguine et membris, uti non potest.’ Sed ut hac corporis humani pro Cluentio, ita  
 26 pro Cornelio equorum, pro Archia saxorum quoque usus est similitudine. Illa, ut dixi, propiora: ‘ut remiges sine gubernatore, sic milites sine imperatore nihil valere’.

Solent tamen fallere similitudinum species, ideoque adhibendum est eis iudicium. Neque enim ut navis utilior nova quam vetus, sic amicitia, vel ut laudanda quae pecuniam suam pluribus largitur, ita quae formam. Verba sunt in his similia vetustatis et largitionis, vis quidem longe di-  
 27 versa <navis et amicitiae,><sup>8</sup> pecuniae et pudicitiae. Itaque

<sup>6</sup> *Burman*: istam AB

<sup>7</sup> *Regius*: lanipedi A: lanipendi B

<sup>8</sup> *add. Halm, after Spalding*

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<sup>33</sup> “Image.” Minucianus, 342.11–343.2 Spengel–Hammer, distinguishes *paradeigmata* (historical or mythical examples), *parabolai* (nonhistorical similes), and *eikones* (*parabolai* with an additional element of vividness). <sup>34</sup> The “old man” on his flat feet (*planipes*) is a mime dancer without shoes; see Juvenal 8.191, Aulus Gellius 1.11.12. The reading *planipedis* (*Regius*’ conjec-

which the Greeks call *eikōn*,<sup>33</sup> which paints a picture of things or persons (for instance, Cassius' "Who's pulling a face like the old man without shoes?"),<sup>34</sup> is rarer in oratory than the kind which increases the acceptability of our argument. For example, if you are talking about the cultivation of the mind, you can use the image of the earth, which produces thorns and thickets if it is neglected, and fruits if it is cultivated. Or again, if you were encouraging someone to take up public service, you could show that bees and ants, which are not only dumb animals but are very tiny, nevertheless work together in common. There is an example of this in Cicero: "As our bodies cannot use their parts without the mind, so a state cannot use its parts—its sinews, blood, and limbs, as it were—without the law." This image of the human body is in *Pro Cluentio*;<sup>35</sup> he has one from horses in *Pro Cornelio*<sup>36</sup> and one from stones in *Pro Archia*.<sup>37</sup> Closer (as I said) is, for instance, "Soldiers are no good without a general, like rowers without a steersman."

However, with Similitudes, appearances can be deceptive, and so judgement must be applied. A new ship is more serviceable than an old one; not so friendship. A woman who is generous with her money is to be praised; not so, if she is generous with her person. In these instances, the words "old" and "generous" are similar, but their force is very different with <"ship" from what it is with "friendship">, and with "money" from what it is with "chastity."

ture) is accepted by Ribbeck (*Comoediae Romanae Togatae* fr. incert. IV, p. 266), and is very probable. *Lanipedis*, "with wool round his foot," would presumably signify "gouty." 35 146.

<sup>36</sup> *Fr. orat.* VIII inc. 2 Schoell (not in Crawford 1994): compare 4.4.8. <sup>37</sup> 19.

- in hoc genere maxime quaeritur an simile sit quod infertur. Etiam in illis interrogationibus Socraticis, quarum paulo ante feci mentionem, cavendum ne incaute respondeas, ut apud Aeschinen Socraticum male respondit Aspasiae Xenophontis uxor, quod Cicero his verbis transfert: 'Dic mihi, quaeso, Xenophontis uxor, si vicina tua melius habeat aurum quam tu habes, utrumne illud <an tuum malis? Illud,><sup>9</sup> inquit. Quid? si vestem et ceterum ornatum muliebrem pretii maioris habeat quam tu, tuumne an illius <malis? Respondit: Illius><sup>10</sup> vero. Age sis, inquit, si virum illa meliorem habeat quam tu habes, utrumne tuum virum malis an illius?' Hic mulier erubuit, merito: male enim responderat se malle alienum aurum quam suum; nam est id improbum. At si respondisset malle se aurum suum tale esse quale illud esset, potuisset pudice respondere malle se virum suum talem esse qualis melior esset.
- 30 Scio quosdam inani diligentia per minutissimas ista partis secuisse, et esse aliquid minus simile, ut simia homini et [ut]<sup>11</sup> marmora deformata prima manu, aliquid plus, ut illud 'non ovum tam simile ovo', et dissimilibus inesse simile, ut formicae et elephanto genus, quia sunt animalia, et similibus dissimile, ut 'canibus catulos et matribus hae-

<sup>9</sup> *add. Halm, from Cic. De inventione 1.5*

<sup>10</sup> *suppl. recc., from Cic. loc. cit.*

<sup>11</sup> *om. recc.: et [ut] marmora prima manu deformata <perfectis> M.W. ("roughly shaped statues compared to finished ones")*

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<sup>38</sup> *De inventione 1.51*: also used by Julius Victor 468 Halm (= 49 Giomini-Celentano) and Albinus 540 Halm. This extract is the longest piece we have of Aeschines the Socratic's dialogue *Aspasia* (= fr. 31 Dittmar, VI A 70 Giannantoni).

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The main question regarding this type therefore is whether the thing produced for comparison is in fact similar. Even in the Socratic interrogations which I mentioned just now, one must be careful not to give a rash answer. Xenophon's wife, in Aeschines the Socratic, gave a poor answer to Aspasia, which Cicero translates as follows:<sup>38</sup> "Tell me, wife of Xenophon, if the woman next door had better gold ornaments than you have, would you <rather have> hers <or yours>?" 'Hers,' she replied. 'And if she had more expensive clothing and other women's ornaments than you, would you <prefer> yours or hers?' '<Hers,> she replied.> 'Well then, if she had a better husband than you have, would you prefer your husband or hers?'" Here the lady blushed, and very properly; for she had wrongly answered that she would rather have the other wife's gold than her own; and this is not decent. If she had answered that she would prefer her gold to be like the other wife's, she could have answered with perfect modesty that she would prefer her husband to be like the better man.

I know that some, with pointless precision, have subdivided all these things into minute parts, and said that some things are "less similar" (for example, a monkey or a roughly blocked out marble statue, compared to the human form), some things "more similar" ("an egg is not so like an egg as . . .");<sup>39</sup> again, there are "similitudes in dissimilars," as between an ant and an elephant, both being animals; and "dissimilitudes in similars," as between "dogs

<sup>39</sup> Proverbial: Cicero, *Academica priora* 2.54, 57; Seneca, *Apocolocyntosis* 11.

31 dos', differunt enim aetate: contrariorum quoque aliter accipi opposita, ut noctem luci, aliter noxia, ut frigidam feбри, aliter repugnantia, ut verum falso, aliter disparata,<sup>12</sup> ut dura non duris: sed quid haec ad praesens propositum magnopere pertineant, non reperio.

32 Illud est adnotandum magis, argumenta duci ex iure simili, ut Cicero in Topicis: 'eum cui domus usus fructus relictus sit non restitutum heredi si corruerit, quia non restituat servum si is decesserit'; ex contrario: 'nihil obstat quo minus iustum matrimonium sit mente coeuntium, etiam si tabulae signatae non fuerint: nihil enim proderit signasse tabulas si mentem matrimonii non fuisse constabit'; ex dissimili, quale est Ciceronis pro Caecina: 'ut si qui me exire domo coegisset armis, haberem actionem, si qui introire prohibuisset, non haberem?' Dissimilia sic deprenduntur: 'non si, qui argentum omne legavit, videri potest signatam quoque pecuniam reliquisse, ideo etiam quod est in nominibus dari voluisse creditur.'

34 'Αναλογίαν quidam a simili separaverunt, nos eam subiectam huic generi putamus. Nam ut unum ad decem, sic<sup>13</sup> decem ad centum simile certe est, et ut hostis sic malus civis. Quamquam haec ulterius quoque procedere solent: 'si turpis dominae consuetudo cum servo, turpis domino cum ancilla: si mutis animalibus finis voluptas, idem homini.' Cui rei facillime occurrit ex dissimilibus

<sup>12</sup> *edd.*: separata AB

<sup>13</sup> *Regius*: et AB

<sup>40</sup> Vergil, *Eclogues* 1.22.

<sup>41</sup> 15 (not quoted verbatim). <sup>42</sup> 34.

<sup>43</sup> We note the "double standard"; there was nothing discreditable in the master's relations with slave girls.

and cubs, kids and mother goats,"<sup>40</sup> which differ only in age. They also subdivide Contraries into pairs of things which are Opposite (night and day), Mutually Damaging (cold water and fever), Contradictory (truth and falsehood), or Disparate (hard and not hard). But I fail to see that this has any great relevance to our present subject.

It is more important to note that Arguments may be based (1) on Similarities in law: Cicero in the *Topics*:<sup>41</sup> "a man to whom the usufruct of a house has been left will not restore it for his heir, if it falls down, because he would not replace a slave if one died"; (2) on Contraries in law: "there is no bar to a legal marriage between parties who cohabit by consent, even if no contract has been signed, for signing a contract will have no value if it is agreed that there was no consent to the marriage"; (3) on Dissimilarities of law: Cicero in *Pro Caecina*:<sup>42</sup> "If anyone had forced me out of my house by armed violence, I should have ground for an action; so should I have none if he had prevented me from entering it?" (4) Dissimilarities may be exposed in the following way: "If a man who has bequeathed all his silver can be thought to have included also the silver coin, it does not follow that he is believed to have wished what is owed to him also to be paid to the legatee."

Some have drawn a distinction between Analogy and Similarity, but I regard Analogy as a species of the genus Similarity. "As one is to ten, so is ten to a hundred" certainly involves Similarity, as does "a bad citizen is just like an enemy." But these things often go too far: "If a liaison with a male slave is disgraceful for the mistress, so is a liaison with a slave girl for the master,"<sup>43</sup> or "If pleasure is the highest aim for dumb animals, so it is for man." These arguments are very easily met by Arguments from Dissimi-



argumentatio: 'non idem est dominum cum ancilla coisse quod dominam cum servo, nec, si mutis finis voluptas, rationalibus quoque': immo ex contrario: 'quia mutis, ideo non rationalibus'.

- 36 Adhibebitur extrinsecus in causam et auctoritas. Haec secuti Graecos, a quibus *κρίσεις* dicuntur, iudicia aut iudicationes vocant, non de quibus ex causa dicta sententia est (nam ea quidem in exemplorum locum cedunt), sed si quid ita visum gentibus, populis, sapientibus viris, claris civibus, inlustribus poetis referri potest. Ne haec quidem vulgo dicta et recepta persuasione populari sine usu fuerint. Testimonia sunt enim quodam modo, vel potentiora etiam quod non causis accommodata sunt, sed liberis odio et gratia mentibus ideo tantum dicta factaque quia aut honestissima aut verissima videbantur. An vero me de incommodis vitae disserentem non adiuvabit earum persuasio nationum quae fletibus natos, laetitia defunctos prosequuntur? Aut si misericordiam commendabo iudici, nihil proderit quod prudentissima civitas Atheniensium non eam pro adfectu sed pro numine accepit? Iam illa septem praecepta
- 37
- 38
- 39

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<sup>44</sup> Often *endoxos krisis* ("celebrated judgement"): e.g. Menander Rhetor 365.15 Spengel, [Dion. Hal.] *Ars rhetorica* 271, 16 Usener-Radermacher; Lausberg § 426.

<sup>45</sup> The Thracian Trausoï according to Herodotus 5.4.

<sup>46</sup> The Altar of Mercy (Ἐλεοῦ βωμός) is generally identified with the Altar of the Twelve Gods: the Heraclidae and Adrastus took refuge there. Q.'s contemporary Statius, whom of course he never mentions, gives a famous description of this cult of Mercy

lars ("It is not the same for the master to sleep with the slave-girl as for the mistress with a male slave," or "If pleasure is the highest aim for mute creatures, it is not so for rational creatures also") or (better) from Contraries ("Just because it is right for dumb creatures, it is not right for rational creatures").

### *Authority*

Authority is a further type of external proof which may be adduced to support a Cause. Following the Greeks, who call these arguments *kriseis*,<sup>44</sup> our people call them "judgements" or "adjudications"; this does not mean verdicts given in legal proceedings (these come under the head of "Examples") but opinions which can be attributed to nations, peoples, wise men, distinguished citizens, or famous poets. Even common sayings and popular beliefs may be useful. All these are in a sense testimonies, but they are actually all the more effective because they are not given to suit particular Causes, but spoken or given by minds free of prejudice and favour for the simple reason that they seemed either very honourable or very true. If I am speaking about the misfortunes of life, will it not help me to quote the convictions of those nations who greet newborn babies with tears and the dead with rejoicing?<sup>45</sup> If I am to recommend the judge to show mercy, will it not be helpful to observe that the sagacious city of Athens regarded Mercy not as an emotion but as a divinity?<sup>46</sup> And

(Clementia) and its moral value (*Thebaid* 12.481–518; David Vessey, *Statius and the Thebaid* (Cambridge, 1973) 309–312).

sapientium nonne quasdam vitae leges existimamus? Si causam veneficii dicat adultera, non M. Catonis iudicio damnata<sup>14</sup> videatur, qui nullam adulteram non eandem esse veneficam dixit?

Nam sententiis quidem poetarum non orationes modo sunt refertae, sed libri etiam philosophorum, qui quamquam inferiora omnia praeceptis suis ac litteris credunt, repetere tamen auctoritatem a plurimis versibus non fastidierunt. Neque est ignobile exemplum Megarios<sup>15</sup> ab Atheniensibus, cum de Salamine contenderent, victos Homeri versu, qui tamen ipse non in omni editione reperitur, significante<sup>16</sup> Aiacem naves suas Atheniensibus iunxisse.

Ea quoque quae vulgo recepta sunt hoc ipso, quod incertum auctorem habent, velut omnium fiunt, quale est: ‘ubi amici, ibi opes’, et ‘conscientia mille testes’, et apud Ciceronem: ‘pares autem, ut est in vetere proverbio, cum paribus maxime congregantur’; neque enim durassent haec in aeternum nisi vera omnibus viderentur.

Ponitur a quibusdam, et quidem in parte prima, deorum auctoritas, quae est ex responsis, ut ‘Socraten esse sa-

<sup>14</sup> damnanda A      <sup>15</sup> t: Megarius AB

<sup>16</sup> D.A.R.: significans AB

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<sup>47</sup> The traditional list (cf. Plato, *Protagoras* 343A) varies—usually Solon, Thales, Pittacus, Cleobulus, Chilon, Bias, Pericles—and their sayings were proverbs like “Nothing in excess,” “Know yourself,” “It is hard to be good.” Demetrius of Phalerum (fr. 114 Wehrli) collected many, and assigned them to individuals. Texts in Diels–Kranz, *Fragmente der Vorsokratiker* 1, 61–66.

<sup>48</sup> ORF p. 95 (from an unknown speech).

<sup>49</sup> *Iliad* 2.557–558, said to have been interpolated by Solon or

those precepts of the Seven Wise Men<sup>47</sup>—do we not regard them as laws of life? If an adulteress is on trial for poisoning, would she not seem condemned by Cato's judgement that every adulteress is also a poisoner?<sup>48</sup>

As for reflections from the poets, not only are speeches full of them, but so also are the books of the philosophers, who, however much they think everything to be inferior to their own precepts and learning, have not disdained to seek Authority from many a passage of poetry. A famous example is the way in which the Megarians were defeated by the Athenians in their dispute over Salamis by means of a line of Homer (not in fact found in every edition) which showed that Ajax had united his fleet with the Athenians.<sup>49</sup>

Common sayings too, just because they have no known author, become the property of all: "Where your friends are, there is your treasure";<sup>50</sup> "Conscience is a thousand witnesses";<sup>51</sup> and Cicero's "Like flocks to like, as the old proverb has it."<sup>52</sup> These sayings would not have endured for all time if they had not seemed true to everybody.

Under this head, and indeed as the first item, some put the Authority of the Gods, which is derived from oracles, like the one that said Socrates was the wisest of men.<sup>53</sup> This

Pisistratus to justify Athens' claim: Aristotle, *Rhetoric* 1. 1375b29, Plutarch, *Solon* 10.2, Strabo 9.394.

<sup>50</sup> See Plautus, *Truculentus* 855, "Menander," *Monosticha* 526; medieval proverb (J. Werner, *Lateinische Sprichwörter . . . des Mittelalters*<sup>2</sup> (1966) n. 170) *non est thesaurus melior quam fidus amicus*, "No treasure's better than a faithful friend."

<sup>51</sup> Compare Shakespeare, *Richard III* 5.3.194: "My conscience hath a thousand several tongues."

<sup>52</sup> *De senectute* 7; compare Homer, *Odyssey* 17.218, Plato, *Symposium* 195B.

<sup>53</sup> Plato, *Apology* 21A.

pietissimum'. Id rarum est, non sine usu tamen. Utitur eo Cicero in libro de haruspicum responsis et in contione contra Catilinam, cum signum Iovis columnae inpositum populo ostendit, et pro Ligario, cum causam C. Caesaris meliorem quia hoc di iudicaverint confitetur. Quae cum propria causae sunt, divina testimonia vocantur, cum aliunde arcessuntur, argumenta.

- 43 Nonnumquam contingit iudicis quoque aut adversarii aut eius qui ex diverso agit dictum aliquod aut factum adsumere ad eorum quae intendimus fidem. Propter quod fuerunt qui exempla et has auctoritates inartificialium probationum esse arbitrarentur, quod ea non inveniret orator,
- 44 sed acciperet. Plurimum autem refert;<sup>17</sup> nam testis et quaestio et his similia de ipsa re quae in iudicio est pronuntiant: extra petita, nisi ad aliquam praesentis disceptationis utilitatem ingenio adplicantur, nihil per se valent.

12

- 1 Haec fere de probatione vel ab aliis tradita vel usu percepta in hoc tempus sciebam. Neque mihi fiducia est ut ea sola esse contendam, quin immo hortor ad quaerendum et inveniri posse fateor: quae tamen adiecta fuerint, non multum ab his abhorrebunt. Nunc breviter quem ad modum sit utendum eis subiungam.

<sup>17</sup> differt *Shackleton Bailey*

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<sup>54</sup> *De haruspicum responso*, the speech against Clodius of 56 BC.      <sup>55</sup> *In Catilinam* 3.21.

<sup>56</sup> 19.

<sup>57</sup> Compare 5.7.35.

## BOOK 5.12

is a rare thing, but it can be of use. Cicero employs it in his speech *On the Replies of the Soothsayers*,<sup>54</sup> in his address to the Assembly against Catiline,<sup>55</sup> when he points to the figure of Jupiter on the top of the column, and in *Pro Ligario*,<sup>56</sup> when he confesses that Caesar's cause was the better one, because the gods judged it so. When these belong to the Cause, they are called "divine testimonies";<sup>57</sup> when they are adduced from other sources, they are Arguments.

It is sometimes also possible to take some remark or action of the judge or your opponent or your opponent's advocate in order to strengthen your point. This has led some writers to treat Examples and these Authorities under Nontechnical Proofs, because the orator does not discover them but has them handed to him. But there is a great difference. Witnesses, examinations under torture, and the like make statements about the actual matter before the court; anything brought in from outside, unless one has the ability to apply it to some useful purpose in the current dispute, has no value in itself.

## CHAPTER 12

### *Uses of Arguments*

This is pretty well everything I know at present about Proof, either from the writings of others or from my own experience. I have not the confidence to assert that this is all there is; indeed, I urge further research, and admit that discoveries may yet be made. However, whatever comes to be added will not be very different. I now add a few remarks on how Arguments should be used.

## QUINTILIAN

- 2 Traditum fere est argumentum oportere esse confes-  
sum; dubiis enim probari dubia qui possunt? Quaedam  
tamen quae in alterius rei probationem ducimus ipsa pro-  
banda sunt. 'Occidisti virum; eras enim adultera.' Prius de  
adulterio convincendum est, ut, cum id coeperit esse pro-  
certo, fiat incerti argumentum. 'Spiculum tuum in corpore  
occisi inventum est.' Negat suum: ut probationi prosit,  
3 probandum est. Illud hoc loco monere inter necessaria est,  
nulla esse firmiora quam quae ex dubiis facta sunt certa.  
'Caedes a te commissa est: cruentam vestem habuisti' non  
est tam grave argumentum si fatetur quam si convincitur.  
Nam si fatetur, multis ex causis potuit cruenta esse vestis:  
si negat, hic causae cardinem ponit, in quo si victus fuerit  
etiam in sequentibus ruit. Non enim videtur in negando  
mentiturus fuisse nisi desperasset id posse defendi si con-  
fiteretur.
- 4 Firmissimis argumentorum singulis instandum, in-  
firmiora congreganda sunt, quia illa per se fortia non oportet  
circumstantibus obscurare, ut qualia sunt appareant,  
5 haec inbecilla natura mutuo auxilio sustententur. Ita quae  
non possunt valere quia magna sunt valebunt quia multa  
sunt; utique vero ad eiusdem rei probationem omnia spec-  
tent.<sup>1</sup> Ut si quis hereditatis gratia hominem occidisse dica-  
tur: 'hereditatem sperabas et magnam hereditatem, et

<sup>1</sup> *Shackleton Bailey*: spectant B: expectant A

It has generally been taught that an Argument should be agreed: for how can doubtful propositions be proved by doubtful propositions? However, some things which we adduce to prove something else need to be proved themselves. "You killed your husband, for you were an adulteress": we have to prove the adultery first, so that, when this is certain, it can become an Argument for an uncertain fact. "Your spear was found in the body of the murdered man": he says it was not his; to make this support our Proof, we have to prove that it was. In this connection, it is essential to observe that there are no firmer propositions than those which were doubtful and have now become certain. "You committed the murder, your clothes were covered with blood": this is not such a weighty Argument if he admits it as if it is proved against him. For if he admits it, there are many reasons why his clothes could have got blood on them; if he denies it, he makes his Cause hinge on this, and if he is beaten here he falls down also in what follows, since it will be thought that he would not have lied in his denial unless he had despaired of being able to explain the fact satisfactorily if he had admitted it.

The strongest Arguments should be pressed individually, the weaker ones massed together, because it is wrong to let naturally strong points be obscured by their context and their qualities concealed, whereas the naturally weaker points are supported by the help they give one another. So Arguments which cannot have force on the ground of their importance may acquire it by strength of numbers; but make sure they all tend to prove the same thing! Suppose, for example, a man is said to have murdered another for an inheritance: "You hoped for an inheritance, a great inheritance, and you were poor, and your



pauper eras et tum maxime a creditoribus appellabaris, et offenderas eum cuius heres eras, et mutaturum tabulas sciebas': singula levia sunt et communia, universa vero nocent, etiam si non ut fulmine, tamen ut grandine.

- 6 Quaedam argumenta ponere satis non est: adiuvanda sunt; ut 'cupiditas causa sceleris fuit': quae sit vis eius; 'ira': quantum efficiat in animis hominum talis adfectio. Ita et firmiora erunt ipsa et plus habebunt decoris si non nudos  
7 et velut carne spoliatis artus ostenderint. Multum etiam refert, si argumento nitentur odii, utrum hoc ex invidia sit an ex iniuria an ex ambitu, vetus an novum, adversus inferiorem parem superiorem, alienum propincum. Suos habent omnia ista tractatus, et ad utilitatem partis eius quam  
8 tuemur referenda sunt. Nec tamen omnibus semper quae invenerimus argumentis onerandus est iudex, quia et taedium adferunt et fidem detrahunt. Neque enim potest iudex credere satis esse ea potentia quae non putamus ipsi sufficere qui diximus. In rebus vero apertis argumentari tam sit stultum quam in clarissimum solem mortale lumen inferre.

- 9 His quidam probationes adiciunt, quas *παθητικός* vocant, ductas ex adfectibus. Atque Aristoteles quidem potentissimum putat ex eo qui dicit, si sit vir bonus: quod ut optimum est, ita longe quidem sed sequitur tamen videri.

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<sup>1</sup> I.e. a lamp. Cousin adduces a Greek proverb (Diogenianus 6.27), "to light a lamp at noon."

<sup>2</sup> *Rhetoric* 1. 1356a13.

creditors were just then pressing you hard; you had offended the man whose heir you were, and you knew he would change his will." Individually, these points are trivial and commonplace, but taken together they are damaging—not like a thunderbolt, maybe, but like a shower of hail.

With some Arguments, the mere statement of them is not enough. They have to be given support. For example, "The motive for the crime was greed" needs an explanation of the force of greed, while to say it was "anger" involves explaining the power such an emotion has over men's hearts. In this way, the Arguments themselves will be stronger, and also more attractive, since we shall not be displaying the bare skeleton with no flesh on it. It also makes a great difference, if we are relying on an Argument about hatred, whether the hatred was due to envy, injury, or rivalry, whether it was old or recent, and whether it was directed against an inferior, an equal, a superior, a stranger, or a relative. All these involve special methods of treatment, and must be considered with reference to the advantage of our side. On the other hand, we must not always burden the judge with all the Arguments we have discovered, because that both bores him and damages our credibility. A judge cannot believe in the sufficiency of arguments which we, the speakers, do not think adequate. Indeed, when the facts are plain, it is as foolish to argue as it is to bring a "mortal light"<sup>1</sup> into broad sunlight.

To these Proofs some add those which the Greeks call "pathetic," that is to say taken from the emotions. Aristotle indeed thinks that the most effective proof is based on the speaker, if he is a good man.<sup>2</sup> This indeed is best; next best, but a long way behind, is to *seem* good. Hence Scaurus'

- 10 Inde enim illa nobilis Scauri defensio: 'Q. Varius Sucronensis ait Aemilium Scaurum rem publicam populi Romani prodidisse: Aemilius Scaurus negat'. Cui simile quiddam fecisse Iphicrates dicitur, qui cum Aristophontem, quo accusante similis criminis reus erat, interrogasset an is accepta pecunia rem publicam proditurus esset isque id negasset, 'quod igitur' inquit 'tu non fecisses, ego feci?'
- 11 Intuendum autem et qui sit apud quem dicimus, et id quod illi maxime probabile videatur requirendum: qua de re locuti sumus in prohoemii et suasoriae praeceptis.
- 12 Altera ex adfirmatione probatio est: 'ego hoc feci!', 'tu mihi hoc dixisti!' et 'o facinus indignum!', similia; quae non debent quidem deesse orationi, et si desunt multum nocent, non tamen habenda sunt inter magna praesidia, cum hoc in eadem causa fieri ex utraque parte similiter possit.
- 13 Illae firmiores ex sua cuique persona probationes quae credibilem rationem subiectam habent: ut vulneratus aut filio orbatus non fuerit alium accusaturus quam nocentem, quando, si negotium innocenti facit, liberet eum noxa qui admiserit. Hinc et patres adversus liberos et adversus suos quisque necessarios auctoritatem petunt.

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<sup>3</sup> The trial of Scaurus was in 90 BC. His accuser, the tribune Q. Varius, came originally from the Spanish town of Sucro; his low beginnings contrast strongly with the ancient nobility of Scaurus. Asconius (*In Scaurianam* 20 = p. 22 Clark: *ORF* p. 167) gives what seem to be the actual words, ending: *testis nemo est: utri vos, Quirites, convenit credere?* ("There is no witness; Citizens, which of us two is it proper for you to believe?")

<sup>4</sup> From Aristotle, *Rhetoric* 2. 1398a4. The story relates to the naval defeat of Embata (356 BC) in the war resulting from the revolt of Athens' allies. Iphicrates, who was acquitted, was a great

grand defence: “Quintus Varius of Sucro alleges that Aemilius Scaurus has betrayed the common interests of the Roman people; Aemilius Scaurus denies it.”<sup>3</sup> Iphicrates is said to have done something like this: he asked Aristophon, who was prosecuting him on a similar charge, whether he would have betrayed his country for a bribe and, when Aristophon said “No,” he went on to say “So have I done what you would not have done?”<sup>4</sup> However, we must think also about the judge before whom we are appearing, and look for such Arguments as will most appeal to him. I spoke of this in giving my rules for the Prooemium and for Deliberative speeches.<sup>5</sup>

Another type of emotional Proof is by strong asseveration: “*I did this!*” “*You told me this!*” “The outrageous crime!” and the like. Such things ought not to be lacking in a speech; the absence of them is damaging. Nevertheless, they are not to be regarded as major sources of support, because this sort of thing can be done in like manner on both sides in the same Cause.

More reliable are Proofs which are based on individual character and supported by a plausible reason: for example, a wounded man or one who has lost a son is not likely to accuse anyone who is not guilty, since, if he stirs things up against the innocent, he frees the real culprit from risk of punishment. This is an Argument from which fathers seek support against their sons, or relatives against relatives.

general. Aristophon was an elderly politician, notorious for having often been prosecuted. Aelius Aristides, *Oration* 28.84–87 (2.168–169 Keil) provides a rhetorical development of this *exemplum*. <sup>5</sup> 3.8.36, 4.1.17.

14 Quaesitum etiam potentissima argumenta primone  
ponenda sint loco, ut occupent animos, an summo, ut inde  
dimittant, an partita primo summoque, ut Homericam dis-  
positione in medio sint infirma ac velut<sup>2</sup> animis crescant.  
Quae prout ratio causae cuiusque postulabit ordinabuntur,  
uno (ut ego censeo) excepto, ne a potentissimis ad levissi-  
ma decrescat oratio.

15 Ego haec breviter demonstrasse contentus, ita posui ut  
locos ipsos et genera quam possem apertissime osten-  
derem: quidam executi sunt verbosius, quibus placuit,  
proposita locorum communium materia, quo quaeque res  
modo dici posset ostendere; sed mihi supervacuum vide-  
16 batur. Nam et fere apparet quid in iniuriam, quid in avari-  
tiam, quid in testem inimicum, quid in potentes amicos  
dicendum sit, et de omnibus his omnia dicere infinitum  
est, tam hercule quam si controversiarum quae sunt quae-  
que futurae sunt quaestiones argumenta sententias tra-  
17 dere velim. Ipsas autem argumentorum velut sedes non  
me quidem omnis ostendisse confido, plurimas tamen.

Quod eo diligentius faciendum fuit quia declamatio-  
nes, quibus ad pugnam forensem velut praepilatis exerceri  
solebamus, olim iam ab illa vera imagine orandi recesserunt,  
atque ad solam compositae voluptatem nervis ca-  
rent, non alio mediis fidiis vitio docentium<sup>3</sup> quam quo  
mancipiorum negotiatores formae puerorum virilitate ex-

<sup>2</sup> ac velut *M. W.*: aut *AB*: ut *Cousin*: et a vicinis crescant *Radermacher* ("and gain strength from their neighbors"): atque in maius crescant *Watt* 1988 ("and grow bigger")

<sup>3</sup> *edd.*: dicentium *B*: dicendum *A*

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<sup>6</sup> *Iliad* 4.299, and 4.2.102 above.

The question is also asked, whether the most powerful Arguments should be put at the beginning, so as to take possession of the judge's mind, or at the end, so as to leave a final impression on him, or be divided between the beginning and the end, in any case following Homer's tactics of putting the weakest in the centre<sup>6</sup> and, as it were, giving them more courage? In fact, they should be arranged according to the demands of the particular Cause, with (in my opinion) only one exception, namely that the speech should never descend from the strongest argument to the weakest.

I have been content to give a brief account of these matters, my object being to display as clearly as possible the actual Places and types of Arguments. Others have gone into it at greater length; they have decided to explain, by setting out the whole armoury of commonplaces, how any particular theme can be handled. This seemed to me a waste of time. It is pretty obvious what should be said against injustice, avarice, a hostile witness, or powerful friends; and to say everything about all these is an infinite task, just as infinite, to be sure, as trying to expound all the Questions, Arguments, and Thoughts involved in every existing and future *controversia*. As to the "areas" of the Arguments, as it were, I have no confidence that I have pointed them all out, only that I have most of them.

This needed to be done with particular care, because declamations, in which we used as it were to fence with foils as practice for the battle of the courts, have long since ceased to be a realistic reproduction of pleading and, being composed solely for pleasure, have lost their muscle; indeed, the teachers, I feel bound to say, have been guilty of the same offence as slave dealers who castrate boys to

18 cisa lenocinantur. Nam ut illi robur ac lacertos barbamque ante omnia et alia quae natura proprie maribus dedit parum existimant decora, quaeque fortia, si liceret, forent ut dura molliunt: ita nos habitum ipsum orationis virilem et illam vim stricte robusteque dicendi tenera quadam elocutionis cute operimus et, dum levia sint ac nitida, quantum  
 19 valeant nihil interesse arbitramur. Sed mihi naturam inveniendi nemo non vir spadone formosior erit, nec tam aversa umquam videbitur ab opere suo providentia ut debilitas inter optima inventa sit, nec id ferro speciosum fieri putabo quod si nasceretur monstrum erat. Libidinem iuuet ipsum effeminati sexus mendacium, numquam tamen hoc continget malis moribus regnum, ut si qua pretiosa fecit fecerit et bona.

20 Quapropter eloquentiam, licet hanc (ut sentio enim, dicam) libidinosam resupina voluptate auditoria probent, nullam esse existimabo quae ne minimum quidem in se indicium masculi et incorrupti, ne dicam gravis et sancti, viri  
 21 ostentet. An vero statuarum artifices pictoresque clarissimi, cum corpora quam speciosissima fingendo pingendove efficere cuperent, numquam in hunc ceciderunt errorem, ut Bagoam aut Megabuxum aliquem in exemplum operis sumerent sibi, sed doryphoron illum aptum vel militiae vel palaestrae, aliorum quoque iuvenum bellicorum et athletarum corpora decora vere existimarunt: nos qui oratorem

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<sup>7</sup> Persian names associated with eunuchs.

<sup>8</sup> Compare Pliny, *Natural History* 34.55 (*doryphorum viriliter puerum*) for a similar stress on the virility of Polyclitus' classic masterpiece.

increase their attractions. As those dealers think there is no beauty in strength or in a muscular arm, and certainly not in a beard and the other natural endowments of the male, and so take what might, if left alone, have developed into sturdiness and soften its supposed hardness—so do we cover up the manly form of eloquence and the power of lean and vigorous speech with a delicate veneer of style, and think effectiveness of no importance, so long as everything is smooth and polished. I look rather at nature; any real man is handsomer to me than any eunuch, nor can I believe that Providence is so indifferent to its own work as to make weakness an excellence, or that the knife can lend beauty to a creature that would be a monster if it was born like that. Sham femininity may indeed itself stimulate lust, but a wicked world should never dominate us so much as to make the moral value of things depend on the price it has put on them.

Consequently, although this debauched eloquence (I shall speak my mind, you see) may win the approval of audiences enervated by pleasure, I decline to regard as eloquence in any sense something which shows no trace at all of a normal male, let alone of a man of weight and integrity. When the greatest sculptors and painters wanted to reproduce in statuary or painting the most beautiful bodies possible, they never committed the error of taking some Bagoas or Megabuxus<sup>7</sup> as a model for their work, but found true beauty in the Doryphorus,<sup>8</sup> who is equally well fitted for war and for the wrestling ring, or in the bodies of other warlike and athletic youths. Shall we then, who claim to be



studemus effingere non arma sed tympana eloquentiae demus?

- 22 Igitur et ille quem instituimus adulescens quam maxime potest componat se ad imitationem veritatis, initurusque frequenter forensium certaminum pugnam iam in schola victoriam spectet, et ferire vitalia ac tueri sciat, et praeceptor id maxime exigit, inventum praecipue probet. Nam ut ad peiora iuvenes laude ducuntur, ita laudati<sup>4</sup> in
- 23 bonis manent.<sup>5</sup> Nunc illud mali est, quod necessaria plerumque silentio transeunt, nec in dicendo videtur inter bona utilitas. Sed haec et in alio nobis tractata sunt opere et in hoc saepe repetenda: nunc ad ordinem inceptum.

13

- 1 Refutatio dupliciter accipi potest: nam et pars defensoris tota est posita in refutatione, et quae dicta sunt ex diverso debent utrimque dissolvi. Et hoc est proprie cui in causis quartus adsignatur locus, sed utriusque similis condicio est. Neque vero ex aliis locis ratio argumentorum in hac parte peti potest quam in confirmatione, nec locorum aut sententiarum aut verborum et figurarum alia condicio est.
- 2 Adfectus plerumque haec pars mitiores habet.

<sup>4</sup> *Kiderlin*: laudari AB

<sup>5</sup> *Kiderlin*: mallent AB

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<sup>9</sup> Orgiastic music and effeminacy are naturally connected: see, e.g., Statius, *Achilleis* 1.848–850.

<sup>10</sup> *De causis corruptae eloquentiae*; see General Introduction.

<sup>1</sup> I.e. after Prooemium, Narrative, and Proofs, and before Epilogue.

fashioning an orator, give eloquence not arms to fight with, but a tambourine?<sup>9</sup>

So let the young man whom we are educating prepare himself, as far as he can, to imitate real life. He will often have to do battle in the forum; let him therefore, while he is in school, set his sights on winning, and learn how to aim for his opponent's vital places and protect his own. This is what his teacher must demand, and what he must particularly praise when he finds it. Just as young people may be led into bad ways by praise, so praise may hold them to good ones. The trouble nowadays is that teachers often pass over the essentials in silence, and effectiveness is not counted one of the virtues of eloquence. But I have treated these matters also in another work,<sup>10</sup> and I shall often need to recur to them in this. For the present, I return to my plan.

## CHAPTER 13

### *Refutation*

Refutation may be understood in two senses, because (1) the function of the defence consists entirely in Refutation, and (2) each side has to rebut what is said by the other. It is in this second sense that Refutation is assigned to the fourth place in the Cause.<sup>1</sup> But the methods are similar in either case. The principle governing Arguments in this part cannot be sought in any Places which are not used for the Confirmation; Topics, Thoughts, Words, and Figures also follow the same guidelines. As to Emotions, only the gentler ones are normally relevant here.

Non sine causa tamen difficilius semper est creditum, quod Cicero saepe testatur, defendere quam accusare. Primum quod est res illa simplicior: proponitur enim uno modo, dissolvitur varie, cum accusatori satis sit plerumque verum esse id quod obiecerit, patronus neget defendat transferat excuset deprecetur molliat minuat avertat despiciat derideat. Quare inde recta fere atque, ut sic dixerim, clamosa est actio: hinc mille flexus et artes desiderantur.

3 Tum accusator praemeditata pleraque domo adfert, patronus etiam inopinatis frequenter occurrit. Accusator dat testem, patronus ex re ipsa refellit. Accusator a criminum invidia, etsi falsa sint,<sup>1</sup> materiam dicendi trahit, de parricidio sacrilegio maiestate: quae patrono tantum neganda sunt. Ideoque accusationibus etiam mediocres in dicendo suffecerunt, bonus defensor nemo nisi qui eloquentissimus fuit. Nam ut quod sentio semel finiam, tanto est accusare quam defendere quanto facere quam sanare vulnera facilius.

4 Plurimum autem refert et quid protulerit adversarius et quo modo. Primum igitur intuendum est id cui responsuri sumus, proprium sit eius iudicii an ad causam extra accessitum. Nam si est proprium, aut negandum aut defen-

<sup>1</sup> *recc.*: sit AB

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<sup>2</sup> Presumably by his preference for the defence, as a better test of skill, and a more humane use of it: but see *Divinatio in Caecilium* 1.1.

It has always been thought, and not without reason, that, as Cicero often testifies,<sup>2</sup> defence is harder than prosecution. In the first place, prosecution is simpler. There is only one way of presenting a charge, but various ways of countering it, because it is usually enough for the accuser to state that his charge is true, whereas the defence advocate may deny, justify, seek to transfer the case, make excuses, plead for mercy, soften, extenuate, divert the charge, or scorn and ridicule it. Thus on the one side we have, as a rule, a straightforward speech, a matter of a loud voice, one might say, while the other side needs a thousand twists and tricks. Moreover, the prosecutor brings most of his speech, ready rehearsed, from home, while the defence advocate often has to face the unexpected. The prosecutor produces a witness, the defence has to use the bare facts to refute the witness. The prosecutor draws his material from the scandal caused by the charges, even if they are false: parricide, sacrilege, treason are his themes; and all the defence can do is deny. This is why even moderate speakers have done well enough in prosecutions, but there has never been a good defence advocate who has not been first class as a speaker. To state my view once for all, prosecution is as much easier than defence as wounding is easier than curing the wound.

### *Defence*

The most important thing is the content and manner of the opponent's presentation. We must therefore first consider whether the point to be answered is properly relevant to the Cause or has been brought in from outside. (1) If it is relevant, we must either deny or justify or seek to have the

- dendum aut transferendum: extra haec in iudiciis fere nihil  
 5 est. Deprecatio quidem, quae est sine ulla specie defensionis, rara admodum et apud eos solos iudices qui nulla certa pronuntiandi forma tenentur. Quamquam illae quoque apud C. Caesarem et triumviros pro diversarum partium hominibus actiones, etiam si precibus utuntur, adhibent tamen patrocinia, nisi hoc non fortissime defendentis est, dicere: 'quid aliud egimus, Tubero, nisi ut quod hic potest  
 6 nos possemus?' Quod si quando apud principem aliumve cui utrum velit liceat dicendum erit dignum quidem morte eum pro quo loquemur, clementi tamen servandum esse vel talem, primum omnium non erit res nobis cum adversario sed cum iudice, deinde forma deliberativae magis materiae quam iudicialis utemur: suadebimus enim ut laudem humanitatis potius quam voluptatem ultionis concupiscat. Apud iudices quidem secundum legem dicturos  
 7 sententiam de confessis praecipere ridiculum est.

Ergo quae neque negari neque transferri possunt utique defendenda sunt, qualiacumque sunt, aut causa ceddendum. Negandi duplicem ostendimus formam, aut non esse factum aut non hoc esse quod factum sit. Quae neque defendi neque transferri possunt, utique neganda, nec solum si finitio potest esse pro nobis, sed etiam si nuda  
 8 infitatio superest. Testes erunt: multa in eos dicere licet; chirographum: de similitudine litterarum disserendum.

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<sup>3</sup> See 3.10.1.

<sup>4</sup> Cicero, *Pro Ligario* 10.

<sup>5</sup> I.e. it is either an Issue of Conjecture or one of Definition.

<sup>6</sup> I.e. suggest it is a forgery.

case transferred. In a forensic case, there is virtually no other alternative. Pleas for mercy which are without any pretence of justification are very rare, and are made only before judges who are not limited to a stated form of verdict.<sup>3</sup> Even the speeches given before Caesar and the triumvirs on behalf of members of the opposite party, though they do contain pleas, also adduce defences—unless, that is, we are to say that there is no robust defensive element in “What other object had we, Tubero, but to win the power that this man now has?”<sup>4</sup> But let us suppose we have one day to say, before the emperor or some other person who has power to decide whichever way he wishes, that the man for whom we are speaking does indeed deserve death, but that it is right for a merciful judge to spare even a man like this. In that case, first, we shall not now be dealing with an opponent but with the judge; secondly, we shall be adopting the form of a deliberative rather than a forensic subject, for we shall be persuading him to seek a reputation for humanity rather than the pleasure of revenge. With judges who are bound to pronounce sentence according to law, it is of course absurd to offer advice about the treatment of admitted guilt.

So a case which can neither be denied nor transferred must inevitably be defended, whatever its nature, or else one must give up the Cause. I have shown that there are two forms of denial: either “it was not done” or “what was done is not this.”<sup>5</sup> Cases which cannot be defended or transferred must inevitably be denied, and not only if a Definition might possibly help us, but also if there is no option except a bare denial. If there are witnesses, much can be said to discredit them. If there is a handwritten document, we can discuss the similarity of the letter forms.<sup>6</sup> In

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- Utique nihil erit peius quam confessio. Ultima est actionis controversia, cum defendendi negandive non est locus  
 9 [id est relatio].<sup>2</sup> Atqui quaedam sunt quae neque negari neque defendi neque transferri possint. ‘Adulterii rea est quae cum anno vidua fuisset enixa est’: lis non erit. Quare illud stultissime praecipitur, quod defendi non possit silentio dissimulandum, si quidem est id de quo iudex pronuntiaturus est.
- 10 At si extra causam sit adductum et tantum coniunctum, malim quidem dicere nihil id ad quaestionem nec esse in iis morandum et minus esse quam adversarius dicat, tamen hic vel<sup>3</sup> simulationi oblivionis ignoscam; debet enim bonus advocatus pro rei salute brevem negligentiae reprehensionem non pertimescere.
- 11 Videndum etiam, simul nobis plura adgredienda sint an amolienda singula. Plura simul invadimus si aut tam infirma sunt ut pariter inPELLI possint, aut tam molesta ut pedem conferre cum singulis non expediat: tum enim toto corpore obnitendum et, ut sic dixerim, directa fronte pug-  
 12 nandum est. Interim, si resolvere ex parte diversa dicta difficilius erit, nostra argumenta cum adversariorum argumentis conferemus, si modo haec ut valentiora videantur

<sup>2</sup> *del. Spalding*: id est translatio *Regius*

<sup>3</sup> hic vel *Winterbottom*: velut huic *AB*: vel *Halm*

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<sup>7</sup> A widow was not allowed to marry within ten months of her husband's death. Hadrian (according to Gellius 3.16) declared a birth in the eleventh month to be legitimate, accepting medical evidence that the long pregnancy was possible. Sexual intercourse after the husband's death here counts as *adulterium*. Rabelais

any case, nothing can be worse than a confession. The last resort, when there is no scope for justification or denial, is to question the legal procedure. [This is “relation.”] And yet there *are* cases which can be neither denied nor defended nor transferred. “A woman who gives birth to a child when she has been a widow for a year is accused of adultery.”<sup>7</sup> There is no dispute here. It is thus very foolish advice to say that what cannot be defended should be tacitly suppressed, at any rate if it is the point on which the judge has to decide.

(2) If however it is something brought in from outside the case, and merely incidental to it, I personally should prefer to say that it is irrelevant to the Question, does not warrant spending time on it, and is less significant than our opponent makes out; but I should not object here even to a pretence of having forgotten,<sup>8</sup> for the good advocate ought not to fear a short-lived censure for carelessness, if it is to save his client.

We must consider also whether to attack several points at once or dispose of them one by one. (1) We attack several at once if they are so weak that they can be knocked down together, or so awkward that it would be imprudent to grapple with them individually, for we must then engage our whole strength, and fight head on, as it were. Sometimes, if it proves too difficult to refute the other side’s points, we can set our Arguments against theirs, so long as we can ensure that they seem stronger. (2) Arguments

(*Gargantua* ch. 3) makes good use of ancient evidence on this subject.

<sup>8</sup> This trick is recommended by Hermogenes (359 Rabe: Wooten (1987) 94) as a way of giving an impression of sincerity.



effici poterit. Quae vero turba valebunt, diducenda erunt, ut, quod paulo ante dixi: 'heres eras et pauper et magna pecunia appellaberis a creditoribus et offenderas et mutaturum tabulas testamenti sciebas.' Urgent universa: at  
 13 singula<sup>4</sup> quaeque dissolveris, iam illa flamma, quae magna congerie convaluerat, diductis quibus alebatur concidet, ut si vel maxima flumina in rivis diducantur qualibet transitum praebent. Itaque propositio quoque secundum hanc utilitatem accommodabitur, ut ea nunc singula ostenda-  
 14 mus, nunc complectamur universa. Nam interim quod pluribus collegit adversarius, sat est semel proponere: ut, si multas causas faciendi quod arguit reo dicet accusator fuisse, nos non enumeratis singulis semel hoc in totum negemus, quia non quisquis causam faciendi sceleris habuit  
 15 et fecerit. Saepius tamen accusatori congerere argumenta, reo dissolvere expediet.

Id autem quod erit ab adversario dictum quo modo refutari debeat intuendum est. Nam si erit palam falsum, negare satis est, ut pro Cluentio Cicero eum quem dixerat accusator epoto poculo concidisse negat eodem die mor-  
 16 tuum. Palam etiam contraria et supervacua et stulta reprehendere nullius est artis, ideoque nec rationem eorum nec exempla tradere necesse est. Id quoque (obscurum vocant) quod secreto et sine teste aut argumento dicitur

<sup>4</sup> <si> singula *A corr., recc.*

<sup>9</sup> 5.12.5.

<sup>10</sup> 168.

which have cumulative force should be taken separately, as in the example I quoted just above:<sup>9</sup> “You were the heir, you were poor, your creditors had large claims on you, you had offended the testator, and you knew he was going to change his will.” Taken together, those Arguments are impressive; if you refute them one at a time, the flame which gathered strength from the mass will die down as its fuel is scattered—just as even very great rivers can be made fordable anywhere if they are <diverted> into a number of channels. The Proposition also should be adapted to these practical considerations, sometimes setting out points individually, sometimes embracing the whole complex, as it is sometimes enough to set out in one Proposition what your opponent has constructed out of a number of points. For example, if the accuser says that the defendant had several motives for doing what he alleges, we should deny the whole idea at once, without listing the individual motives, on the general ground that a man who had a motive for committing a crime has not necessarily done so. More often, however, it will be expedient for the prosecution to mass Arguments together, and for the defence to break them up.

A further point to consider is how the opponent’s statements should be refuted. (1) If they are patently false, a denial is enough; as when Cicero in *Pro Cluentio*<sup>10</sup> denies that the man whom the accuser says fell down dead after drinking the cup died on the same day. (2) Patently contradictory, superfluous, or foolish statements need no skill to rebut, and there is therefore no need to give principles or examples to illustrate these. (3) An “obscure” charge (as it is called), in which something is alleged to have been done secretly, and there is no witness or Argument, is suf-

factum, satis natura sua infirmum est (sufficit enim quod adversarius non probat), item si ad causam non pertinet.

17 Sed tamen interim oratoris est efficere ut quid aut contrarium esse aut a causa diversum aut incredibile aut supervacuum aut nostrae potius causae videatur esse coniunctum. Obicitur Oppio quod de militum cibariis detraxerit: asperum crimen, sed id contrarium ostendit Cicero, quia idem accusatores obiecerint Oppio quod is voluerit exercitum largiendo corrumpere. Testes in Cornelium accusator lecti a tribuno codicis pollicetur: facit hoc Cicero supervacuum, quia ipse fateatur. Petit accusationem in Verrem Q. Caecilius, quod fuerat quaestor eius: ipsum Cicero ut pro se videretur effecit. Cetera quae proponuntur communis locos habent. Aut enim coniectura excutiuntur, an vera sint, aut finitione, an propria, aut qualitate, an inhonesta iniqua improba inhumana crudelia et cetera quae ei generi

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20 accidunt, eaque non modo in propositionibus aut rationibus, sed in toto genere actionis intuenda: an sit crudelis, ut Labieni in Rabirium lege perduellionis, inhumana, ut Tiberonis Ligarium exulem accusantis atque id agentis ne ei Caesar ignoscat, superba, ut in Oppium ex epistula Cottae

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<sup>11</sup> See on 5.10.69. This passage is *Fr. orat.* III.7a Schoell; Crawford (1994) 28.

<sup>12</sup> See on 4.3.13. This is *Fr. orat.* VII.6 Schoell; Crawford (1994), 73.

<sup>13</sup> In *Divinatio in Q. Caecilium*.

<sup>14</sup> This is the case defended by Cicero in *Pro Rabirio perduellionis reo* in 63 BC, 36 years after the alleged treason. The prosecutor was T. Labienus, then *tribunus plebis*, later well known as Caesar's legate in Gaul; he deserted to Pompey and was killed at Munda in 45.

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ficiently unsafe in itself (for the fact that the opponent offers no proof is enough); and so (4) is any charge not relevant to the Cause. Sometimes, however, it needs a real orator to make the opponent's argument appear contradictory, irrelevant, unbelievable, superfluous, or favourable to our side rather than to the opponent's. Oppius<sup>11</sup> is charged with having taken a cut from the soldiers' ration allowance: a serious matter, but Cicero shows that it contradicts other charges, because the same accusers also charged Oppius with trying to bribe the army by largesse. Again, Cornelius' accuser<sup>12</sup> promises witnesses to prove that the tribune read out the law: Cicero shows this to be superfluous, because Cornelius admits it. Quintus Caecilius asks for the right to accuse Verres, because he had been his quaestor; Cicero makes this actually tell in his own favour.<sup>13</sup> (5) All other prosecution statements involve standard topics; they are dealt with either by Conjecture (are they true?) or by Definition (are they relevant?) or by Quality (are they dishonourable, unfair, scandalous, inhumane, cruel, or whatever else comes under this head?), and these points are to be considered in connection not only with the prosecution statements or the reasons alleged, but with the whole tenor of the pleading: cruelty is the leading feature of Labienus' prosecution of Rabirius under the law of treason;<sup>14</sup> inhumanity, in Tubero's<sup>15</sup> prosecution of the exiled Ligarius and his attempt to prevent Caesar from pardoning him; arrogance, of the charge brought against Oppius as a result of Cotta's letter.<sup>16</sup> (6)

<sup>15</sup> See 10.1.10: *ORF* p. 528.

<sup>16</sup> Cicero, *Fr. orat.* III.7b Schoell: Crawford (1994) 28.

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- 21 reum factum: proinde<sup>5</sup> praecipites insidiosae inpotentes deprehenduntur; ex quibus tamen fortissime invaseris quod est aut omnibus periculosum (ut dicit Cicero pro Tullio: 'quis hoc statuit umquam, aut cui concedi sine summo omnium periculo potest, ut eum iure potuerit occidere a quo metuisse se dicat ne ipse posterius<sup>6</sup> occideretur?') aut ipsis iudicibus, ut pro Oppio monet pluribus ne illud
- 22 actionis genus in equestrem ordinem admittant. Nonnumquam tamen quaedam bene et contemnuntur vel tamquam levia vel tamquam ad causam nihil pertinentia. Multis hoc locis facit Cicero. Et haec simulatio interim huc usque procedit ut quae dicendo refutare non possumus quasi fastidiendo calcemus.
- 23 Quoniam vero maxima pars eorum similibus constat, rimandum erit diligentissime quid sit in quoque quod adsumitur dissimile. In iure facile deprenditur: est enim scriptum de rebus utique diversis, tantoque magis ipsarum rerum differentia potest esse manifesta. Illas vero similitudines quae ducuntur ex mutis animalibus aut inanimis facile est eludere.
- 24 Exempla rerum varie tractanda sunt, si nocebunt: quae si vetera erunt, fabulosa dicere licebit, si indubia, maxime quidem dissimilia; neque enim fieri potest ut paria sint omnia, ut, si Nasica post occisum Ti. Gracchum defendenda-

<sup>5</sup> perinde *Gesner* (*but see N. Holmes, Glotta* 74 (1997–8) 64–5)

<sup>6</sup> prius *Capperonnier*

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<sup>17</sup> 56.

<sup>18</sup> Cicero, *Fr. orat.* III.7c Schoell: Crawford (1994) 28.

Precipitate, treacherous, and unreasonable prosecutions are exposed in the same way. But the strongest attack should be reserved for those which are either (a) dangerous to the community (Cicero, *Pro Tullio*:<sup>17</sup> “Who ever decided, or who could ever be allowed without great risk to our whole society, to regard it as justifiable to kill a man just because he says he was afraid he might himself be killed by him later?”), or (b) dangerous to the judges themselves (in *Pro Oppio* he warns at some length against allowing an action of this kind to damage the equestrian order).<sup>18</sup> (7) Sometimes however some Arguments are best treated with contempt as trivial or irrelevant to the Cause. Cicero often did this; and the pretence sometimes succeeds to the point that we trample down, as it were, by showing our distaste for them, Arguments which we cannot refute.

### *Refutation of Examples and similar Arguments*

However, since most of these Arguments are based on Similarities, we shall need to hunt around very diligently for any Dissimilarities in whatever is put forward as a comparison. These are easily detected in matters of law. For the law was of course drafted to cover cases different from this one, and the difference of the circumstances may thus be all the more obvious. And parallels from dumb animals or inanimate objects are easily sidestepped.

Factual examples have to be handled in various ways, if they are likely to be damaging; if they are from antiquity, one can call them mythical; if they are undoubted, one can stress the dissimilarities, for it is not possible that everything should correspond. For example, if, after the murder of Tiberius Gracchus, Nasica were defended by the ex-

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tur exemplo Ahalae a quo Maelius est interfectus, Maelium regni adfectatorem fuisse, a Graccho leges modo latas esse popularis, Ahalam magistrum equitum fuisse, Nasicam privatum esse dicatur. Si defecerint omnia, tum videndum erit an optineri possit ne illud quidem recte factum.

Quod de exemplis, idem etiam de iudicatis observandum.

25 Quod autem posui, referre quo quidque accusator modo dixerit, huc pertinet ut, si est minus efficaciter elocutus, ipsa eius verba ponantur: si acri et vehementi fuerit usus oratione, eandem rem nostris verbis mitioribus profereamus, ut Cicero de Cornelio: 'codicem attigit', et protinus cum quadam defensione, ut, si pro luxurioso dicendum sit: 26 'obiecta est paulo liberalior vita.' Sic et pro sordido parcum, pro maledico liberum dicere licebit. Utique numquam committendum est ut adversariorum dicta cum sua confirmatione referamus, aut etiam loci alicuius executione adiuvemus, nisi cum eludenda erunt: 'apud exercitum mihi fueris, inquit, tot annis forum non attigeris, afueris tam diu, et, cum tam longo intervallo veneris, cum his qui in foro habitaverunt de dignitate contendas?' 27

28 Praeterea in contradictionibus interim totum crimen exponitur, ut Cicero pro Scauro circa Bostarem facit veluti

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<sup>19</sup> See 5.11.12, 16.

<sup>20</sup> 5.13.4.

<sup>21</sup> *Fr. orat.* VII.29 Schoell: Crawford (1994) 83. See on 4.3.13. In this passage, Cornelius puts his hands on the codex, to begin (allegedly) his unlawful reading of his law.

ample of Ahala, who killed Maelius, we could argue that Maelius aimed to be king, whereas Gracchus had only brought forward popular laws, and that Ahala was Master of the Horse, and Nasica simply a private citizen.<sup>19</sup> If all else fails, we shall then have to see if it can be established that the parallel action was itself wrong.

These comments on Examples may also be made about Previous Decisions.

To return to my remark<sup>20</sup> that the manner in which the accuser has made his charges is important. The point here is that, if he has spoken ineffectively, his actual words should be quoted; if he has used energetic and vigorous language, we should restate the facts in our own milder terms. (Cicero does this in *Pro Cornelio*:<sup>21</sup> “He touched the document.”) This can be combined with a defence move; for example, if we have to defend a debauchee, we can say “He has been charged with having a somewhat liberal life-style.” Similarly a mean man can be called “thrifty,” a slanderer “outspoken.” In no circumstances must we repeat our opponent’s remarks together with their Confirmation, or help him in developing any topic, unless we mean to sidestep them: “‘Let me see,’ he says, ‘you have been with the army; you have not set foot in the forum all those years: you have come back after such a long interval, and you’re competing—are you?—for high office with people who have made the forum their home?’”<sup>22</sup>

Again, in countering the charge, (1) we sometimes set out the whole of it (as Cicero does in the affair of Bostar

<sup>22</sup> Cicero, *Pro Murena* 21.



orationem diversae partis imitatus, aut pluribus propositionibus iunctis (ut pro Vareno: 'cum iter per agros et loca sola faceret cum Pompuleno, in familiam Ancharianam incidisse dixerunt, deinde Pompulenum occisum esse, ilico <C.><sup>7</sup> Varenum vinctum adservatum dum hic ostenderet quid de eo fieri vellet'): quod prodest utique si erit incredibilis rei ordo et ipsa expositione fidem perditurus; interim per partes dissolvitur quod contextu nocet, et plerumque id est tutius.

Quaedam contradictiones natura sunt singulae: id exemplis non eget.

29 Communia bene<sup>8</sup> adprenduntur non tantum quia utriusque sunt partis, sed quia plus prosunt respondententi. Neque enim pigebit, quod saepe monui, referre: com-  
 30 mune qui prior dicit, contrarium facit; est enim contrarium quo adversarius bene uti potest: 'At enim non veri simile est tantum scelus M. Cottam esse commentum. Quid? hoc veri simile est, tantum scelus Oppium esse conatum?' Artificis autem est invenire in actione adversarii quae inter semet ipsa pugnent aut pugnare videantur, quae aliquando ex rebus ipsis manifesta sunt, ut in causa Caelia-

<sup>7</sup> *add. D.A.R. (or Cn.)*

<sup>8</sup> <non> bene *Shackleton Bailey*

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<sup>23</sup> See Severianus p. 360 Halm (= *Pro Scauro* (first part) fr. (h) Clark): "Pronounce what your adversary has put forward in weaker language, though anything incredible or idiotic can be set out in full . . . 'He said that one Bostar of Nora, escaping from Sardinia before Scaurus' approach . . .' and below he adds 'buried before my client had finished his dinner.'"

<sup>24</sup> *Fr. orat.* II.5 Schoell: Crawford (1994) 14. See on 5.10.69.

in *Pro Scauro*, almost parodying the opposing speech),<sup>23</sup> or group together several of its statements (as in *Pro Vareno*:<sup>24</sup> “They have told us that, when he was travelling with Pompulenus through a lonely stretch of country, they fell in with Ancharius’ slaves; Pompulenus was then killed; and thereupon <Gaius> Varenus was kept in chains until Ancharius made it clear what he wanted done with him”). This is certainly useful if the sequence of events is incredible and is likely to be discredited by being spelt out. (2) Sometimes, again, a statement which is damaging as a whole is demolished bit by bit; this is generally the safer way.

Some answers naturally stand on their own. No illustrations are needed of this.

It is a good thing to make use of common Arguments,<sup>25</sup> not only because they belong to both sides, but because they are actually more help to the defence. I do not at all mind repeating a warning I have often given: the first party to use a “common” argument is working against himself, for any point which his opponent can use to advantage must work against him. “But, you say, it is improbable that Marcus Cotta thought of such a dreadful crime. Well, is it probable that Oppius *attempted* such a dreadful crime?”<sup>26</sup> It takes a skilled hand, however, to discover real or apparent contradictions in an opponent’s speech, though these are sometimes obvious from the actual facts, as in the case

Varenus here must be not Cicero’s client L. Varenus but C. Varenus (who was murdered) or Cn. Varenus (who was wounded). C. Ancharius Rufus was one of the prosecutors.

<sup>25</sup> I.e. points which could serve either side’s interest.

<sup>26</sup> Cicero, *Fr. orat.* III.3 Schoell: Crawford (1994) 30.

- na Clodia aurum se Caelio commodasse dicit, quod signum magnae familiaritatis est, venenum sibi paratum, quod summi odii argumentum est. Tubero Ligarium accusat quod is in Africa fuerit, et queritur quod ab eo ipse in Africam non sit admissus. Aliquando vero praebet eius rei occasionem minus considerata ex adverso dicentis oratio: quod accidit praecipue cupidis sententiarum, ut ducti occasione dicendi non respiciant quid dixerint, dum locum praesentem, non totam causam intuentur. Quid tam videri potest contra Cluentium quam censoria nota? Quid tam contra eundem quam filium ab Egnatio corrupti iudicii, quo Cluentius Oppianicum circumvenisset, crimine exheredatum? At haec Cicero pugnare invicem ostendit: 'Sed tu, Atti, consideres censeo diligenter utrum censorium iudicium grave velis esse an Egnati. Si Egnati, leve est quod censores de ceteris subscripserunt; ipsum enim Gnaeum Egnatium, quem tu gravem esse vis, ex senatu eiecerunt. Sin autem censorum, hunc Egnatium, quem pater censoria subscriptione exheredavit, censores in senatu, cum patrem eiecissent, retinuerunt.'
- 34 Illa magis vitiose dicuntur quam acute reprenduntur, argumentum dubium pro necessario, controversum pro confesso, commune pluribus pro proprio, vulgare, super-

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<sup>27</sup> Cicero, *Pro Caelio* 31.

<sup>28</sup> *Pro Ligario* 9.

<sup>29</sup> *Pro Cluentio* 135.

of Caelius, where Clodia says that she lent Caelius money, which is a sign of great intimacy, and that he obtained poison to murder her, which is a proof of extreme hatred.<sup>27</sup> Again, Tubero accuses Ligarius of having been in Africa, and then complains that he was himself refused permission to enter Africa by Ligarius.<sup>28</sup> Opportunities for this are sometimes offered by an ill-judged speech of our opponents. This happens particularly with those who have a passion for clever thoughts, with the result that, led on by the opportunities presented by their speech, they forget to look back to what they have already said, because their eyes are on the immediate context and not on the Cause as a whole. What is so likely to tell against Cluentius as the censor's reprimand? What is more damaging to him than the fact that Egnatius disinherited his son on the ground that he had accepted bribes as a juryman in the trial in which Cluentius had got the better of Oppianicus? But Cicero<sup>29</sup> shows that these facts cancel each other out: "My suggestion, Attius, is that you should consider carefully whether you want the judgement of the censors or the judgement of Egnatius to carry more weight. If you choose Egnatius', then the offence the censors recorded in other cases is trivial, because they expelled from the senate the same Gnaeus Egnatius on whose authority you lay such stress. But if you choose the decision of the censors—well, this Egnatius, whom his father disinherited with a sort of censorial blacklisting, was retained in the senate by the censors although they had expelled his father."

There are also errors which it is a fault to commit, but which do not need all that much acumen to demolish: a doubtful Argument presented as necessary, a controversial one as agreed, one common to many cases as peculiar to

vacuum, stultum,<sup>9</sup> contra fidem. Nam et illa accidunt parum cautis, ut crimen augeant quod probandum est, de facto disputent cum de auctore quaeratur, impossibilia adgrediantur, pro effectis relinquunt vixdum inchoata, de homine dicere quam de causa malint, hominum vitia rebus adsignent (ut si quis decemviratum accuset, non Appium), manifestis repugnent, dicant quod aliter accipi possit, summam quaestionis non intueantur, non ad proposita respondeant: quod unum aliquando recipi potest, cum mala causa adhibitis extrinsecus remediis tuenda est, ut cum peculatus reus Verres fortiter et industrie tuitus contra piratas Siciliam dicitur.

36 Eadem adversus contradictiones nobis oppositas praecepta sunt, hoc tamen amplius, quod circa eas multi duobus vitiis diversis laborant. Nam quidam etiam in foro tamquam rem molestam et odiosam praetereunt, et iis plerumque quae composita domo attulerunt contenti sine adversario dicunt, et scilicet multo magis in scholis, in quibus non solum contradictiones omittuntur, verum etiam materiae ipsae sic plerumque finguntur ut nihil dici pro parte altera possit. Alii diligentia lapsi verbis etiam vel  
37 sententiolis omnibus respondendum putant, quod est et

<sup>9</sup> *Winterbottom*: servum A: constitutum B

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<sup>30</sup> See Livy 3.33ff. Appius Claudius became the villain of the *decemviri* in the common accounts of 451–450 BC, following the enactment of the Twelve Tables. He was supposed to be a “tyrant” and to have fallen because of his seduction of Verginia. Q. clearly envisages a declamation on the theme.

<sup>31</sup> Cicero, *In Verrem* 5.1 demolishes this defence.

the one in hand, or anything banal, superfluous, foolish, or incredible. Careless speakers are liable to yet more mistakes: amplifying a charge which is still to be proved; disputing whether something happened, when the question is who did it; attempting the impossible; dropping an argument as though it was complete, when it is hardly begun; speaking of the individual rather than the Cause; attributing the failings of persons to institutions (for example, accusing the Decemvirate and not Appius);<sup>30</sup> controverting the obvious; saying things which can be taken in two ways; not considering the main question; not answering the charges. (This last, and this alone, may occasionally be acceptable, when a bad Cause has to be defended by palliatives introduced from elsewhere, as when Verres, accused of peculation, is said to have shown courage and energy in defending Sicily against the pirates.)<sup>31</sup>

### *Answering Objections*

The same rules apply to Objections which are made against us, but there is a further point, inasmuch as in this connection many speakers fall into two quite distinct errors. Some, even in the courts, pass over these Objections as awkward and vexatious, content themselves for the most part with the Arguments they brought with them from home ready drafted, and speak without regard to their adversary. This is of course much commoner in the schools, where not only are Objections left out, but the themes themselves are commonly contrived in such a way that there is nothing to be said on the other side. Others fail through trying too hard, and think they have to answer every word and every trivial remark, an endless and quite

infinite et supervacuum; non enim causa reprehenditur, sed actor, quem ego semper videri malim disertum, ut, si dixerit quod rei prosit, ingenii credatur laus esse non causae, si forte quod laedat, causae non ingeni culpa.

38 Itaque illae reprehensiones, ut obscuritatis, qualis in Rullum est, infantiae in dicendo, qualis in Pisonem, inscitiae rerum verborumque et insulsitatis etiam, qualis in Antonium est, animo dantur et iustis odiis, suntque utiles ad conciliandum<sup>10</sup> iis quos invisos facere volueris odium.

39 Alia respondendi patronis ratio est: aliquando tamen eorum non oratio modo sed vita etiam, vultus denique incessus habitus recte incusari solet, ut adversus Quintium Cicero non haec solum sed ipsam etiam praetextam demissam ad talos insectatus est; presserat enim turbulentis  
40 contionibus Cluentium Quintius. Nonnumquam elevandae invidiae gratia quae asperius dicta sunt eluduntur, ut a Cicerone Triarius. Nam cum Scauri columnas per urbem plaustris vectas esse dixisset: 'ego porro' inquit 'qui Albanas habeo columnas, clitellis eas adportavi?' Et magis hoc in accusatores concessum est, quibus conviciari aliquando patrocinii fides cogit. Illa vero adversus omnis et  
41 recepta et non inhumana conquestio, si callide quid tacuisse breviasse obscurasse distulisse dicuntur. Defensio-

<sup>10</sup> *Meister*: conciliandum AB

<sup>32</sup> Cicero, *De lege agraria* 2.13.      <sup>33</sup> E.g. *In Pisonem* 1.

<sup>34</sup> E.g. *Philippics* 3.22.      <sup>35</sup> *Pro Cluentio* 111.

<sup>36</sup> *Pro Scauro* 45 (l) Clark. The point seems to be that Cicero's columns were of cheap, local stone, and Scaurus' were of Greek marble; but both were heavy, and waggons were necessary.

superfluous task, for it is a criticism not of the Cause but of the speaker. For my part, I should always wish the speaker to be thought a person of eloquence, so that anything he says to the advantage of his case can be credited to his talents and not to the Cause, while if he says what damages it, the blame can be attached to the Cause and not to his talents. So Cicero's criticisms (for example) of obscurity (as against Rullus),<sup>32</sup> incapacity as a speaker (as against Piso),<sup>33</sup> ignorance of things and words and utter tastelessness (as against Antony)<sup>34</sup> are a concession to passion and justified resentment; they have a practical use in stirring up ill feeling against those whom you wish to make disliked.

Replying to advocates requires a different method, and occasionally it may be right to criticize not only their speech, but their way of life, their expression, their walk, or their bearing. Thus Cicero<sup>35</sup> in his attack on Quintius inveighs not only against all these, but even against the way his toga falls about his heels; for Quintius had attacked Cluentius in violent public speeches. Sometimes, to dispel unpopularity, a sharp remark can be turned aside with a joke, as Cicero did with Triarius.<sup>36</sup> For when the latter said that Scaurus' columns were carried through Rome on waggons, Cicero retorted: "Why, I have columns from Alba, and did I bring them in panniers?" This move is more permissible against the accusers, whom one's duty as defence advocate sometimes obliges one to insult. On the other hand, it is an acceptable and by no means discourteous complaint against any speaker to observe that he has disingenuously passed over, cut short, obscured, or postponed some point or other. Anticipated tactics on the part



nis quoque praesumpta ratio<sup>11</sup> reprehenditur saepe, ut Attius adversus Cluentium, Aeschines adversus Ctesiphontem facit, cum ille Ciceronem lege usurum modo, hic minime de lege dicturum Demosthenen queritur.

Declamatores vero in primis sunt admonendi ne contradictiones eas ponant quibus facillime responderi possit, neu sibi stultum adversarium fingant. Facimus autem (quod maxime uberes loci popularesque sententiae nascuntur materiam dicendi nobis quod volumus ducentibus) ut non sit ille inutilis versus:

non male respondit, male enim prior ille rogarat.

- 43 Fallet haec nos in foro consuetudo, ubi adversario, non ipsi nobis respondebimus. Aiunt Accium interrogatum cur causas non ageret cum apud eum in tragoediis tanta vis esset, hanc reddidisse rationem, quod illic ea dicerentur quae ipse vellet, in foro dicturi adversarii essent quae minime vellet. Ridiculum est ergo in exercitationibus quae foro praeparant prius cogitare quid responderi quam quid ex diverso dici possit. Et bonus praeceptor non minus laudare discipulum debet si quid pro diversa quam si quid pro sua parte acriter excogitavit.
- 45 Rursus est aliud in scholis permittendum semper, in

<sup>11</sup> praesumpta ratio Watt 1993: permutatio AB

<sup>37</sup> *Pro Cluentio* 143.

<sup>38</sup> Aeschines, *Against Ctesiphon* 206: "Do not let him evade the question of illegality."

<sup>39</sup> Source unknown.

<sup>40</sup> The great tragic poet was said to have prosecuted an actor

of the defence are also often attacked, as by Attius against Cluentius<sup>37</sup> or Aeschines against Ctesiphon,<sup>38</sup> Attius complaining that Cicero is going to confine himself to the law, and Aeschines that Demosthenes intends to say as little as possible about the law.

Disclaimerers however need particularly to be warned against mounting Objections which can easily be met, or imagining a stupid opponent. In fact, since florid commonplaces and applause-seeking epigrams arise here particularly, because we assume that the subject of our speech can be anything we choose, we give a useful point to the line

The answer wasn't bad; the question was.<sup>39</sup>

But this habit will be our undoing in court, where we have to answer an opponent, not ourselves. They say that Accius,<sup>40</sup> when asked why he did not plead Causes, seeing that so much power was evident in his tragedies, explained that what was said in his plays was what *he* wanted, but in court his opponents would say things that he did not want. It is thus absurd, in exercises which are meant as a preparation for the courts, to think what answer can be made before thinking what can be said by the other side. A good teacher ought in fact to praise a pupil just as much for having a smart idea for the opposite side as for having one for his own.

### *Imaginary Objections*

There is, on the other hand, another practice which is for naming him on the stage (*Ad Herennium* 1.24, 2.19); but this may be a fictitious theme (see Kohl (1915) 97).

- foro rarum. Nam loco a petitore primo contradictione uti qui possumus ubi vera res agitur, cum adversarius adhuc  
 46 nihil dixerit? Incidunt tamen plerique in hoc vitium vel consuetudine declamatoria vel etiam cupiditate dicendi, dantque de se respondentibus venustissimos lusus, cum modo se vero nihil dixisse neque tam stulte dicturos, modo bene admonitos ab adversario et agere gratias quod adiuti sint iocantur, frequentissime vero, id quod firmissimum est, numquam iis responsurum adversarium fuisse quae proposita non essent nisi illa sciret vera esse et ad fatendum conscientia esset impulsus, ut pro Cluentio Cicero:  
 47 'Nam hoc persaepe dixisti, tibi sic renuntiari me habere in animo causam hanc praesidio legis defendere. Itane est? Ab amicis imprudentes videlicet prodimur, et est nescio quis de iis quos amicos nobis arbitramur qui nostra consilia ad adversarium deferat. Quisnam hoc tibi renuntiavit? Quis tam improbus fuit? Cui ego autem narraui? Nemo, ut opinor, in culpa est: nimirum tibi istud lex ipsa renuntiavit.'  
 48 At quidam contradictione non contenti totos etiam locos explicant: scire se hoc dicturos adversarios et ita prosecuturos. Quod factum venuste nostris temporibus elusit Vibius Crispus, vir ingenii iucundi et elegantis: 'ego vero' inquit 'ista non dico; quid enim attinet illa bis dici?'  
 49 Nonnumquam tamen aliquid simile contradictioni

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<sup>41</sup> 143.

<sup>42</sup> See 10.1.119, 12.10.11: Vibius is also mentioned by Tacitus (*Historiae* 2.10, 4.41; *Dialogus* 8) and Juvenal (4.81–93).

always permissible in the schools, but rare in court. For in a real case, when we speak first as claimants, how can we answer an Objection, when our opponent has as yet said nothing? Many fall into this mistake, either through the habit of declamation or because they are so keen to speak, and they give splendid scope for fun at their own expense to those who answer them, who say sarcastically either that they never said anything like that, and indeed would not have said anything so foolish, or else that their opponent has given them good advice and they are grateful for his assistance. Most often, however, they will say (and this is their strongest line) that their opponent would surely never have replied to points which had not been made, unless he had known them to be true and had been driven to admit it by a bad conscience. So Cicero in *Pro Cluentio*:<sup>41</sup> “You have often said that you have information that I intended to defend this cause on the grounds of the law. Really! I suppose I must have been betrayed by my friends and not known what was going on, and one of those whom I believe to be my friends has been reporting my plans to the other side! Who gave you this information? Who was the villain? Whom did I tell, anyway? No one, so far as I can see, is to blame: obviously it was the law itself that gave you the news.”

Some, not content with raising an Objection, actually develop whole passages at length, saying that they know their opponents will say so-and-so and pursue the point in such-and-such a way. In our own day, Vibius Crispus,<sup>42</sup> a man of witty and elegant mind, got round this very neatly: “No,” he said, “I am not saying *that*. What is the use of having it said twice over?”

There are occasions however when something resem-

poni potest, si quid ab adversario testationibus comprehensum in advocacionibus iactatum <est><sup>12</sup> (respondebimus enim rei ab illis dictae, non a nobis excogitatae) aut si id genus erit causae ut proponere possimus certa extra quae dici nihil possit, ut, cum res furtiva in domo deprensa sit, dicat necesse est reus aut se ignorante inlatam aut depositam apud se aut donatam sibi: quibus omnibus, etiam si  
 50 proposita non sunt, responderi potest. At in scholis recte et narrabimus<sup>13</sup> et contradictionibus occuremus, ut in utrumque locum, id est primum et secundum, simul exerceamur. Quod nisi fecerimus, numquam utemur contradictione; non enim erit cui respondeamus.

51 Est et illud vitium nimium solliciti et circa omnia momenta luctantis; suspectam enim facit iudici causam, et frequenter quae statim dicta omnem dubitationem sustulissent dilata ipsis praeparationibus fidem perdunt, quia patronus et aliis crediderit opus fuisse. Fiduciam igitur orator prae se ferat, semperque ita dicat tamquam de causa optime sentiat. Quod sicut omnia in Cicerone praecipuum est. Nam illa summa cura securitatis est similis,  
 52 tantaque in oratione auctoritas ut probationis locum optineat, dubitare nobis non audentibus. Porro qui scierit quid pars adversa, quid nostra habeat valentissimum, facile

<sup>12</sup> *add. Meister*

<sup>13</sup> *Winterbottom: om. B (but leaving space of 6 letters): enaribus A: propositionibus edd. ("we shall be right to oppose both Propositions and Objections")*

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<sup>43</sup> Perhaps in preliminary proceedings *in iure*, where advocates might be present (Crook (1995) 133).

bling an Objection can be put forward. This is either (1) if something included by our adversary in the depositions has been discussed in consultation between advocates<sup>43</sup> (in this case we shall be answering something they have said, not something we have invented), or (2) if the Cause is of such a kind that we can put forward definite points such that nothing more can be said. For example, if stolen property has been discovered in his house, the defendant must say either that it was put there without his knowledge, or that it was deposited with him, or that it was given to him; and all these points can be answered even if they have not been put forward. In the schools, however, we are quite right both to narrate the facts and to answer Objections, so as to get the maximum practice at the same time both in speaking first and in speaking second. If we do not do this, we shall never use Objections, for there will be no one for us to answer.

Another fault is characteristic of the unduly nervous speaker who agonizes over every detail. He makes his Cause suspect to the judge; often indeed points which would have removed all doubt if made at once lose their credibility by the mere fact that it takes so long to prepare the way for them, because the advocate (or so it must seem) has found other points necessary too. So let the orator display confidence and always speak as though he took the most positive view of his Cause. This virtue, like all virtues, is outstanding in Cicero. His consummate art gives an impression of insouciance, and the authoritative certainty of his speech is such that it takes the place of Proof, and we dare not question it. Again: a man who knows what are the strongest points in his own and his opponent's Cause will

iudicabit quibus maxime rebus vel occurrendum sit vel instandum.

53 Ordo quidem in parte nulla minus adfert laboris. Nam si agimus, nostra confirmanda sunt primum, tum quae nostris opponuntur refutanda: si respondemus, prius<sup>14</sup> incipiendum a refutatione. Nascuntur autem ex iis quae contradictioni opposuimus aliae contradictiones, euntque interim longius: ut gladiatorum manus quae secundae vocantur fiunt et tertiae si prima ad evocandum aduersarii ictum prolata erat, et quartae si geminata captatio est, ut bis cavere, bis repetere oportuerit. Quae ratio et ultra

54 ducit. Sed illam etiam quam supra ostendi simplicem ex adfectibus atque ex adfirmatione sola probationem recipit refutatio, qualis est illa Scauri de qua supra dixi, quin nescio an etiam frequentior ubi quid negatur. Videndum praecipue utriusque parti ubi sit rei summa; nam fere accidit ut in causis multa dicantur, de paucis iudicetur.

55 In his probandi refutandique ratio est, sed adiuvanda viribus dicentis et adornanda. Quamlibet enim sint ad docendum quod volumus accommodata, ieiuna<sup>15</sup> tamen erunt et infirma nisi maiore quodam oratoris spiritu implentur. Quare et illi communes loci de testibus, de tabulis, de argumentis aliisque similibus magnam vim animis iudicum adferunt, et hi proprii quibus factum quodque lauda-

<sup>14</sup> *E*: plus *AB*: potius *Kiderlin*

<sup>15</sup> *Bonnell*: pecunia *A*: *om.* *B*

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<sup>44</sup> See 5.12.9–12.

<sup>45</sup> 5.12.10.

easily judge what he must particularly counter or emphasize.

### *Order*

As regards Order, there is no part of a speech in which this causes less trouble. If we are prosecuting, we have first to confirm our own positions, and then refute those which are brought against them. If we are defending, we have to begin with the Refutation. However, fresh Objections arise from the answers that we make to Objections, and the process sometimes goes further still. It is like the so-called "second" strokes of the gladiator, which become "third" if the "first" has been made to provoke a strike from the opponent, and "fourth" if the parry has been repeated, so that he has to be on his guard twice and strike twice. The process goes on and on. But Refutation also admits the simple Proof which I described above, based on emotions and bare affirmation.<sup>44</sup> An example is Scaurus' refutation which I mentioned above.<sup>45</sup> Indeed, this may perhaps be the commoner form when the facts are denied. Both parties must note above all where the nub of the case lies. It often happens that many things are said in the course of a Cause, whereas the judgement is about only a few of them.

Such is the theory of Proof and Refutation. It has to be backed up and enriched by the powers of the speaker. However well our Arguments are adapted to give the information we want, they will be thin and weak unless the orator breathes more life into them. Consequently, both the Commonplaces about witnesses, documents, Arguments, and the like, and also the specific developments in which we praise or blame particular actions or show



58 mus aut contra, iustum vel iniustum docemus, maius aut minus, asperius aut mitius. Ex his autem alii ad comparationem singulorum argumentorum faciunt, alii ad pluri-  
 um, alii ad totius causae inclinationem. Ex quibus sunt qui praeparant animum iudicis, sunt qui confirmant. Sed praeparatio quoque aut confirmatio aliquando totius causae est, aliquando partium, et proinde ut cuique conveniunt subicienda.

59 Ideoque miror inter duos diversarum sectarum velut duces non mediocri contentione quaesitum singulisne quaestionibus subiciendi essent loci, ut Theodoro placet, an prius docendus iudex quam movendus, ut praecipit Apollodorus, tamquam perierit haec ratio media et nihil cum ipsius causae utilitate sit deliberandum. Haec praeci-  
 piunt qui ipsi non dicunt in foro, ut artes a securis otio-  
 sisque compositae ipsa pugnae necessitate turbentur.

60 Namque omnes fere qui legem dicendi quasi quaedam mysteria tradiderunt, certis non inveniendorum modo argumentorum locis sed concludendorum quoque nos praeceptis alligaverunt: de quibus brevissime praelocutus, quid ipse sentiam, id est quid clarissimos oratores fecisse videam, non tacebo.

them to be just or unjust, more or less important, more brutal or less so, all make a great impression on the mind of the judge. Some of them help him to weigh up the individual Arguments, others groups of Arguments, others affect the balance of the entire Cause. Now some of these Commonplaces prepare the mind of the judge, others confirm his impressions; but preparation and confirmation also sometimes relate to the whole Cause, sometimes to parts of it, and so have to be added as appropriate in each case.

It is this that makes me surprised at the fierce controversy between the two leaders of opposing schools,<sup>46</sup> as to whether Commonplaces should be put after individual Questions (as Theodorus believes) or the judge be instructed before his feelings are moved (as Apollodorus advises)—as though our middle way had ceased to exist, and one did not have to consult the practicalities of the Cause itself! These rules come from people who do not speak in court themselves, so that their textbooks, composed in security and leisure, are thrown into confusion by the necessities of real conflict. For almost all those who have laid down the law of speaking as though it was some sort of Mystery<sup>47</sup> have tied us down, not only to specific topics for discovering Arguments, but to specific rules for validating them. After some very brief preliminary remarks, I shall declare my own view about these rules, that is to say, what I understand the practice of the best orators to have been.

<sup>46</sup> See 2.11.2, 3.1.17–18.

<sup>47</sup> I.e. a secret religious rite into which one has to be initiated: see note on 5.14.27.

- 1 Igitur enthymema et argumentum ipsum, id est rem quae probationi alterius adhibetur, appellant et argumenti elocutionem, eam vero, ut dixi, duplicem: ex consequentibus, quod habet propositionem coniunctamque ei protinus probationem, quale est<sup>1</sup> pro Ligario: 'causa tum dubia quod erat aliquid in utraque parte quod probari posset; nunc melior ea iudicanda est quam etiam di adiuverunt.' Habet enim rationem et propositionem, non habet conclusionem: ita est ille imperfectus syllogismus. Ex pugnantibus vero, quod etiam solum enthymema quidam vocant, fortior multo probatio est. Tale est Ciceronis pro Milone: 'eius igitur mortis sedetis ultores cuius vitam si putetis per
- 2 vos restitui posse nolitis.' Quod quidem etiam aliquando multiplicari solet, ut est ab eodem et pro eodem reo factum: 'quem igitur cum omnium<sup>2</sup> gratia noluit, hunc voluit cum aliquorum querela? Quem iure, quem loco, quem tempore, <quem inpune><sup>3</sup> non est ausus, hunc iniuria, iniquo loco, alieno tempore, cum periculo capitis non du-

<sup>1</sup> quale est *Kiderlin*: quale *B*: quae est *A*

<sup>2</sup> *edd.* (from *Cic. Pro Milone* 41): aliqua *AB*

<sup>3</sup> *add. Regius* from *Cic. loc. cit.*

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<sup>1</sup> 5.10.2.      <sup>2</sup> 19.      <sup>3</sup> *Conclusio* means the whole formal argument, such as it is: the *propositio* is "this is the better cause," the *ratio* is "the gods support it."

<sup>4</sup> See 5.10.2.

<sup>5</sup> 79. Here we have a major premiss, "if you avenge a death, you would if possible restore a life"; a minor, "but you would not wish to restore this life"; the *propositio* "you do not wish to avenge the death."

BOOK 5.14

CHAPTER 14

*Enthymeme and Epicheireme,  
and how to refute them*

The term Enthymeme is applied both to the Argument itself, that is to say the thing adduced to prove something else, and to the expression of the Argument. This, as I said,<sup>1</sup> takes two forms: (1) From Consequents: this form has a Proposition and, attached immediately to it, a Proof, as in *Pro Ligario*:<sup>2</sup> “At that time, the cause was in doubt, because there was something which could be proved on both sides; now, we have to judge that the cause which even the gods supported was the better.” Here we have a Reason and a Proposition, but no completed argument.<sup>3</sup> It is thus an imperfect Syllogism. (2) From incompatibles: this is a much stronger Proof, and some restrict the name Enthymeme to this form.<sup>4</sup> Thus Cicero in *Pro Milone*:<sup>5</sup> “So you are sitting here to avenge the death of a man whose life you would not wish restored, if you thought it in your power to restore it.” This form is sometimes multiplied, as by Cicero in the same defence:<sup>6</sup> “So did he choose, at a time when it would cause some to complain, to kill the very man whom he refused to kill at a time when everyone would have been pleased? Did he, unhesitatingly, wrongfully, at an unfavourable place and time, and at risk to his own life, kill the very man whom he did not dare to attack lawfully, at a good place and time, and in perfect safety?”

<sup>6</sup> Ibid. 41. The argument says (in several ways): (1) that Milo could have killed Clodius at a time when it would have been easy, lawful, and approved; (2) that he is alleged to have done so in unfavourable circumstances, which is very improbable.

- 4 bitavit occidere?' Optimum autem videtur enthymematis genus cum proposito dissimili vel contrario ratio subiungitur, quale est Demosthenis: 'Non enim, si quid umquam contra leges actum est idque tu es imitatus, idcirco te convenit poena liberari, quin e contrario damnari multo magis. Nam ut, si quis eorum damnatus esset, tu haec non scripsisses, ita, damnatus tu si fueris, non scribet alius.'
- 5 Epichirematos et quattuor et quinque et sex etiam factae sunt partes a quibusdam. Cicero maxime quinque defendit, ut sit propositio, deinde ratio eius, tum adsumptio et eius probatio, quinta complexio: quia <vero><sup>4</sup> interim et propositio non egeat rationis et adsumptio probationis, nonnumquam etiam complexione opus non sit, et quadripartitam et tripartitam et bipartitam quoque fieri posse
- 6 ratiocinationem. Mihi et pluribus nihilominus auctoribus tres summum videntur. Nam ita se habet ipsa natura ut sit de quo quaeratur et per quod probetur: tertium adici potest velut ex consensu duorum antecedentium. Ita erit prima intentio, secunda adsumptio, tertia conexio. Nam confirmatio primae ac secundae partis et exornatio isdem cedere possunt quibus subiciuntur.
- 7 Sumamus enim ex Cicerone quinque partium exemplum: 'Melius gubernantur ea quae consilio reguntur

<sup>4</sup> *add. Regius*

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<sup>7</sup> *Oration 22.7, 23.99.*

<sup>8</sup> *De inventione* I.58–59. It is confusing that *propositio* here means the major premiss, not (as above) the proposition to be proved. *Complexio* here is "conclusion," not necessarily set out explicitly. (*Complexio* and *conexio* seem to be synonyms, and to

The best kind of Enthymeme, however, seems to be one in which a Reason is combined with a Dissimilar or Contrary Statement, as here in Demosthenes:<sup>7</sup> “For if at any time an act was committed contrary to law, and you copied it, it does not follow that you ought to go free of punishment; on the contrary, there is all the more reason why you should be condemned. For, just as you would not have made this proposal if one of them had been condemned, so, if you are condemned, no one else will make such a proposal in future.”

The Epicheireme, according to various writers, has four or five or even six parts. Cicero<sup>8</sup> supports the view that there are at most five: Major Premiss and its Reason, Minor Premiss and its Proof, and finally Conclusion (*complexio*). But since sometimes the Major Premiss does not need a Reason, or the Minor Premiss a Proof, and sometimes too there is no need for a Conclusion, the reasoning process may consist of only four, three or even two parts. Nevertheless, I, like most authorities, believe that there are at most three. For the nature of things requires that there should be a subject of inquiry and a means of proving it; the third element which may be added results (as it were) from the agreement of the first two: so we have (1) the Major Premiss, (2) the Minor Premiss, (3) the Conclusion (*conexio*). The Confirmation and the development of the first two can come under the parts to which they belong.

Let us take an example of the five parts from Cicero: “Things that are controlled by design are better governed

be distinguished from *conclusio*, which *normally* (but see below, § 20) signifies the complete formal argument.)

- quam quae sine consilio administrantur. Hanc primam partem numerant, eam deinceps rationibus variis et quam copiosissimis verbis adprobari putant oportere.' Hoc ego totum cum sua ratione unum puto: alioqui si ratio pars est, est autem varia ratio, plures partes esse dicantur. Adsumptionem deinde ponit: 'Nihil autem omnium rerum melius quam omnis mundus administratur. Huius adsumptionis quarto in loco aliam porro inducunt adprobationem': de quo idem quod supra dico. 'Quinto inducunt loco complexionem, quae aut id infert solum quod ex omnibus partibus cogitur, hoc modo: consilio igitur mundus administratur, aut, unum in locum cum conduxit breviter propositionem et adsumptionem, adiungit quid ex his conficiatur, ad hunc modum: quod si melius geruntur quae consilio quam quae sine consilio administrantur, nihil autem omnium rerum melius quam omnis mundus administratur, <consilio igitur mundus administratur.'<sup>5</sup> Cui parti consentio.
- 10 In tribus autem quas fecimus partibus non est forma semper eadem, sed una in qua idem concluditur quod intenditur: 'anima immortalis est, nam quidquid ex se ipso movetur immortale est, anima autem ex se ipsa movetur, immortalis igitur est anima.' Hoc fit non solum in singulis

<sup>5</sup> *suppl. rec.* from Cic. *De inventione* 1.59

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<sup>9</sup> Cicero adds examples (house, army, ship) which establish the point by induction.

<sup>10</sup> Here too (loc. cit. 59) Cicero adds examples: seasons, alternation of night and day, regularity of movement of the stars.

<sup>11</sup> Plato, *Phaedrus* 245C. Q. here seems to provide evidence for the existence of a reading *αὐτοκίνητον*, "self-moved" (instead

than those which are managed without design.’ This they count as the first part. Then they think it should be supported by various reasons and the greatest possible fullness of expression.”<sup>9</sup> Now I think all this, including the Reason, is one item; otherwise, if the Reason is a separate part and there is a variety of Reasons, there would be said to be yet more parts. Cicero next comes to the Minor Premiss:<sup>10</sup> “‘But nothing at all is better managed than the universe.’ They next introduce in fourth place another Proof, namely of this Minor Premiss.” My comment on this is as above. “In fifth place they put the Conclusion, which either (1) merely states the necessary inference from all the parts (‘Therefore the universe is managed by design’) or (2) having brought together the Major Premiss and the Minor Premiss in one brief statement, adds what follows from them, after this fashion: ‘If things governed by design are better managed than those governed without design, and nothing is better governed than the whole universe, <it follows that the universe is governed by design>.’” I agree with this.

In the three-part Epicheireme, as we have described it, the form is not always the same. (1) In one form, the result of the Argument is identical with the Major Premiss: “The soul is immortal, since whatever moves of its own accord is immortal; the soul moves of its own accord; therefore the soul is immortal.”<sup>11</sup> This occurs not only in individual

of ἀεικίνητον, “perpetually moved”), conjectured by Vollgraff in Plato, subsequently found in a papyrus text (*P. Oxy.* 1017), and often defended by modern scholars. Cicero’s two versions of the passage (*Tusculanae Disputationes* 1.53, *Somnium Scipionis* 27–28) have *semper*, i.e. ἀεικίνητον. We do not know Q.’s source.



11 argumentis sed in totis causis, quae sunt simplices, et in quaestionibus. Nam et haec primam habent propositionem: 'sacrilegium commisisti', 'non quisquis hominem occidit caedis tenetur', deinde rationem (sed haec est in causis et quaestione longior quam in singulis argumentis), et plerumque summa complexione vel per enumerationem vel per brevem conclusionem testantur quid effecerint. In hoc genere propositio dubia est, de hac enim quaeritur.

12 Altera est complexio non par intentioni, sed vim habens parem: 'mors nihil ad nos, nam quod est dissolutum sensu caret, quod autem sensu caret nihil ad nos.'

In alio genere non eadem propositio est quae conexio: 'omnia animalia meliora sunt quam inanima, nihil autem melius est mundo, mundus igitur animal.' Hic potest videri deesse intentio; potuit enim sic constitui ratiocinatio: 'animal est mundus, omnia enim animalia meliora sunt quam inanima' et cetera. Haec propositio aut confessa est ut proxima, aut probanda, ut: 'qui beatam vitam vivere velit, philosophetur oportet', non enim conceditur; cetera sequi nisi confirmata prima parte non possunt.

Item adsumptio interim confessa est, ut: 'omnes autem volunt beatam vitam vivere', interim probanda ut illa: 'quod est dissolutum sensu caret', cum soluta corpore

<sup>12</sup> Epicurus, *Kyriai Doxai* 2.

<sup>13</sup> See Plato, *Timaeus* 30AB. This and similar arguments were common to Platonists and Stoics. For Zeno's syllogism, in which it is used to prove the universe to be rational, see *SVF* 1.32 (Long and Sedley (1987) 54 F 1).

Arguments but in entire Causes, if they are simple, and in Questions. For these also have a Major Premiss—"You have committed sacrilege" or "Not everyone who has killed a man is guilty of murder"—and then a Reason (which is longer in Causes and Questions than in individual Arguments), after which they normally attest their result in a final statement (*complexio*), either by enumeration or by a brief formal validation (*conclusio*). In this type, the Major Premiss is doubtful, because it is the subject of inquiry.

(2) A second type of Conclusion (*complexio*) is not equivalent to the Major Premiss, but has equivalent force. "Death is nothing to us, for that which has been dissolved is not sentient, and that which is not sentient is nothing to us."<sup>12</sup>

(3) There is a third form in which the Major Premiss and the Conclusion (*conexio*) are not the same: "All animate things are better than inanimate things, there is nothing better than the universe, therefore the universe is animate."<sup>13</sup> Here one might think the Major Premiss missing, for the reasoning could have been constructed as follows: "The universe is animate, all animate things are better than inanimate," and so on. This Major Premiss is either an admitted fact (as in this last example) or to be proved, as in the following: "He who wishes to live a happy life must practise philosophy." In this case, it is not agreed; and the consequences cannot follow unless the first part is established.

Sometimes again the Minor Premiss is agreed ("but all men want to live a happy life"), sometimes to be proved ("that which has been broken up is not sentient"), because it is doubtful whether, when broken away from the body,

anima an sit immortalis vel ad tempus certum maneat sit in dubio. Quod adsumptionem alii, rationem alii vocant.

- 14 Epichirema autem nullo differt a syllogismis nisi quod illi et plures habent species et vera colligunt veris, epichirematis frequentior circa credibilia est usus. Nam si contingeret semper controversa confessis probare, vix esset in
- 15 hoc genere usus oratoris. Nam quo ingenio est opus ut dicas: 'bona ad me pertinent, solus enim sum filius defuncti', vel 'solus heres' (cum iure bonorum possessio intestati <secundum proximitatem, testati><sup>6</sup> secundum tabulas testamenti detur), 'ad me igitur pertinet'? Sed cum ipsa ratio in
- 16 quaestionem venit, efficiendum est certum id quo probaturi sumus quod incertum est, ut, si ipsa forte intentione dicatur aut 'filius non es' aut 'non es legitimus' aut 'non es solus', itemque aut 'non es heres' aut 'non iustum testamentum est' aut 'capere non potes' aut 'habes coheredes', efficiendum est illud<sup>7</sup> propter quod nobis adiudicari bona
- 17 debeant. Sed tum est necessaria illa summa conexio cum intervenit ratio longior, alioqui sufficiunt intentio ac ratio: 'silent enim leges inter arma, nec se expectari iubent, cum ei qui expectare velit ante iniusta poena luenda sit quam iusta repetenda.' Ideoque id enthymema quod est ex consequentibus rationis simile dixerunt. Sed et singula quaeque interim<sup>8</sup> recte ponuntur, ut ipsum illud 'silent

<sup>6</sup> intestati <secundum proximitatem, testati> *suppl.* Winterbottom after Gertz and Burman      <sup>7</sup> Winterbottom: iustum A

<sup>8</sup> quaeque interim *edd.*: interim quae A

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<sup>14</sup> This in fact seems the better description, the suppressed Minor being "death is a dissolution (of soul and body)."

<sup>15</sup> Cicero, *Pro Milone* 11.

the soul is immortal or only continues to exist for a time. Some call this the Minor Premiss, some the Reason.<sup>14</sup>

The Epicheireme is no way different from Syllogisms, except that they have more species and infer truth from truth, whereas the Epicheireme is most often used with Propositions which are merely probable. If doubtful Propositions could always be proved by means of admitted ones, there would hardly be any use for an orator in this type of Argument. How much talent do you need to say "The property belongs to me, for I am the only son of the deceased"; or "I am the only heir"—for by law the property of an intestate <goes to the next of kin and that of a man who has made a will> goes in accordance with the will—"so it belongs to me?" But when the Reason itself comes into question, we have to establish the certainty of the proposition we are going to use to prove what is uncertain. For example, if the Major Premiss were "You are not his son" or "You are not legitimate" or "You are not his only son," or again "You are not his heir" or "It is not a valid will" or "You cannot inherit" or "You have co-heirs," we have to establish the fact which makes it right for the property to be adjudged to us. When an unusually long Reason intervenes, the final Conclusion becomes essential. Otherwise, Major Premiss and Reason suffice: "Laws are silent in the midst of arms, and do not bid us wait for their approval, because the man who chooses to wait will have to pay an unjust penalty before the just penalty can be claimed."<sup>15</sup> It has therefore been said that an Enthymeme based on Consequents resembles a Reason. However, (1) it is sometimes right to state individual Propositions (like the one just quoted:

18 leges inter arma', et a ratione incipere fas est, deinde concludere, ut ibidem: 'quod si duodecim tabulae nocturnum furem quoquo modo, diurnum autem, si se telo defenderet, interfici inpune voluerunt, quis est qui quoquo modo quis interfectus sit puniendum putet?' Variavit hic adhuc et rursus rationem tertio loco posuit: 'cum videat aliquando gladium nobis ab ipsis porrigi legibus'. Per omnis<sup>9</sup> autem partis duxit ordinem: 'insidiatori vero et latroni quae potest inferri iniusta nex?' (hoc intentio); 'quid comitatus nostri, quid gladii volunt?' (hoc ratio); 'quos habere certe non liceret si uti illis nullo pacto liceret': hoc ex ratione et intentione conexio.

20 Huic generi probationis tribus occurritur modis, id est per omnis partis. Aut enim expugnatur intentio aut adsumptio aut conclusio,<sup>10</sup> nonnumquam omnia. [Sed omnia haec tria sunt.]<sup>11</sup>

Intentio expugnatur: 'iure occidi eum qui insidiatus sit'; nam prima statim quaestio pro Milone est 'an ei fas sit lucem intueri qui a se hominem necatum esse fateatur'.

21 Expugnatur adsumptio omnibus iis quae de refutatione diximus. Et ratio quidem numquam est vera nisi et propositio vera sit; interim verae propositionis falsa ratio est, ut

<sup>9</sup> per omnis *Winterbottom*: prioris *A corr.*

<sup>10</sup> *Perhaps* complexio or conexio *D.A.R.*

<sup>11</sup> *del. Gesner, cf. Julius Victor 415,8 Halm = 59,3 Giomini-Celentano; some other minor corrections have been made in this passage, on the basis of Victor's paraphrase, by Halm and Bonnell*

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<sup>16</sup> *Ibid.* 9. The argument is: if the law allowed a thief to be killed in certain circumstances, the killer of a thief is not always to be punished.

“The laws are silent in the midst of arms”), and (2) it is perfectly proper to begin with a Reason and then complete the Argument, as in the same context:<sup>16</sup> “But if the Twelve Tables allowed the killing of a thief without incurring a penalty either by night in any circumstances, or by day if he defended himself with a weapon, who can maintain that the killer is to be punished whatever the circumstances in which a man has been killed?” Cicero gave a further twist to this, and put the Reason back in the third place, by adding:<sup>17</sup> “When he observes that the laws themselves sometimes put a sword into our hands . . .” On the other hand, he also went through all the parts in sequence: “What death can be unjust for the ambusher and the robber?” This is the Major Premiss. “What is the object of our escorts and our swords?” This is the Reason. “Surely, if we were not allowed to use them, we should not be allowed to have them.” This is the Conclusion (*conexio*) from the Reason and the Major Premiss.

This type of Proof may be met in three ways, that is to say with reference to any of its three parts; the Major Premiss, the Minor Premiss, and the Conclusion (*conclusio*) may all be attacked, and sometimes all three.

(1) Major Premiss attacked: “I was justified in killing him, because he lay in wait for me.” The very first Question in Milo’s defence is “whether it is right for a man who confesses to having killed a man to look upon the light of day.”

(2) The Minor Premiss is attacked by all the methods mentioned under “Refutation.”<sup>18</sup> Note that the Reason is never true when the Proposition is not also true, but that sometimes a true Proposition has a false Reason. For ex-

<sup>17</sup> Ibid. 10.      <sup>18</sup> 5.13.

'virtus bonum est' verum est: si quis rationem subiciat  
'quod ea locupletes faciat', verae intentionis falsa sit ratio.

- 22 Conexio autem aut vera negatur, cum aliud colligit  
quam id quod ex prioribus efficitur, aut nihil ad quaestio-  
nem dicitur pertinere. Non est vera sic: 'insidiator iure oc-  
ciditur; nam cum vitae vim adferat ut hostis, debet etiam  
repelli ut hostis: recte igitur Clodius ut hostis occisus est';  
non utique, nondum enim Clodium insidiatorem ostendi-  
mus. Sed sit vera conexio 'recte igitur insidiator ut hostis  
occiditur': nihil ad nos, nondum enim Clodius insidiator  
23 apparet. Sed ut potest vera esse intentio et ratio et tamen  
falsa conexio, ita, si illa falsa sunt, numquam est vera  
conexio.

- 24 Enthymema ab aliis oratorius syllogismus, ab aliis pars  
dicitur syllogismi, propterea quod syllogismus utique con-  
clusionem et propositionem habet et per omnes partes  
efficit quod proposuit, enthymema tantum intellegi con-  
tentum est.<sup>12</sup>

- 25 Syllogismus talis: 'solum bonum virtus, nam id demum  
bonum est quo nemo male uti potest: virtute nemo male  
uti potest; bonum est ergo virtus.'

Enthymema ex consequentibus: 'bonum est virtus, qua  
nemo male uti potest.' Et contra: 'non est bonum pecunia;  
non enim bonum est quo quis male uti potest; pecunia

<sup>12</sup> *Winterbottom*: sit A

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<sup>19</sup> Q. is wrong here: see Aristotle, *Analytica Priora* 2, 53b11ff.

ample: "Virtue is a good thing" is true; but if you were to add as a Reason "because it makes men rich," there would be a false Reason for a true Major Premiss.

(3) With the Conclusion (*conexio*), one may either (a) deny its truth (when it makes an inference other than that established by the Premisses) or (b) say that it is irrelevant to the Question. (a) Denial of truth: "An ambusher is justifiably killed; for as he threatens life as an enemy does, he should be repelled like an enemy; Clodius was therefore justifiably killed as an enemy." Not necessarily, for we have not shown that Clodius set an ambush. (b) Suppose a true Conclusion (*conexio*): "Therefore an ambusher is rightly killed as an enemy." This is irrelevant, because Clodius has not yet been shown to have set an ambush. However, though the Major Premiss and the Reason can be true while the Conclusion is false, if they are false, the Conclusion can never be true.<sup>19</sup>

### *Syllogism and Enthymeme*

Some call the Enthymeme a "rhetorical Syllogism," others "a part of the Syllogism," because a Syllogism always has a completed argument (*conclusio*) and a Major Premiss, and proves its Proposition by means of all its parts, while an Enthymeme is content simply to be understood.

(1) Syllogism: "Virtue is the only good, because that alone is good which no one can put to bad use; <no one can put virtue to bad use;> therefore virtue is a good."

(2) Enthymeme from Consequents: "Virtue, which no one can put to bad use, is a good." Contrast (3): "Money is not a good; for what can be put to bad use is not a good;



potest quis male uti; non igitur bonum est pecunia.'

Enthymema ex pugnantibus: 'an bonum est pecunia, qua quis male uti potest?'

26 'Si pecunia quae est in argento signato argentum est, qui argentum omne legavit et pecuniam quae est in argento signato legavit: argentum autem omne legavit; igitur et pecuniam quae est in argento legavit' habet formam syllogismi. Oratori satis est dicere: 'cum argentum legaverit omne, pecuniam quoque legavit quae est in argento.'

27 Peregisse mihi videor sacra tradentium partes, sed consilio locus superest. Namque ego, ut in oratione syllogismo quidem aliquando uti <non><sup>13</sup> nefas duco, ita constare totam aut certe confertam esse adgressionum et enthymematum stipatione minime velim. Dialogis enim et dialecticis disputationibus erit similior quam nostri operis actionibus, quae quidem inter se plurimum differunt.

28 Namque in illis homines docti et inter doctos verum quae-  
rentes minutius et scrupulosius scrutantur omnia et ad  
liquidum confessumque perducunt, ut qui sibi et inve-  
niendi et iudicandi vindicent partis, quarum alteram το-  
29 πικρήν, alteram κριτικήν vocant. Nobis ad aliorum iudicia  
componenda est oratio, et saepius apud omnino imperitos  
atque illarum certe ignaros litterarum loquendum est,  
quos nisi et delectatione adlicimus et viribus<sup>14</sup> trahimus et

<sup>13</sup> *add. Winterbottom after Regius*

<sup>14</sup> vicibus *Meister* ("by turns")

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<sup>20</sup> Compare Cicero, *Topica* 13, and above, 5.11.33.

<sup>21</sup> See on 1.2.20, 5.13.60.

money can be put to bad use; therefore money is not a good.”

(4) Enthymeme from Incompatibles: “Is money, which can be put to bad use, a good?”

(5) The following is in the form of a Syllogism: “If money, which is in the form of coined silver, is silver, then the man who bequeathed all his silver has also bequeathed the money which is in the form of coined silver; but he did bequeath all his silver, therefore he bequeathed the money in the form of silver.”<sup>20</sup> It is enough for the orator to say “Having bequeathed all his silver, he has also bequeathed the money in the form of silver.”

*Conclusion: some practical considerations*

I seem to have finished playing the part of initiator into these mysteries;<sup>21</sup> next comes the place for practical advice. I do indeed think that it is sometimes not a crime to use a Syllogism in a speech; but I certainly do not want a speech entirely consisting of, or stuffed full with, Epicheiremes and Enthymemes. It would be more like a dialogue or a dialectical debate than a pleading belonging to our art; and these are very different things. In debates of this kind, scholars seeking the truth among fellow scholars go into everything with meticulous minuteness, and come to a clear and agreed conclusion; they claim the tasks both of invention and of judgement—“topics” and “criticism,” as the Greeks call them. We, on the other hand, have to compose speeches for others to judge, often before people who are quite untrained and certainly ignorant of that sort of scholarship; and unless we can entice them with delights, drag them along by the strength of our pleading,

nonnumquam turbamus adfectibus, ipsa quae iusta ac vera sunt tenere non possumus.

- 30 Locuples et speciosa <et imperiosa><sup>15</sup> vult esse eloquentia: quorum nihil consequetur si conclusionibus certis et crebris et in unam prope formam cadentibus concisa et contemptum ex humilitate et odium ex quadam servitute et ex copia satietatem et ex similitudine fastidium tulerit. Feratur ergo non semitis sed campis, non ut ieiuni<sup>16</sup>
- 31 fontes angustis fistulis colliguntur, sed ut beatissimi amnes totis vallibus fluunt, ac sibi viam, si quando non acceperit, faciat. Nam quid illa miserius lege velut praeformatas infantibus litteras persequentium et, ut Graeci dicere solent, quem mater amictum dedit sollicite custodientium: [propositio conclusio ex consequentibus, propugnantibus]<sup>17</sup>
- 32 non inspiret? non augeat? non mille figuris variet ac verset, ut ea nasci et ipsa provenire natura, non manu facta et arte suspecta magistrum fateri ubique videantur? Quis umquam sic dixit<sup>18</sup> orator? Nonne apud ipsum Demosthenen paucissima huius generis reperiuntur? Quae adpressa Graeci magis (nam hoc solum peius nobis faciunt) in catenas ligant et inexplicabili serie conectunt et indubitata colligunt et probant confessa et se antiquis per hoc similes

<sup>15</sup> *add. Halm from "Cassiodorus" 503.11–12*

<sup>16</sup> *uti exiles Marshall AJP 95 (1974) 81*

<sup>17</sup> *del. Burman: cf. § 25*

<sup>18</sup> *recc.: vixit A: vicit Radermacher ("won his case")*

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<sup>22</sup> For this range of metaphor, see, e.g., 12.2.11, Cicero, *De natura deorum* 2.21 (with Pease *ad loc.*).

<sup>23</sup> So Plutarch (*On the Fortune of Alexander = Moralia* 330B): it is a foolish and vain mind which either "admires a self-coloured

and sometimes disturb them by emotional appeals, we cannot make even a just and true cause prevail.

Eloquence seeks to be rich, beautiful, <and commanding>. It will be none of these things if it is fragmented by definite, frequent, and monotonously structured formal Arguments, and thus arouses contempt for its meanness, distaste for its hidebound restrictions, satiety because there is so much of it, and boredom because it is all the same. Let it therefore travel not by the narrow paths, but over the open plains, not like a scanty spring conveyed in narrow pipes, but like the mightiest rivers that fill whole valleys.<sup>22</sup> If it does not find a way prepared for it, let it make one for itself. What is more debilitating than these petty rules, which make us behave like little children tracing the shapes of the letters or (as the Greeks say) carefully keeping to the clothes that mother gave?<sup>23</sup> Should it not inspire, amplify, vary, and diversify its subject by countless Figures—and do this in such a way that these things seem to be born and sprung from Nature herself, and not contrived, suspected for their artificiality, and revealing the teacher at every point? What real orator ever spoke like that? Even in Demosthenes there are very few examples of this sort of thing to be found. And yet the Greeks (and this is the only thing they do worse than we do) seize on these things, tie them together into chains, make up concatenations of them that no one can unravel, infer Conclusions that were never in doubt, prove admitted facts, and think

cloak and is repelled by a tunic with a purple edge, or, on the other hand, disdains the former and is amazed by the latter, keeping to the dress of a little child, which family usage, like his nurse, has made him wear.”

vocant, deinde interrogati numquam respondebunt quem imitentur.

- 33 Sed de figuris alio loco. Nunc illud adiciendum, ne ūs quidem consentire me qui semper argumenta sermone puro et dilucido et distincto, ceterum minime elato<sup>19</sup> ornatoque putant esse dicenda. Namque ea distincta quidem ac perspicua debere esse confiteor, in rebus vero minoribus etiam sermone ac verbis quam maxime propriis et ex  
34 usu: at si maior erit materia, nullum ūs ornatum, qui modo non obscuret, subtrahendum puto. Nam et saepe plurimum lucis adfert ipsa tralatio, cum etiam iuris consulti, quorum summus circa verborum proprietatem labor est,  
35 litus esse audeant dicere qua fluctus eludit, quoque quid est natura magis asperum, hoc pluribus condiendum est voluptatibus, et minus suspecta argumentatio dissimulatione, et multum ad fidem adiuvat audientis voluptas: nisi forte existimamus Cicerone:n haec ipsa male in argumentatione dixisse, 'silere leges inter arma', et 'gladium nobis interim ab ipsis porrigi legibus'. In his<sup>20</sup> tamen habendus is est<sup>21</sup> modus ut sint ornamento, non impedimento.

<sup>19</sup> *Meister*: lato *A*: laeto *Obrecht*

<sup>20</sup> In his *Julius Victor* 421,3 *Halm* = 67,5 *Giomini-Celentano*: his *A*: is *Spalding*

<sup>21</sup> is est *D.A.R.* (est is *Radermacher*): istis *A*

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<sup>24</sup> 9.1-3.

<sup>25</sup> Compare Anonymus Seguierianus 196 (57 *Dilts-Kennedy*): "The style of the Proofs should be neither simple (as in the Narrative) nor fully explicit . . . but periodic, formed into cola (κωλοειδῆ) (D. C. Innes) for κωνοειδῆ), and in general combative."

themselves on a par with the classics for doing so; and then, when you ask them, they will never tell you who it is they are imitating!

I shall deal with Figures elsewhere.<sup>24</sup> For the moment, I make the further point that I disagree also with those who believe that Arguments should always be expressed in language which is pure, lucid, and distinct, but not elevated or ornate.<sup>25</sup> Of course I admit that the Arguments must be distinct and clear, and indeed that in the less important cases the language and the vocabulary should also be as literal and normal as possible. But if the subject is a grander one, I do not think that any ornament (so long as it does not lead to obscurity) should be denied it. Metaphor itself often illuminates. After all, even lawyers, who take great pains over the precise significance of words, venture to define the shoreline (*litus*) as the place where the wave “plays itself out” (*eludit*).<sup>26</sup> Moreover, the more unattractive a thing is by nature, the more it needs to be seasoned with delights. Argumentation is less suspect when well disguised, and the hearer’s enjoyment does a lot for the credibility of the speaker. Or do we think that Cicero<sup>27</sup> was wrong to put “Laws are silent in the midst of arms” and “The laws themselves sometimes put a sword in our hands” in the middle of a passage of Argumentation? The criterion in these matters, however, must be that they are an improvement, and not a hindrance.

<sup>26</sup> Aquilius’ definition, according to Cicero, *Topica* 32. Compare 7.3.13.

<sup>27</sup> *Pro Milone* 11, 9.



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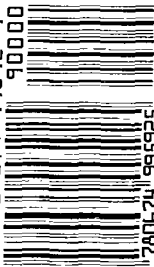
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